Strasbourg, 13 February 2013

GC(2012)31

EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS XIX-4 (2011) OF THE 1961 EUROPEAN SOCIAL CHARTER

(Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Netherlands (Aruba, Antilles), Poland, Spain, "The former Yugoslav Republic of Macedonia" and United Kingdom)

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 Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Netherlands (Aruba, Antilles), Poland, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom. Reports were due by 31 October 2010.

5. Conclusions XIX-4 (2011) of the European Committee of Social Rights were adopted in December 2011 (Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Netherlands (Aruba, Antilles), Poland, Spain, "the Former Yugoslav Republic of Macedonia" and the United Kingdom).

6. 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.

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

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

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

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[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.

- 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.

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

II. Examination of national situations on basis of Conclusions XIX-4 (2011) of the European Committee of Social Rights

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

11. The Governmental Committee applied the rules of procedure adopted at its 125th meeting (26–30 March 2012). In applying these measures and according to the modalities decided by the Bureau in December 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).

12. 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 2 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.

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

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

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

Resolution on the implementation of the European Social Charter during the period 2006-2009 (Conclusions XIX-4 (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 Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Netherlands (Aruba, Antilles), Poland, Spain, "The former Yugoslav Republic of Macedonia" and the United Kingdom;

Considering Conclusions XIX-4 (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 XIX-4 (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 XIX-4 (2011) – European Social Charter (ESC)

Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Netherlands (Aruba, Antilles), Poland, Spain, "The former Yugoslav Republic of Macedonia" and United Kingdom

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

ESC 7§1 GREECE

The ECSR concludes that the situation in Greece is not in conformity with Article 7§1 of the 1961 Charter on the ground that it has not been established that the legal framework regulating the minimum age of admission to employment in Greece is effectively applied.

16. The representative of Greece, recalling that legislation on the protection of minors at work had been found in conformity, emphasized that grounds of non-conformity were limited to the efficiency of the implementation of such legislation in practice. She informed the Committee that, in addition to supervising the implementation of the legislation, work booklets for minors over 15 years of age were issued, medical checks to issue work permits were overseen work places were inspected in which minors were employed. These were main activities of labour inspectors, since minors were particularly vulnerable in cases of violations of the law. Violations of the legislation on the protection of minors at work by employers and representatives of employers were sanctioned by imprisonment and fines.

17. The representative of Greece explained further that, even though the National Commission for Human Rights had identified a lack of human resources in labour inspectors, and despite budget constraints due to the current financial crisis, data showed that labour inspections were efficient, since 60,203 labour inspections had been carried out, and 14.402.529 € of fines imposed in 2012. She specified that her Government had increased efforts to control undeclared work in the last two years, and that additional staff had been recruited and trained at the Ministry of Labour to support and assist labour inspectors in performing their duties.

18. In reply to a question from the Chair, the representative of Greece affirmed that labour inspectors were successful in controlling the minimum age of admission to employment.

19. The Secretariat recalled that the ECSR had come to the opposite conclusion on the basis of information from the National Commission for Human Rights, which obviously revealed differences in assessment among Greek sources.

20. The representative of Greece agreed that there had been some concerns, but reiterated that about 200 additional staff had been recruited and trained by the Ministry of Labour to support and assist labour inspectors in performing their duties.

21. The Committee took note of the additional staffing and invited the Government of Greece to bring the situation into conformity with the European Social Charter.

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

ESC 7§3 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 7§3 of the 1961 Charter on the ground that it has not been established that protection against work which would deprive children of the full benefit of compulsory education is safeguarded in practice.

[4] State Parties in English alphabetic order.

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

1. Legal Framework

The Greek legislation covering minors' working conditions is very protective and clearly defines both the minimum age for admission to employment, as well as minors' time limits, issues that are directly related to the institutional safeguard of their right to compulsory education, and 'the provision of facilities for further education and training. In particular, we note the following:

a. In general, the provisions of labor law for minors (Law 1837/89, PD 62/1998) apply to any form of employment, except for occasional, short-term light work, such as agriculture, forestry and livestock family business and provided that such operations are performed during the day (see Section 3, Article 1 PD 62/1998, as amended by article 33 Law 2956/2001).

Minors until they reach the age of 15 (which coincides with the end of compulsory 9-year education in our country) may not engage in any kind of work (Article 2 of Article 4 Law 1837/89 & PD 62/1998). By exception, with the permission of the competent labor inspection, the employment of children until the age of 3 years, is permitted in cultural and related activities for a period of time that must not exceed three months per year under the following conditions: i) their safety, health (physical and mental) and physical, spiritual, moral or social development is not affected, and b) their work does not prevent their attendance at school, their participation in vocational orientation or training programs approved by the competent authority or that their capacity to benefit from the education provided is not affected (Article 5 PD 62/1998 and article 3 Law 1837/89).

b. Regarding their work time limits, minors' working hours may not exceed eight hours per day and forty hours per week, while the working time of those who have completed their 16th year of age, and those attending secondary schools of all types, technical or vocational schools, public or private, recognized by the State, should not exceed six hours per day and thirty hours per week. The working time of a teenager when working in a business, in the framework of a system of in turns theoretical and / or practical training or internship or apprenticeship, is included in the estimation of working time. **When the teenager is employed by several employers, working days and working hours shall be accumulative.** The daily work of young people in secondary schools of all types, public or private, state-recognized technical or vocational schools starts or ends at least two hours after the end or before the beginning of the course respectively. **Overtime work of adolescents is prohibited** (Article 3 of Presidential Decree 62/1998, Art. 5 of Law 1837/1989).

Minors employees are entitled to a daily rest period of at least twelve consecutive hours, which should include the period from 10:00 p.m. until six in the morning. Therefore the work of adolescents (ie every young person at the age of at least 15 years but under 18 years who is no longer subject to compulsory schooling in the text on this provisions) is prohibited from 22.00 to 06.00 hours (para2 of Art. 5, Law 1837/1989, Art. 8 and para1 of Art. 9 of P.D. 62/1998). Also, adolescents are entitled to a minimum weekly rest period of two consecutive days of which should be on a Sunday (Art. 9, para2 of Presidential Decree 62/98).

If the working day is longer than 4.5 hours, minors are provided to a break of at least thirty consecutive minutes (Article 10 of P. D. 62/98).

The leave is granted during the summer school holidays in consecutive days. Half of the leave is granted in parts and in other occasions if the minor requests so (para1 of Law 1837/1989).

Finally, for the convenience of employees who are pupils or students of educational units of any type, an additional leave is provided in para1 of art. 2 of Law1346/83 for participating in exams. The leave according to art. 7 of the National General Labour Collective Agreement 1996 and art. 6 of NGLCA 1998, is up to thirty additional days and it may be granted in consecutive days or in parts.

2. Implementation control

The Labour Inspectorate Body (SEPE) is responsible for the enforcement of the above mentioned legislation. SEPE issues minors' booklets -after-medical opinion - in order to allow to minors over the age of 15 to engage in business.

Checks and workplace inspections to detect cases of illegal employment of minors, are one of the main activities of the Labour Inspectorate, as minors are one of the most vulnerable an special categories of workers affected by the non-application of labor law.

In cases of minors who work in employment conditions that do not guarantee their physical or mental health, the competent supervisory bodies **prohibit the continuation of work**. Imprisonment and fines are provided for employers and their representatives who violate the provisions on child labour protection.

Besides according to art.2, para1 of Law 3996/11 "SEPE's responsibility is the supervision and the control of the implementation of the provisions of labor legislation, research on the insurance coverage and the illegal employment of workers, resolving labor disputes and provide information to employees and employers on the most effective means for legal compliance".

In the year 2011, according to Law 1837/89 "For the protection of minors in employment and other provisions" 874 juvenile booklets were granted after medical examinations by medical doctors of IKA. The 480 of the booklets were granted to boys and 394 to girls.

Here are some figures on complaints received for cases of illegal employment and fines imposed, as well as awarded books:

Year	**Granted booklets to minors**	**Sues for minor' illegal employment**	**Fines on minors' illegal employment**
2011	874	2	21
2010	1.462	3	4
2009	1.752	0	17

The overall audit activities of the Labour Inspectorate for the year 2011 are presented in the following table:

<table>
<tr><th></th><th colspan="2">Health and Safety Services</th><th colspan="2">Labour relations services</th><th colspan="2">Special Inspectors Service</th><th colspan="2">Total audit activity of SEPE</th></tr>
<tr><td>Controls</td><td colspan="2">28.150</td><td colspan="2">31.515</td><td colspan="2">538</td><td colspan="2">60.203</td></tr>
<tr><td>Law sues</td><td>775</td><td rowspan="3">Total number of sanctions 2.171</td><td>5.557</td><td rowspan="3">Total number of sanctions 9.295</td><td>4</td><td rowspan="3">Total number of sanctions 150</td><td>6.336</td><td rowspan="3">Total number of sanctions 11.616</td></tr>
<tr><td>Termination of work</td><td>806</td><td>0</td><td>5</td><td>901</td></tr>
<tr><td>Fines granted</td><td>590</td><td>3.738</td><td>141</td><td>4.469</td></tr>
<tr><td>Fines (in €)</td><td colspan="2">1.704.111 €</td><td colspan="2">10.937.418 €</td><td colspan="2">1.761.000 €</td><td colspan="2">14.402.529 €</td></tr>
</table>

Finally, Law 3996/2011 "Reform of the Labour Inspectorate, adjustment for social security and other provisions" concerning the inspections of Labor Relations introduced the institution of the "conciliator of labour relations." Under art.3, § 4 "The reconciliation process is conducted by a conciliator, who is a labour Inspector with increased qualifications and works at the local Inspection Department of Labour Relations".

The work of the Inspector is advisory, control and reconciliatory. These three properties are distinct, ie exercised in the duties of the Inspector of Labour Relations, discrete, however,

and without overlaps that may affect the objectivity and impartiality required by the implementation of each jurisdiction. In any case by resolving labor disputes the payment of accrued and the general protection of labor rights are guaranteed. We note that in the year 2011 21,345 labor disputes were conducted, 9,843 of which are resolved while 19.875.087 € were paid to workers.

3. **Ensuring school attendance in Primary Education**

Except from the labor legislation and its implementation, the Ministry of Education, Religion, Culture and Sport, aiming to combat dropout phenomena and the stopping of compulsory education, has adopted a series of measures.

A. Issues relating to the compulsory attendance of students:

a. Pursuant to Art.2§3 of Law 1566/85 on the "Structure and function of Primary and Secondary Education" "attendance is compulsory in elementary school and in high school, if the student is under 16 years of age. Whoever has custody of the child and fails to register him/ her or oversights the attendance, can be punished under Article 458 of the Penal Code".

According to art. 73 §1a of Law 3518/2006, "attendance in kindergarten is for two years and infants that complete on the 31st December of the year the age of four years, are enrolled. Attendance for those that on the 31st December of the year of enrollment, complete the age of five years is mandatory".

By virtue of Law 3852/2010 "Additional responsibilities of municipalities," the Municipalities have the right to "impose sanctions to parents and guardians who do not enroll their children in school and neglect their regular schooling".

b. Subject to the provisions of art. 11, para2, of Presidential Decree 201/1998 on Control of study: "The attendance of students is monitored by the classroom teacher, the daily absences are recorded and there is constant communication for that matter between families and the school. The class teacher ensures that parents provide the school with the information requested by the director to justify absences" and "when a student is unjustifiably absent and the parents or the guardian do not communicate with the school, despite any alerts, the family is sought through municipal or police authority. In cases where the search does not work, the appropriate chief is informed for the interruption of study. The Head of the competent division looks for the student in all schools of the region. When that does not work, the Director shall submit a report to the Department of Studies of the Ministry of Education, accompanied by the data for the survey that took place. The Department of Studies searches in all schools of the country".

B. All-day Primary School

In the context of effectively upgrading primary school by virtue of Law 2525/97 the all-day school was established, and joined the Greek educational system in order to set high educational and social goals and support working families.

Creative Activities Programs took place in 1,000 Day Primary Schools and Schools of extended schedule.

The aims of the all-day Primary School - School of extended schedule is a) the implementation of its curriculum courses, b) the implementation of programs for studying for the next day as well as creative programs, and c) the support teaching programs for students with learning difficulties.

On the other hand, targets are both pedagogical, and social. In particular, one of the pedagogical objectives is that students integrate into their leisure time creative activities, they participate in programs that support learning and in teaching activities that entrench and expand their knowledge. Finally, children remain in a safe and creative environment.

As social goals we mention the protection of children of working parents, the organic link between school and society and other compensating factors that fight educational disparities by providing a supportive learning process.

By virtue of a Ministerial Decision of the Ministry of Education on "All-day School" the operation of day primary schools on voluntary basis began, based on the results obtained from the operation of the 28 day pilot schools and in combination with the experience of the organization of schools of extended schedule.
Moreover, Special Education Day Schools operate with the purpose to serve in cases of increased educational and social needs. The curriculum includes both the compulsory teaching subjects as well as selection subjects (design, sport, theater education, new technologies, art, etc.).
Furthermore, the Ministry of Education expanded the compulsory programme until 2:00 p.m. and enriched the morning program. The total teaching hours were increased from 174 to 210 hours per week for all grades of primary school.
In total for the school year 2012-2013 about 45 % of the pupils' population attends one of the 964 all-day primary schools that operate throughout the country.

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

ESC 7§4 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 7§4 of the Charter on the ground that working hours for persons between the age of fifteen and sixteen are excessive.

23. The representative of Croatia provided the following information in writing:

In respect to working time of persons younger than 16 in Croatia, the following should be noted: Occasional work of regular secondary school students during winter, spring and summer break is regulated by provisions 21-31 of the Ordinance on carrying out employment mediation activities (Official Gazette n. 19/11). Mentioned in the text (Conclusions XIX-4 2011) is the previous Ordinance (Official Gazette n. 39/09) which was repealed on 19th February 2011 when the above mentioned new Ordinance came into force. The article on working time was not changed.
The article 25 of the Ordinance defines that full working time of a regular student aged under 18 cannot be longer than 7 hours per day and 35 hours per week. Exceptionally, working time of a regular student who is 15 years old can be 8 hours per day and 40 hours per week.
The mentioned article of the Ordinance is harmonized with the Council Regulation 94/33/EC of 22nd June 1994 on protection of young persons at work (article 8 § 1, c): "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: (c) seven hours a day and 35 hours a week for work performed during a period of at least a week when school is not operating; these limits may be raised to eight hours a day and 40 hours a week in the case of children who have reached the age of 15."

ESC 7§4 CZECH REPUBLIC

The Committee concludes that the situation in Czech Republic is not in conformity with Article 7§4 of the Charter of 1961 on the ground that the length of working time for young workers under 16 years of age is excessive.

24. The representative of the Czech Republic provided the following information in writing:

The Czech Republic believes that in situation when the European Social Charter does not explicitly stipulate nor daily neither weekly working hours limitation with respect to people under 16 years of age (neither the ILO conventions reduce working hours of juvenile except the ban of overtimes and night work), it is more appropriate to oblige an employer to

respect fully individual physical and mental level of development of each young worker than to fix general limit to working time of young workers.
The Labour Code amendment effective since January 1st 2008 changed previous legal regulation in section 79 subsection 2 d) which limited working hours of juveniles (30 hours a week and 6 hours a day). It has been changed upon the request and in agreement with social partners who submitted to the MoLSA the proposal to amend the Labour Code in 2007 with justification that legal regulation concerned is to rigid and does not allow students to earn extra money. The Government accommodated the demands of social partners and submitted respective amendment to the Labour Code to the Parliament.
It is necessary to stress, that the Czech legislation protects most vulnerable categories of employees, **especially juveniles**, women and people with disabilities. They are provided special care (Labour Code, section 237 et seq.) in compliance with international treaties. With regard to employees who finished compulsory education and are older than 15, the Labour Code clearly provides that **juveniles** may be employed **only on those works which are adequate to their physical and intellectual level of development and special care to their needs at work must be devoted from an employer (section 243 et seq. of the Labour Code)**.
It is prohibited to order juveniles work overtime or at night. Juvenile employees older than 16 can only exceptionally carry out night work not exceeding one hour if it is necessary for their vocational training (section 245 of the Labour Code.
The length of each shift of juveniles must not exceed eight hours daily and where such an employee performs work in two or more labour-law relationships, the length of his/her weekly working hours may not exceed 40 hours a week in total.
In case of apprentices and high school students, the ratio of the theoretical and vocational part of study (if it is part of the study) is approximately the same. In the first school year is usually placed an emphasis more on theory, while in the last school year of study/apprenticeship vocational training slightly overweighs it. However, the layout varies on the type of school.
Length of vocational training in the first school year (young people under 16) may not exceed 6 lessons (1 lesson = 45 minutes), the second year is usually in the range of 7 lessons and in the third school year may not be longer than 8 lesson (Resolution No. 13/2005 of 29 December 2004 governing Secondary Education and Education at the Conservatoire, Act N. 561/2004 Coll., Educational Act).
With respect to above mentioned facts, the Czech Republic believes that is fully in compliance with Article 7§4.

Article 7§5 – Fair pay

ESC 7§5 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 7§5 of the Charter on the ground that apprentices do not enjoy a right to appropriate allowances.

25. The representative of Croatia confirmed that there were no changes in the legislation concerning this situation.

She reminded that the situation of non-conformity stands only for apprentices. She further explained that in Croatia the apprenticeship is a compulsory part of secondary education for crafts occupations as well as technical and related secondary vocational schools (Law on Crafts and Ordinance on the organisation and teaching methods in vocational schools).

Therefore, craftsmen keep a record of practical training of apprentices and pay for the actual time spent on the training.

According to the curriculum, the apprentice has to accumulate at least 560 hours of practical training in a craftsmen's workshop the first year; at least 630 hours of training during the second year and at least 640 hours in the third year of education. She acknowledged that the information

sent was not detailed enough to get a clear picture of the allowance system for apprentices in Croatia. All this information will be contained analytically in the next report.

26. The Committee invited the Government to supply the relevant information in the next report.

ESC 7§5 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 7§5 of the 1961 Charter on the ground that the allowance paid to apprentices is inadequate.

27. The representative of Germany stated that the collectively agreed vocational training allowances in Germany were adequate in accordance with the provisions of the Vocational Training Act. The allowances' levels are autonomously negotiated, taking account of the respective economic situation, by the relevant collective bargaining parties of the different business sectors and defined in corresponding collective agreements. In Germany, this is done in the framework of the bargaining autonomy that is enshrined in the Constitution and without the Government being involved and exerting any influence. Regardless of whether it is true at all that the situation in Germany is not in conformity with Article 7, paragraph 5 of the ESC as far as the level of vocational training allowances is concerned, the Government is therefore not in a position to ensure an increase of training allowances as requested by the Committee.

28. The Secretariat and the representative of ETUC indicated that although the Social Charter supports the autonomy of collective bargaining, it is to be underlined that if the results of the collective complaint are not in line with the Charter, the State has the ultimate responsibility to ensure that the situation is brought into conformity.

29. The representative of Germany said that there are not problems with the German Trade Unions and that the Government has not the possibility to interfere in the collective bargaining process.

30. The Committee took note of the information.

ESC 7§5 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 7§5 of the Charter of 1961 on the grounds that:

- *Young workers' wages are not fair;*
- *It has not been established that the apprentices allowances are adequate.*

First ground of non-conformity

31. The representative of Spain said that the ECSR did not consider young workers' wages to be fair for the same reasons as those mentioned in respect of Article 4, Paragraph 1 of the Charter, in other words because the minimum salary rate did not amount to no less than 60 % of the net average wage.

He said that in Spain the rules pertaining to the minimum inter-occupational wage (SMI) did not distinguish between different age groups. The information provided in respect of Article 4, Paragraph 1 of the Charter therefore also applied to this provision.

In this regard the representative of Spain said that, at the 123rd meeting of the Governmental Committee, his country had reported on the efforts made over recent years to increase the amount of the SMI and that the amount was now close to 50 % of the average wage. The Governmental Committee had taken note of this progress and had invited Spain to provide information in the next report on Article 4, Paragraph 1 of the charter concerning changes in the SMI. Spain would provide information on these developments in the next report.

32. The Committee took note of the information and encouraged Spain to bring the situation into conformity with the Charter.

Second ground of non-conformity

33. The representative of Spain provided the following information in writing:

Second motif de non-conformité:
En ce qui concerne la rémunération des contrats de formation et apprentissage (contrats adressés aux jeunes entre 16 et 30 ans), celle-ci doit être mise en liaison avec la durée et la journée de travail de ces contrats. En ce sens, on a adopté récemment le **Décret-Loi Royal 3/2012, du 10 février, de mesures urgentes pour la réforme du marché du travail,** qui incorpore des modifications dans ce domaine.
Le régime juridique actuel dans cette matière établit à titre général la durée minimale d'une année et maximale de trois, sans préjudice que moyennant convention collective de différentes durées puissent être établies, en fonction des besoins d'organisation et productives des entreprises, sans que la durée minimales puisse être inférieure à six mois ni la durée maximale supérieure à trois ans.
En ce qui concerne la journée de travail, tandis que la réglementation précédente établissait que le temps de travail effectif ne pourrait pas être supérieur au 75 % de la journée maximale légale pendant toute l'existence du contrat, le nouveau régime maintient ce pourcentage pendant la première année, mais l'élève jusqu'au 85 % pendant la deuxième et la troisième année.
Tout en étant fixé légalement tant auparavant que conformément à la réglementation en vigueur que la rémunération relative à ce contrat ne pourra être inférieure au salaire minimum interprofessionnel en proportion avec le temps de travail effectif, la nouvelle réglementation a pour effet la perception d'un minimum salarial garanti supérieur par rapport à la situation précédente, étant donné que pendant la deuxième et la troisième année d'existence du contrat la rémunération sera supérieure.
On rappelle, en outre, que le minimum salarial garanti peut faire l'objet d'amélioration, conformément à ce qui est établi en convention collective.
Ci-après on fournit une évaluation du salaire brut mensuel moyenne de contrats d'apprentissage, formation ou de stage et salaire brut mensuel moyenne du total des travailleurs salariés conformément à l'information recueillie dans l'Enquête de Population Active (EPA).

	2006	**2007**	**2008**	**2009**	**2010**
Salaire brut mensuel moyenne de contrats d'apprentissage, formation ou de stage	1.255,81	1.321,52	1.487,46	1.499,86	1.539,12
Salaire brut mensuel moyenne total travailleurs salariés	1.570,66	1.635,89	1.771,55	1.811,48	1.837,36

ESC 7§5 UNITED KINGDOM

The Committee concludes that the situation is not in conformity with Article 7§5 of the 1961 Charter on the ground that the minimum wages of young workers between 15 and 17 are not fair.

34. The representative of the United Kingdom made the following statement:

This issue was covered in part at last year's meeting when the Governmental Committee considered the United Kingdom case (and others) under Article 4.1 on the adequacy of the Minimum Wage generally. The United Kingdom questioned the European Committee of Social Rights (ECSR's) methodology and use of the quoted Eurostat statistics on average earnings but agreed that the United Kingdom would submit details of national average earnings statistics.

The National Statistics from the Annual Survey of Hours and Earnings now available show that at April 2011 the National Minimum Wage (NMW) for 16/17 year olds equated to 67 % of average earnings. If the United Kingdom was to apply the ECSR's formula of the 16/17 NMW being set at 80 % of the adult rate (which should in turn be 60 % of average adult earnings) the resultant NMW would actually equate to 130 % of 16/17 year old average earnings.

An increase on this scale would add significantly to employer's wage bills and put at risk not only future job creation but also the job security of those 16/17 year olds currently in work – the United Kingdom Government would find this unacceptable.

The ECSR refers to the NMW not applying to 15 year olds. In the United Kingdom, compulsory school leaving age is 16. It is not considered appropriate to extend the NMW to children under compulsory school age who are not fully operating within the labour market and who should be in full time education. The United Kingdom believes that it is not right to encourage them to seek work.

35. The Committee took note of the information provided. Indeed the average minimum wage was raised since the ECSR assessment. However, this wage rise was still insufficient to comply with the requirements of the Social Charter with respect to young people between 16 and 17 years of age.

36. The representative of the United Kingdom agreed to provide further data in the next report. However, the United Kingdom Government's position to favour job security against rise in minimum wage would not change.

37. The Committee invited the United Kingdom Government to include all the additional information provided in its next report and to bring the situation into conformity with Article 7§5 of the Charter.

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

ESC 7§6 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the time spent by young workers in vocational training is considered as working time.

38. The representative of Croatia said that in Croatia apprentices and trainees were employees having a working contract. Consequently time spent in vocational training was considered as working time. It should be noted that in Croatia young persons from the age of 15 onwards until the age of 18 were still following compulsory education and were therefore not to be employed under the Labour Act.

39. The Committee invited the Croatian Government to include all the relevant information provided in its next report.

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

ESC 7§10 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 7§10 of the 1961 Charter on the ground that simple possession and storage of child pornography is not a criminal offence if it involves a minor aged 15-18.

40. The representative of Poland said that her country was in the process of transposing into national law EU Directive 2011/93 with respect to the fight against children's sexual abuse and exploitation as well as pedopornography. This legislative measure once finalised at the latest on 18

December 2013 would then also allow Poland to ratify Council of Europe's Convention on the protection of children against sexual exploitation and sexual abuse. Once these pieces of legislation in force, Poland would be in conformity with Article 7§10 of the Charter.

41. The Committee took note of the positive legislative developments.

ESC 7§10 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 7§10 of the Charter of 1961 as it has not been established that the legal framework effectively protects children from child pornography.

42. The representative of Spain provided the following information in writing:

Le Comité fait valoir sa non-conformité avec l'application de l'article 7.10 de la Charte Sociale Européenne, en ne pouvant déterminer la protection appropriée des enfants contre la pornographie des enfants parce qu'on n'a pas informé si la législation espagnole en cette matière couvre tous les mineurs de 18 ans et si la simple possession de pornographie des enfants est une affaire criminelle. De même, le Comité considère que la coordination des données et le système de registre pour des cas d'abus sexuel et d'exploitation en enfants est toujours très faible.

Il est vrai que le rapport annuel n'a informé que sur la protection contre les dangers physiques auxquels sont exposés les enfants par rapport au travail. En ce qui concerne la protection contre les dangers moraux on doit indiquer ce qui suit:

La **protection des mineurs contre la pornographie des enfants** comprend, conformément à ce qui est établi dans la Loi Organique 10/1995, du 23 novembre, du Code Pénal, les personnes mineurs et les incapables, tout en entendant par personne mineur conformément à ce qui est établi dans la Constitution Espagnole (article 12) et le Code Civil (article 315), à toutes ces personnes ayant moins de 18 ans.

Concrètement, c'est l'article 189 du Code Pénal qui punit l'utilisation de mineurs aux fins pornographiques. Bien que cet article ait quelques modifications, la conduite punissable n'a pas varié depuis avant 2003 (date de commencement de l'évaluation que le Comité fait dans son rapport). À travers cet article on poursuit l'utilisation des mineurs ou d'incapables aux fins ou dans spectacles exhibitionnistes ou pornographiques ou pour élaborer toute sorte de matériel pornographique, ou le financement de n'importe quelle de ces activités; ainsi que la production, vente, diffusion ou exhibition par tout moyen de matériel pornographique auxquels élaboration les mineurs ou les incapables aient été utilisés, ou la possession à ces fins.

En outre, le **Code Pénal** a été récemment modifié par la **Loi Organique 5/2010, du 22 juin 2010.** Cette réforme augmente la protection accordée aux mineurs, puisqu'on améliore techniquement la réglementation des agressions et des abus sexuels commis sur les mineurs de 13 ans, tout en incorporant un nouveau chapitre dénommé "les abus et les agressions sexuelles aux mineurs de 13 ans", ainsi que en augmentant les peines prévues pour ces cas.

On standardise d'une façon expresse le *Child grooming ou cyberharcèlement sexuel* contre les enfants avec lequel on essaie de donner réponse aux risques découlant de l'utilisation de nouvelles technologies, en avançant le moment de l'intervention pénale lorsque le propos de la prise de contact soit la perpétration d'un délit sexuel contre un mineur.

On incrimine d'une façon expresse la conduite du client de prostitution de mineurs et incapables et on crée des modalités aggravées dans les délits de prostitution pour le cas que la victime soit un mineur de 13 ans.

On prévoit deux nouvelles conséquences pénales pour les délits sexuels, d'une part, les condamnés par ces délits pourront être soumis à la mesure de sécurité et liberté surveillée lorsqu'après l'exécution de la peine privative de liberté subsiste une prévision objective de danger.

De même on prévoit la privation de l'autorité paternelle comme peine privative de droits en ces cas où ceux qui ont l'autorité paternelle commettent un délit sexuel grave contre les personnes à leur charge.

En ce qui concerne la **possession pour la propre utilisation de matériel pornographique** dans lequel des mineurs ou incapables aient été utilisés, ce délit a été introduit dans le Code Pénal espagnol par la Loi Organique 15/2003, du 25 novembre, en vertu de laquelle on modifie la Loi Organique 10/1995, du 23 novembre, du Code Pénal. Le libellé de ce paragraphe n'a pas varié dès lors.
Concrètement, c'est l'article 189.2 qui punit cette conduite aux termes suivants:
"Celui qui pour sa propre utilisation ait matériel pornographique auquelle élaboration des mineurs ou incapables auraient été utilisés, sera puni d'une peine de trois mois à une année de prison ou d'une amende de six mois à deux ans."
Avec la nouvelle réforme introduite on standardise la Traite comme un délit indépendant, article 177 Bis, tout en créant le titre VII Bis, dénommé "De la Traite des Êtres Humains", où le bien juridique protégé est la liberté et la dignité. Ce délit comprendra toutes les formes de Traite des Êtres Humains, ressortissants ou transnationaux, relatifs ou non à la délinquance organisée, tout en recueillant expressément que les peines prévues par ce délit seront imposées indépendamment de celles relatives par les délits effectivement commis.
Tant la traite de personnes que l'appui à l'immigration illégale sont configurés comme des types qualifiés lorsque les sujets passifs sont les mineurs.
En ce sens, cet article recueille des peines plus grandes lorsque la victime est mineur, tout en rendant explicite que la victime sera libre de peine par les infractions pénales qui ait commis dans la situation d'exploitation supportée.
En ce qui concerne le Plan d'Action contre l'Exploitation Sexuelle des Enfants et l'Adolescence il faut remarquer que le Troisième Plan, relatif aux années 2010 à 2013 a été adopté par la Séance Plénière de l'Observatoire des enfants le 20 décembre 2010 dans le but de donner continuité aux deux plans précédents et mettre à jour le catalogue de mesures à effectuer pour être plus efficaces contre ce phénomène.
Ce nouveau plan recueille brièvement les conclusions de l'évaluation effectuée au précédent, tout en reflétant le besoin de continuer à travailler en réseau entre tous les partenaires impliqués. Pour son développement on a recommencé de nouveau à demander l'engagement des institutions de l'Administration Générale de l'État, qui sont le leadership de son application, outre les Communautés Autonomes et les ONG's. L'organe chargé du suivi et coordination du Plan est l'Observatoire des Enfants.
Finalement, il convient de remarquer que depuis l'année 2009 fonctionne en Espagne un **registre national de délinquants sexuels,** avec lequel on essaie de prévenir la récidive de ces agresseurs, notamment de ceux-là qui abusent sexuellement des mineurs. La mise en marche d'une **base de données online** pour le registre de notifications de ceux qui maltraitent les enfants, qui comprend comme typologie le harcèlement sexuel est l'un des pas les plus importants. On est en train d'encourager aussi la coordination entre les partenaires gouvernementaux et non gouvernementaux en cas de traite et exploitation sexuelle de personnes, notamment les femmes et les petites filles. Et en ce sens on a avancé avec l'adoption d'un protocole cadre de protection des victimes de traite des êtres humains, qui consacre une partie importante de son texte aux victimes mineurs.
Ci-après on reproduit le libellé de l'article 189 du Code Pénal:

1. *Sera puni d'une peine de prison d'une à cinq années:*
   a. *Celui qui capterait ou utiliserait à mineurs ou incapables aux fins ou en spectacles exhibitionnistes ou pornographiques, tant publics que privés, ou pour élaborer toute sorte de matériel pornographique, quel que soit son support, ou financerait n'importe quelle de ces activités ou s'enrichirait avec celles-ci.*
   b. *Celui qui produirait, vendrait, distribuerait, exhiberait, offrirait ou fournirait la production, vente, diffusion ou exhibition par tout moyen de matériel*

pornographique auxquelles élaboration les mineurs ou les incapables auraient été utilisés, ou l'aurait à ces fins, bien que le matériel aurait son origine de l'étranger ou serait inconnue.

2. *Celui qui pour* ***sa propre utilisation aurait matériel pornographique*** *auquelle élaboration les mineurs ou les incapables auraient été utilisés, sera puni d'une peine de trois mois à une année de prison ou d'une amende de six mois à deux années.*

3. *Seront punis d'une peine de prison de cinq à neuf années ceux qui effectueraient les actions visées au paragraphe 1 de cet article lorsqu'on coïncide l'une des circonstances suivantes:*
    a. *Lorsqu'on utilise à des enfants mineurs de 13 ans.*
    b. *Lorsque les faits revêtent un caractère particulièrement dégradant ou vexatoire.*
    c. *Lorsque les faits revêtent une spéciale gravité compte tenu de la valeur économique du matériel pornographique.*
    d. *Lorsque le matériel pornographique représente les enfants ou les incapables qui sont victimes de violence physique ou sexuelle.*
    e. *Lorsque le coupable appartiendrait à une organisation ou association, même à titre transitoire, qui s'occuperait de la réalisation de ces activités.*
    f. *Lorsque le responsable soit ascendant, tuteur, curateur, gardeur, professeur ou toute autre personne chargée, en fait ou en droit, du mineur ou incapable.*
4. *Celui qui fasse participer à un mineur ou incapable dans une conduite de nature sexuelle qui porte atteinte à l'évolution ou développement de la personnalité de celui-ci, sera puni d'une peine de prison de six mois à une année.*
5. *Celui qui aurait sous son autorité, tutelle, garde ou accueil à un mineur ou incapable et qui, avec la connaissance de son état de prostitution ou de corruption, ne fasse tout son possible pour empêcher sa continuation en cet état, ou ne se présente pas à l'autorité compétente pour la même fin s'il manque de moyens pour la garde du mineur ou incapable, sera puni d'une peine de prison de trois à six mois ou d'une amende de six à 12 mois.*
6. *Le Ministère Public promouvra les actions pertinentes dans le but de priver de l'autorité paternelle, tutelle, garde ou accueil familial, le cas échéant, à la personne qui commette l'une des conduites décrites au paragraphe précédent.*
7. *Sera puni d'une peine de prison de trois mois à une année ou d'une amende de six mois à deux années celui qui produirait, vendrait, distribuerait, exhiberait ou fournirait par tout moyen matériel pornographique où les mineurs ou incapables n'ayant été utilisés directement, on emploie leur voix et leur image altérée ou modifiée.*

Du point de vue du contrôle policier il faut dire ce qui suit:

1.- Depuis 1995 sont en train de fonctionner les Équipes et Spécialistes Femme-Mineur de la Gendarmerie (EMUMEs) dans les Unités Organique de la Police Judiciaire. Ses domaines d'action comprennent la violence dans le milieu familial, les délits contre la liberté sexuelle comme les agressions et les harcèlements sexuels, les actes délictueux concernant la traite des êtres humains aux fins d'exploitation sexuelle, et la pornographie des enfants en Internet. Le but de ces équipes, en ce qui concerne les enfants, est leur fournir une assistance intégrale, personnalisée et spécialisée depuis le même moment de la connaissance des faits, en les envoyant, le cas échéant, vers institutions spécifiques de protection, sans préjudice de la recherche criminelle correspondante.

2.- Dans tous les Accords bilatéraux que le Ministère de l'Intérieur négocie en matière de coopération dans la lutte contre la délinquance on comprend, dans les actes délictueux qui valent une collaboration plus intense pour leur éradication, toutes ces formes organisées de délinquance contre la liberté sexuelle, notamment concernant les mineurs, ainsi que la confection, diffusion et la fourniture de matériel pornographique avec la participation des mineurs.

3.- Le Ministère de l'Intérieur continue à aborder un processus de renforcement des structures d'organisation, du personnel spécialisé et des ressources matérielles des Forces et Corps de Sécurité pour lutter plus efficacement contre ces phénomènes, ce qui a éte confirmé par le titulaire du Département dans sa récente comparution devant la Chambre des Députés, où, en avançant les lignes stratégiques de ce processus, on a souligné le besoin de protéger les groupes les plus vulnérables et de développer des stratégies de sécurité spécifiques pour les enfants et les adolescents.

ESC 7§10 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 7§10 of the 1961 Charter on the ground that children who are victims of sexual exploitation may be prosecuted.

43. The representative of the United Kingdom provided the following information in writing:

The position remains that, it is an offence for someone to engage persistently in loitering or soliciting in the street for the purposes of prostitution. As with most offences in the United Kingdom, this applies to children (aged 10 or over) as well as to adults.
There have been only a handful of prosecutions since 2000, when new guidelines on Safeguarding Children were issued for prosecutors. In practice children are rarely arrested for loitering or soliciting. This is in accordance with "*Safeguarding Children and Young People from Sexual Exploitation"*, which was issued as supplementary guidance to "*Working Together to Safeguard Children"*.
Both the Police and Crown Prosecution Service guidance is very clear that a child involved in prostitution should always be treated as a victim of abuse or sexual exploitation.
The Association of Chief Police Officers (ACPO) reports that, although rarely used, the power to arrest remains a helpful tool that can be used as a last resort in order to remove a child to a place of safety.
The Government would explain that it is an offence under Section 47 of the Sexual Offences Act 2003 to pay for the sexual services of a child. Depending on the age of the child and the nature of the offending, the maximum penalty available for this serious offence is life imprisonment.

Article 8§1 – Maternity leave

ESC 8§1 GREECE

The Committee concludes that the situation is not in conformity with Article 8§1 of the 1961 Charter on the ground that periods of unemployment are not taken into account when calculating qualifying periods needed to be entitled to maternity benefits.

44. The representative of Greece informed the Committee that the situation has basically not changed. The Greek system is a contributory-redistributive one and the time precondition required for the employee to establish her entitlement to the maternity benefit (200 days in a period of two years) are days of insurance and not only of employment. In other terms, for the employment days the equivalent social security contributions must have been paid. During the unemployment period no contributions are paid to the social security organisations, contributions that are necessary for the granting of maternity benefits. Therefore, the period of unemployment is not taken into account.

45. In the case that an employee does not fulfill the requirements for the granting of a maternity benefit then she receives a subsidiary social welfare benefit for the same purpose. In reply to a question asked by the representative of ETUC, the representative of Greece confirmed that women who have never worked fall as well under the system of social welfare benefit.

46. The Committee strongly urged Greece to bring the situation into conformity with the Charter.

ESC 8§1 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 8§1 of the Charter of 1961 on the ground that the standard rates of Statutory Maternity Pay (SMP), after six weeks, and Maternity Allowance (MA) are inadequate.

47. The representative of the United Kingdom stated that this is a long standing issue of many years and there has been no change in the situation, but there has been a development – since the Committee last met, the maternity pay period has been extended to 39 weeks. The first 6 weeks benefit is paid at 90 % of previous average earnings and up to 33 weeks at the subsequent weekly standard rate.

He further explained that, in the recent past the UK's approach has been to focus attention and resources on extending the personal scope so as to bring into coverage as many working women as possible including low paid and part time working women.

To pay earnings related benefits at levels suggested by the ECSR would merely target, taking into account the limited resources, higher earning workers which they will consider a regressive measure. According to the Government's view, they have the balance of protection right.

48. In reply to the question asked by the representative of Belgium, the representative of United Kingdom said that as far as he knows his country fully complies with the Directive 92/85/EEC.

49. The Committee took stock of the new developments and urged the Government to bring the situation into conformity with the Charter as far as the benefits are concerned.

Article 8§2 – Illegality of dismissal

ESC 8§2 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 8§2 of the 1961 Charter on the ground that the exceptions to the prohibition on dismissal during maternity leave go beyond those authorised by the 1961 Charter.

50. The representative of the Czech Republic informed that the Labour Code amendment which came into effect on January 1st, 2012, amended the provision of Section 54 of the Labour Code which now contains an explicit prohibition of dismissal notice to a pregnant employee or an employee on maternity or parental leave in case of organisational changes stated in Section 52 b) of the Labour Code (a relocation of employer's undertaking). She stated that the conformity with Article 8§2 of the Charter is therefore ensured.

51. The Committee took note of the information and welcomed this amendment.

ESC 8§2 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 8§2 of teh 1961 Charter on the ground that it has not been established that, where there is no reinstatement, compensation that is sufficient both to fully compensate the victim of an unlawful dismissal and to deter the employer is provided for in law.

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

En réponse aux conclusions XIX-4 (2011), article 8§2, le Gouvernement luxembourgeois voudrait soumettre au comité gouvernemental un certain nombre de précisions alors qu'il lui semble que certaines dispositions ont été mal comprises, respectivement qu'il y ait confusion entre licenciement abusif et licenciement nul.
En outre, le Gouvernement estime que l'ensemble des dommages auxquels l'employeur peut être condamné en cas de licenciement abusif (dommage moral, dommage en relation causale avec le licenciement, remboursement au Fonds pour l'emploi des indemnités de chômage versées au salarié licencié) sont suffisamment dissuasifs pour l'employeur.
Sera dès lors précisée la réparation de la résiliation abusive du contrat de travail (I.) dans un premier temps et l'action judiciaire en maintien du salarié dans l'entreprise en cas de licenciement nul (II.) dans un deuxième temps.

I. La réparation de la résiliation abusive du contrat de travail

§ 1. Les dommages et intérêts

1. Principe général

La juridiction du travail qui juge qu'il y a usage abusif du droit de résilier le contrat de travail condamne l'employeur à verser au salarié des dommages et intérêts compte tenu du dommage subi par lui du fait de son licenciement (article L.124-12 par. (1) du code du travail).
Le code précise que l'indemnité de départ ne se confond pas avec cette réparation (article L.124-7 par. (2) al. 2 du code du travail).
Le préjudice matériel subi par un salarié en raison de son licenciement abusif est à fixer sans tenir compte de l'indemnité de départ qui a une nature forfaitaire et indépendante du dommage encouru (Cour de cassation 24 avril 2003, B. c/ Moog Hydrolux, Pasicrisie Tome 32, page 435).
Selon la jurisprudence (Cour 5 janvier 1995, Taveira de Sousa c/ Syndicat d'Initiative et du Tourisme Beaufort; Cour 22 janvier 1998, Alloo c/ Mathieu et Fett), une demande de paiement en dommages et intérêts ne peut aboutir qu'en cas d'existence d'une faute commise par l'employeur exerçant son droit de licenciement, d'un dommage et d'une relation causale entre la faute et le dommage. Par conséquent, un recours en indemnisation est rejeté en l'absence d'un dommage, même si le caractère abusif du licenciement est retenu.
Il ne suffit pas pour le salarié d'affirmer ne pas avoir trouvé un travail stable et équivalent (Cour 21 février 1991, Kaufmann c/ Figuerinha Carvalho) ou n'avoir retrouvé un nouvel emploi qu'à partir d'une certaine date pour pouvoir réclamer un montant pour préjudice matériel, mais il lui incombe d'établir qu'il a subi un dommage matériel à la suite de son licenciement abusif (Cour 11 mai 1995, Dasbourg c/ Da Mota Martins Ribeiro).
L'employeur, seul responsable des risques assumés et bénéficiant du pouvoir de prendre les mesures que paraît commander la situation de l'entreprise, n'a aucune obligation de reclasser le personnel licencié pour motif économique au sein de son entreprise ou ailleurs.
La seule sanction économique prévue par la loi dans l'hypothèse d'un licenciement non fondé sur les nécessités du fonctionnement de l'entreprise, de l'établissement ou du service consiste dans l'indemnisation à charge de l'entrepreneur fautif des préjudices accrus au salarié congédié en l'absence d'un motif réel et sérieux (Cour 14 mars 2002, Verlodt c/ Tradition Eurobond S.A.).

2. L'existence et l'évaluation du préjudice

La Cour (4 mai 1995, Alle c/ Distri-Mail s.à r.l.) a rappelé que seuls les dommages qui se trouvent en relation causale directe avec le licenciement doivent normalement être pris en considération pour fixer le dommage matériel.
La perte matérielle consiste en la différence entre le salaire que le salarié aurait perçu s'il n'avait pas été licencié et ce qu'il a touché à titre d'indemnité de chômage, pour autant que les pertes ainsi subies sont encore en relation causale avec le licenciement abusif. Les pertes de revenu ne sont en effet à prendre en considération que pour autant qu'elles se rapportent à une période qui aurait raisonnablement dû suffire pour permettre au salarié de trouver un nouvel emploi, le salarié étant obligé de faire tous les efforts nécessaires pour trouver un

emploi de remplacement (Cour 17 juin 1993, Moyaedi c/ Euroscript, Pasicrisie Tome 29, page 245; Cour 22 juin 2000 Edilux s.à r.l. c/ Declercq e.a.; Cour 25 avril 2002, Campoy c/ Varamo).
Si l'indemnisation du dommage matériel du salarié doit être aussi complète que possible, les juridictions du travail en statuant sur l'allocation des dommages et intérêts pour sanctionner l'usage abusif du droit de résilier le contrat de travail ne prennent en considération que le préjudice se trouvant en relation causale directe avec le congédiement. A cet égard, les pertes subies ne sont à prendre en considération que pour autant qu'elles se rapportent à une période qui aurait dû raisonnablement suffire pour permettre au salarié licencié de trouver un nouvel emploi, le salarié étant obligé de faire tous les efforts pour trouver un emploi de remplacement. Comme il lui appartient d'établir qu'il a subi un dommage, il lui appartient également de prouver avoir fait les efforts nécessaires pour réduire dans la mesure du possible son préjudice et trouver rapidement un nouvel emploi. C'est sur cette période pendant laquelle se trouve établi un lien de causalité entre la faute de l'ancien employeur et le dommage subi que porte l'indemnisation (Cour, 25 juin 1998, Ayari c/ Belaton S.A.; voir également Cour 26 novembre 1998, Ozbay c/ SES; Cour 11 mars 1999, Restaurant Postkutsch c/ Salice).
En principe, la simple inscription comme chômeur, même si elle implique de la part du chômeur de multiples contraintes, ne le dispense pas de prendre des initiatives personnelles pour rechercher un emploi afin de lui permettre de réduire dans la mesure du possible la période chômée et par voie de conséquence son dommage, une simple attitude passive à attendre des propositions lui paraissant acceptables ne suffisant pas à cet égard (Cour 10 juin 1999, Intermeat Services c/ Jean-Claude Scherer).
Le salarié ne peut prétendre à l'octroi de dommages et intérêts du chef de préjudice matériel, destinés à compenser la perte de rémunération pour la période au cours de laquelle il touche une indemnité compensatoire de préavis (Cour 18 janvier 1996, Epilux Luxembourg s.à r.l. c/ Lovinfosse). La non-prise en compte de cette indemnité lors de la fixation du préjudice matériel subi par le salarié conduirait à une double indemnisation de la période couverte par ladite indemnisation (Cour 1er juin 2006, n° 29.013 ; Cour 5 février 2009, n° 32.787).
Le préjudice matériel en relation causale avec le licenciement abusif s'apprécie in concreto : d'une part, seul le dommage réel et effectif est réparé et, d'autre part, les sommes allouées au salarié au titre de l'indemnité compensatoire de préavis et de l'indemnité de départ doivent être prises en considération pour l'évaluation du préjudice matériel (Cour 11 décembre 1997, Petre c/ Lufthansa Deutsche Aktiengesellschaft).
La situation économique, en particulier celle du marché de l'emploi, et la situation personnelle du salarié (son âge et sa formation) constituent des facteurs extrinsèques, qui sont connus de l'employeur et qui ne sauraient atténuer son obligation de réparer l'intégralité du dommage causé lorsqu'il procède à un licenciement abusif (Cour 20 mars 1997, Gorka-Rizzo c/ Sogecar s.à r.l.).
Pour l'évaluation du préjudice matériel du salarié licencié, seul le salaire effectivement gagné en montants bruts auprès du nouvel employeur et celui gagné auprès de l'employeur précédant sont à comparer (Cour 4 décembre 1997, Kuhn c/ Keller Kaysen).
La Cour retient également le préjudice moral subi du fait de l'atteinte à la dignité et des soucis quant à son avenir professionnel (Cour 12 décembre 2002, Voltzenlogel c/ Hôtel Gulliver S.A.).
La Cour admet l'existence d'un dommage moral dans le chef du salarié qui, par l'effet du licenciement, a subi une atteinte dans son honneur professionnel et a eu des soucis quant à son avenir professionnel (Cour 10 mai 2001, Luxdiffusion S.A. c/ De Paiva Henriques).
3. La recherche d'un nouvel emploi : critère d'évaluation du préjudice
Il est vrai, ainsi que la Cour de cassation l'a souligné dans un arrêt rendu le 11 septembre 1997 (Bertemes c/ Duffort), que la recherche, par le travailleur licencié, d'un travail équivalent n'est pas une condition légale d'applicabilité des dispositions légales qui réglementent l'allocation de dommages et intérêts en cas d'usage abusif du droit de résilier le contrat, dès lors qu'elle ne constitue que l'un des critères d'évaluation du dommage matériel faite par le juge du fond dans l'exercice de ses pouvoirs souverains d'appréciation.

Il faut cependant constater que la Cour a jugé dans un arrêt du le 28 janvier 1999 (Weisgerber s.à r.l. c/ Hoffmann et Etat du Grand-Duché de Luxembourg) que le préjudice subi par le salarié qui perd son emploi et en conséquence sa source de revenus du fait de son licenciement abusif ne perdure que pendant la période de temps nécessaire pour permettre au salarié de retrouver une situation tant soit peu équivalente. Pour l'évaluation de cette période de référence, la Cour admet qu'il y a lieu de tenir compte de la situation économique générale, de la nature de l'emploi perdu, de l'âge du chômeur et de sa volonté de se recycler, le tout par rapport aux conditions de licenciement.
De même, dans un arrêt du 8 juillet 1999 (B.T.L. s.à r.l. c/ Bayo Ramos et Etat) la Cour a jugé que la perte matérielle qui est la conséquence directe du licenciement ne saurait être indéfiniment mise à charge de l'employeur fautif et qu'elle ne perdure que pendant le temps normalement nécessaire au salarié pour trouver un emploi de remplacement, étant entendu qu'il est tenu de déployer des efforts personnels à cette fin en dehors de son inscription comme demandeur d'emploi. La Cour considère qu'un facteur important dans la fixation de la période de référence est l'âge du demandeur d'emploi dont les chances sur le marché de l'emploi s'amenuisent d'année en année.
Le dommage subi par le salarié licencié abusivement doit être réparé pour autant qu'il est en relation causale directe avec ce dernier. Le salarié est obligé de minimiser son préjudice et de faire tous les efforts nécessaires pour trouver le plus tôt possible un emploi de remplacement. Il ne saurait se cantonner dans une attitude passive et se contenter d'une simple inscription comme chômeur (Cour 7 juillet 2005, Daulux S.A. c/ Stratmann).
C'est ainsi que, selon une jurisprudence bien établie, les pertes subies ne sont à prendre en considération que pour autant qu'elles se rapportent à une période qui aurait raisonnablement dû suffire pour permettre au salarié de retrouver un emploi plus ou moins équivalent au point de vue de sa rémunération et des qualifications requises pour l'exercer, le salarié étant de son côté tenu de limiter le dommage en cherchant activement un emploi (Cour 11 mars 1999, Restaurant Postkutsch c/ Salice; voir en ce sens Cour 7 juillet 2005, Instal S.A.c/ Cunha Da Silva).
Dans l'évaluation du préjudice subi par le salarié du fait de son licenciement, il y a lieu de prendre en considération sa recherche immédiate d'un nouvel emploi après son licenciement et surtout le fait d'avoir accepté un poste moins bien rémunéré lui imposant des contraintes de déplacement et de séparation de sa famille durant la semaine (Cour 11 janvier 2001, Wiersma c/ Guardian Automotive-E S.A.).
Dans un arrêt du 22 janvier 2009 (n° 32.843) la Cour rappelle qu'il existe à charge du salarié congédié abusivement une obligation de modérer le dommage et que le salarié licencié abusivement doit faire tous les efforts pour retrouver un nouvel emploi et qu'il ne doit pas se borner à rechercher un emploi lui permettant d'exercer une fonction analogue à celle exercée auparavant et se situant dans le même secteur d'activité, mais qu'il doit rechercher activement dans tous les secteurs économiques un emploi adapté à ses facultés de travail.
La Cour ajoute que l'employeur ne saurait être tenu indéfiniment au paiement du préjudice matériel consécutif à un licenciement, mais uniquement durant la période à l'expiration de laquelle le salarié aurait raisonnablement dû retrouver un emploi.
En prenant en considération tous les éléments de la cause et notamment le caractère spécialisé du poste occupé et l'âge du salarié d'un côté, ainsi que sa grande expérience en matière bancaire et une demande existante pour des banquiers expérimentés, d'autre part, la Cour a estimé en l'espèce qu'un délai de six mois à partir du licenciement aurait dû suffire pour trouver un nouvel emploi. Les quatre premiers mois étant couverts par l'indemnité compensatoire de préavis, elle a jugé que le préjudice à prendre en considération comprend deux mois.
En considération du fait cependant que le salarié avait volontairement omis de s'inscrire auprès de l'Administration de l'emploi, la Cour a estimé qu'il doit assumer le risque encouru en choisissant une autre voie, non couronnée de succès, pour tenter de trouver un nouvel emploi.
A cet égard, la Cour a jugé à d'itératives reprises qu'une période de six mois après son licenciement aurait dû suffire pour permettre au salarié de trouver un nouvel emploi (Cour 4

mai 1995, New Hotel-Restaurant du Chemin de Fer c/ P M; Cour 21 décembre 1995, W c/ Nouveau Rififi; Cour 10 octobre 1996, H-K c/ P).
Dans un arrêt du 25 avril 2002 (M c/ CSK Belgium S.A.) la Cour a fixé à 5 mois la période de référence, c'est-à-dire la période qui aurait dû suffire pour permettre au salarié licencié de retrouver un emploi à peu près équivalent à celui qu'il venait de perdre et pendant laquelle la perte de revenu se trouve en relation causale avec son licenciement abusif en tenant compte de l'âge du salarié, de ses qualifications professionnelles, de la situation sur le marché de l'emploi, ainsi que de la dispense de travail qui a permis au salarié de se mettre tout de suite activement à la recherche d'un nouvel emploi.
S'agissant d'un demandeur d'emploi âgé de 47 ans, la Cour a estimé que si, d'un côté, il n'était pas en droit de s'attendre à voir s'offrir immédiatement un autre emploi, il n'a pas prouvé cependant avoir fait la moindre démarche en ce sens, démarche qu'il aurait déjà pu entamer dès le début de son long préavis de six mois. En présence de cette attitude purement passive et expectative, la Cour a ramené la période de référence à deux mois après la cessation de la relation de travail (Cour, 28 janvier 1999, W c/ H et Etat du Grand-Duché de Luxembourg).
Compte tenu de la qualification du salarié et de la situation du secteur dans lequel il exerçait son activité professionnelle, la Cour a admis qu'en l'absence d'autres circonstances particulières, une personne, même âgée de 55, ans aurait dû être à même de trouver un nouvel emploi dans le délai de six mois après l'expiration du préavis en faisant les démarches actives nécessaires (Cour 11 juillet 1996, Central Rest Stop c/ M e.a.; voir en ce sens également Cour 7 janvier 1999, B c/ M S).
Sur la toile de fond d'une crise économique plus aiguë, les salariés licenciés doivent faire preuve d'une attitude plus active et ne sauraient se cantonner dans une position passive et se contenter d'une simple inscription comme chômeur (Cour 17 février 1994, V c/ Resuma; Cour 11 mai 1995, Caterman c/ B).
La Cour a considéré que la perte de revenus subie par un salarié après une période de douze mois ayant suivi la fin du préavis, n'était plus en relation causale avec le licenciement en raison du fait que les efforts du salarié n'étaient pas orientés vers des emplois peut-être moins bien rémunérés, mais susceptibles, en attendant mieux, de limiter le préjudice allégué (Cour 25 janvier 1996, D c/ curateur faillite de la S.A. Gamma Menuiserie).
L'on ne saurait indéfiniment faire supporter à son ancien employeur les pertes matérielles subies par le salarié par suite de son licenciement, dès lors que celui-ci a l'obligation de faire les efforts pour retrouver un emploi comparable et réduire ainsi, dans la mesure du possible, le dommage indemnisable. Ainsi, la chaîne de causalité se trouve rompue dès le moment où l'on pourra raisonnablement admettre que le salarié a dû retrouver un emploi similaire à celui qu'il venait de perdre. Cependant, l'on ne saurait lui tenir grief, si immédiatement après la période encore couverte par l'indemnité de préavis, il accepte de prendre un emploi moins bien rémunéré au lieu de s'en remettre à la solidarité nationale (Cour 17 avril 1997, H c/ United Overseas Bank (Luxembourg)).
Il ne saurait être tenu grief à un salarié d'avoir rapidement accepté un nouvel emploi fût-ce à des conditions moins favorables, dès lors que, suite à son licenciement avec effet immédiat, il s'est trouvé du jour au lendemain sans revenus et qu'en agissant ainsi il a contribué à diminuer le dommage lui causé par son licenciement abusif. La Cour a donc estimé qu'il y a lieu de tenir compte de la perte de revenus subie par le salarié du fait d'avoir accepté un emploi à durée déterminée pour six mois après son licenciement (Cour, F c/ Cerametal s.à r.l.).
La Cour (8 janvier 1998, A c/ Mazzoni Shoes Services s.à r.l.) a jugé qu'il appartenait au salarié de faire la diligence nécessaire pour prolonger une autorisation de travail venue à échéance et que l'employeur ne saurait donc être tenu d'indemniser le salarié qui se trouve au chômage et sans ressources pour avoir omis de faire les démarches nécessaires au renouvellement de son permis de travail.
Le délai de préavis, en cas de licenciement avec préavis, pendant lequel le salarié est supposé prester un travail pour compte de l'employeur – le contrat de travail ne prenant fin qu'à la date de l'expiration du préavis – ne peut être compris dans la période de référence,

peu importe que le salarié bénéficie d'une dispense de travail. En effet, pendant le délai de préavis, assorti ou non d'une dispense de travail, le salarié touche son salaire (article L.-124-9 (1), al. 2) et ne subit donc aucun préjudice, tandis que la période de référence à fixer par la juridiction du travail est celle pendant laquelle le préjudice matériel notamment la perte de revenu qu'il a subie suite à la cessation est en relation causale directe avec son licenciement abusif et doit partant être réparée par l'employeur fautif, de sorte que celle-ci ne peut prendre cours qu'à partir de la fin des relations de travail (Cour 10 janvier 2008, Comet S.A. c/ Pierucci).

4. Remboursement par l'employeur des indemnités de chômage au Fonds pour l'emploi

4.1. Principe

Le jugement ou l'arrêt déclarant abusif le licenciement du travailleur ou justifiée la démission motivée par un acte de harcèlement sexuel condamne l'employeur à rembourser au Fonds pour l'emploi les indemnités de chômage par lui versées au salarié pour la ou les périodes couvertes par des salaires, traitements ou indemnités que l'employeur est tenu de verser en application du jugement ou de l'arrêt (article L.521-4 par. (5) al. 1).

Il en est de même du jugement ou de l'arrêt condamnant l'employeur au versement des salaires, traitements ou indemnités en cas d'inobservation de la période de préavis ou en cas de rupture anticipée du contrat à durée déterminée (article L.521-4 par. (5) al. 1 in fine).

Les indemnités de chômage qui avaient été attribuées à titre provisionnel au salarié licencié pour motif grave sur la base de l'autorisation du président de la juridiction du travail lui demeurent cependant acquises (article L.521-4 par. (5) al. 3).

Le montant des indemnités que l'employeur est condamné à rembourser sera toutefois porté en déduction des salaires, traitements ou indemnités que l'employeur est condamné à verser au salarié (article L.521-4 par. (5) al. 3 et 4 du code du travail).

Lors de la saisine de la juridiction du travail compétente du fond du litige, le Fonds pour l'emploi est mis en intervention par le travailleur qui a introduit auprès de l'Administration de l'emploi une demande en obtention de l'indemnité de chômage complet. A défaut de cette mise en intervention du Fonds pour l'emploi, la juridiction saisie peut l'ordonner en cours d'instance jusqu'au jugement sur le fond. Il en est de même pour le Fonds pour l'emploi qui peut intervenir à tout moment dans l'instance engagée (article L.521-4 par. (7) du code du travail).

4.2. L'existence d'un jugement ou d'un arrêt déclarant abusif le licenciement

La condamnation de l'employeur au paiement d'une indemnité pour le préjudice subi par le salarié constitue l'assiette du recours de l'Etat.

Dans un arrêt du 30 octobre 1997 (Etat du Grand-Duché de Luxembourg c/ Valvasori et Skrijelj, Pasicrisie Tome 30, page 263), la Cour de Cassation a relevé que la loi ne vise pas exclusivement le licenciement immédiat pour motif grave déclaré abusif, mais également le licenciement avec préavis jugé abusif ainsi que la rupture anticipée du contrat à durée déterminée (pour la jurisprudence antérieure, voir Cour 26 septembre 1996, Ets Gombos & Cie s.à r.l. c/ Lang-Lucas et Etat, Pasicrisie Tome 30, page 136).

La Cour d'appel précise à son tour dans un arrêt du 15 janvier 1998 (Etat c/ Avelar Domingues et Mon Jardin) que le texte s'applique sans qu'il y ait lieu de distinguer entre un licenciement intervenu pour des motifs illégitimes ou constituant un acte économiquement et socialement anormal (licenciement avec préavis) ou un licenciement pour motif grave (licenciement avec effet immédiat).

Un arrêt de cassation du 30 avril 1998 (Etat du Grand-Duché de Luxembourg c/ consorts Rihm) confirme que le licenciement pour motif économique avec respect du préavis légal, déclaré abusif par jugement ou arrêt, donne lieu à remboursement.

Le texte s'applique sans restriction à tous les cas où le jugement ou l'arrêt déclare abusif le licenciement (Cour 25 juin 1998, Etat c/ Ayeri et Belaton).

Dans un arrêt du 8 janvier 2009 (n° 33.517), la Cour a précisé que le recours de l'Etat contre l'employeur, dans l'hypothèse d'un licenciement abusif, s'exerce sur le montant alloué au salarié au titre du préjudice matériel et non au titre du préjudice moral. Elle considère que l'indemnité de chômage est par nature un salaire de remplacement qui se substitue au revenu qui a été perdu suite au licenciement du bénéficiaire qui remplit les conditions requises par la loi pour en bénéficier sous le contrôle de l'Administration de

l'Emploi, tandis que le préjudice moral subi est avant tout celui que subit le salarié dans sa personne, qui se traduit par une atteinte à sa réputation, à son honneur ou à sa vie privée et qui est de ce fait une créance personnelle.

4.3. L'incidence du désistement du salarié ou de la transaction conclue en cours d'instance sur le recours de l'Etat

Dans un arrêt du 4 mars 1999 (Etat c/ Rihm et Mosar), la Cour observe que même si l'Etat en exerçant son recours se prévaut d'un droit propre, distinct de celui du salarié (dont il découle et dont il constitue en quelque sorte le complément), son action et son droit ne sont pas indépendants de ceux du salarié. En effet, d'une part, l'Etat n'a pas d'action principale en recouvrement des indemnités de chômage versées au salarié, mais ne peut qu'intervenir dans l'action engagée par ce dernier contre son employeur. D'autre part, seul le droit du salarié fixé par le juge constitue l'assiette du recours de l'État. A défaut d'action engagée par le salarié ou en cas d'abandon de ses prétentions indemnitaires par ce dernier, l'État ne pourra donc exercer son recours.

Or, contrairement à ce qui se passe dans l'hypothèse d'un licenciement pour motif grave, où l'introduction d'une action indemnitaire est une condition préalable à l'attribution, par provision, de l'indemnité du chômage complet en attendant la décision judiciaire définitive du litige concernant la régularité ou le bien-fondé du licenciement, le salarié n'est, en cas de licenciement avec préavis, pas obligé d'agir en réparation contre son employeur pour pouvoir bénéficier des allocations de chômage auxquelles il a droit du seul fait de son licenciement. Il est en effet présumé chômeur involontaire, indépendamment d'une action en réparation dont il est seul juge pour apprécier l'opportunité. Cette règle a pour corollaire que le salarié qui a librement décidé d'engager une action contre son employeur est également en droit d'y mettre fin par un désistement d'instance ou d'action, fût-ce en raison d'une transaction qu'il a conclue en cours d'instance avec l'employeur contre lequel il a agi, ou pour tout autre motif qui lui est personnel, et qu'il ne saurait être contraint par l'État intervenant à la poursuivre, pas plus que ce dernier ne pourrait l'obliger à l'intenter.

L'Etat ne peut donc plus continuer seul la procédure aux fins d'exercer son recours contre l'employeur dès lors que, même à supposer que le caractère abusif du licenciement résulte d'ores et déjà des éléments du dossier, le recours de l'État ne saurait être toisé pour défaut d'assiette puisque du fait de l'abandon de ses prétentions par le salarié la juridiction saisie ne serait pas amenée à fixer les indemnités que l'employeur serait tenu de lui verser, de sorte que la condition d'une condamnation principale de l'employeur au profit du salarié requise par la loi pour sa condamnation accessoire au remboursement des indemnités de chômage ne serait pas remplie.

Si le litige se mouvant entre les trois parties en cause est indivisible en ce sens qu'il n'est susceptible que d'une solution unique à l'égard de toutes les parties, il n'en reste pas moins que le salarié est maître de son action et qu'il peut y mettre fin par un désistement consécutif à une transaction conclue avec l'employeur. Un tel désistement comporte pour le recours de l'Etat, intervenant volontaire à titre accessoire, la conséquence que l'extinction de l'instance principale entraîne celle de l'instance d'intervention.

Dans l'affaire Etat c/ Martino et Silmalux s.à r.l. (Cour 6 janvier 2000, Pasicrisie Tome 31, page 347) la Cour avait estimé que s'il est admis de transiger en droit du travail, il n'en reste pas moins que la transaction doit être conclue par toutes les parties au litige pour atteindre son objectif qui est précisément de mettre fin à une contestation née et portée devant le tribunal du travail. Par conséquent, les parties employeuse et salariée qui ont saisi la juridiction du travail ne sauraient conclure une transaction sans l'Etat et au mépris de ses droits. Selon la Cour, la transaction devait donc être déclarée nulle et non avenue (voir également Cour 4 novembre 2004, Etat c/ E. et Hoffmann-Schwall S.A., Pasicrisie Tome 32, page 569).

Dans l'affaire Etat du Grand-Duché c/ Thiry et Restaurant Cornelyshaff s.à r.l. (21 février 2008), la Cour était également appelée à toiser la question de savoir quelle est l'incidence de la transaction sur la demande d'intervention de l'Etat. Estimant que cette incidence est fonction de la nature exacte de l'action engagée par celui-ci, la Cour distingue entre l'intervention principale ou agressive et l'intervention accessoire ou curative.

Elle explique qu'en cas d'intervention principale le tiers entend faire reconnaître un droit lui appartenant sur le bien qui fait l'objet du litige et réclame une condamnation à son profit ; quant aux effets de cette intervention, l'intervenant, qui a un droit propre, peut poursuivre l'instance et demander au tribunal de prononcer à son profit un jugement de condamnation au cas où l'instance principale disparaît; ainsi, si l'instance principale se termine par une transaction, celle-ci est sans effet à l'égard de l'intervenant lorsqu'il s'agit d'une intervention agressive, parce que cette dernière repose sur des droits indépendants de ceux du demandeur principal.
En revanche, en cas d'intervention volontaire dite accessoire ou conservatoire, l'intervenant entend uniquement préserver ses intérêts en se joignant à la partie à laquelle ils sont liés. L'intervenant ne se prévaut par conséquent pas d'un droit propre et son action suit le sort de celle de la partie qu'il appuie. En conséquence, l'extinction de l'instance principale du fait d'une transaction conclue par les parties principales entraîne celle de l'instance d'intervention qui s'y est greffée.
Au vu du texte de l'article L. 521-4 du code du travail, la Cour a estimé que la dépendance des droits de l'Etat par rapport à ceux du salarié ainsi que l'indivisibilité matérielle et juridique entre les prétentions des trois parties (Etat, salarié et employeur) ne sauraient être mises en doute.
Ainsi, l'action et le droit de l'Etat dépendent, au vœu de l'article L. 521-4 par. (7) du code du travail, de la saisine par le salarié de la juridiction du travail compétente du fond du litige et au cas où le salarié, licencié avec préavis, n'exerce pas l'action en dommages-intérêts pour licenciement abusif lui conférée par la loi, l'Etat ne peut pas faire valoir son droit à remboursement des indemnités de chômage prestées devant le tribunal du travail. L'Etat ne dispose donc pas d'une action principale en recouvrement des indemnités de chômage versées au salarié. S'y ajoute que seul le droit du salarié tel qu'il se trouve fixé par le juge constitue l'assiette du recours de l'Etat.
Selon la Cour, cette conclusion s'impose d'autant plus lorsque le salarié n'est pas obligé, en cas de licenciement avec préavis, d'agir en réparation contre l'employeur pour pouvoir bénéficier des allocations de chômage.
Au vu de la dépendance et de l'indivisibilité entre les actions résultant de l'article L. 521-4 du code du travail, la Cour a jugé que l'intervention de l'Etat est à qualifier d'accessoire, avec les effets propres à cette intervention.
La transaction conclue entre l'employeur et le salarié en cours d'instance met fin au litige, emportant le dessaisissement de la juridiction du travail pour statuer sur la demande en remboursement de l'organisme ayant payé les indemnités de chômage.
La Cour a cependant estimé que, par exception à ce principe, la transaction ne fait pas disparaître l'intervention conservatoire, si l'intervenant prouve la fraude et réussit à faire révoquer pour ce motif la transaction.
Dès lors qu'une transaction peut intervenir entre le salarié et l'employeur pour de nombreux motifs sans aucun rapport avec le recours du Fonds pour l'emploi, la Cour considère que le seul fait par l'employeur de transiger avec son salarié ne saurait, en tant que tel et à défaut d'autres éléments, être qualifié de fraude aux droits de l'Etat permettant la révocation de la transaction litigieuse, ce dernier restant en défaut de rapporter la preuve d'une intention frauduleuse dans le chef des parties transigeantes.
La transaction met fin à une instance que le salarié n'était pas obligé d'introduire et que la même transaction, conclue antérieurement, aurait pu prévenir.
A propos d'une affaire dans laquelle l'Etat était intervenu volontairement, la Cour de cassation a jugé dans un arrêt du 18 mars 2004 (Etat c/ curateur faillite Ferber Boissons, Pasicrisie Tome 32, page 579) que l'action en intervention de l'Etat était éteinte à défaut de condamnation de l'employeur à la suite d'une transaction entre celui-ci et son salarié.
Dans son arrêt du 4 juin 2009 (n° 34.246) la Cour observe que cette dernière décision, qui ne fait aucune distinction entre l'hypothèse d'un licenciement avec préavis et celle d'un licenciement avec effet immédiat, met l'accent sur le défaut de condamnation de l'employeur et renvoie ainsi à l'article L.521-4. par. (5) et (6) du code du travail.
Ces deux dispositions posent en effet comme condition du succès de l'action du Fonds pour l'emploi l'existence d'une condamnation, condition exclue dans le cas où les parties

principales au litige ont conclu une transaction, peu importe d'ailleurs, selon la Cour, que cette transaction soit ou non opposable à l'Etat.

4.4. Situation des employeurs ayant engagé des salariés non résidents

La Cour a jugé qu'il n'y a pas de discrimination des employeurs ayant engagé des salariés domiciliés sur le territoire luxembourgeois par rapport aux employeurs ayant engagé des salariés non résidents, ces derniers étant exemptés du remboursement au Fonds pour l'emploi du fait que leurs salariés ne sont pas indemnisés par le fonds, mais le cas échéant par l'organisme compétent de leur pays de résidence (Cour 20 janvier 2000 Peinture Poullig c/ Wampach).

5. Remboursement par le travailleur des indemnités de chômage au Fonds pour l'emploi

Dans le cas d'un licenciement pour motif grave, le demandeur d'emploi peut, par voie de simple requête, demander au président de la juridiction du travail compétente d'autoriser l'attribution par provision de l'indemnité de chômage complet en attendant la décision judiciaire définitive du litige concernant la régularité ou le bien-fondé de son licenciement ou de sa démission (article L.521-4 par. (2) du code du travail).

Le président détermine la durée pour laquelle l'attribution provisoire de l'indemnité de chômage est autorisée, cette durée ne pouvant être supérieure à 182 jours de calendrier (article L.521-4 par. (3) du code du travail).

Le jugement ou l'arrêt déclarant justifié le licenciement du travailleur condamne ce dernier à rembourser au Fonds pour l'emploi, le cas échéant de façon échelonnée, tout ou partie des indemnités de chômage lui versées par provision (article L.521-4 par. 6 al. 1 du code du travail).

Lorsque l'Administration de l'emploi procède à l'exécution du jugement ou de l'arrêt ordonnant le remboursement des indemnités de chômage versées par provision, le travailleur peut solliciter le bénéfice d'un sursis d'exécution auprès du président de la juridiction qui a prononcé la condamnation. Le président statue en référé dès le dépôt de la demande au greffe. Il peut prendre tous renseignements utiles concernant la situation matérielle du travailleur (article L.521-4 par. (6) al. 2 du code du travail).

Lors de la saisine de la juridiction du travail compétente du fond du litige, le Fonds pour l'emploi est mis en intervention par le travailleur qui a introduit auprès de l'Administration de l'emploi une demande en obtention de l'indemnité de chômage complet. A défaut de cette mise en intervention du Fonds pour l'emploi, la juridiction saisie peut l'ordonner en cours d'instance jusqu'au jugement sur le fond. Il en est de même pour le Fonds pour l'emploi qui peut intervenir à tout moment dans l'instance engagée (article L.521-4 par. (7) du code du travail).

Dans un arrêt du 18 mars 1999 (Banque Nationale de Paris c/ Thom et Etat) la Cour explique que c'est au regard de la décision rendue sur le fond du licenciement, déclaré abusif ou justifié, que la loi organise le remboursement au Fonds pour l'emploi des indemnités de chômage par lui versées par provision, et ce soit de la part de l'employeur, soit de la part du salarié.

C'est pour garantir ses droits consistant dans le remboursement des indemnités que la loi autorise l'Administration de l'emploi en tant que gestionnaire du fonds à intervenir à tout moment, et ce déjà dès l'instance engagée devant le président de la juridiction du travail, qu'elle oblige le travailleur à mettre en intervention le fonds lors de la saisine de la juridiction du travail du fond du litige et que, même à défaut de cette mise en intervention, la juridiction pourra l'ordonner en cours d'instance jusqu'au jugement sur le fond.

L'Etat en tant que gestionnaire du fonds agit sur base d'une intervention principale et obligatoire qui crée une indivisibilité de fait et d'intérêt voulue entre le salarié, l'employeur et l'Etat en ce sens que le litige n'est susceptible que d'une solution unique. L'instance devient nécessaire et obligatoire dès la demande en attribution par provision de l'indemnité de chômage entre ces mêmes trois parties.

Compte tenu de ce que les indemnités de chômage attribuées au salarié sur la base de l'autorisation du président du tribunal du travail ne lui demeurent acquises que si le licenciement est déclaré abusif, il existe dans le chef du salarié une obligation de faire trancher le litige qu'il était obligé de porter devant la juridiction du travail, à l'effet de faire constater le caractère abusif ou justifié de ce licenciement.

Dans la mesure où le travailleur n'entend pas conclure quant au caractère du licenciement et poursuivre l'action qu'il était obligé d'intenter pour voir confirmer le caractère abusif du licenciement, la juridiction du travail n'est pas en mesure de prendre une décision définitive quant au litige concernant la régularité ou le bien-fondé de son licenciement.
Dès lors, il doit être condamné à rembourser au Fonds pour l'emploi les indemnités de chômage lui versées par provision.
Le jugement ou l'arrêt déclarant justifié le licenciement du travailleur condamne ce dernier à rembourser au Fonds pour l'emploi, « le cas échéant de façon échelonnée, tout ou partie » des indemnités de chômage lui versées par provision. La faculté réservée aux juridictions de limiter la condamnation du salarié à une partie des indemnités indûment touchées par provision est à réserver à des situations exceptionnelles, dûment justifiées, prenant en considération notamment les efforts faits par le salarié pour limiter le préjudice subi par l'État (efforts faits pour rechercher un nouvel emploi dans les plus brefs délais) et sa situation financière actuelle. La demande en obtention du bénéfice d'un remboursement partiel n'est pas justifiée lorsque le salarié reste en défaut de fournir la moindre précision quant aux réels efforts qu'il affirme avoir faits pour rechercher un nouvel emploi et de soumettre à la Cour une quelconque pièce documentant ses prétendus efforts (Cour, 18 mars 1999 MC Constructions s.à r.l. c/ Medairos Pereira et Etat).
Dans l'affaire La Civette s.à r.l. c/ Hoerth et Etat (arrêt du 9 juillet 1999), la Cour constitutionnelle a jugé que la loi, en excluant de l'obligation de remboursement le salarié dont le licenciement avec préavis a été jugé justifié en raison de sa conduite, n'est pas contraire à la Constitution qui dispose que « les Luxembourgeois sont égaux devant la loi ».
6. Le traitement fiscal de l'indemnité pour résiliation abusive
L'article 115, point 9° de la loi concernant l'impôt sur le revenu accorde le bénéfice d'une exemption fiscale à l'indemnité pour résiliation abusive du contrat de travail fixée par la juridiction du travail.
Les indemnités ne sont toutefois exemptées au total que jusqu'à concurrence d'un montant qui s'élève à 12 fois le salaire social mensuel minimum pour travailleurs non qualifiés applicable au 1er janvier de l'année d'imposition.
Est toutefois exclue de cette exemption l'indemnité pour résiliation abusive versée aux personnes ayant droit soit à une pension de vieillesse soit à une pension de vieillesse anticipée.
L'indemnité pour résiliation abusive n'est exemptée que jusqu'à concurrence d'un montant s'élevant à 4 fois le salaire social mensuel minimum pour travailleurs non qualifiés pour les salariés âgés au moment du départ de 60 ans ou plus et ne pouvant prétendre à une pension de vieillesse ou à une pension de vieillesse anticipée lorsqu'ils ont touché normalement par année d'imposition un salaire dont le revenu imposable dépasse 150 % du montant de la limite générale d'imposition par voie d'assiette des salariés et des pensionnés telle qu'elle se dégage de l'article 153 al. 1er n° 1 LIR (150.000 euros depuis le 1er janvier 2010).
A noter que le bénéfice de l'exemption fiscale est applicable également, sous les mêmes conditions et réserves, à l'indemnité pour résiliation abusive fixée par une transaction.

§ 2. La recommandation judiciaire de réintégrer le salarié
En statuant sur les dommages et intérêts attribués au salarié licencié abusivement, la juridiction du travail peut, lorsqu'elle juge réunies les conditions pour une continuation ou une reprise harmonieuse de la relation de travail, recommander à l'employeur de consentir à la réintégration du salarié en réparation de son licenciement abusif (article L.124-12 par. (2) al. 1).
Une telle proposition ne peut être exprimée par la juridiction du travail qu'à la condition qu'une demande ait été formulée par le salarié en cours d'instance.
Deux cas de figure sont possibles:
1. L'employeur consent à la réintégration du salarié lui recommandée par la juridiction du travail.

Dans ce cas, la réintégration effective du salarié avec maintien de ses droits d'ancienneté libère l'employeur de la charge des dommages et intérêts qu'il a été condamné de lui verser en réparation de son licenciement abusif (article L.124-12 par. (2) al. 2).

2. L'employeur ne souhaite pas consentir à la réintégration du salarié licencié abusivement lui recommandée par la juridiction du travail.

Dans ce cas, la juridiction du travail a la faculté de condamner l'employeur au versement d'une indemnité complémentaire fixée par la loi à un mois de salaire ou de traitement (article L.124-12 par. (2) al. 3).

La loi subordonne cependant cette condamnation à la demande du salarié.

§ 3. La réparation de l'irrégularité formelle du licenciement

La juridiction du travail qui conclut à l'irrégularité formelle du licenciement en raison de la violation d'une formalité qu'elle juge substantielle est obligée d'examiner le fond du litige en étendant son contrôle judiciaire sur la motivation du licenciement (article L.124-12 par. (3) al. 1 du code du travail).

Au cas où la juridiction du travail juge abusif le licenciement pour des raisons de fond, l'irrégularité pour vice de forme se trouve absorbée, les juges ne pouvant imposer la réparation cumulative du licenciement abusif quant au fond et irrégulier quant à la forme.

En revanche, lorsque les juges du travail estiment que le licenciement n'est pas abusif quant au fond, ils peuvent condamner l'employeur à verser au salarié une indemnité qui ne peut être supérieure à une mensualité de salaire ou de traitement pour la réparation de l'irrégularité de forme du licenciement qu'ils jugent substantielle pour la protection des intérêts du salarié.

Le code n’exige pas la preuve d’un préjudice en cas d’inobservation d’une formalité substantielle (Cour 7 juin 2007, Bülow c/ SST Luxembourg S.A.).

Le code qualifie comme irrégulier pour vice de forme

- le licenciement notifié sans observation de la procédure de l’entretien préalable (article L.124-2 par. (4);
- le licenciement notifié sans lettre recommandée à la poste (article L.124-3 par. (1) al. 1).

En revanche, le code du travail souligne expressément que le refus de motivation ne constitue pas une formalité de pure forme, mais qu'elle rend le licenciement abusif (L.124-5 par. (2) al. 2).

L’absence ou la tardiveté de l’entretien préalable constituent une irrégularité formelle du licenciement en raison de la violation d’une formalité substantielle, qui oblige le juge à examiner le fond du litige, mais qui est sans incidence sur le fond du litige et notamment le point de départ du délai de préavis (Cour 11 janvier 1996, Uniroyal Englebert Textilcord c/ Subires).

De même, la Cour a qualifié de formalité substantielle le respect du délai légalement fixé entre l’envoi de la lettre de convocation et la date de l’entretien préalable (Cour 7 juin 2007, Bülau c/ SST Luxembourg S.A.).

Par contre, la Cour (15 juin 2000, Schrobiltgen c/ J. Lamesch & Cie s.à r.l. et Luxrecyclage S.A.) a refusé de considérer comme une formalité substantielle l’inobservation des délais à respecter pour la notification du licenciement consécutivement à l’entretien préalable, à savoir au plus tôt le jour qui suit celui de l’entretien préalable et au plus tard 8 jours après cet entretien.

Selon la Cour (24 juillet 1995, Erpelding e.a. c/ Flammang), l'inobservation par l'employeur du délai de préavis constitue non pas une irrégularité formelle, mais une irrégularité de fond. Elle considère que l'insuffisance du délai de préavis porte directement atteinte au droit du salarié et lui cause préjudice en ce qu'elle réduit indûment la durée du contrat de travail et du temps minimum que le législateur a voulu impérativement accorder au salarié afin de lui permettre de trouver un nouvel emploi et d'éviter le chômage.

L'indemnité allouée par la juridiction du travail en raison de l'irrégularité formelle du licenciement, ne peut être cumulée avec l'indemnité compensatoire de préavis destinée à réparer l'irrégularité commise, cette dernière ne pouvant subir une double sanction.

L'indemnité ne s'applique en effet qu'aux irrégularités pour lesquelles le législateur n'a pas prévu chaque fois une sanction spécifique (Cour 28 mars 1996, Chemolux c/ Leven).
L'omission d'information et de consultation du comité mixte d'entreprise en cas de licenciement individuel pour motif économique ne constitue pas une irrégularité. En effet, le licenciement d'un salarié, même pour motif économique, ne saurait constituer un cas d'information et de consultation du comité mixte à défaut d'avoir une incidence déterminante sur la structure de l'entreprise ou sur le niveau de l'emploi (Cour, 15 janvier 1998, Norton S.A. c/ Smolders).

II. L'action judiciaire en maintien du salarié dans l'entreprise en cas de licenciement nul

Le code du travail qualifie comme étant nul et de nul effet notamment
1. le licenciement en violation de l'interdiction de licencier un membre des différentes délégations du personnel (article L.415-11 par. (1) al. 1);
2. la notification individuelle ou la convocation à l'entretien préalable effectuées avant la signature du plan social ou du procès-verbal de l'Office national de conciliation dans le cas d'un licenciement collectif pour cause économique (le cas échéant avant la mise en place d'une délégation du personnel ou d'un comité mixte d'entreprise) (article L.166-2 par. (8) al. 1 en combinaison avec l'article L.166-5 par. (1) al. 2);
3. le licenciement en violation de l'interdiction de licencier une femme en cas de maternité (article L.337-1 par. (1) al. 3);
4. le licenciement en violation de l'interdiction de licencier un salarié pendant le congé d'accueil (article L.234-56);
5. le licenciement du salarié à partir du dernier jour du délai pour le préavis de notification de la demande de congé parental et pendant toute la durée du congé (article L.234-47 par. (2));
6. le licenciement de la femme en raison de son mariage (article L.337-6);
7. le licenciement en violation de l'interdiction de licencier un salarié bénéficiant d'une mesure de reclassement interne (article L.551-2 par. (2));
8. le licenciement en violation de l'interdiction de représailles en matière de discriminations fondées sur le sexe (article L.241-8 al. 3) et en matière de discriminations fondées sur la religion, les convictions, le handicap, l'âge, l'orientation sexuelle, la race ou l'ethnie (article L.253-1 al. 3).

Dans les cas de nullité du licenciement prévus par la loi, la juridiction du travail doit ordonner le maintien du salarié dans l'entreprise lorsque ce dernier en fait la demande (article L.124-12 par. (4)).
Le code du travail dispose également que sont applicables les dispositions qui régissent l'action judiciaire en réparation de la résiliation abusive du contrat (article L.124-11) ainsi que les dispositions du code civil (articles 2059 à 2066) qui régissent l'astreinte (*Le juge peut, à la demande d'une partie, condamner l'autre partie, pour le cas où il ne serait pas satisfait à la condamnation principale, en paiement d'une somme d'argent, dénommée astreinte, le tout sans préjudice des dommages-intérêts, s'il y a lieu*).
Il convient toutefois de relever que s'agissant des nullités du licenciement visées ci-dessus, le code du travail a instauré des procédures judiciaires particulières en maintien ou en réintégration du salarié licencié en violation de la loi.
Dans un arrêt du 23 novembre 2006 (K c/ ISS Facility Services Luxembourg S.A., Pasicrisie Tome 33, page 359) la Cour a relevé qu'en matière de nullité du licenciement le président du tribunal du travail et, en instance d'appel, le magistrat présidant la chambre de la Cour d'appel, statue au fond et non pas comme juge des référés.

Article 8§3 – Time off for nursing mothers

ESC 8§3 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 8§3 of the 1961 Charter on the ground that breastfeeding breaks are not paid as normal working hours and that the amount of the benefits paid in lieu may result in loss of salary.

53. The representative of Croatia provided the following information in writing:

> In respect to breastfeeding breaks in Croatia, the following should be noted: Breastfeeding breaks for employed women are regulated by the Law on Maternal and Paternal Benefits (Official Gazette no. 85/08, 110/08 and 34/11), Article 19:
> "(1) Employed and self-employed mother, who after maternity leave or working part-time continues to breastfeeding for two hours per day, regardless of whether the father of the child is employed and using one of rights he is entitled to according to this law at the same time.
> (2) The right referred to in Paragraph 1 of this Article may be used in one occasion or in two instalments during the day for one hour.
> (3) The right referred to in Paragraph 1 of this Article can be used by an employed or self-employed mother to the child's age of 1.
> (4) The time for the break described in the Paragraph 1 of this Article is included in working time.
> (5) Employed and self-employed mother during the use if rights described in the Paragraph 1 of this Article shall be entitled to compensation equal to 100 % of the budget base, calculated on hourly basis for the month for which her salary is calculated."
> The Law of Maternal and Paternal Benefits (Official Gazette, no. 85/05, 110/08 – correction and 34/11) makes no difference between women employed in public or private sector. Consequently, it follows that provisions of this law guarantee the right of women to nurse the child, or female worker who is breastfeeding a child, an appropriate time, or pause, for breastfeeding, as required by the Article 8§3 of the Social Charter. These provisions also guarantee the same right to every worker who is breastfeeding a child, regardless whether in private or public sector.
> In terms of compensations for using the right for a pause for breastfeeding a child, a female worker is entitled to compensation, whose base is determined in accordance to the prescribed amount of the budget base, pursuant to Article 19§5.
> However, when considering the issue of compensation, one should keep in mind that all the benefits prescribed by the Law which are related to the budget base are provided by the state budget, i.e. from general tax funds, with the exception of compensations based on the Law on Compulsory.
> Thus, the possibility remains open that the compensation for breastfeeding breaks amounts 100 % of the hourly rate of the female employee, under the assumption that this right becomes one of the rights deriving from a compulsory h

ESC 8§3 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 8§3 of the 1961 Charter on the ground that domestic workers are not entitled to time off for breastfeeding.

54. The representative of Spain informed the Committee that the situation had been brought into conformity by Royal Decree 1620/2011 of 14 November, concerning the special working relations of domestic workers.

55. Article 9.6 of the Royal Decree establishes that workers are entitled to public holidays and to the holidays mentioned under Article 37 of the Workers' Statute. Article 37.4 of the Workers' Statute lays down rules concerning breaks for breastfeeding, which are consequently applicable to women employed in domestic work as from 1 January 2012, the date on which the Royal Decree came into force, and also to contracts in force at that date.

56. The Committee took note of this information and congratulated Spain on the steps it had taken.

Article 8§4 – Regulation of night work

ESC 8§4 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 8§4 of the 1961 Charter on the ground that the regulation of night work is insufficiently protective for women.

57. The representative of Poland provided the following information in writing:

> On ne prévoit pas d'amender la législation polonaise. Selon les autorités polonaises la protection des femmes qui travaillent la nuit telle que garantie dans le cadre de la législation en vigueur et qui s'adresse à tous les travailleurs est suffisante vu les conditions dans lesquelles ce travail est exécuté.
> Des dispositions accordant la protection allant plus loin que celles qui s'appliquent aux travailleurs de deux sexes ne sont pas nécessaires – des différences physiques et psychiques entre les femmes et hommes ne prennent pas d'étendue – dans le cadre du travail de nuit – justifiant l'adoption des mesures de protection particulières adressées aux travailleuses. De plus, elles pourraient mener à la discrimination des femmes et mettre au détriment leur position sur le marché du travail.
> Les modalités générales de travail de nuit établies dans le Code du travail s'appliquent aux travailleurs de deux sexes : la période nocturne comprend 8 heures entre 21h00 et 7h00. L'employé dont les horaires du travail de chaque journée incluent au moins 3 heures de travail de nuit ou qui – après l'évaluation de ses horaires du travail – s'avère avoir travaillé pendant un quart de son temps de travail durant la nuit, est considéré comme un employé de nuit. Le temps de travail de l'employé de nuit ne peut pas dépasser 8 heures sur 24h, surtout s'il effectue des travaux dangereux ou liés à un effort physique ou intellectuel intense. Pour le repos pendant le travail de nuit et les périodes de repos après le travail de nuit les modalités générales s'appliquent.
> Il est à noter que certaines situations particulières sont prises en compte par la législation pour assurer la protection nécessaire : le travail de nuit de groupes particuliers des femmes est réglé de façon spécifique. Conformément à l'article 178 du Code du travail il est strictement interdit d'employer une femme enceinte pour le travail de nuit. En ce qui concerne l'employé (femme ou homme) qui a en charge un enfant de moins de 4 ans, il peut effectuer le travail de nuit uniquement ayant exprimé son consentement.

Article 16 – Right of the family to social, legal and economic protection

ESC 16 CROATIA

The Committee concludes that the situation is not in conformity with Article 16 of the 1961 Charter on the ground that an equal treatment of nationals of other States Parties to the entitlement to family benefits is not ensured because of excessive residence requirement.

58. In the absence of a representative of Croatia, the ETUC representative asked what length of residence was regarded as non-excessive by the ECSR. The Secretariat said that, according to the ECSR's case law, a period of one year or more was excessive (see Conclusions XIX-4 Denmark), while a period of six months was acceptable (see Conclusions 2011 Finland).

59. The representative of the Netherlands proposed that a vote be held on a Recommendation on procedural grounds (absence). The proposal was supported by the ETUC representative.

60. In accordance with its Rules of Procedure, the Committee voted on a recommendation, which was rejected (0 votes in favour, 20 against). The Committee then held a vote on a Warning, which was rejected (17 votes in favour, 4 against).

61. The Committee sent a strong message to the Government of Croatia indicating that the presence of a representative at the meeting of the Committee was a prerequisite for the proper

conduct of its discussions and invited the Government of Croatia to bring the situation into conformity with the Charter.

ESC 16 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- *it has not been established that families receive adequate social protection with regard to housing;*
- *the level of family benefits does not constitute an adequate income supplement.*

First and second grounds of non-conformity

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

The Committee asks that the next report indicate how the „family" is defined in domestic law.
The Czech legal order does not stipulate one single definition of term „family", as the approach to the family differs with respect to the point of view, i.e. from perspective of law, sociology, demography etc.
The section 115 of **the Civil Code** determines only "**a household**" as follows:
"The household consists of individuals who permanently live together and jointly pay the costs of their needs".
The Act on State Social Support (No. 117/1995, as amended) in section 7 defines "family"
(1) **As a family is considered** (for the purposes of this Act, unless otherwise agreed) a beneficiary and jointly assessed persons, or a beneficiary himself, if there are not such persons. For the purpose of child allowance, social allowance and parental allowance, none of the persons can be considered as a beneficiary or a jointly assessed person in more than one family at the same time. Any of listed persons jointly assessed for the purpose of child allowance and social allowance can be assessed jointly with other persons at the same time for housing allowance under the paragraph 6, if conditions for such a procedure are fulfilled.
(2) **Jointly assessed persons are (**unless specified otherwise)
a) dependent children (§ 11),
b) dependent children (§ 11) and their parents; as parents are considered also persons having children in foster care at the discretion of the competent authority (represented person), husband, partner of parents or of a represented person, widow or widower of the parent or of represented person and partner of parents or of represented person,
c) spouses, partners or cohabitees, unless the parents are assessed in accordance with subparagraph b),
d) dependent children, their lonely parent and they are dependent children, and parents of these parents.

Social protection of families
Housing for families
The report does not include any detailed figures, in particular on the amounts paid and the number of families concerned. Nor does it answer the Committee´s other questions, namely whether the steps taken – such as the construction of subsidised housing loans help to first-time buyers aged under 36 and house building – to meet demand for housing adapted to the needs of families, are affordable and appropriate for families on low incomes.
Regional and district cities offer young people the opportunity to resolve their housing situation by renting a „starter housing" until they arrange for a more permanent alternative. The apartments are designed for individual applicants and young families younger 35 years, who are not debtors, participate at building or other saving, are permanent residents

of the city and have no other housing. Starting apartments, as a pilot project, offer a competitive rent. In addition to starter housing, cities expand number of flats for elderly and barrier-free housing for handicapped.
The Government adopted the Regulation No. 284/2011 of 8 September 2011 regulating support from the State Housing Development Fund for construction of rental housing through low-interest loans. The loans are provided to legal or natural person (including municipalities) for rental apartments´ construction in new buildings, for construction changes of existing buildings from which rental apartments in residential buildings will arise. Construction of rental housing is intended for two target groups. Seniors over 70, people with disabilities, people with low income and those who due to natural disaster were deprived of housing are in the first group. The second one includes any individual.
The interest rate is determined depending on the choice of target group. An investor, who decides to rent the first target group flat, can get a loan with a favourable interest rate. The loan is provided in the amount of up to 70 % of expenses relevant for the loan amount. The maturity of the loan can be arranged for up to 30 years. Implementation of this program continues in 2012.

Mill CZK		Drawing	Concluded Contracts
Grants to rental housing (social housing) investors	50,00	12,89	73,14
Grants to municipalities for rental housing construction	0,00	31,69	0,00
Loans to young people for rental housing constructions	1 150,00	772,75	841,81
Grants to young people to loans for housing construction/acquisition	100,00	96,00	96,00
Loans for housing construction for natural persons affected by floods	50,00	2,91	2,85
Capital investment expenses	6,00	1,43	0,80
Total	1 356,00	917,67	1 013,80

Source: State Housing Development Fund

There are no statistic in respect to whether the constructions of subsidised housing loans help to first-time buyers aged under 36 and house building to meet demand for housing adapted to the needs of families. It depends on many aspects, whether they are affordable and appropriate for families on low incomes, for example on the region and its unemployment rate, number of family members, family income, size of the housing etc.
The Government implements the measures contained in the Housing Policy Concept of the Czech Republic until 2020 (see - http://www.mmr.cz/Bytova-politika/Koncepce-Strategie/Koncepce-bydleni-CR-do-roku-2020 , http://www.sfrb.cz/ , http://www.sfrb.cz/o-sfrb/koncepce/) , namely those relating to support of rental housing which facilitates workforce mobility and responds to the demographic development of the society, thus increasing the ability of household to find decent housing for a price corresponding to their income. One of the tasks imposed by the Housing Policy Concept of the Czech Republic until 2020 is to carry out an analysis of the existing legislative environment in the field of care for socially vulnerable groups with a higher threshold of affordability of good quality housing and proposing its modification with the aim of increasing availability of housing support for this group (particularly non-profit organisations).
The Czech Republic provides support to low-income families or to individuals when paying the costs for an adequate housing through two social benefits. “Housing allowance” is provided from the system of state social support and a “supplement for housing” within the

assistance in material need. Both allowances are paid by the Labour Office of Czech Republic or more precisely by its regional branches and contact offices.

The housing allowance is paid if housing costs of an owner or tenant (or a cooperative member) of an apartment registered as a permanent resident in the apartment exceed 30 % of the decisive income of the household (in Prague 35 %) and at the same time these 30 % (or. 35 %) is not higher than the normative housing costs. This upper limit (normative housing costs) is set by the law. It differs according to the form of housing, the size of the municipality and the number of jointly assessed persons. It is set for the current calendar year. The income of the household and housing costs is tested in calendar quarter in order to assess the claim and set the amount of the allowance. **In 2012, the average monthly number of the receivers of this allowance is almost 170 000.**

The supplement for housing helps people in material need to pay the housing costs if their income - including the housing allowance - is not sufficient. The supplement for housing is targeted to the people who really need it. The benefit is provided not only to the owners or tenants registered as permanent residents in the apartment but - in justified cases - also to the persons living as subtenants, in hostels, asylum facilities and some residential social services facilities. The amount of the contribution towards the housing costs is set in such a way that after the family pays the justified housing costs (i.e. rent, services related to housing and energy supply costs) the family should have an amount sufficient for living. Subjects to testing are income and the housing costs as well as all circumstances of being in material need. Overall social and property conditions, working activity or more precisely the willingness to participate in the labour market (those who are able to work), the effort to increase the income by own endeavour enforcement of unpaid claims or sale and usage of property. In order to assure a faster response to the changes of social and housing situation of the persons, such evaluation takes place every month. **In 2012, the supplement was paid approximately to 40 thousand beneficiaries per month.**

Prescriptive housing costs for rental units in CZK
Valid from January 1, 2011 to December 31, 2011

Number of persons in household	Size of municipality				
	Prague	over 100 000 inhabitants	50 000 - 99 999 inhabitants	10 000 - 49 999 inhabitants	under 9 999 inhabitants
1	6363	5117	4863	4406	4293
2	9183	7478	7130	6505	6350
3	12557	10328	9872	9056	8852
4+	15744	13055	12506	11521	11276

Prescriptive housing costs for cooperative and private units in CZK
Valid from January 1, 2011 to December 31, 2011

Number of persons in household	Size of municipality				
	Prague	over 100 000 inhabitants	50 000 - 99 999 inhabitants	10 000 - 49 999 inhabitants	under 9 999 inhabitants
1	3723	3723	3723	3723	3723
2	5584	5584	5584	5584	5584
3	7818	7818	7818	7818	7818
4+	9950	9950	9950	9950	9950

States must set up procedures to limit the risk of eviction. The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- An obligation to consult the parties affected in order to find alternative solution to eviction;
- An obligation to fix a reasonable notice period before eviction;
- Accessibility to legal remedies;
- Accessibility to legal aid;
- Compensation in case of illegal eviction.

To enable it to assess whether the situation is in conformity with Article 16 of the 1961 Charter as regards access to adequate housing for families, the Committee asks for information in the next report on all the aforementioned points.

An obligation to consult the parties affected in order to find alternative solution to eviction;

The Czech legislation determines that a tenant agreement is a bilateral act and both contractual parties are bound by obligations, but finding alternative solution by mutual agreement is privileged;

The legal protection of the tenant´s rights is stipulated the Civil Code (Act No. 40/1964 Coll., as amended). A tenant can be moved out from the apartment only on the basis of the power for execution, which is decided by the court. Tenancy ends (except an agreement and agreed tenancy period) on the basis of notice which the landlord is entitled to give only based on law. At the same time, he/she is obliged to provide at least a shelter to the tenant (breaching of good morals, serious breaching of tenant's obligations or in case the tenant owns more than one apartment) and in some cases stipulated by the law, full replacement (service flat, reconstruction, public interest etc.).

An obligation to fix a reasonable notice period before eviction;

Written notice period from the rent must not be shorter than three months and must expire at the end of the third month (article 710 of the Civil Code);

Accessibility to legal remedies;

Any person may enforce his/her rights before an independent and impartial court of justice by prescribed procedure (Article 36 of The Charter of Fundamental Rights and Freedoms);

A tenant can submit an action for nullity and testify to the court of justice within 60 days (article 711 of the Civil Code);

Compensation in case of illegal eviction.

Everyone has the right to compensation for damage caused by a lawful decision of a court or other authority (Article 36 of The Charter of Fundamental Rights and Freedoms).

Accessibility to legal aid;

There are social services provided according to Act No.108/2006 Coll., Social Services Act, as amended, which are cost free and low-threshold social counselling. Every person is entitled to free basic social counselling on how to resolve difficult social situation or its prevention. The extent and form of help and support provided through social services must preserve human dignity. The help has to come from individually identified needs of people.

On a local level the establishment of the housing loss prevention programs can be supported, methodologically and financially. The programs should be based on achieving coordination between the local authority and providers of social care in order to prevent intractable situations resulting from the debt due to non-payment of rent and services related to housing.

The Government also provides financial support to non-governmental organizations (NGO´s) which focus on consulting. The main activity of NGOs supported by the Ministry is to provide legal and technical assistance to the public, especially to tackle a wide range of problems across the housing sector.

The protection of rights of tenants is also provided by many organisations and unincorporated associations, such as The Association of Tenants of the Czech Republic(www.son.cz), The Housing and Owners Association (www.bytovadruzstva.cz), The Union of Czech and Moravian Housing Cooperatives, The Czech Society for Housing Development etc., which are operating throughout the Czech Republic. Main activities of

associations are using their knowledge of membership in the International Union of Tenants, cooperation with state and local authorities, cooperation with companies and individuals with similar goals, providing of professional consultancy and assistance to people in need of housing issue, cooperation on creation of legislation, issuing of professional publications etc.

The Committee asks for detail information in the next report on measures taken to improve the situation of Roma families, and in particular on how far the objectives in the Decade of Roma Inclusion have been achieved.
In order to ensure maximum effectiveness of individual measures on the local level, the Government Resolution N. 85 of 23 January 2008 established the **Agency for social integration in Roma localities**, aimed at supporting municipalities in the social integration process. It promotes supra-departmental approach and joint actions of the public administration and non-profit sector. In this regard, the Agency mainly assists to municipalities and local entities in the following areas:
- Ensuring services in support of education, promotion of employment, social services, and social housing, and ensuring infrastructure for such services;
- Drawing on funding from the European structural funds, state budget, regional grant programs, and other sources;
- Communication with the central authorities, namely ministries responsible for the area of social integration; based on the impulses received in the course of its work within individual locations, the Agency forms proposals in the area of legislation, grant titles, social policies, etc.

Measures approved as a part of the Strategy of Combating Social Exclusion for the years 2011 – 2015, are currently being implemented. These measures are focused in particular on the problems of socially excluded localities. Municipalities continue to be provided, as a part of local partnership, with support from the Agency for Social Inclusion in Roma Localities. Social integration of the inhabitants of excluded localities continues to receive significant support from the EU Structural Funds with an emphasis on support of local projects for provision of social services, promotion of education, employment and housing.
The Government has been implementing a broad scale the comprehensive Roma Integration Concept for the years 2012- 2013, which includes human rights, ethnic and socio-economic perspectives.
Enclosed please find a Roma People Strategy 2011-2015 in the Appendix I.
More details will be brought in the 10th Report on Fulfilling of the European Social Charter.

Children facilities
The Committee asks for a detailed description in the next report of day care facilities for children under three, the cost for parents and any financial support that is available, and an indication of the number of applications made and the number of places available.
Pre-school facilities are divided into public (state + regional + municipal) and private. Among public facilities there are crèches and kindergartens. Crèches are childcare facilities for children up to 3 years of age.
Private facilities are running as professional trade / small business (on licence) “securing childcare for children up to 3 years of age” and two small business /trades concerning childcare for children over 3 years of age and then “parent centres” (citizen associations or public benefit associations) that are attended by small children with their parents. Mostly attended is the last year in the kindergarten, where the highest percentage of children is justified by fact that it is a preparation for primary school.
A. Care in parent centres is often provide as an occasional short-term care either free of charge (if it is provided on volunteer basis by particular mothers) or for a symbolic fee. About 20 % of these centres work on commercial basis.
Private agencies providing childcare are usually used by high income and career-oriented families. Such care of child costs CZK 70 – 150 per hour (in Prague CZK 130 – 150 per hour).

Parents can draw a **parental allowance in addition to their income** to cover needs of a child under three years of age.
Through an amendment of the School Act (effective since January 1, 2012) the conditions have been created for development and subsidising company child care facilities (to facilitate parents employed by the company to reconcile work and family and facilitate their come back to employment).
Development of other forms of child care services has been promoted through amendment to the Trade Act which regulates child care services for children below three years of age - provided as regulated trade.
It must be stressed that the supply of non-institutionalized childcare for children up to 3 years of age has increased in recent years. The number of trade licenses issued in this area increased from less than 300 at the end of 2008 to 880 in March 2012. We expect that this increase should continue, also as a consequence of the recent amendment to the License Trade Act. The options of required qualification for the license trade of care for children up to 3 years of age have been extended by this amendment.
The Law on "Children's Group" submitted by the Ministry of Labour and Social Affairs to the Government and Parliament will make possible to create another flexible form of child care for children from 6 months to 6 years. The aim of the act is to promote supply of childcare by providing fiscal incentives for both employers to organise workplace childcare and for parents to make childcare more affordable. This law will be complemented with amendment to the Income Tax Law which will provide tax alleviations for employers which will establish that form of child care service, as well as for employees – parents of those children, who will have to cover cost of these services while being employed. These alternative types of services are characterised by possible higher flexibility towards parents and children needs.
It is necessary to stress that the Czech Republic still has specific regulation of parental leave, significantly longer than EU average. Moreover, in national historical context the Government gives **preference to less formal and more individualized child care** before institutionalized child care services - which must be taken into account when assessing the situation of child care facilities.

Participation rate in pre-primary education

Child's age	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
under 3 years	25,3 %	26,5 %	25,4 %	23,0%	23,0 %	24,8 %	26,8 %	27,5 %
3 years	80,0 %	77,3 %	74,6 %	76,6%	75,3 %	76,5 %	76,4 %	75,8 %
4 years	94,4 %	94,2 %	90,0 %	90,7%	90,9 %	89,4 %	88,5 %	86,9 %
5 years	96,0 %	96,4 %	95,8 %	93,7%	93,2%	92,8 %	91,7 %	91,4 %
6 years	25,0 %	23,8 %	22,7 %	22,3%	21,6%	21,0 %	20,7 %	20,5 %
over 6 years	.	.	0,5 %	0,5 %	0,5 %	0,5 %	0,5 %	0,5 %

Source: Institute for Information on Education

The Committee asks what steps are being taken to deal with these difficulties and allow children aged 3 to 6 to be admitted in appropriate conditions. It also repeats its request in the last conclusion for information on staff qualification, the financial contribution required from parents and inspection arrangement, since this information does not appear in the report.
The decision to increase number of places in kindergartens is fully in competence of its founder, i.e. municipalities, which are often very cautious, since the population wave has not been stable (after a rise in number of births in approx. 2008 – 2010, the number of new-born started to decrease again in 2011). Kindergarten or nursery schools established by employers in compliance with Educational Act play important role in this field, as they represent a suitable alternative.

Staff qualification is regulated by Act N. 563/2004 Coll., Pedagogical Personnel Act, as amended (www.msmt.cz/dokumenty/act-no-563-of-24th-september-2004), which sets professional qualification of teachers in kindergarten in section 6. The minimum level is secondary education specialised in pre-school education.
Financial contribution required from parents is determined in Regulation N. 14/2005 Coll.,[5] regulating pre-school education, which sets in section 6 subsection 2 that: *"the monthly contribution attributed to one child cannot exceed 50 % of the actual monthly average operational costs of the legal person carrying out preschool activities in kindergarten fall on a child´s preschool education in kindergarten in the previous calendar year".*

Family counselling services

The Committee asks for information to be included in the next report on family counselling services.
Families with children can ask for an expert advice municipal authority which is responsible for the social and legal protection of children and other authorised persons responsible to carry out social and legal protection of children, namely the public authorities (office of social-legal protection of children), in compliance with Act N. 359/1999 Coll., specifying the Social and Legal Protection of Children, as amended, para 10 - 12.
Municipal Office (body responsible for legal and social protection of the child) are obliged:
a) to help parents in solving educational and other problems related to care with the child,
b) to provide or mediate advisory services in bringing up and education of the child and in care about disabled child,
c) to organise (within the advisory activities) lectures and courses focused on solving educational, pedagogical, social, and other problems related to care of the child and his/her up-bringing.
These authorities can impose parents an obligation to use specialised counselling assistance devices if the parents:
a) Did not use a specialised counselling for the child despite the urgent need of such an assistance and the municipal authority recommended such an assistance previously ;
b) Are not able to solve the problems associated with upbringing of the child without professional counselling assistance, especially in disputes relating to the contact with a child and child´s upbringing and offer parents to participate in a mediation or pre-trial settlement.
Another option is to ask for help and advice some of NGOs widely operating in the Czech Republic, for example The White Circle of Safeness (www.bkb.cz), Advisory Centre for civil and human rights (www.poradna-prava.cz), Civil Advisory Centres (www.obcanskeporadny.cz); Foundation of Endangered Children (www.fod.cz), Foundation "Our Child" (www.nasedite.cz), Foster Care Institute Natama (www.natama.cz), Czech Centre for Families Re-development Střep (www.strep.cz), etc.
Counselling is provided free of charge.

Mediation services

The report contains no information on access to family mediation services, whether they are free of charge, how they are distributed across the country and how effective they are, despite its request in the last conclusions (Conclusion XVIII-1). The Committee underlines that if the next report does not provide the necessary information, there will be nothing to show that the situation in the Czech Republic is in conformity with Article 16 of the 1961 Charter on this ground.
In 2012, the Czech Republic adopted Act N. 202/2012 Coll., Mediation Law Act. Czech legal order thus belongs among the modern legal systems which emphasise on the agreement of the parties and conciliation.
At the background of the growing number of divorces, the overall instability of family relationship and an increase in problems in families, the attention placed on the area of family mediation is growing. Mediation in the Czech Republic enables pre-trial settlement of

[5] Available at http://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=59248&fulltext=&nr=14~2F2005&part=&name=&rpp=15#local-content.

disputes and divorces as well as other family settlement, offers assistance in responsible regulation post-breakup and post-divorce rules with simultaneous participation of impartial mediator.
Mediator plays important role in civil disputes at the court. Everyone has the right to go to court ask for the mediation of conciliation in a special pre-trial settlement (the praetorian peace). The judicial fee comes up to CZK 20,000 according the executive regulation**.**
Only a person registered in the list of mediators is authorised to provide mediator services. The list is governed by Ministry of Justice.
The mediator is entitled to agreed remuneration for mediation and agreed cash expenses (mainly travel expenses, postage, expenses for making photocopies, etc.). Unless otherwise agreed in agreement on mediation, mediator´s remuneration and expenses are born equally by parties to the conflict.
Mediation is also provided by a number of private legal and natural persons.
Despite the request in the last conclusion (Conclusions XVII-1), the report contains no up-to-date information on the participation and consultation of associations representing families in the framing of family polices. The Committee repeats its request.

Participation of associations representing families
Families are represented in the Czech Republic by association of NGO´s, such as the Network of Mother Centres, Acer, Union centre for family and community. Their main task includes cooperation with governmental and non-governmental organisations, cooperation with partner organisations abroad, representing Mother Centre's activities in the national level and abroad, cooperation with media, organising seminars, conferences etc. Various research institutions are active in this field also, such as Research Institute for Labour and Social Affairs, Institute of Sociology and Academy of Sciences of the Czech Republic etc.
All those institutions are invited by the Ministry of Labour and Social Affairs to be a part of conceptual work by way of consultation. NGO´s prepared for example comments grant methodology.
Permanent working group on family policy is established by the Ministry of Labour and Social Affairs, which representatives are from relevant organisations.
Government Council for NGOs is another permanent advisory and coordinating body in the field of non-governmental non-profit organisations.

Financial support of non-profit organisations within the family supporting

Year	Total number of financial resources	Total number of pro-jects	Total number of supported projects	Social exclusion prevention	%	Family relationship and competencies	%	Alternative care	%	Children accompanying	%	Total
2006	57 700 000	218	194	19 931 600	39	11 546 100	23	15 691 200	31	3 820 300	7	50 989 200
2007	75 000 000	241	172	48 686 600	65	15 018 100	20	7 308 200	10	3 836 800	5	74 849 700
2008	84 000 000	331	237	52 074 494	62	17 011 198	20	9 640 866	12	4 915 416	6	83 641 974
2009	120 000 000	329	307	73 877 047	65	18 607 475	16	11 165 618	10	10 781 873	9	114 432 013
2010	117 500 000	390	308	68 739 713	59	20 276 976	17	16 092 561	14	11 386 738	10	116 495 988

2011	109 500 000	440	408	59 318 256	54	19 290 474	18	20 822 272	19	10 220 312	9	109 651 314
2012	109 300 000	470	376	63 356 577	58			26 487 751	24	19438795	18	109 283 123

Domestic violance against women

The Committee notes the information on the legal protection. However, the report contains no information on the situation in practice. It therefore asks for such information, particularly statistics, to appear in the next report on Article 16.

Domestic violence and violence against women is a serious violation of human rights and also an unacceptable interference with the physical and psychological integrity of the victim. In its Policy Statement, the Government set out as one of its goals eliminating crime perpetrated against women. Positive trends have occurred when combating domestic violence and violence against women in recent years.

In 2011, the Government approved the National Action Plan for the Prevention of Domestic Violence for years 2011-2014. The Action Plan was drawn up by the Committee for the Prevention of Domestic Violence that also acts as a monitoring authority of the implementation thereof. The Action Plan aims to systemic and comprehensive solution to this problem. The activities are targeted at the following seven areas:

– support for people endangered by domestic violence;
– children endangered by domestic violence;
– work with violent persons;
– education and interdisciplinary cooperation in the area of domestic violence;
– the society and domestic violence;
– analysis and studies in the field of domestic violence;
– legislation related to domestic violence.

The National Action Plan for the Prevention of Domestic Violence (http://www.mpsv.cz/cs/12184) contains 32 tasks assigned to particular ministries and other entities. A part of the activities of the National Action Plan is also education effort and a media campaign which should take place in 2014.

The National Action Plan for the Prevention of Domestic Violence is enclosed in the appendix II.

Positive trends towards eliminating domestic violence and violence against women can be observed also in the area of legislation. The Ministry of Justice has prepared a bill on victims of crime and amending certain laws. This proposal was approved by the Czech Government and is currently being discussed in the Chamber of Deputies of the Czech Republic. This bill aims to expand the rights of victims and the assistance provided to them. The bill provides, in particular, for:

- the right of victims to be provided technical assistance which will be free of charge to some groups of victims;
- the right to information;
- the right to privacy;
- the right to be protected from secondary victimisation;
- a statement by the victim on the impact of crime on their life (victim impact statement);
- an extension of the right to financial assistance and increase of the lump sum payment;
- the victim will be allowed to claim from the state the compensation for non-material loss or damage to be paid by the offender.

The Government continues to monitor cases of domestic violence and violence against women. Both the number of persons ordered out of a home as well as the number of detected crimes of cruelty of a person living in the same household has increased in recent years. Rather than showing increase in domestic violence in the Czech society this fact

shows decreasing latency and increasing ability of the police and other concerned authorities to effectively deal with cases of domestic violence.
The Government pays attention to the training of staff of relevant authorities and enhancing interdisciplinary collaboration. The Ministry of the Interior supports the creation of specialized police teams to tackle domestic violence. The Judicial Academy expands their offering of training of judges, prosecutors and forensic experts in the field of domestic violence. Individual ministries extend the scope and deepen the intensity of the training of individual workers who in the course of their work-related activities come into contact with endangered people by domestic violence and violence against women.

Overview of evictions of violent persons committing domestic violence from a common dwelling

Region	I.	II.	III.	IV.	V.	VI.	VII.	VIII.	IX.	X.	XI.	XII.	2011	2007	2008	2009	2010	Total 2007-2011
South Bohemia	8	5	3	5	4	9	7	4	9	7	7	4	72	50	37	35	84	**278**
South Moravia	7	16	16	7	11	10	9	5	8	13	8	8	118	82	72	82	87	**441**
Karlovy Vary	19	10	11	17	13	8	9	10	13	8	8	11	137	32	46	49	79	**343**
Hradec Kralove	6	1	3	1	3	2	2	3	6	1	8	9	45	34	22	16	44	**161**
Liberec	4	10	9	6	6	9	7	4	4	6	7	10	82	30	36	68	62	**278**
North Moravia	15	9	8	11	14	9	14	7	18	9	7	14	135	213	110	111	108	**677**
Olomouc	5	10	7	13	12	8	13	9	11	4	7	13	112	44	35	43	61	**295**
Pardubice	7	10	8	12	7	7	5	6	8	7	5	11	92	61	39	44	73	**309**
Plzen	1	2	2	2	2	2	3	2	2	1	2	2	23	16	22	14	27	**102**
Prague	8	9	10	6	9	9	10	11	14	10	12	15	123	59	34	48	104	**368**
Central Bohemia	3	10	11	7	11	14	16	7	10	8	12	12	121	79	67	59	64	**390**
Usti nad Labem	10	19	19	22	19	16	17	19	11	24	14	12	202	81	87	134	133	**637**
Vysocina	8	3	3	1	6	3	5	1	4	3	4	1	42	32	26	39	51	190
Zlín	10	14	18	10	10	7	6	6	12	11	9	13	126	49	46	36	81	338
Total	**111**	**128**	**128**	**120**	**127**	**113**	**123**	**93**	**130**	**112**	**110**	**135**	**1 430**	**862**	**679**	**778**	**1 058**	**4 807**

Family benefits

The Committee asks what proportion of families receive the tax credit. It notes that this form of assistance is not available to the poorest families and asks what measures are taken to help this group. The Committee also notes from the report that a tax deduction of CZK 24 840 (942 euro) can be claimed for a spouse living with a tax-payer in a common household whose income does not exceed CZK 68 000 (2 578 euro) in a calendar year.

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 equalised income. The Committee considers that the allowances do not constitute an adequate income supplement. The Committee therefore concludes that the situation is not in conformity with the Article 16 in this regard.

With respect to the family benefits the Czech Republic refers to the 10th (detailed) Report of Fulfilling the European Code of Social Security.

The Czech Republic reiterates that the child allowance is just one of the family benefits (or, more precisely, benefit paid under the scheme called “State Social Support”) and – in the case of poorest families – there is also the assistance and benefits paid under the scheme “Material need”. As such, the child allowance should be considered jointly with other benefits of the social benefits schemes.

Vulnerable families

The Committee notes that the Ministry of Labour and Social Affairs receives assistance from the European Social Fund, but there is no indication of how the funds are being used. The Committee welcomes these positive developments but notes that there is nothing in the report to show how these principles are being applied in practice and what impact they are having on Roma families. It therefore asks for a description in the next report of the measures taken to offer Roma families economic protection.

Sources from the European Social Fund and national instruments are in the individual (local) branches of the Labour Office used to support mutual links of social work with Active Employment Policy (AEP) instruments focused on socially excluded members of Roma communities and to promote establishing partnerships of local administration bodies, labour offices and the non-profit sector, in order to connect social services and employment services on the local level. In the context of the reform of the social protection administration, social workers have been assigned to individual Labour Office local units since January 2012. This measure enhanced the social work with clients, closely linked to social work performed on local level by municipal authorities and under networking activities with locally available social services and local non-profit organisations and civil society organisations.

With the use of the European Social Fund support is provided to social business in relation to hardly employable Roma and pilot verification of innovative projects targeted at enhancement of Roma participation in the labour market in order to identify examples of successful projects and open opportunities for exchange of experience and good practice examples on regional, national and international levels (in scope of the aid granted from the European Structural Funds in the programme period 2007–2013). The Ministry of Labour and Social Affairs uses sources from the *European Social Fund* **through the Operation Programme “Human Resources and Employment**” (OP HRE) **and provides funds to eligible entities under grant axis *3.2 – Support of social integration of members of Roma localities.*** The support provided in this area is instrumental in enhancing the social integration of members of socially excluded Roma communities, ensuring availability, quality and control of services, including removing barriers in access of the Roma population to education and employment.

In 2011, CZK 173.084.968,68 was paid out in total in the area supported under the ESF – Operational Programme Human Resources and Employment (area of support 3.2. Support to Social Inclusion of Members of Romany Localities).
Under the OP HRE axis of support 3.2 continuous calls for proposals were opened already in 2008, namely Call N. 19 for grant projects, total allocation of **CZK 477 474 000** (allocation fully used, the call terminated on 30. 11. 2011), and Call N. 15 for individual regional projects, total allocation of **CZK 175 500 000** (increased in 2012, valid until 31 December 2012). In 2009 and 2010 Call N. 19 supported 53 projects at the total amount of **CZK 330 514 310.36**, in 2011 support was provided to 23 projects at the total amount of **CZK 127 620 521.96**. Call N. 15 supported projects of regions Hradec Králové (two projects), Ústí, Olomouc, Pardubice, Moravia-Silesia and Karlovy Vary, at the total amount of **CZK 144 421 978**. The calls are focused particularly at support provided to contracting authorities, providers and users of services, support to social services and other instruments for the benefit of social integration of members of socially excluded Roma communities/localities and support to processes of social services provision and development of partnerships. Support under the OP HRE area 3.2 is within the individual calls also targeted at the following activities:
1. professional (vocational) education of workers of social service providers, namely social workers, workers in social services and head workers in educational programmes/courses accredited by the Ministry of Labour and Social Affairs according to Act N. 108/2006 Coll., Social Services Act, as amended. These include both retraining courses and lifelong learning courses for education of workers;
2. education of staff of contracting authorities in the sphere of social services (regions, municipalities, regional and municipal authorities) supporting social integration of people in Roma localities;
3. education of the service users (persons living in socially excluded Roma localities/communities) to enhance necessary abilities and skills, including support to programmes targeted at acquisition of basic social and occupational skills, return to the society and the labour market.
On 21 September 2011 the Government adopted its "Strategy for Combating Social Exclusion for the period 2011 – 2015" (Government Resolution No. 699), elaborated by the Government department for social integration in Roma localities (Agency for Social Integration) of the Office of the Government of the Czech Republic. The strategy for combating social exclusion has a key strategic target consisting in elimination of social exclusion and poverty in socially excluded localities, often with Roma populations. It is divided into six areas closely related to social exclusion issues – namely security, housing, education, employment, social services and regional development.
The Government recognises that integration into the labour market is the key condition for social inclusion. The high rate of unemployment, which is often of the long-term or repeated type, leads to a number of significant impacts on the people from socially excluded localities. Apart from the material deprivation there are both social (exclusion from participation in social and economic life) and psychological consequences (resignation on job searching, loss of working habits, succumbing to addictions etc.).
Measures of the Strategy in the thematic section "Employment and Benefit Systems" are based particularly on recommendations by the World Bank, which emphasizes the necessity of a substantial change of employment services, enabling the Labour Office of the Czech Republic to respond to changing requirements of the labour market and improve placement of disadvantaged job seekers, and on the other hand it accentuates the requirement for enhanced responsibility of the unemployed. The measures do not require permanent increases of public budget contributions and concentrate mostly on optimisation of the already established instruments and expenses. Key changes may be found in AEP, where measures aim to increase efficiency of retraining or vocational courses and to link the courses widely to local labour market needs. Central measures include changes in the work with unemployed clients

based on increased efficiency of individual action plans and diversification of approach to clients according to their employability. Measures also respond to the hitherto practice in the public service and community works and integrate them into an organic structure of the so-called permeable employment. Specific attention is paid to social economy instruments and socially responsible public procurement as a natural way of involving people unemployed for a long-term into the labour market. Measures from this thematic section target at

- Efficient use of benefit systems for employment activation of people and for housing support
- Implementation of zonal ALMP arrangements (mediation, counselling, training) by PES
- Preparation of a joint methodology for the implementation of the permeable system of employment
- Strengthening the cooperation with social service providers in creation of individual action plans
- Implementation of tools for flexible employment and reimbursement
- Methodological support of creation of local employment networks in socially excluded localities
- Support to business activities in socially excluded localities
- Socially responsible public procurement in socially excluded localities – use of the institute of special condition
- Preventing indebtedness and solving over-indebtedness in socially excluded localities
- The creation of interdisciplinary platform for over-indebtedness and regular monitoring of consumer protection concerning financial loans and consumer credits.

Regarding prevention of over-indebtedness in socially excluded localities, the Strategy concentrates on increasing economic and financial literacy. A significant impact on the state of household indebtedness may be expected from legislative amendments related to consumer loans. Upon creation of the measures the Agency used good practice of some Labour Offices (branches and contact points of the Labour Office of the Czech Republic), international experience, summary output of the National Training Fund from key activity N. 4 of the Labour Market Institute's project – a support system of employment services, background of the strategy for combating social exclusion and outputs from the Government's National Economic Council.

Numerous regional individual projects in the sphere of employment are currently being implemented in socially excluded localities in cooperation with the Agency for Social Integration. These include:

- "Práce pro každého v Ústeckém kraji" (allocation CZK 62 956 300, implementation 01. 07. 2012 – 30. 06. 2012). The project focuses on employment consultancy, vocational retraining and mediation of subsidised and non-subsidised jobs for up to 10 months for low-qualified and inexperienced jobseekers (http://www.esfcr.cz/projekty/prace-pro-kazdeho-v-usteckem-kraji).
- "Práce bez překážek v Ústeckém kraji" (allocation CZK 75 934 700, implementation 01. 08. 2011 – 31. 07. 2014), targeted at employment consultancy, financial and functional literacy, vocational retraining and mediation of subsidised and non-subsidised jobs for up to 12 months for the long-term unemployed from remote municipalities with unemployment rate exceeding 15 % (http://www.esfcr.cz/projekty/prace-bez-prekazek).
- "Sociálně vyloučené lokality v Ústeckém kraji" (allocation CZK 60 000 000, implementation 01. 10. 2012 – 30. 06. 2015), targeted at employment consultancy, financial and functional literacy, vocational retraining and mediation of subsidised and non-subsidised jobs.
- "Nový začátek v Karlovarském kraji" (implementation 01. 06. 2012 – 30. 06. 2015), focused on a) vocational diagnostics –motivation courses–community work or b) vocational diagnostics –vocational retraining–socially beneficial jobs.

The Strategy measures in the thematic section "Education" support actions to limit

the rate of failure of children from socially excluded background at common basic and secondary schools and on the labour market. This approach is based on the assumption, confirmed by the current development of pedagogic sciences and school practice in the most successful countries in this regard, that the quality educational system, which doesn't necessarily segregate children (educates them together in the mainstream education system) and is able to react to individual needs of each one of them, is the most effective tool in combating social exclusion and its intergenerational reproduction. In this area adopted measures strive:

- To prolong the compulsory school attendance at least until the achievement of certificate of apprenticeship
- To systemize the methodologically treated, quality professional training for primary schools and to allocate adequate financial resources
- To create a system of minimum obligatory support of secondary school students
- To review the Framework Educational Programs for Professional Education

Year 2011

OPLZZ	CZK 118 711 608,32
OP LZZ (regions)	CZK 22 922 438,36
OP LZZ (municipalities)	CZK 12 048 472,00
IOP	CZK 19 402 450,00
Total in 2011	CZK 173 084 968,68

Estimated number of registered Roma community members included into ESF projects

Region	Total	Men	Women
South Bohemia	160	90	70
Vysočina	65	28	37
Pardubice	207	107	100
Zlín	26	15	11
Plzeň	163	96	67
Karlovy Vary	97	64	33
Hradec Králové	0	0	0
Ústí n. L.	600	200	400
South Moravia	820	380	420
Prague			
Liberec	119	85	34
Moravia-Silesia	520	338	182
Olomouc	127	75	52

Central Bohemia	72	27	45
Total	**2 956**	**1 505**	**1 451**
in %	**100**	**50.9**	**49.1**

Equal treatment of foreign nationals and stateless persons with regard to family benefits
The Committee asks whether this equality of treatment includes other family benefits or whether the list is exhaustive.
The list of family benefits brought in the previous report is exhaustive.

ESC 16 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with the 1961 Charter on the ground that the length of residence requirements for ordinary and special child allowances is excessive.

63. The representative of Denmark provided further details on the ways in which the Danish system of child related benefits supports and protects families in general and vulnerable families in particular. She underlined that to appreciate the real situation, it is important to take into account the full system of financial support of children. Three essential elements of this system should be pointed out:

- public financial support to families with children consists of a wide range of benefits which are available to vulnerable families and whose level exceeds the level of child allowances (ex.: social assistance and housing benefit, subsidies towards day care expenses). In general, these other child related benefits are not associated with length of residence requirements; they are fully tax funded and generally universalistic. These benefits include, but are not limited to, five types of benefits: supplementary social assistance to families with children, general and special day care subsidies, housing benefit to families with children, emergency social assistance towards reasonable expenses, and payment of expenses to prevent removal of a child from his/her family;
- effective instruments exist to help reinforce absent parents' obligation to support their own children: parent who is separated from the child's other parent may ask the regional state administration to order the other parent to pay child maintenance if the other parent does not support the child financially. If the other parent still does not pay child maintenance, the child maintenance decision may be enforced free of charge by the authorities, for example through wage withholding or through international conventions applicable if the parent concerned leave outside Denmark;
- the length of residence requirements for child allowances don't apply to foreign nationals who are either refugees or covered by bi- or multilateral regulations and conventions on social security.

64. The representative of Denmark confirmed that, on the request of the ECSR, the 32nd report will include information on the new legislation concerning a qualifying period whereby entitlement to family benefits will be "earned" gradually through periods of employment or residence (see Conclusions XIX-4).

65. In reply to the question by the representative of the Netherlands, the representative of Denmark again confirmed that any further details concerning the relevant new legislation will be available in the next report.

66. At the end of the discussion on the welfare system in Denmark, the representative of Lithuania noted that this issue is examined under Article 13 of the Charter. Furthermore, the Committee noted

that the situation remains unchanged since 2006. It took note of the information provided and it sent a strong message to encourage the Government to bring the situation in conformity with Article 16 of the Charter or to contact the ECSR regarding the length of residence requirements.

67. On the request of the representative of Turkey and in accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (0 votes in favour, 27 against). The Committee then voted on a warning, which was also rejected (5 votes in favour, 19 against).

ESC 16 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 16 of the Charter because equal treatment is not guaranteed to nationals of other States Parties to the 1961 Charter and the Charter in respect of the granting of supplementary child-raising allowances in Bavaria.

68. The representative of Germany informed the Committee that the Bavarian legislator set up a new provision which entered into force on 30 August 2012. The new provision provides for an entitlement to Land child-raising allowance of parents of foreign origin without the characteristic of "nationality" being taken into account. He added that Baden-Württemberg does no longer exclude nationals from a member state of the European Union or a treaty state of the Agreement on the European Economic Area from receiving Land child-raising allowance. It has been decided that the enforcing body shall already act accordingly as regards cases that have not yet been concluded all new applications.

69. The Committee welcomed this information and congratulated the Government of Germany for ensuring equal treatment in respect of the granting of supplementary child-raising allowances on its territory.

ESC 16 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- *housing conditions of Roma families are not adequate;*
- *Roma families still not have sufficient legal protection;*
- *the level of family benefits is manifestly inadequate.*

First ground of non-conformity

70. The representative of Greece indicated that Greek Government has adopted in recent years and currently implements various projects aimed at improving housing conditions of Roma families. Within the framework of the Integrated Action Plan (of 2002-2008) for the improvement of Roma people living conditions, measures were taken in order to guarantee access to electricity, water facilities, drainage and waste sewerage etc. The total estimated budget amounts to 94.9 million euros and so far 62.09 million euros have already been distributed to the competent local authorities. Furthermore, a number of actions were launched by relevant ministries in the field of health, employment, social protection, education, culture and sports.

71. In addition, following the 2010 reform on local and regional authorities' competences (Kallikratis Programme, law 3852/2010), Departments of Social Affairs have been established at regional level, to deal with housing rehabilitation issues for traveller communities at the local level. Since 2006, all measures taken give priority to more vulnerable Roma groups, such as families with young children, students, persons with disabilities, single-parent families, low-income families etc.

72. Furthermore, the representative of Greece informed that the legal framework as regards the conditions for granting housing loans has been amended. By virtue of a Joint Ministerial Decision (no. 15654/31.03.2011, OG 512/B), Roma beneficiaries are provided, in particular, with a financial incentives to better facilitate their ability to fulfill the obligations undertaken with the mortgage, partially extended timeframe for the construction of the house and the disbursal of the loan or an exemption from the general timeframe clause for signing a contract with a bank. So far, 6570 Roma families have signed for a housing loan and benefit from the above-mentioned activities.

73. In 2010, in cooperation with the European Commission, the Greek Ombudsman, competent Ministries and Roma representatives, the National Roma Integration Strategy has been re-oriented to a holistic approach which focuses on education, employment, health and housing issues. A database on the living conditions of Roma was set up.

74. The representative of Greece also informed that the Ministry of Interior formulated a concrete proposal within the new Strategy Framework to eliminate forced evictions. In 2010, according to the Ministry of Interior, no forced evictions took place. She recalled that last July, the Committee of Ministers, welcomed the measures already taken by the Greek authorities and their commitment to bring the situation into conformity with the Charter.

75. The Committee took note of the information provided on various measures and the implementation of the EU Strategy for Roma. It welcomed the efforts made by the Government of Greece in a particularly difficult economic context. It welcomed the progress made and asked the Government to continue its efforts to bring the situation into conformity with the European Social Charter.

Second ground of non-conformity

76. The representative of Greece underlined that Roma are Greek citizens with no prejudice to their origin. Thus, they enjoy full citizen rights: full judicial protection, access to information on their rights and the equity provided for by the Greek Constitution. Due to their – sometimes – difficult living conditions, the Greek State considers Roma population as a vulnerable group.

77. She informed the Committee that a number of measures have been adopted in order to help Roma to access services and goods, and promote their equal and effective participation in social and civil life. In particular, as regards legal problems that might arise due to the lack of certificates and other administrative documents, the Greek State follows a number of administrative guidelines in order to facilitate their access to all procedures (i.e. the lack of birth certificate that causes problems in issuing an identity card has been dealt with by a single declaration of the citizen's age before the Court of First Instance). As regards legal aid, the Roma population is entitled to this aid in civil, commercial and criminal cases under the Law 3226/2004 on legal aid to the law-income citizens provided they reside in Greece or in the EU and have a low family income.

78. The representative of Greece added that respecting the delay in delivering justice is a general problem in Greece and does not concern Roma population trials in particular. The three new laws adopted in 2010 (Law 3900/2010 on "Rationalisation of the procedures and the acceleration of the administrative trial", Law 3904/2010 on "Rationalisation and improvement in delivering of penal justice" and Law 3898/2010 on "Mediation in civil and commercial cases") should modernise and accelerate both criminal and civil procedures.

79. In reply to the question by the representative of Turkey, the representative of Greece confirmed that the difficulty for Roma population to obtain legal status has been overcome.

80. The Committee took note of the positive developments, in particular with regard to the streamlining of administrative procedures. It encouraged the Government of Greece to persevere in order to achieve conformity of the situation with the European Social Charter.

Third ground of non-conformity

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

Regarding the negative conclusion of the European Committee of Social Rights that in Greece the level of family benefits is manifestly inadequate, first of all we would like to stress that our country takes a series of measures to protect and strengthen the family. Specifically, we note the following:

A. Policies to support the family: reconciliation of family and working life

The legislation relating to the reconciliation of family and work include all the provisions that directly or indirectly assist the workers and especially women to combine paid work with family responsibilities. These provisions are aimed at protecting maternity, gender equality, equal treatment of employees, family facilities (providing various forms of leave), provision of benefits, flexible forms of employment and the organization of time (eg stores' timetables).

In particular, for the support of family and the reconciliation of family and working life, the following are provided:

a) Maternity and paternity leave: childcare leave (absence from work or part-time work), parental leave, leave for school attendance of children, etc,

b) Allowances related to their child,

c) Structures for support and social care: public crèches, kindergartens, summer camps, creative centers for children, all-day kindergartens and schools.

Moreover, the special leave for the protection of maternity is granted for a period of up to six months, as provided for in art. 142 of Law 3655/08 (G. G. 58 A/3-4-2008). Beneficiaries are women who are insured with IKA and are employed in companies or holdings in the private sector, as stated in art. 36 of Law 3996/2011, under fixed or permanent employment, full or partial employment.

The leave is granted by the employer after the end of childbirth or pregnancy leave or to the leave than has the same time as the reduced working hours. During the special maternity leave, OAED pays to the working mother a monthly amount equal to the minimum wage, as well as a ratio of the holiday gift and of leave bonuses. In case of part-time work during the semester before the pregnancy leave, the amount paid is equal to half of the amount as specified above.

The timing of the special maternity leave is estimated as insurance period for pension and sickness at IKA - ETAM, as well as to the supplementary insurance sector. The necessary contributions are deducted from the above mentioned amount (OAED covers the employer's contribution).

Action "Harmonization of work and family life"

The Ministry of Labour, Social Security and Welfare, strengthens family mainly through facilitating access to employment, especially for women. Emphasis is given to ensuring access to quality goods and services to the enlargement of childcare structures and support for other dependent members.

For example, the action "harmonization of work and family life" of the Operational Programme "Human Resources Development 2007-2013", for the management of which the Ministry of Labour, Social Security and Welfare is responsible, through the General Secretariat for EU and other resources. The aim of this action is to support individual employability through specific support to women in order to have access to child care facilities (crèches, kindergartens) and be facilitated for the care of their children.

The action is being implemented since 2008, assigned to the Agency Workers Foundation, and since 2010-2011 is assigned to the Greek Association for Local Development and Local Government SA through a system of individualized vouchers granted to the beneficiaries.

For the period 2012-2013, the following shall apply:

Participants can only be women who are mothers of infants, preschoolers, children and / or infants, adolescents and persons with disabilities who:

a) have Greek citizenship or nationality of a Member State of the EU or third countries nationals who legally reside in Greece.
b) wish to enroll their children in: nurseries, crèches and kindergartens, integrated care nurseries, creative centers for children, creative centers for children with disabilities,
c) have a family income that does not exceed 40.000 €.
The conditions for the participation in the program are as follows:
a) the mothers should work in Greece as employers or self-employed or self-employed in the primary sector, or
b) should participate in active labour policies, or
c)should be unemployed, with an unemployment card, or receive a regular unemployment benefit by the OAED during the past 24 months.
We note that mothers with children with disabilities are excluded from all the above-mentioned preconditions. They have the right to apply for their children regardless of their working or socioeconomic status in creative activity centres for children with disabilities and the departments for disabled children in integrated care nurseries.
If the conditions for the participation in the programmes are met, then socio-economic criteria are taken into consideration for the selection of beneficiaries:
a) low annual family income,
b) the working status, the employment relation and the type of employment,
c) unemployment by OAED,
d) marital status.
Furthermore, the Ministry of Labour, Social Security and Welfare, during this difficult social and economic condition in the country, in response to increased demand and in order to support the largest possible number of women, reinforces actions with immediate positive social impact. In this context, for the current period has undertaken the following initiatives:
1. Enhancement of the available funding for daycare and preschools and rationalization of creches,
2. New criteria for the participation in the program for hosting children in kindergartens (period 2012-2013): income criteria (40,000 euros annual family income) to ensure the strengthening of the economically weaker women.
3. Facilitate the submission of documents relating to the taxable year income in
order to reflect more fairly the women's current economic situation. Specifically, with regard to the program for children in kindergartens for the period 2012-2013, the beneficiaries' declared income for the financial year 2011 is included in the necessary documents (income earned from 1/1/2010 to 31/12/2010) or the financial year 2012 (income derived from 1/1/2011 to 31/12/2011).
These initiatives in the period 2012-2013 resulted to the increase by 18,000 positions of children in nurseries and kindergartens compared with last year, bringing the total number of beneficiaries for the current year to over 60,000.

B. Policies for the financial support of the family - Family allowances
Employees who provide dependent work (OAED)
The family allowance is granted to employees who provide dependent work by private law to any employer in the country (unless by virtue of a Collective Labour Agreement, law, enterprise regulation, or other provisions they receive from their employer a higher child allowance).
A prerequisite for receiving the family allowance is that the beneficiary, in the previous year:
• has worked for realised at least 50 days, or
• has received for at least two months regular unemployment subsidy, or
• was for at least two months incapable to work, or
• was for at least two months absent from work due to pregnancy-childbirth leave.
The children for whom child benefit is paid to:
• should be aged up to 18 years or until 22 if studying,

• if they are unable to work, they receive the benefit for as long as the disability lasts,
• should be unmarried,
• should reside in Greece or any country - member of the European Union.

Family benefits for the year 2012

Number of children	Monthly amount in euros	Annual amount in euros	Annual amount with the third child's benefit
2	24,65	295,80	330,96
3	55,47	665,64	700,80
4	67,38	808,56	843,72
5	78,68	944,16	979,32
6	89,98	1.079,76	1.114,92
7	101,28	1.215,36	1.250,52
8	112,57	1.350,84	1.386,00
9	123,87	1.486,44	1.521,60
10	135,17	1.622,04	1.657,20
11	146,47	1.757,64	1.792,80
12	157,77	1.893,24	1.928,40
13	169,06	2.028,72	2.063,88
14	180,36	2.164,32	2.199,48

For each child beyond the four the amount of 11.30 € per month has already been added (art. 1 P.D. 154/2004); the third child's allowance (art. 18, Law 1346/83) amounts to 2.93 € monthly and to 35.16 € annually. We note that the allowance is increased by 3.67 € per month, that is 44.04 € per year for each child where necessary (eg disabled child, the parent is widowed, etc.).

Workers in the public sector

Law 4024/2011 (G. G. 226A/27.10.2011) "Pension arrangements, single payroll, job redundancy and other provisions for the implementation of the medium term fiscal policy framework 2012-2015" (art. 17) provides for family a benefit, the amount of which depends on the number of children of civil servants. More specifically, the law removes the provision of family benefit for married employees, while increasing the monthly benefit for the children of the employee, as follows: 50 € (gross) for one child (single, under the afe of 18, or incapable to work due to disability percentage of 50 %, or children up to 19 years of age who are in high school, or children aged up to 24 years who study at the university), 70 € for two children in total, 120€ in total for three children, 170 € in total for four children and the provision is increased by 70€ for every additional child.

C. Policies for the financial support of the family – Allowances for families with three children and more

a) Benefits to large families and families with three children

The Law 3918/2011 "Structural changes in the health system and other provisions" was supplemented with provisions relating to the granting of family allowances to large families and families with three children as follows:

1. Monthly benefits amounts

i) Allowance third child

The allowance for the third child of L. 1892/1990 (art.63) was set (since 02.03.2011) at the amount of 177 €, and is payable until the completion of the sixth year of the child's age.

ii. Allowance for large families

The family allowance of Law 1892/1990 (art.63) was set (since 02.03.2011) at the amount of 44 € per month for each unmarried child under 23 years of age or, if he/ she is a student or up to 25 years if he fulfills his military obligations.
On 02.03.2011, the provision of art. 63 para3 of Law 1892/1990, which provided for a minimum total monthly allowance, was abolished. This allowance is not granted to large families, for as long as they receive the benefit for the third child.

iii. Allowance for families with three children

The benefit for families with three children (L.3631/2008, art.6) was determined from 1.1.2011 onwards at 44 € per month for each unmarried child under the age of 23. If the third child is also eligible for the third child benefit (because the child is under the age of six), then for this child the family receives the highest of the two benefits i.e. the third child's benefit (177 €).

iv. Lifetime pension

The mother who no longer is entitled to large family allowance (all kids are over the age of 23), 102 € are paid every month as pension for life (para 4, art. 63 of Law 1892/1990).

Conditions for the granting of benefits

Law 4052/2012 (art.27, para22) that replaced art.21, para3 of the same law, provides for an income criterion of 45,000 euros in order to grant financial benefits to large families and families with three children.
Furthermore, allowances for dependent children receive, in addition to the insured employees, and retirees of the IKA--ETAM. These benefits, which represent increases of the pension amount is quite significant and are maintained despite the adverse effects of the economic crisis on the largest insurance fund of the country. The terms and conditions for their granting are:
For those insured for the first time until 31.12.92
The pension is increased by 20 % for the first child, 15 % for second and 10 % for the third, provided that they are unmarried, they do not work, they do not receive a pension from another insurance fund or the state, and the spouse does not already receive the increase for the children. The surcharge is granted until the age of 18 or until the age of 24 for children who continue their studies in higher education, vocational training institutes and colleges of higher education. The above age limits do not apply for children who are incapable of any gainful work.
For pensioners who are entitled to the minimum pension, the increase for each protected child and for up to three children amounts to one wage of an unskilled worker, as it was on the 30.09.1990 and adapted according to any increase granted ever since.
For those insured for the first time since 1.1.1993
The pension shall be increased by 8% for the first child, 10 % for the second child and 12 % for the third or more children if they are unmarried and underage and do not work or are incapable of any gainful work and do not receive any pension from an insurance fund or the state. The aforementioned surcharge is extended until the age of 24 provided that the children attend universities in Greece or abroad.
The pension increases granted to children are calculated based on the half of the medium per capita GDP during the year 1991, adjusted according to the relevant increase rate in the pensions of civil servants.
The beneficiaries of the minimum pension, who have protected children, are also granted with the surcharge amounting to 5 % for the first child, 6 % for the second and 7 % for the third or more, under the same conditions as above.
The abovementioned framework proves that pensioners receive significant increases in their pension for their protected children.

D. Tax credits, tax exemptions

• The overall taxable limit, due to the restrictive fiscal policy during the current economic crisis, fell to 5,000 euro, but increments in the tax-free threshold remained as follows:

For the first child the tax-free limit is increased by 2,000 €, for the second child by 2,000 € more, and by 3,000 € extra for each subsequent child. Additionally, an increase in the tax free threshold to 9,000 euros from 5,000 euros was provided for young people aged up to 30 years old, for retired people over 65 and people with disabilities or pensioners with children with special needs regardless of their age (provided that the reported income does not exceed the 9,000 euro – art.38 L.4024/2011).

• The tax-free limits on donations, inheritance and parental benefits amount up to 150,000 € in the first category (spouse, children, grandchildren) and 30,000 in the second category (parents, siblings, etc.). If the heir of the deceased is a spouse or minor children, the property inherited remains untaxed up to the amount of 400,000€ per beneficiary (art.1 of L.3815/2010).

• Increased exemption from transfer tax, inheritance and parental benefit for large families in obtaining the first residence by purchase, inheritance or parental benefit (#art.21 and 25 of L.3842/2010).

• Reducing the emergency special fee for electrified structured surfaces for the large families as well, among other groups of vulnerable social groups (art.53 of L.4021/2011).

Exceptions to reductions in pensions

The measure of reducing expenditures on pensions due to the unfavorable financial context, is not implemented in the following cases:

• Disabled pensioners and retirees who take care of a disabled spouse or child, are excluded from the reductions in the main pension (art.1 of L.4024/2011 art.1 of 4051/2012).

• People with a disabled child or disabled spouse insured by the state, are excluded from the increase of the retirement age limit (art.6 of L.3865/2010).

E. Benefit of past years aimed to strengthen the family income applicable until today

1. Enhancing low-income families and children enrolled in compulsory education (art.27 of L.3016/2002). An allowance of 300 € per year is granted for each child and for an annual family income up to 3,000 €.

2. Student housing benefit for families who have children enrolled in tertiary institutions in the country in a city other than their principal residence (art.10 of L.3220/2004). A benefit of 1,000 € is granted annually for each child and for an annual family income up to 30,000 €, increased by 3,000 € for each additional child.

From the abovementioned, it is clear that our country is taking several measures to strengthen families by addressing the issue holistically and by combing the urgent need for fiscal adjustment with the protection of the family.

ESC 16 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- *measures implemented to address the problem of domestic violence have not been sufficient;*
- *the level of family benefits is inadequate;*
- *equal treatment of nationals of other States parties regarding the payment of family benefits is not ensured because the length of residence requirement is excessive.*

First ground of non-conformity

82. The representative of Latvia provided the following information in writing:

1. For the purpose of the specific regulation of the Criminal Law (hereinafter, - “CL”) on domestic violence, we inform that the Law “On Amendments to the Criminal Law” of 21

October 2010 entered into force on 1 January 2011, whereof the First Part, Section 48, CL is supplemented with Sub-Clause 15 under the following editorship:
15) “The criminal offence related to violence or threats of violence was committed against a person to whom the perpetrator is related in the first or the second degree of kinship, against the spouse or former spouse, or against a person with whom the perpetrator is or has been in unregistered marital relationship, or against a person with whom the perpetrator has a joint (single) household”.
Thereby, as of 1 January 2011 the mutual relations or kinship of the victim and the perpetrator can be of significance when penalty is inflicted, namely, such circumstance can be regarded as an aggravating circumstance.
Simultaneously, with regard to the criminal offence (corpora delicti) we inform that in the near future in CL it is not planned to separate criminal offence related to the domestic violence or one against a woman. The Ministry of Justice does not distinguish the necessity of such action as it is essential that a person who committed violent offence will meet the criminal liability.
In criminal offence of CL the activities that are a subject to punishment are defined. There, the importance is not attached to mutual relations of the victim and the perpetrator, as they do not change the nature of the offence. If a woman is raped, the perpetrator is charged with rape not considering if the woman is his wife or unknown to him. Simultaneously, relations or kinship of the victim and the perpetrator can have an impact to the sentence, namely, it can be more severe than in the other cases.
In addition to the conception definition of “domestic violence”, we inform that development of such definition is planned in the conception project of the preventive coercive measures (State Secretaries’ meetings, hereinafter, - VSS) (VSS-1271) (VSS 10.11.2011 announced, Minutes No 44, Article 24, hereinafter, - Draft Concept Paper). In the Draft Concept Paper in order to implement the conception until 1 February 2015, currently it is envisaged to develop the draft law where int.al. the conception definitions of “violence” and “domestic violence” will be included.
In this draft law it is envisaged to define the preventive coercive measures that could be adapted to any person, starting from the age of 11, in whose behaviour violence risks will be ascertained. Thus, in Latvia it is planned to implement measures to protect effectively a person, including women’s fundamental rights – life, health, gender-based inviolability, virtue and freedom.
It is planned that the preventive coercive measures might be as follows:
1. monitoring or supervision of a person, int.al.:
- obligation to inform about place of residence and work and study place, as well as about going abroad;
- obligation to be at a specific location in specific time period;
- prohibition to approach a specific location;
- prohibition to participate at specific social, public or other events;
- prohibition to approach and get in touch with a specific person or persons;
- prohibition to use intoxicating substances;
- obligation to receive social rehabilitation services.

2. determination of rehabilitative protection;
3. preventive bail.

The objective of enforcement of these measures would exactly be prevention of violence, wherewith enforcement of the preventive coercive measures in Latvia’s legal system might be effective solution in the fight against domestic violence. Furthermore, within the preventive coercion measures – determination of rehabilitative protection, it is planned to provide different kind of support also for violence risk threatened persons (for example, psychological help and social rehabilitation services, assistance in finding employment and place of residence).
With regard to claim the state compensation in Latvia, Clause 1, Law “On State Compensation to Victims” states that a natural person who, in accordance with procedures specified in the

Criminal Procedure Law, has been recognized as a victim with the right to receive a State compensation for moral injury, physical suffering or financial loss resulting from an intentional criminal offence, if the criminal offence has resulted the death of the person or caused severe, moderate bodily injuries to the victim or the criminal offence has been directed against sexual inviolability of the person or the victim has been infected with human immunodeficiency virus, Hepatitis B or C.
Considering above mentioned, if the person has suffered from domestic violence and due to respective criminal offence the criminal procedure has been initiated, whereof the person is declared as the victim, it has the right to receive the state compensation to victims, if the cause stated by Law "On State Compensation to Victims" is ascertained, for example, severe, moderate bodily injuries have been caused.

2. In addition to the mentioned measures in the sphere of criminal law, the Ministry of Justice has also developed a number of draft laws directed to prevention of violence against a woman and a family concerning civil matters.
On 22 February 2012, the Legal Affairs Committee of the Parliament of the Republic of Latvia – Saeima prior to the first reading supported amendment in Article 1, Clause 74, the Civil Law that anticipates the right to annul a marriage if spouses live apart less than three years, also, if the reason of divorce is physical, sexual, psychological or economical violence of the spouse against the other spouse, who requires the dissolution of the marriage, or against her child or their child.
Similarly, the Legal Affairs Committee of the Saeima (Parliament of the Republic of Latvia) also supported a proposal of the Attorney General to State in Clause 169, the Civil Law that a person cannot adopt a child if this person has ever been punished for deliberate criminal offence related to violence or violence threat – irrespective of annulment or removal of criminal record.
We also inform that the Ministry of Justice has developed the package of the draft laws ("Amendments in the Civil Procedure Law", "Amendments in the Law On the Orphan's Courts" and "Amendments in the Law "On Police""), whose objective is to create a legal mechanism in order to protect a person's private rights (rights to life, freedom, person's inviolability, health, gender-based inviolability, inviolability of private life, home and correspondence) also with temporary civil services – temporary protection of private rights - as it is envisaged in many European and other countries of the world.
The mentioned draft laws have been announced in the State Secretaries' meeting of 12 January 2012, currently its coordination process is going on and they anticipate opportunity for persons suffered from violence and pursuit to apply to court according to own initiative within the civil procedure, int.al. via police mediation and plead court to state restriction to a violent person.
As, for example, the draft law "Amendments in the Civil Procedure Law"(VSS-27) anticipates that temporary enforcement of private rights is permissible when requiring non-existence or divorce of marriage due to personal invasion, recovery of alimentation, division of the parties joint dwelling where they have a single household or usage of joint dwelling where the parties reside and in issues resulting from rights of protection and interaction. Review of issue on determination of temporary protection measures of private rights is permissible in any stage of process, as well as prior to a claim submission at court. According to this draft law, temporary protection measures of private rights are as follows:
1. obligation of the defendant to leave and prohibition to return and reside in the dwelling where the defendant resides permanently with the claimant;
2. prohibition of the defendant to be located in the dwelling where the defendant resides permanently with the claimant, not closer for the distance stated by court decision on temporary protection measures of personal rights;
3. prohibition of the defendant to reside at specific location;

4. prohibition of the defendant to meet the claimant and maintain up physical or visual relations with him;
5. prohibition of the defendant in any way to contact the claimant;
6. prohibition of the defendant, using the mediation of the other persons, to organize meeting or any other contacts with the claimant;
7. prohibition of the defendant to use the claimant's private data;
8. other prohibitions stated by court or a judge and obligations of the defendant where the objective is to ensure protection of the defendant's personal rights.

This draft law also anticipates that granting the claim statement of determination the private rights for temporary protection prior the claim has been pursued, court or judge appoints to the claimant the submission date for the claim statement at court within one year.

The claim statement has to be submitted to court within 30 days, if such private right temporary protection measures are determined – the defendant's obligation to leave and prohibition to return and reside in the dwelling in which the defendant resides together with the claimant; prohibition of the defendant to be located in the dwelling where the defendant resides permanently with the claimant, not closer the distance stated by court decision on temporary protection measures of personal rights. Private right temporary protection measure will be effective until time period when basic claim judgement enters into force.

3. According to existing legislation in Latvia, state is entitled through various means to provide services of social rehabilitation to child-victims of illegal acts. In turn there is a legal duty of every municipality to implement rights of children who have suffered from violence. Where possible, municipalities broaden the scope of persons to whom rehabilitation services or other social assistance are available.

As of 2000, a child who is a victim of criminal acts (a criminal offence, exploitation, sexual abuse, violence or any other illegal, cruel or humiliating action) is provided assistance, financed by the national budget, which is necessary for the child to recover physical and mental health and to integrate into the community.

Social rehabilitation services at the place of residence are provided by a psychologist, a psychotherapist or a social worker who has undergone special training in rehabilitation of abused children.

In Latvia already since 1999 a child who has suffered from illegal actions can receive 30 days long course of rehabilitation at a rehabilitation institution or ten 45 minute-long consultations at the place of residence. Since 2008 children suffered from severe violence receive 60 days long course of rehabilitation at a rehabilitation institution.

Most municipalities in Latvia have their own social service or social workers that also engage in cases of domestic violence. Since there is no centrally organized data gathering mechanism in place, data on provision of these additional services is not available.

The system of rehabilitation centers is complemented by a waster and geographically more evenly spread network of specialists (municipal social workers) that can provide services at the place of residence. Services in residence are provided by a specialist, who has acquired and retains appropriate education and training.

At the same time it should be noted that Amendments to the Law on Social Services and Social Assistance[6] (7 May 2009) prescribe duties of the State in the provision if social services. According to Section 13, Paragraph one, Clause 3^1 Social rehabilitation services for adult persons who have suffered from violence. The type, amount and content of social rehabilitation services, the conditions for the receipt and granting of services shall be determined by the Cabinet of Ministers. At the same time according to the Law on Social Services and Social Assistance Section 13, Paragraph one, Clause 11 social rehabilitation services for persons who have committed violence. The type, amount and content of social rehabilitation services,

[6] Law entered into force on 1st January 2003.

the conditions for the receipt and granting of services shall be determined by the Cabinet of Ministers.

At the end of 2008 the global financial crisis affected national economy of Latvia particularly severely, therefore the Law on Social Services and Social Assistance Transitional Provisions prescribe that Section 13, Paragraph one, Clause 3^1 and Section 13, Paragraph one, Clause 11 of this Law shall come into force on 1 January 2013. Besides, according to the 28 February 2012 Cabinet of Ministers decision about duties of the State in the provision if social rehabilitation services for adult persons who have suffered from violence and for persons who have committed violence are planned to be in place in 2015.

In 2009 and 2010 support groups for women victims of domestic violence were organized (financed from the State program on improvement of situation of child and family):

- in 2009, 4 support groups for women victims of violence in 4 Latvian cities and towns (Rīga, Cēsis, Rēzekne, Talsi) were organized (56 women were participating), as well as 15 support group facilitators were trained. Total amount allocated: 5000LVL
- in 2010, support groups for women victims of domestic violence were organised in 12 Latvian cities and towns (Talsi, Kuldīga, Valmiera, Cēsis, Lielvārde, Dobele, Madona, Balvi, Rēzekne, Daugavpils, Liepāja, Saldus), 113 women were participating. The support groups consisted of 10 meetings, each meeting 180 min. long. Total amount allocated: 9050,80LVL.

Since 2005, annual state financed trainings on the issues of domestic violence have been provided to different kinds of professionals, including investigators, judges, police, medical personnel, social workers, employees of educational institutions. Training needs for each group of professionals are being evaluated regularly.

The following training courses have been conducted:

- 2005-2010: Training for specialists on risk assessment criteria in disadvantaged families and work with such families.
- 2007: Training of police officers on children's rights and proper response to cases of domestic violence.
- 2008: Training of pre-school and school pedagogues on how to detect children who have suffered from violence (20000LVL, 500 pedagogues trained).
- 2009: Training of specialists on how to detect a child who has suffered from violence (13000LVL, 400 specialists).
- 2010: Training of specialists on domestic violence and multi institutional cooperation (12000LVL, 1090 specialists)
- 2010: Training of judges on child rights and domestic violence (5000LVL, 135 specialists).

Second ground of non-conformity

83. The representative of Latvia informed the Committee that the Law on "Payment of State allowances during the time period from 2009 to 2014" enters some restrictions in the payment of State allowances. According to the Government's decision and a report on "Evaluation of social security standards due to come into force in 2013-2015," the family benefits will amount to 8 LVL per month for each child during 2013 and 2014.

84. As from 1 January 2015, it is planned to resume differentiation benefit amounts based on the number of children in a family; these amounts will be doubled for a second child and tripled for the third and subsequent children in the family.

85. A draft law on the State budget in 2013 foresees that restrictions as regards the payment of maternity and paternity benefits as well as parental leave allowances will be removed. The maximum amount of the benefit will be up to 700 LVL per month, instead of 350 LVL previously.

86. In reply to the ETUC representative, the representative of Latvia pointed out that the first reading of the draft law on these benefits will take place on 22 October 2012 and the second reading – on 15 November 2012. If the draft is adopted, the current situation will change as from 1st January 2013.

87. The Committee noted that the situation will remain unchanged until 2013. However, it also noted the willingness to improve the situation and asked the Government to continue its efforts to bring the situation into conformity with the European Social Charter.

Third ground of non-conformity

88. The representative of Latvia confirmed that no modification to the existing legislation (Article 24 of the Immigration Law) is planned in the near future.

89. The Committee took note of this information. On the request of the representative of Belgium and in accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (1 vote in favour, 26 against). The Committee then voted on a Warning, which was rejected (15 votes in favour, 11 against).

ESC 16 NETHERLANDS (ANTILLES)

The Committee concludes that the situation in the Netherlands concerning the Netherlands Antilles is not in conformity with Article 16 of the 1961 Charter on the ground that the system of family benefits does not cover the entire population.

90. The representative of the Netherlands announced that, following the dissolution of the Federation of the Netherlands Antilles, which had been completed on 10 October 2010, the islands' statuses had changed: Curaçao and Sint-Maarten formed two new autonomous states (in addition to that of Aruba and the state of the Netherlands) within the Kingdom of the Netherlands, while the three other islands (Bonaire, Saba and Sint-Eustatius), which had much lower populations, had been reincorporated in the state of the Netherlands as special status municipalities. He therefore proposed that examination of the situation be deferred to the next cycle, for which the islands would submit their own reports.

91. The Committee decided to await the next report.

ESC 16 NETHERLANDS (ARUBA)

The Committee concludes that the situation in the Netherlands concerning Aruba is not in conformity with Article 16 of the 1961 Charter on the ground that there is no guarantee that family benefits will be paid to the nationals of other States party to the 1961 Charter and the Charter.

92. The representative of the Netherlands pointed out that, further to political changes, Aruba was responsible for its own reports concerning the Charter. He presented written information prepared by the authorities of Aruba and specified that he was unfortunately not able to answer specific questions regarding the legislation and situation in Aruba.

93. Regarding Article 16 of the 1961 Charter, the Government of Aruba informs the Committee that eligibility for (most) social benefits on Aruba is conditional on legal residency. Social and family benefits are therefore granted to both Dutch and non-Dutch citizens.

Nationals of other states are eligible for social care if they have had at least three years of legal residence on Aruba. Welfare (financial assistance) is granted to Dutch-citizens. This type of assistance does not require three years of legal residence if the Dutch citizen concerned is born in Aruba.

However, non-Dutch citizens may receive welfare in other forms, such as emergency aid (a lump sum) and also may receive bridging assistance during the interim period in case they have applied for the Dutch citizenship.

Social insurance benefits such as old-age, widow's and orphan's pension are all conditional on legal residency. Being born on Aruba or having the Dutch nationality is not required. The same applies to sickness and accident insurance as well as medical insurance. Local residents who are unable to pay for legal assistance can also claim free legal assistance.

Based upon the aforementioned Aruba, being part of the Kingdom of the Netherlands, hereby guarantees that equal treatment is given to foreign nationals and stateless persons with regard to family benefits."

94. In reply to the question by the Committee on the status of Aruba compared to the Charter in the new political situation, the representative of the Netherlands said that he will discuss this question the Legal Department of his Ministry and with the representatives of the island. The Netherlands have already informed the Council of Europe of the new political situation in 2010. The Council of Europe may wish to contact relevant authorities in Aruba directly. Furthermore, the representative of the Netherlands added that the legal position of the Netherlands is that the islands are bound by the provisions of the Charter which were accepted by them.

95. The Committee considered that information is missing as regards family benefits in Aruba and decided to wait for the next report. It also considered that the Committee of Ministers should be aware of the problem faced by the Committee to examine the conformity of the situation with the Charter in this new political situation.

ESC 16 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 16 of the 1961 Charter on the ground that there is no guarantee that family benefits will be paid to the nationals of certain States Parties to the 1961 Charter and the Charter.

96. The representative of Poland said that family benefits were paid to the children of foreigners with resident status in Poland or on the basis of bilateral and multilateral agreements, it being understood that the principle of reciprocity applied here. It should be noted that the Government had begun negotiations with Turkey, the Republic of Moldova and Ukraine with a view to concluding bilateral agreements with them. As for Turkey, a proposal had been made with a view to including family allowances in the future agreement. Difficulties had been encountered in the discussions with the other two countries which had refused to include the family benefits clause in the agreements concluded.

97. In reply to the question by the representative of Turkey concerning the principle of reciprocity, the representative of Poland said that in the Polish system family benefit was a non-contributory budget-funded benefit and was not subject to a work requirement.

98. In reply to the question by the representative of Estonia and the ETUC representative concerning equal treatment, the representative of Poland said that no figures on the matter were available.

99. The Committee took note of the information provided and urged the Polish Government to continue its efforts with a view to bringing the situation into conformity with Article 16 of the Charter, given that bilateral agreements were not an optimum solution.

ESC 16 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 16 of the 1961 Charter because family benefits are inadequate.

100. The representative of Spain challenged the assessment criteria employed by the European Committee of Social Rights. Under Article 16 of the Charter, the Contracting Parties undertook to promote the social, legal and economic protection of the family through a whole range of measures set out in the article, as well as other means they deemed appropriate. In his view, assessment of the conformity of the situation with the provisions of Article 16 should therefore be based on the whole range of measures taken by the state to ensure such protection. Yet the European Committee of Social Rights considered that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which was the case when they represented a significant percentage of the median equivalised income.

The representative of Spain then said that the last report had provided information concerning measures and benefits applied in Spain with a view to fostering the development of families and preventing exclusion, for instance legislative reforms, housing benefit, tax benefits, agreements with the Autonomous Communities and social assistance for large families. The information had been illustrated with statistics.

101. The representative of Estonia agreed with the opinion of the representative of Spain concerning the criteria employed by the European Committee of Social Rights to assess national situations regarding family benefits. In Estonia, for instance, there were two types of benefit: benefits based on parents' salaries and benefits to cover costs related to education. She believed that all benefits should be taken into account in the assessments.

102. The ETUC representative pointed out that Spain had followed the same reasoning during the previous cycle but the European Committee of Social Rights had maintained its position.

103. The Committee took note of the information submitted by the Spanish Government and urged it to bring the situation into conformity with Article 16 of the Charter or to contact the European Committee of Social Rights for an exchange of views on the situation.

ESC 16 UNITED KINGDOM

The ECSR concludes that the situation in the United Kingdom is not in conformity with Article 16 of the 1961 Charter on the ground that the right of Gypsy/Traveller families to housing is not effectively guaranteed.

104. The representative of the United Kingdom made the following statement:

The Government noted the ECSR's finding of non-conformity, but, respectfully, does not agree with it.

As regards inequalities experienced by Gypsies and Travellers, the Government is very concerned about the poor social outcomes among these communities. The following steps were taken: the Secretary of State for Communities and Local Government chaired a cross-governmental ministerial working group set up in 2010 to look at what the Government could do to tackle these inequalities. The working group published a progress report in April 2012 that includes 28 commitments that will help mainstream services work better for Gypsies and Travellers particularly in health and education, but also in tackling hate crime against Gypsies and Travellers and improving their interaction with the criminal justice system.

As far as encouraging site provision is concerned, the Government is encouraging local authorities to provide appropriate sites for travellers, in consultation with local communities. It is providing £60

million of traveller pitch funding in 2015, through the Homes and Communities Agency. Traveller pitches attract New Homes Bonus (council tax match funding) in exactly the same way as other forms of housing. This will reward those councils that provide additional traveller pitches. In addition, the United Kingdom is funding training to support councillors with their leadership role around traveller site provision; including advice on dealing with the controversy that can sometimes accompany planning applications for traveller sites.

Regarding 'Traveller Pitch Funding', successful bids totalling £ 47 million were announced on 5th January. These will help provide over 750 new and refurbished pitches for travellers. The new authorised travellers' sites will provide help to reduce the number of unauthorised sites, which create tensions between travellers and the settled community. This new support for official traveller pitches goes hand in hand with action against unauthorised traveller sites. Through the Localism Act, the Government is introducing stronger powers for councils to tackle the abuse of retrospective planning permission and, consequently, any form of unauthorised development. New bids for the remaining £ 13 million of the £ 60 million budget will continue to be considered and the Agency will help those who had their bids rejected to improve and resubmit their offers so that further pitches can be delivered over the next three years.

As part of the Government's plan to provide a fair deal for travellers and the settled community, from 30 April 2011 local authority traveller sites were included in the Mobile Homes Act 1983. This means that those living on authorised traveller sites have improved protection against eviction and a secure home in line with residents of other residential mobile home sites.

Furthermore, the representative of the United Kingdom confirmed that the notion of "Camping permits" mentioned in the ECSR conclusions was not clear. No information about these was available. He added that the Government will address the other questions posed by the ECSR in its next report under this theme.

105. The Committee took note of the information provided, in particular of the efforts to create appropriate sites for travellers. It invited the United Kingdom Government to bring the situation into conformity with the European Social Charter.

Article 17 – Right of children and young persons to social, legal and economic protection

ESC 17 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 17 of the Charter of 1961 as young imprisoned offenders are not in all circumstances separated from adults.

106. The representative of Croatia provided the following information in writing:

> Act on Juvenile Courts ("Official Gazette", n° 84/11), which entered into force on 1 September 2011, has determined that placement of a juvenile for whom detention has been ordered (Article 66, paragraph 1) in a closed reformatory institution must have diagnostic department and the department for education and work in small groups.
> Article 125 of the same Act stipulates the responsibility of the Minister of Justice for the adoption of implementation of regulations for establishment, structure and housing for minors in a closed institutional facility when there are conditions for remand determination based on Article 66, paragraph 2 and 3, and implementation of regulations on house rules in closed reformatory institution where minor is placed when there are conditions for remand determination based on Article 66.
> Above stated provisions clearly define legal obligation for accommodating juveniles for which remand is determined in specially designed closed penitentiary to be completely separated

from adults, which are in essence conclusions and objections of the Committee in relation to the violation of Article 17 of the European Social Charter for juvenile offenders.
By adopting there implementing regulations and building the necessary capacity for their application, the conditions for termination of the Article 13 paragraph 5 of House Rules in prison for carrying out investigative custody for juvenile offenders will be met in its entirely, and the above provision is only applicable in exceptional cases, at the recommendation of a physician and with the prior approval of the court in the best interests of the minor.

ESC 17 CZECH REPUBLIC

The ECSR concludes that the situation of the Czech Republic is not in conformity with Article 17 of the Charter of 1961 as corporal punishment of children is not explicitly prohibited in the home and in institutions.

107. The representative of the Czech Republic informed the Committee that relations between children and parents or foster parents were regulated by the Family Act and the new Civil Code (due to come into force in 2014), which provided that parents may use such method in child education that do not infringe the dignity of the child, his/her health, physical/mental/emotional development, and was reasonable in relation to the circumstances. She admitted that this was no ban of corporal punishment in general, but a ban of excessive corporal punishment amounting to ill-treatment and degradation of the child. She emphasized that parents could face sanctions upon action by child protection authorities, such as removal of the child from parents, removal or limitation of parental authority, or even criminal offence of ill-treatment.

The representative of the Czech Republic reported that awareness of the right of the child to harmonious development and to protection from all forms of violence, enhancing awareness of violence against children through educational programmes on alternative disciplinary measures (positive parenting, upbringing without corporal punishment) was one of her Government's major priorities.

The representative of the Czech Republic reported that corporal punishment could also be considered a crime under Article 146 of the Criminal Code on bodily harm (sanctioned with imprisonment from 6 months to 3 years or even up to 5 years if the victim is a pregnant woman or a child under 15 years of age); Article 145 on grievous bodily harm (sanctioned with imprisonment of up to 12 years if the victim is a pregnant woman or a child under 15 years of age); Article 198 on battering a person entrusted to someone's care (sanctioned with imprisonment from 1 to 5 years). She explained that, as a legal framework, the Criminal Code did not describe explicitly all possible forms of offences. First, it would not be possible in terms of specifying a range of offences and secondly, other relevant factors must be taken into account when considering a crime (intensity, age of the victim and offender, intent to commit a crime, negligence, etc).

The representative of the Czech Republic affirmed that corporal punishment was not lawful, neither at home nor anywhere else in any case, and that the situation was fully in compliance with Article 17 of the Charter. She asked the Committee, however, to explain the connection between corporal punishment and the social and economic protection of mother and children under Article 17 of the Charter.

108. The Secretariat, admitting that Article 17 of the 1961 Charter had a more limited wording and made no explicit reference to violence as in Article 17§1 of the Revised Charter, explained that the ECSR construed Article 17 of 1961 Charter so as to include such a reference. Even though this had been considered an extensive interpretation of the 1961 Charter, such was the situation, and the Czech legislation, despite the described array of measures, did not offer the required explicit prohibition.

109. In reply to a question from the representative of Poland, the representative of the Czech Republic mentioned the National Strategy of Prevention of Violence against Children 2008-2018, under which her Government made efforts to oppose the widespread tolerance for corporal punishment, inter alia through awareness raising and educational programmes, aiming at supporting alternative disciplinary measures. She offered to provide more detail in the next report.

110. In reply to a question from the representative of ETUC whether the legislation, which did not sanction corporal punishment of children above 15 years of age, had been amended, the representative of the Czech Republic explained that juveniles were protected by other provisions of the Criminal Code, but that she had focused on the protection of children under the Criminal Code, as required under Article 17 of the Charter. She admitted that the situation in the Czech Republic had not changed in the sense of amendment of the Family Act.

111. The Chair recalled that the ECSR required a clear, plain and forceful prohibition of corporal punishment of children of all kind. Admitting that the definition of corporal punishment could seem extensive in some cultures, she emphasized that, one had to go in this direction sooner or later.

112. The representative of Iceland, recalling the difference between prohibition in a criminal code and prohibition in an act designed to protect children, affirmed that the threshold for a violation was lower under the standard of corporal punishment than for a criminal case. She observed the seriousness and the lack of will for change on this question, and suggested to vote on a Recommendation. The representatives of Poland and the Netherlands concurred.

113. The representative of Poland pointed out that, without any explicit prohibition, the actual wording of the law allowed parents to choose the means of punishment, implicitly allowing corporal punishment, and left a wide margin of interpretation to courts. Moreover, criminal legislation was difficult to implement, and not adapted to regulate family relations, which family should be regulated by civil law. The actual wording made it difficult for a child to take action against parents who abused their power. She called the Committee to urge the Czech Republic to change its legislation.

114. The representative of Lithuania objected that, even without an explicit prohibition, a law which punished any form of violence inferred that corporal punishment was also forbidden, thus protecting effectively against any form of violence against children.

115. The representative of the United Kingdom asked for respect that different countries had different approaches. He affirmed that no text explicitly required a total prohibition of corporal punishment that a margin of appreciation was needed, and that parents should not be criminalized. He emphasized that calling out for prohibition in every country was not reasonable, and that actions to educate parents were preferable.

116. The representative of Belgium concurred and asked for additional references on the concept of corporal punishment in legal documents from the Council of Europe, or the case-law of the European Court of Human Rights. The Council of Europe had probably made progress in the matter, but the concept was obviously subject to interpretation, and it was problematic to call for a Recommendation if the concept was not clear. He shared the view of the representative of Poland that policies were more effective than criminal sanctions, and pointed at existing legislation, criminal case-law, and awareness policies and measures to help families and support children. He emphasised that corporal punishment was graduated, which gave lawyers margins for action, and that implementation measures were taken into account, too. Instead of permanent controls in families, it was important that children had ways to raise the issue before institutions that complaints were welcome, and that institutional protection was available to address the serious cases.

117. The representative of Turkey, recalling that children were protected because of their special vulnerability, asked on what grounds any discrimination was justified in comparison to other categories of vulnerable persons, such as handicapped or elderly persons.

118. The representative of the Czech Republic confirmed that all vulnerable categories of people are protected against violence in the Czech Republic. However, Article 17 of the Charter concentrated only on the protection of mothers and children as a special category of people.

119. The Chair recalled that corporal punishment of children was not a matter of criminal law.

120. The representative of the Czech Republic, recalling that the legislation required parents to behave so as to care about the moral, emotional, intellectual development of the child; that it provided for educational programmes targeted at parents, teachers or social workers, asked for a definition of corporal punishment and an explanation of how it should be brought into conformity with the Charter. She felt it was not fair to state that the legislation was not in conformity.

121. The Chair confirmed that to raise a hand on a child for any other reason than for providing care amounted to corporal punishment. The Council of Europe required a clear, plain and forceful ban of such punishment. Even if different cultures had different approaches, education methods had evolved in the past 20 years, and ways had been shown to educate children without smacking.

122. The Secretariat, recalled the commitment made by Prime Minister TOPOLANEK to Council of Europe Human Rights Commissioner HAMMARBERG in 2007 to enact an explicit prohibition

123. The representative of Lithuania asked under what circumstances corporal punishment could be justified under current legislation, and asked for statistical data on corporate punishment and violence against children. The representative of the Netherlands, also requesting statistical data, insisted the matter was serious.

124. The Chair called for a vote on a Recommendation to the Czech Republic to amend its legislation and take measures to enact a specific prohibition of the corporal punishment of children.

125. In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (7 votes in favour, 23 against). The Committee then voted on a Warning on the same grounds, which was also rejected (10 votes in favour, 20 against).

126. The Committee invited the Government of Czech Republic to include studies on the issue in its next report. It invited the Government of the Czech Republic to bring its situation into conformity with the European Social Charter.

ESC 17 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 17 of the 1961 Charter on the following grounds:

- *the prison sentence for minors may be up to 20 years, which is excessive;*
- *minors can be subject to 8 months of pre-trial detention which may be further extended, which is excessive;*
- *solitary confinement of minors may last 4 weeks, which is excessive.*

First, second and third grounds of non-conformity

127. The representative of Denmark provided the following information in writing:

> Denmark takes note of the conclusions drawn by the Committee.
> Please, be assured that Denmark very much appreciates the intentions behind the European Social Charter, and has if relevant the Charter in mind when taking legislative measures.
> However, Denmark has not been of the opinion that Article 17 precludes the Danish legislation on length of prison sentences, pre-trial detention and solitary confinement of minors.
>
> Regarding the first ground of non-conformity (Section 33, paragraph 3 of the Criminal Code):

First of all, Denmark can inform the Committee that the age of criminal responsibility is now raised from 14 to 15 years (by amendment to the Criminal Code, Act No. 158 of 28 February 2012). The rules of imprisonment, pre-trial detention etc. therefore no longer applies to minors under the age of 15 years.
In addition to this, regarding the legislation on prison sentences, Denmark can inform the Committee that a prison sentence can either be a lifetime sentence or a sentence for a fixed period of time of not more than 16 years (Section 33 (1) of the Criminal Code).
In cases where the punishment prescribed for the offence may be increased, the term of imprisonment may, however, be up to 20 years (Section 33 (2)). Until 2010 the penalty in respect of minors could not exceed imprisonment for 8 years (Section 33(3)).
In 2010 Section 33(3) was changed (Act No. 711 of 25 June 2010). The paragraph now states that if an offender had not reached the age of 18 years when the offence was committed, the offender cannot be sentenced a lifetime sentence.
As also mentioned in the 30th Danish report, the court, when determining a penalty, shall in accordance with Section 82(1) of the Criminal Code, in general, consider it a mitigation circumstance if the offender had not reached the age of 18 years when the offence was committed.
Because of this, case law shows that the former maximum penalty of 8 years for minors was only relevant in cases of particularly gross crime, as for example cases of homicide.
According to the explanatory memorandum to the 2010-act, the purpose of the act was to make sure – in these particularly severe cases – that the court has a sufficient room for manoeuvre when passing a sentence.
As stated in the explanatory memorandum due consideration was given to the UN Convention on the Rights of the Child's specific provision on imprisonment for juvenile offenders. As it appears the new Danish legislation is in conformity with Article 37(a) of the UN Convention[7] and the recommendation made by the Committee on the Right of the Child in this respect[8].
In the light of the wording of article 17 in the European Social Charter, the scope of Section 33(3) of the Criminal Code and the fact that Section 33(3) is in accordance with Article 37(a) of the UN Convention on the Rights of the Child, Denmark believes to be in conformity with Article 17 of the Charter.

Regarding the second ground of non-conformity (Section 768 a, paragraph 2 of the Administration of Justice Act):
In the 24th Danish report of May 2004 Denmark – as an answer to a question from the Committee – informed the Committee of the maximum period of which a young suspect could be held in pre-trial custody (pre-trial detention). The text was the following:
"The Administration of Justice Act does not lay down any maximum period for the deprivation of liberty in pre-trial custody. However, the deprivation of liberty must not be disproportional to the hereby caused intrusion in the affairs of the accused, the significance of the case, and the sanction, which can be expected if the accused is found guilty. Moreover, Section 767 of the Administration of Justice Act reads that a time limit shall be laid down in the court order as for the length of the detention. The time limit can be extended but at the most by four weeks at a time."

In 2005 the Committee concluded that the situation in Denmark was in conformity with article 17 (Conclusions XVII-2).

[7] Article 37(a) of the UN Convention on the Rights of the Child states that "… Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."
[8] According to point 77 of General Comment No. 10, Children's rights in juvenile justice, of 25 April 2007 the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.

Since the abovementioned information was given to the Committee, the Danish Parliament (Folketinget) has adopted an amendment to the Administration of Justice Act (Act No. 493 of 17 June 2008). The key purpose of this amendment – in regard of pre-trial detention – is to restrict long pretrial detentions.
Thus section 768 a (2) prescribes that unless the court finds that very special circumstances are involved, pre-trial detention must not, in cases in which the detainee is less than 18 years old, be extended for a continuous period that exceeds:
1) 4 months when the accused is charged with an offence that does not carry a sentence under the law of imprisonment for 6 years or
2) 8 months when the accused is charged with an offence that may carry a sentence under the law of imprisonment for 6 years or more.
According to the explanatory memorandum to the 2008-act, there must – among other considerations – be added considerable importance to the nature of the offence committed. Therefore, pre-trial detention exceeding the abovementioned duration is particularly relevant in cases of very serious crime where the expected sanction, if found guilty, will be several years of imprisonment.
The conditions regarding proportionality and time limit in court orders, which the Committee was informed of in the 24th report, are still in force.
As it appears Denmark has – since the Committee's conclusions on conformity
in 2005 – only worked to restrict the duration of pre-trial detentions, including pre-trial detentions of minors.
Denmark therefore believes that the situation is still in conformity with Article 17 of the Charter.

Regarding the third ground of non-conformity (Section 770 c, paragraph 5 of the Administration of Justice Act):
As mentioned in the 30th Danish report the Administration of Justice Act was changed in 2006 (Act No. 1561 of 20 December 2006) with the purpose of decreasing the number of solitary confinements as well as limiting their duration.
Before the 2006-act solitary confinement of minors – as described in the 24th report – could in no case take place for more than 8 weeks if the detainee was below the age of 18 years.
In 2005 the Committee concluded that this situation was in conformity with article 17 (Conclusions XVII-2).
With the 2006-act a limit of only 4 weeks (instead of 8 weeks) for the duration of solitary confinement for minors was established.
Regarding solitary confinement, including the ordinary conditions for using it, please refer to the 24th Danish report, page 61-62. However, Denmark would like to point out the following paraphrase:
"Section 770 b, paragraph 2, emphasizes the special strain that the measure may impose due to the personal situation of the detainee. This provision ensures, for example, that placement of young persons below the age of 18 years in solitary confinement will only be applied in rare and exceptional circumstances. Solitary confinement of persons below the age of 18 will thus exclusively be ordered in rare and exceptional cases, when particularly serious reasons make solitary pre-trial detention necessary in the specific case. In any renewal of solitary confinement for more than very brief periods, the principle of proportionality will carry increasing weight against any continued solitary confinement of persons below the age of 18 years."

This is still the situation in Denmark. In addition to Section 770 b, paragraph 2, the 2006-act now explicitly emphasizes in a new Section 770 b (2) that placement of a minor in solitary confinement can only be initiated or continued if there – beyond the ordinary conditions – are exceptional circumstances that makes it necessary.

The new 4 weeks limit may only be exceeded if the charge concerns intentionally violation of chapter 12 or 13 of the Criminal Code (terrorism etc.). The principle of proportionality has the consequence that solitary confinement exceeding 4 weeks can only be used in exceptional cases where the detainee is suspected of an extremely severe offence and the risk of the detainee obstructing the investigation is very substantial.
According to the explanatory memorandum to the 2006-act, the age of the detainee are of great significance when considering solitary confinement.
Therefore solitary confinement for a detainee of the age of 15 or 16 years – as a paramount principal rule – cannot take place.
The 2006-act also states that the police needs an approval from the Danish Director of Public Prosecutions in order to ask the court for a continuation of a solitary confinement beyond 4 weeks for a minor (Section 770 d (3)).
As it appears Denmark has – since the Committee's conclusions on conformity in 2005 – only worked to restrict the duration of solitary confinements, including solitary confinement of minors.
Denmark therefore believes that the situation is still in conformity with Article 17 of the Charter.

ESC 17 POLAND

The ECSR concludes that the situation in Poland is not in conformity with Article 17 of the 1961 Charter on the ground that the maximum length of pre-trial detention of minors is excessive.

128. The representative of Poland informed the Committee that her Government did not intend to follow up on the negative conclusion and explained that minors became criminally liable at the age of 17 but this age was lowered to 15 in the event of prosecution for the serious crimes listed exhaustively in Article 10§2 of the Criminal Code (murder, gang rape, armed robbery, causing permanent or fatal physical injury, attempts on the life of the President of the Republic, hijacking of an aircraft or ship, causing a disaster, taking hostages and slavery). In view of the seriousness of these crimes, it had not been deemed appropriate for the legislation to limit the length of pre-trial detention in the light of the presumed perpetrator's age and, even when serious crimes were being prosecuted, the courts decided on prevention measures taking into account individual circumstances including personal qualities of the presumed author of the crime. Among the prevention measures were pre-trial detention with police supervision, material guarantees or prohibition on leaving the country.

The representative of Poland explained that the length of pre-trial detention was closely supervised by the Ministry of Justice, which had adopted statutory measures for supervision in this connection. She could not provide statistics concerning individual lengths of pre-trial detention as it would mean tracking all individual cases which requires a long time. However, she did inform the Committee that only one person aged between 15 and 17 had been in pre-trial detention in 2011 (compared to 3 in 2009, 14 in 2009 and 5 in 2007). The average length ordered was between six and twelve months and 70 % of all periods of pre-trial detention lasted not longer than 12 months. The upper limit was 24 months and extensions beyond this were very rare. Such extensions could only be applied in cases foreseen by law bearing in mind that the Criminal Code amended in 2008 limited further these cases.

The representative of Poland said that it was difficult to account for the variation in the number of persons between the ages of 15 and 17 in pre-trial detention but numbers were very low and the rule was justified in view of the seriousness of the crimes involved.

129. The ETUC representative pointed out that, though they may be offenders, children were still not mature and it was possible for a country's legislation to take account of this fact. From what the representative of Poland had said, it appeared that pre-trial detention was regarded as a first stage of punishment even before judgment had been passed whereas the purpose of such detention was not

coercive. He asked whether the length of detention might be linked to a lack of judges and whether the Polish Government had taken steps to remedy any congestion in Poland's courts.

130. The representative of Poland, rejecting the notion that pre-trial detention was a first stage of punishment, pointed out that the measure was limited to the presumed perpetrators of the most serious crimes, was not automatic and the courts had discretion on the matter. She said that following a ruling against Poland by the European Court of Human Rights the Ministry of Justice had introduced measures with a view to accelerating the court procedures. All orders for pre-trial detention were subject to review by the President of the relevant appeal court. The presidents of court reported to judicial inspectors every quarter and it was rare for the measure to be applied in practice.

131. In reply to a question from the Chair, the representative of Poland confirmed that pre-trial detention could be applied to minors from the age of 15 onwards but only in the event of prosecution for one of an exhaustive list of serious crimes. The prosecutor has to submit to the court the request for a pre-trial detention within 48 hours after the arrest, the court having 24 hours to decide upon the request.

132. The representative of Lithuania pointed out that the ECSR had not questioned the judgment procedure and said that it was clearly established that the possibility of holding a child under 17 years of age for more than 24 months was excessive and that this was a clear violation of human rights. The limited number of cases did not obscure the fact that they existed. She proposed that the Committee should vote on a Recommendation. The representatives of Turkey and Estonia supported this proposal.

133. The representative of Turkey said that the source of the problem was not the application of the legislation in practice but the legal rule in itself and the fact that Poland was not willing to amend its legislation.

134. In reply to a question from the representative of Estonia, the representative of Poland said that courts were not bound by the prosecutor’s submissions but had the ultimate decision-making power in the light of the circumstances of the case. She added that statistics revealed that police supervision was ordered three times more often than pre-trial detention, that minors were considered to be vulnerable, that Poland had never been criticised in this respect by an international institution including the European Court of Human Rights and that it was not within the ECSR’s competence to rule on the length of pre-trial detention.

135. In accordance with its Rules of Procedure, the Committee voted on a proposal for a Recommendation, which was rejected (7 votes in favour and 11 against). The Committee then voted on a Warning, which was approved (by 18 votes in favour, 6 against).

ESC 17 "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 17 of the 1961 Charter on the ground that corporal punishment is not explicitly prohibited in the home and in institutions.

136. The representative of “the Former Yugoslav Republic of Macedonia” provided the following information in writing:

> The European Committee of Social Rights in its Conclusions XIX-4 (2011), concerning the situation in the Republic of Macedonia in respect to the Article 17 of the European Social Charter (1961) concludes, based on the information from another sources, that the situation in the country is not in conformity with the requirements of the mentioned Article, on the ground that there is no explicit prohibition of corporal punishment of children in all situations.

The Law on family in the Republic of Macedonia, in its part related to the family (domestic) violence, incorporates explicit provisions by which the child is protected from any kind of violence within the family, which means any kind of harassment, insulting, jeopardizing of their safety, corporal hurt, sexual or other psychological or physical violence which is causing a sense of insecurity, endangering or fear towards the family members, regardless of their gender and age.

This Law also defines what is regarded as misuse in exercising the parental right or severe negligence of performing parental duties.

For the purpose of further and more effective protection of children, in 2009 an Action plan on prevention and combating sexual abuse of children and pedophilia 2009-2012, has been adopted. Based on this Action Plan, a number of various activities were implemented in this field.

However, during the preceding period, it has been recognized that the existing legal framework for protection of children is not sufficient, and therefore additional measures and actions need to be taken in order to ensure effective protection of children from all kinds of abuse and negligence.

For that purpose, in 2012 a special Information on the current situation regarding the abuse and negligence of children in Macedonia has been prepared and reviewed and adopted by the Government of Republic of Macedonia, together with concrete proposals for future activities and with the proposal for establishment of a separate body - National coordination body for protection of children from abuse and negligence. This National coordination body is established and is composed of members (representatives) from all competent ministries and relevant NGOs, which have competencies or scope of work in the area of child protection.

It is envisaged that by the end of this year, an separate Action plan will be prepared and adopted, in which each competent Ministry, as well as NGO will foresee their activities that will be implemented in the coming year, aimed at protection of children from abuse and negligence.

A special Protocol for acting in cases of abuse and negligence of children will also be prepared and adopted, with the purpose of establishing clear procedures, actions and the manner of cooperation of the various bodies which should act in the cases of abuse and negligence of children, as well as establishing the cooperation between competent ministries and their cooperation with the non-governmental sector in this field.

Having in mind the situation in this field, as well as the identified shortages and needs for further improvements, the mentioned comprehensive Action plan that will be developed will also include proposals for the introduction of necessary legislative changes and improvements aimed at ensuring better and more effective child protection. These proposals will also take into consideration the findings of the European Committee of Social Rights, and the need for full alignment of the legal framework and the practice in the Republic of Macedonia with the requirement of the European Social Charter in this field.

ESC 17 UNITED KINGDOM

The ECSR concludes that the situation in United Kingdom is not in conformity with Article 17 of the Charter of 1961 on the grounds that:

- *not all forms of corporal punishment are prohibited in the home;*
- *the age of criminal responsibility is manifestly low.*

First ground of non-conformity

137. The representative of the United Kingdom informed the Committee that his Government did not accept a breach of Article 17 of the Charter, since the legislation provided no defence for physical

punishment that amounted to violence that could constitute “any act or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of the child”, as violence had been defined in the context of that provision of the Charter. He specified that Article 17 of the Charter, as ratified by the United Kingdom, did not require a ban of all corporal punishment of children. Article 17§1 of the Revised Charter did so, requesting State parties to prohibit all forms of violence against children, but the United Kingdom had not ratified that later version.

The representative of the United Kingdom specified that his Government’s position remained unchanged since it did not wish to incriminate parents for administering a mild smack by imposing a ban on all corporal punishment. He reported that Section 58 of the Children Act 2004 had severely limited the offences to which the “reasonable punishment” defence could potentially apply, and limited access to such defence to parents or persons acting in loco parentis. He specified that, where the charge of common assault was brought, the defence could only succeed if the court was satisfied that the punishment was “reasonable”. Therefore, although a mild smack was not unlawful under current legislation, parents who smacked their children and caused injuries, grazes or bruising, could be charged with assault for occasioning actual or grievous bodily harm, which could not be defended as “reasonable punishment”. Similar measures to amend the law had been taken in Scotland and Northern Ireland. He affirmed that criminal law protected children from all, not only serious, violence in the United Kingdom.

The representative of the United Kingdom also reported that his Government encouraged parenting programmes which promoted the use of alternative forms of discipline, and that research in England and Wales had shown that parents now preferred alternative approaches to discipline to physical punishment.

138. The representative of the United Kingdom informed the Committee that on 15 September 2009, the Committee of Ministers of the Council of Europe had adopted a Resolution in A. v. United Kingdom, whereby it was satisfied that the amendments to the legislation met the requirements of the European Convention of the Human Rights (ECHR).

139. The Chair, expressing surprise about the Committee of Ministers’ Resolution, emphasized that the requirement under the Social Charter went further.

140. The representative of the United Kingdom recalled that the court hadn’t been found to be wrong in A. v. United Kingdom, and that the Committee of Ministers had accepted that the amendments to the legislation had implemented the judgement by the ECHR.

141. The Committee took note of the positive amendments and invited the Government of the United Kingdom to bring its situation into conformity with the European Social Charter.

Second ground of non-conformity

142. The representative of the United Kingdom informed the Committee that his Government believed that children were old enough to differentiate between bad behaviour and serious wrong-doing at 10 years of age. He reported that his Government accepted that prosecution was not always the most appropriate response to youth offending, and that the majority of crime committed by younger children was addressed using out of court prevention and robust intervention. Setting the age of criminal responsibility at 10 years allowed frontline services to intervene early and robustly, preventing further offending and helping young people develop a sense of personal responsibility.

The representative of the United Kingdom affirmed that, if most European countries did have a higher minimum age of criminal responsibility, each country had to make a judgement based on its own circumstances and procedures, and simple comparisons between countries could be misleading, because the youth justice and supporting social systems differed considerably. His Government believed that 10 years of age for England and Wales correctly reflected what was required of the justice system.

143. The representative of the United Kingdom specified that his Government was keen to ensure that children and young people were not prosecuted whenever a suitable alternative could be found. Local Youth Offending Teams included social services and health professionals who could refer the child on to other statutory services for further investigation and appropriate support, such as Children's Services Departments or Child and Adolescent Mental Health Services.

144. The representative of Lithuania affirmed that 10 years of age was too low for criminal responsibility. Emphasizing that the matter was serious and that no will for change was perceptible, she suggested to call for a vote on a Warning. The representative of Iceland concurred.

145. In reply to a question from the Chair, the representative of the United Kingdom specified that convicted children of 10 years of age would not go to prison, but to a young offenders' institution.

146. In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (9 votes in favour, 11 against). The Committee then voted on a Warning on the same grounds, which was adopted (21 votes in favour, 6 against).

Article 19§4 – Equality regarding employment, right to organise and accommodation

ESC 19§4 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§4 of the 1961 Charter on the grounds that:

- *it has not been established that migrant workers lawfully resident in the country are treated no less favourably than Luxembourg nationals with regard to remuneration and other working conditions;*
- *certain categories of workers cannot be elected to joint works council;*
- *it has not been established that migrant workers lawfully resident in the country are treated no less favourably than Luxembourg nationals with regard to accommodation.*

First and third ground of non-conformity

147. No information was submitted from the Government of Luxembourg.

Second ground of non-conformity

148. The representative of Luxembourg said that, as already indicated in the information provided in its last report, Luxembourg is in the process of modifying its legislation. In 2008, there were fundamental changes made to legislation concerning work and resident permits issued to non EU residents which meant that the various different types of work permits (A, B and C) which previously existed had been abolished and integrated into one single resident permit, for example, for employees. A Working Group has drawn up a draft law which is under discussion with social partners and this text no longer makes a distinction concerning elections to work councils, thereby removing the previous restrictions. The text will be in force by July 2013 which is before the next social elections take place, so this ground of non-conformity will no longer apply.

149. The Chair pointed out that this information was already contained in the report so no new developments appear to have taken place.

150. The Secretariat explained that the ECSR was aware that there were discussions underway concerning the amendment of the legislation but it was not aware that a law had been drafted. During the reference period, the situation was one of non-conformity but this timetable for change has provided more definite information.

151. The Committee took note of the developments and encouraged Luxembourg to bring the situation into conformity with the European Social Charter.

ESC 19§4 UNITED KINGDOM

The Committee concludes that the situation in the United-Kingdom is not in conformity with Article 19§4 of the 1961 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.*

First and second grounds of non-conformity

152. The representative of the United Kingdom provided the following information in writing:

Membership of trade unions and enjoyment of the benefits of collective bargaining
The Social Rights Committee concluded that the United Kingdom's previous Report did not provide information on the above points and asked for updated information in the next report.
For many years, the position in the UK was that the Race Relations Act of 1976 ensured that migrant workers who were lawfully present in the UK were treated no less favourably than UK nationals in relation to:

(a) remuneration and other employment and working conditions; and
(b) membership of trade unions and enjoyment of benefits of collective bargaining.

This position was described in the UK's 17th Report of 1997 and successive subsequent reports have indicated that the position remained as previously described.
However, following the compilation and submission of UK's 30th Report to the Council of Europe, a new Equality Act came into force on 1 October 2010 and through this new measure the UK continues to meet its obligations arising under Article 19, paragraph 4.
The Equality Act 2010[9] brings together over 116 separate pieces of legislation into one single Act. The new Act provides a legal framework to protect the rights of individuals and advance equality of opportunity for all.
The Act simplifies, strengthens and harmonises the current legislation to provide Britain with a new discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.
The nine main pieces of legislation that have merged are:

- the Equal Pay Act 1970
- the Sex Discrimination Act 1975
- the Race Relations Act 1976
- the Disability Discrimination Act 1995
- the Employment Equality (Religion or Belief) Regulations 2003
- the Employment Equality (Sexual Orientation) Regulations 2003
- the Employment Equality (Age) Regulations 2006
- the Equality Act 2006, Part 2
- the Equality Act (Sexual Orientation) Regulations 2007.

Part 5 of the Act covers equal treatment in pay and employment related issues and Section 57 covers membership of trade unions and collective bargaining rights.
Full details will be provided in the UK's next report covering Article 19.

[9] Available at http://www.legislation.gov.uk/ukpga/2010/15/contents

Article 19§5 – Equality regarding taxes and contributions

ESC 19§5 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 19§5 of the 1961 Charter on the ground that, independently from their status, not all migrant workers from States parties to the 1961 Charter benefit from the tax exemption for the acquisition of a first family house.

153. The representative of Greece provided the following information in writing:

By virtue of Law 1078/1980 (art. 1), contracts for the purchase of a real estate in whole and for full ownership exempt from transfer tax if their object is the acquisition of a first house and the conditions set by law are met.
Art. 21 of the new tax law 3842/2010 "Restoring tax justice, tackling tax evasion and other provisions" provides, inter alia, the exemption from the first house taxation for recognized refugees and third country nationals placed under the long-term resident status, as defined in Directive 2003/109/EC, as incorporated into the Greek law by the Presidential Decree 150/2006.
Regarding the categories of third-country workers who reside legally in Greece, if placed under the long-term resident status, they also enjoy the privilege of the above-mentioned tax exemption for the acquisition of their first house.
Finally, according to the provisions of paragraphs 4 and 5 of Article 23 of Law 3943/2011 “Combating tax evasion, staffing audit services and other provisions concerning the Ministry of Finance” (G.G. 218A/3.10.2011), which amended the said provision of Law 1078/1980, the tax exemption for the acquisition of a first house is also granted if the buyer resides legally in Greece or intends to reside in the country within two years from the purchase of the house. The intention to reside in Greece is demonstrated by a simple statutory declaration.

Article 19§6 – Family reunion

ESC 19§6 AUSTRIA

The Committee concludes that the situation in Austria is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- *Austrian law and practice do not provide for family reunion up to the age of twenty-one for the children of all migrant workers who are nationals of States Parties of the 1961 Charter which are not party to the European Economic Area Agreement;*
- *in the framework of the “quota system”, a waiting period which can last up to three years is excessive;*
- *the exclusion of social assistance benefits from the calculation of the worker’s income is likely to hinder family reunion rather than facilitate it;*
- *the “Integration Agreement” requirements are likely to hinder family reunion rather than facilitate it.*

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

154. The representative of Austria said that Austria ratified the Revised European Social Charter on 20 May 2011 and, with regard to the family reunion of children of migrant workers, the situation is in conformity with the Revised Charter. The age limit of family reunion in respect of children is the age of majority, which is 18 years.

155. The Committee congratulated the Government of Austria on its ratification of the Revised Charter.

Second, third and fourth grounds of non-conformity

156. The representative of Austria provided the following information in writing:

Quota system – waiting period of three years

The Committee asks whether the 'quota system' is referred to all applications for family reunion and what are, if any, the exceptions to the rule.

The quota system is not applied to all cases of family reunion. The vast majority of cases of immigration in the context of family reunion - i.e. reunion with family members who are Austrian citizens, holders of a residence permit or third-country key employees - is not subject to the quota system. With regard to the quota system in the context of family reunion it is also important to emphasise that compliance with the Austrian constitution has been confirmed by rulings of courts of last instance (decision of the Constitutional Court no. G119/03 and others of 8 October 2003); this also entails ECHR compliance as Austria has adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) at the same level as constitutional laws; additionally, a residence title has to be awarded notwithstanding any otherwise applicable quota regulations if family reunion is based on grounds laid down in Article 8 of the Human Rights Convention. Children born in the time period between the mother´s application for and the granting of the right to stay in Austria are also exempt from the quota system (Section 12 Para. 8 of the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz, NAG*)). http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004242

The Committee notes that according to the 'quota system', migrant workers who apply for family reunion may have to wait up to three years.

In this context it has to be pointed out that the residence titles typically applied for by “migrant workers”, i.e. permits of the types "Rotational Employee”, “Specific Cases of Gainful Employment” or issued on the basis of the Red-White-Red (RWR) Card, allow for non-quota based family reunion and are not subject to the quota system.

The Committee considers that States can impose a waiting period to migrant workers before their family can join them and that a period of a year is acceptable under the 1961 Charter. With this in mind, the Committee considers that a legal period which can last up to three years is excessive and therefore it is not in conformity with the 1961 Charter.

In this connection it has to be emphasised that, as a rule, either the quota of the year when the application is filed or the quota of the following year can be referred to when granting a residence title connected with quota-based family reunion. This means that a waiting period of three years is not generally applicable, but after expiry of three years at the latest the quota requirement ceases to apply. For residence permits subject to the quota system the incoming applications during one year are allocated consecutively as long as the quota is not exceeded. When the quota is used up, any further application principally would have to be rejected. However, cases of family reunions are exempted from the quota restriction. Residence permit applications in connection with family reunions are not rejected on grounds of the quota being used up, but the decision is postponed up to the time a new quota is available. If a quota-based permit is not available in the subsequent year either, the quota requirement will lapse after three years (unless a decision has been issued by that time). However, Section 46 Para. 6 *NAG* again provides for refraining from application of the quota system in connection with family reunions on grounds of Art. 8 ECHR.

The Committee recalls that it is important that in practice the authorities in charge of issuing the permits take account of the fact that "the principle of family reunion is but an aspect of the recognition in the Charter (Article 16) of the obligation of states to ensure social, legal and

economic protection of the family (...). Consequently, the application of Article 19§6 should in any case take account of the need to fulfill this obligation" (Statement of interpretation – Conclusions VIII, 1984). With this in mind, it asks to be informed on the criteria governing the granting of the permits for family reunion in the framework of the pre-set quota limits.
Family members that are third-country citizens and intend to reside and settle in Austria for more than six months require a corresponding residence title, whereas the type of the residence title depends on the residence status applicable to the family member applying for reunion. For periods of residence of up to six months a residence title cannot be awarded, but an application for a visa has to be filed.
Family members as defined in the *NAG* comprise spouses, registered partners or unmarried children of minor age including adopted children or stepchildren. Spouses and registered partners must be at least 21 years at the time of filing the application.
For granting any residence title the following prerequisites have to be met:
- Sufficient financial means/resources: Third-country nationals must have stable and regular resources which are sufficient to maintain themselves without recourse to social assistance benefits from the territorial corporate bodies (*Gebietskörperschaften*) and the amount of which is in accordance with the reference rates of Section 293 of the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*).
- Health insurance coverage: Third-country nationals must have health insurance coverage for Austria.
- Accommodation as is customary locally: Third-country nationals must furnish proof of their legal entitlement to accommodation (by submitting, for example, a rental agreement) that is regarded as normal for a comparable family in the same region.

Third-country nationals have to furnish proof of their knowledge of the German language at A1 level according to the Common European Framework of Reference for Languages upon their first application for granting a residence title. The required German language skills are very basic and at a very simple level; several purposeful exemptions have been defined.
If any of the aforementioned prerequisites are not met, a residence permit has to be granted all the same if required to retain the private or family life as laid down in Art. 8 ECHR (cf. for example Section 11 Para. 3 *NAG*, Section 19 Para. 8 *NAG*, Section 21a Para. 5 *NAG*).

Exclusion of social assistance benefits from the calculation of the worker's income
On the basis of the applicable legislation (NAG), the establishment permits may only be granted if the stay of the family member concerned will not result in a financial burden for a territorial authority concerned in Austria. In this respect, the legislation provides that a financial burden for Austria is not to be expected when the alien has 'stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family without recourse to the social assistance system' and which correspond to the amount mentioned in the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz*). With respect to social assistance, the Committee considers that migrant workers who have sufficient income to provide for the members of their families should not be denied the right to family reunion because of the origin of such income, where its origin is not unlawful or immoral and where they have a right to the granted benefit. It concludes that the situation in Austria is incompatible with Article 19§6 of the 1961 Charter because the exclusion of social assistance benefits from the calculation of the worker's income is likely to hinder family reunion rather than facilitate it.
There seems to be a misunderstanding or lack of understanding of Austrian settlement and residence law with respect to the alleged incompatibility with Art. 19§6 of the European Social Charter, which we would like to clarify in the following:
Third-country nationals intending to reside or settle in Austria for more than six months have to furnish proof of sufficient financial means, among others, in order to be awarded a residence title. It is verified whether the third-country national has stable and regular resources which are sufficient to maintain himself/herself without recourse to social assistance benefits from the

territorial corporate bodies (*Gebietskörperschaften*) or without recourse to the payment of equalization supplement (*Ausgleichszulage*) and whether the amount is in accordance with the reference rates of Section 293 of the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*). During this verification of course the total income from legal sources and to which the individual concerned is legally entitled is taken into account.
The *NAG* provision requiring proof of sufficient financial means is based on EU law: **Council Directive 2003/109/EC** of 25 November 2003 (concerning the status of third-country nationals who are long-term residents) and **Directive 2004/38/EC** of the European Parliament and of the Council of 29 April 2004 (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States – "Free Movement Directive"), and especially **Council Directive 2003/86/EC** of 22 September 2003 (on the right to family reunification – "Family Reunification Directive") which lays down the prerequisites that have to be met by third-country nationals to be granted a residence title.
Art. 7 of Directive 2003/86/EC stipulates that evidence may be required on stable and regular resources which are sufficient to maintain themselves without recourse to the social assistance system of the Member State concerned. These resources can be evaluated by referring to the level of national minimum wages and pensions.
In transposing this Directive to the national level it had to be taken into account that there is no statutory "minimum pension" in Austria. As the provisions of Section 293 *ASVG* concerning the equalisation supplement have a purpose that is almost identical to that of a minimum pension, the *NAG* refers to the reference rates stipulated in the *ASVG* provision concerning the required financial means.
The constitutional admissibility of referring to the equalisation reference rates pursuant to Section 293 *ASVG* in the evaluation of whether sufficient resources are available has been confirmed meanwhile by decision no. B 1462/06-10 of the Constitutional Court of 13 October 2007 and by case law established by the Administrative Court (e.g. decisions no. 2008/22/0632 and no. 2008/22/0637 of 18 March 2010).
Additionally, falling short of the required financial means certainly does not automatically mean that the application for a residence title is denied: an assessment as to compliance with Art. 8 ECHR is performed in any case (explicitly specified in Section 11 Para. 3 *NAG*).
Furthermore, third-country nationals acquire a legal entitlement to social assistance benefits from the territorial corporate bodies only upon being granted specific residence titles and exclusion of these benefits from the calculation during the application process is therefore not in contradiction to the statement of the Committee of Social Rights ("[…] where the origin of the income is not unlawful or immoral and where they have a right to the granted benefit.").
More generally, the Committee recalls that "the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion" (Conclusions XIII-1, Netherlands).
The option of referring to the minimum wages and pensions in determining whether an applicant's financial means are sufficient is, as mentioned above, expressly stipulated in Article 7 Para. 1 lit c of Council Directive 2003/86/EC and was accordingly transposed to national level.
Falling below the specified minimum income must not result in denying family reunion without assessing on a case-by-case basis the situation of the applicant, which is particularly important if the requirement is not met only by a narrow margin (cf. decision 2008/21/0004 of the Administrative Court of 27 May 2010). Hence, the reference rates provided are not absolute thresholds and falling short of the required financial means does certainly not automatically mean that the application for a residence title is denied: an assessment as to compliance with Art. 8 ECHR is always performed (explicitly specified in Section 11 Para. 3 *NAG*).
In assessing the private and family life with regard to Art. 8 ECHR, the following factors have to be considered in particular:

1. type and duration of previous residence and whether the third-country national previously resided illegally in Austria;
2. the actual existence of a family life;
3. the need for protection of private life;
4. the level of integration;
5. the ties to the third-country national's home country;
6. a clean criminal record;
7. violations of public order, especially with regard to the asylum authorities or alien's police as well as immigration law;
8. the question of whether the private or family life of the third-country national developed at a time the individuals concerned were aware of their uncertain residence status;
9. the question of whether the duration of the alien's previous residence was caused by unreasonable delays attributable to the authorities' sphere of influence.

In each specific case the aforementioned criteria laid down by law have to be evaluated, balancing the interests of both the applicant and the state against each other; additionally, alternatives have to be evaluated as to their adequacy and reasonableness and the difference amount to the reference rate has to be taken into account.

'Integration Agreement' requirements

Another condition governing family reunion consists in the fulfilment of an "Integration Agreement". The latter imposes to the family members concerned an alphabetization course which must be completed within twelve months from the entry into Austria. Completing this course is a precondition for taking part in a second module which also contains elements of political education and ends with a written examination. This module has to be completed within five years. Children under the age of nine in the moment of their entry into Austria as well as elderly people or sick people are not obliged to fulfil the 'Integration Agreement'. The Committee considers that given its character, the "Integration Agreement" procedure is likely to hinder family reunion rather than facilitate it. With this in mind, it asks that the next report provide up-todate information on the decisions taken by the competent authorities with respect to family members of migrant workers which were not able to provide evidence for the knowledge and skills required in the framework of the 'Integration agreement'.

In this respect, again, there seems to be a misunderstanding or a lack of understanding of the Austrian settlement and residence law as the Committee's pertinent statement is not in line with applicable legislation.

According to the Aliens' Law Reform Act 2011, the Integration Agreement provisions are laid down in Sections 14 et seq. of the *NAG*. The requirements to fulfil the Integration Agreement do not apply to all foreigners but only to those wishing to settle in Austria. Holders of a residence permit (*Aufenthaltsbewilligung*) of, for example, the type "Specific Cases of Gainful Employment" or „Student" do not have to comply with these requirements.

The Integration Agreement comprises two modules, of which only the first one is mandatory.

Pursuant to Section 14a Para. 1 *NAG* third-country nationals are obliged to complete Module 1 of the Integration Agreement within two years after first being granted one the of the following residence titles:

- "Red-White-Red Card" (in this case the requirements of Module 1 of the Integration Agreement are *ex lege* met pursuant to Section 14 Para. 4 no. 4 *NAG* upon award of the residence title);
- "Red-White-Red Card Plus"
- "Settlement Permit";
- "Settlement Permit – Gainful Employment Excepted";
- "Settlement Permit - Dependant";
- "Family Member".

Where meeting the requirements of the Integration Agreement is not possible for personal reasons within the specified periods, the period allowed for fulfilment may be extended by subsequent periods of 12 months.
Meeting the requirements of the Integration Agreement is therefore not mandatory for first granting a residence title, i.e. for immigration, but the obligation to come up to the requirements of the Integration Agreement begins to apply (only) upon award of the residence title.
Moreover, in renewal procedures a denial of the application for renewal of a residence title on grounds of non-fulfilment of the requirements of the Integration Agreement is not envisaged. "Hindering family reunion" as the Committee suggests can therefore not be caused by the provisions of the Integration Agreement.
For meeting the Module 1 requirements, proof of German language skills at A2 level according to the Common European Framework of Reference for Languages has to be furnished.
Third-country nationals whose language skills are not sufficient are offered German Integration classes by certified institutes; these courses are customised for the needs of third-country nationals and are designed to help them achieve the A2 level. Attending German Integration classes is, however, not mandatory to meet the requirements of the Integration Agreement, but the requirements of Module 1 can also be met in other ways (e.g. by submitting a generally acknowledged certificate of adequate German language skills or if a school was attended and completed, the leaving certificate of which is equivalent to a university admission qualification).
Another support initiative in the field of family reunion is provided by the Austrian state by reimbursing 50 % of the costs of a German Integration class up to a maximum amount of 750 € for certain family members. This initiative aims at both creating a financial incentive to meet the requirements of Module 1 of the Integration Agreement and financially supporting families in this respect.
In addition, there are specific exemptions from the mandatory requirements. For example, third-country nationals who will be of minor age at the time when the fulfilment period expires or third-country nationals who cannot be expected to meet the requirements due to their physical or psychological condition are exempt from meeting these requirements.

ESC 19§6 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- *the requirement for foreign nationals wishing to be joined by their spouses to have a permanent residence permit - which is granted provided that the foreigner concerned has held a temporary residence permit for five years - or to have had a temporary residence permit for at least two years, is excessive;*
- *requiring applicants for family reunion to produce documentary evidence of their knowledge of German is likely to hinder family reunion rather than facilitate it;*
- *excluding social welfare benefits from the calculation of migrant worker's income is likely to hinder family reunion rather than facilitate it.*

First, second and third grounds of non-conformity

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

In the case of third-country nationals, family reunion is, as a matter of principle, only permitted for members of the nuclear family (spouse + children under age) (S. 27 et seq. of the residence Act). However, in cases of exceptional hardship family reunion may also be permitted for other family members (S. 36 of the Residence Act).
The right to family reunion exists for unmarried children under 18 of a German national, S. 28 of the Residence Act.

Family reunion of children of a foreign national is governed by S. 32 of the Residence Act. Children under 18 who, together with their parents, move their home to the Federal Republic of Germany are entitled to family reunion if both parents or the parent having the sole right of care and custody are/is in possession of a residence permit, a settlement permit or a permit for permanent residence EC. The same applies for children aged 16 and more who have a good command of the German language or otherwise favourable prospects of integration (e.g. education, way of live) when they join their parents in Germany (i.e. who have not entered Germany together with their parents). For children under 16 the right to family reunion is not subject to any further conditions if they join their parents at a later date. Moreover, there is a hardship clause according to which a residence permit may be granted to avoid special hardship in individual cases. Under the Residence Act major children of a foreign national fall under the category “other family members” and therefore may only be granted family reunion in the case of exceptional hardship as provided for in S. 36, paragraph 2 of the Residence Act.
Figures on rejections of family reunion applications during the reference period of minor children aged over 16 and major children under 21 are not available.
The right to family reunion of third-country spouses is based on S. 30 of the Residence Act and is subject to the criteria set out in that Section, in particular minimum age and proof of knowledge of the German language. The migrant generation to which the foreign national belongs is of no relevance. In cases where the marriage did not yet exist when the residence permit was granted to the foreign national, or where residence in Germany is expected to be less than one year, the decision on family reunion is left to the discretion of the authority (S. 30, paragraph 2, sentence 2 of the Resident Act). If family reunion is permitted a residence title will be issued. The statistics on residence permits granted on the basis of S. 30 of the Residence Act do not differentiate between permits based on a legal entitlement and discretionary permits.
It should be noted that in cases where a foreign national is in possession of a residence permit, no further conditions have to be satisfied if the marriage already existed on the date of issue of the permit and residence in Germany is expected to be more than one year.
The Central Register of Aliens does not contain any data on the legal grounds on which the authorities based their rejection of residence permits for family reunion. Therefore, we are not in a position to provide information on rejections of applications based on a lack of resources or housing.
Particular account should be taken of the provisions of the Act on the Prevention of Forced Marriage of July 2011 (corresponding to page 56 of the 28th Report).
The Act aims to combat forced marriage and to improve the protection of victims of forced marriage. It strengthens the rights of victims of forced marriage who wish to return to Germany from abroad and makes forced marriage a separate criminal offence under the German Criminal Code. Section 51, paragraph 4 of the Residence Act now stipulates that a foreign national’s residence permit does not expire if he/she has a right of return, or was unlawfully forced into marriage and prevented from returning to Germany by force or threat of serious harm, and if he/she re-enters Germany within three months after the end of the coercive situation and no later than 10 years after leaving the country.
Moreover, the period that a couple has to be married in the Federal Republic of Germany before the spouse who was granted family reunion acquires an independent right of residence has been extended from two to three years.
In addition, the Act contains several provisions to improve the right of residence of young people who are well integrated into society. In accordance with S. 25 of the Residence Act a tolerated foreign national who was born in Germany or entered the country before the age of 14 may be granted a residence permit if he/she has been legally resident in Germany for six years, has successfully attended school in Germany for six years, or has acquired a recognized school leaving certificate or vocational qualification, and if the residence permit application was filed after the age of 15 and before the age of 21. Another condition is that

there are prospects of successful integration. The parents and minor children of a foreign national who is in possession of the above-mentioned residence permit may also benefit from his right of care and custody may be granted a residence permit provided that they did not use deception to prevent or delay their deportation and that they earn their livelihood through gainful employment. Minor children may be granted a residence permit if the live together in a household with the foreign national.

ESC 19§6 GREECE

The ECSR concludes that the situation in Greece is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- *children of migrant workers between eighteen and twenty-one years of age cannot benefit, either by law or in practice, from the right to family reunion;*
- *the requirement that a migrant worker has lived for a period of two years in Greece before being able to exercise family reunion is excessive.*

First ground of non-conformity

158. The representative of Greece said that with respect to family reunification the relevant provisions of EU Directive 2003/86/EC would be applied. Given that this Directive referred to minor children, there is in Greece no legal obligation to provide for family reunification for the age group 18 – 21.

The representative of Greece emphasized that upon application an independent residence permit would be granted at the age of 18, would be valid for one year, but automatically renewed until the person concerned reaches the age of 21. For such a permit permanent residence and income were not required.

159. Replying to a question from the Chair, the representative of Greece confirmed that the independent residence permit granted at the age of 18 would be automatically renewed three times until the person concerned reached the age of 21.

160. The representative of Greece pointed out that the ECSR's conclusion of non-conformity had obviously been based on the wrong assumption that the residence permits mentioned above were granted only if the persons concerned came to Greece for work or for doing studies.

161. The Secretariat recalled that the 1961 Charter stipulates the age of majority at 21, the Revised Charter at the age of 18.

162. The Committee took note of the information provided by the Greek Government. It invited the Greek Government to clarify in its next report, that no requirements such as work or studies were necessary to obtain the independent residence permit described above.

Second ground of non-conformity

163. The representative of Greece noted again that the relevant provisions of EU Directive 2003/86/EC would be applied. The Directive stipulated that the member States had the right to require two-year residence before a migrant worker could apply for family reunification. She confirmed that the Greek Government had no intention to change the legal situation at the national level. The Greek Government considered two years a necessary period of time allowing a migrant worker to obtain links with the country and to integrate more smoothly into the Greek society.

164. The representative of Poland recalled that the EU Directive stipulated that its provisions were without prejudice to more favourable ones at the national level.

165. The Chair proposed that this issue should be taken up as a point for discussion at the next Joint GC/ECSR Bureau meeting.

166. The Committee took note of the information provided by the Greek Government. Given the fundamental importance of migrant workers to enjoy family life, the Committee invited the Greek Government to reconsider its legislation in this area.

ESC 19§6 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 19§6 of the 1961 Charter on the ground that the condition that foreign nationals with a temporary residence permit who wish to be reunited with their family must have been lafully resident in Poland for two years is excessive.

167. The representative of Poland provided the following information in writing:

> Des experts indépendants ont proposé une conclusion positive à l'issue d'examen des dispositions de la loi sur les étrangers portant sur le regroupement des familles des travailleurs migrants ressortissants des états parties de la Charte (conclusions XVIII-1, 2006).
> Pour rappel: la loi sur les étrangers prévoit que (article 53, paragraphe 1, point 5) le permis de séjour pour une durée déterminée est délivré à un étranger ayant l'intention d'habiter avec le travailleur migrant dont il est question dans la Charte Sociale Européenne. Aucune période de résidence préalable du travailleur migrant n'est pas requise.
> Comme membres de la famille sont considérés, toujours en vertu de l'article 53, paragraphe 1, point 5 de la Loi sur les étrangers, les personnes visées à l'annexe à la Charte Sociale Européenne, dans sa partie relative à l'article 19, paragraphe 6.
> Le dernier rapport polonais contient des informations sur les amendements apportés aux autres dispositions légales – celles régissant la régularisation du séjour des membres de famille des travailleurs migrants (article 54 point 4) – il s'agit des étrangers qui travaillent en Pologne et membres de leur familles et qui sont couverts par la Directive 2003/86/CE du 22 septembre 2003 sur la réunification des familles.
> Des ressortissants des Etats parties à la Charte sociale ne sont pas couverts par ces dispositions. Il leurs sont applicables des dispositions distinctes contenues à l'article 53, paragraphe 1, point 5 de la Loi sur les étrangers.
> Il en ressort que des experts ont donné leur opinion sur les dispositions qui ne sont pas applicables aux ressortissants des Etats parties de la Charte.
> Les dispositions sur la réunification des familles des travailleurs migrants ressortissants des états parties de la Charte jugées conformes à la Charte (conclusions XVIII-1) n'ont pas été amendées durant la période couverte par le rapport, par conséquent elles n'ont pas été mentionnées dans le rapport.
> C'est par le seul soin de donner l'aperçu de toute la législation qu'on a inclus dans le rapport ces informations, même si elles concernent des questions en dehors du champ d'application de la Charte.
> De plus, la question n'a pas été suffisamment mise au clair dans le rapport. La faute d'où ressort le malentendu et la conclusion négative pèse entièrement sur les auteurs du rapport polonais.
> Cette question sera mise au clair dans le prochain rapport.

ESC 19§6 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- *excluding social welfare benefits from the calculation o the worker's income is likely to hinder family reunion rater than facilitate it;*
- *no provision is made in law or in practice for the family reunion of children of migrant workers aged between 18 and 21 who do not have a disability and do not require the assistance of a third party because of their state of health.*

First ground of non-conformity

168. The representative of Spain provided the following information in writing:

> 1. En ce qui concerne l'évaluation du Comité sur que l'exclusion des prestations d'assistance sociale du calcul du niveau de revenu n'est pas conforme à la teneur de la Charte Sociale Européenne parce qu'on ne doit pas faire des différences des revenus de l'auteur du regroupement familial selon l'origine de ces revenus, on établit ce qui suit :
> En premier lieu, on doit rappeler que, en application de la primauté du Droit de l'Union Européenne sur le droit espagnol, la réglementation espagnole ne se sépare pas de ce qui est stipulé à ce sujet dans l'article 7.1.c) de la Directive 2003/86 sur regroupement familial[10], qui permet que « les États membres puissent exiger au demandeur qui apporte la preuve que l'auteur du regroupement familial ait des revenus fixes et réguliers suffisants pour son propre entretien et celui des membres de sa famille, sans faire appel au système d'assistance sociale de l'État membre en question ».
> Le CEDS remarque que ce sont certains pays qui invoquent l'application de cette Directive concernant le regroupement familial, mais il n'est pas d'accord que cela soit suffisant devant les prévisions les plus favorables de la Charte.
> Néanmoins, il convient d'éclairer que l'article 19.6 est générique en ce qui concerne le devoir des États de faciliter le regroupement familial et ne dit rien sur le calcul des revenus. Nous sommes en parlant ici, par conséquent, d'une interprétation du CEDS en ce sens que les revenus par assistance sociale ne doivent pas être pris en compte dans le total de revenus suffisants pour demander le regroupement familial.
> Par conséquent, il ne s'agit pas d'une question de collision entre une Directive communautaire et une prévision plus favorable de la Charte, mais entre une Directive et une interprétation du CEDS, et en ce sens l'Espagne considère qu'avec l'application de la Directive on accomplit aussi la prévision de l'article 19.6 de la Charte Sociale de faciliter dans la mesure du possible le regroupement familial, sans que ce droit soit un obstacle à la demande que l'auteur du regroupement familial dispose des revenus fixes et réguliers pour son entretien et celui de sa famille.
> En deuxième lieu, il est tout à fait fondamental de souligner que l'exigence de moyens économiques prévus dans la réglementation espagnole en matière des étrangers et d'immigration peut être diminuée dans les cas suivants**:**
> - lorsque le membre de famille qui est regroupé soit mineur.
> - lorsque concourent circonstances exceptionnelles justifiées qui conseillent cette diminution sur la base du principe de l'intérêt supérieur du mineur, conformément à ce qui est établi dans la Loi Organique 1/1996, du 15 janvier, de Protection Juridique du Mineur, et on remplit les conditions légales et réglementaires restantes pour l'octroi de l'autorisation de résidence pour regroupement familial.
> - Lorsqu'il s'agit de regrouper d'autres membres de famille pour des raisons humanitaires appréciées par rapport à des cas individualisés et en rapport préalable de la (actuelle) Direction Générale des Migrations ».

[10] Directive 2003/86/CE du Conseil, du 22 septembre 2003, concernant le droit au regroupement familial.

En troisième lieu, on doit faire référence au texte de l'Introduction Générale à l'ensemble des Conclusions que fait ce Comité et où il souligne que, dans son arrêt du 4 mars 2010 (Affaire Chakroum, C-578/08), la Cour de Justice de l'Union Européenne a déjà limité la possibilité prévue par cette Directive (2003/86/CE de regroupement familial) en ce qui concerne la restriction du regroupement familial pour des raisons de disposition de ressources économiques ».

À ces effets, on informe que ce que le Tribunal des Pays-Bas posait dans sa question préjudicielle à la Cour de Justice de l'Union Européenne était ce qui suit :
« Si on doit interpréter l'expression *« faire appel au système d'assistance sociale »* prévue dans l'article 7.1.c) de la Directive en ce sens que cette expression offre à l'État membre une marge pour adopter une réglementation en matière de regroupement familial qui donne lieu à ce que ne soit pas permis le regroupement familial de l'auteur du regroupement familial qui ait justifié ses ressources fixes régulières et suffisantes pour pouvoir faire face aux frais de subsistance généralement nécessaires, mais que, néanmoins, compte tenu du montant de ces ressources il pourra faire appel à une prestation d'assistance spéciale pour faire face aux frais de subsistance exceptionnels et déterminés d'une façon individuelle, à la remise d'impôts accordée par les autorités locales en fonction du montant des revenus ou des mesures d'appui aux revenus dans le cadre des politiques municipales de rente de base ».
De la lecture de la teneur de l'arrêt on dégage, comme point de départ, que le citoyen de nationalité marocaine qui demandait l'autorisation de résidence temporaire pour regroupement familial aux Pays-Bas s'il avait justifié disposer de « ressources fixes, régulières et suffisantes » conformément à a réglementation qui règle cette matière.
Cependant, la caractéristique fondamentale dans ce cas découle du fait que ce même citoyen marocain qui justifiait ces ressources aurait droit, dans le cas où éventuellement lui serait accordée l'autorisation pour regroupement familial, aux prestations d'assistance conformément à la réglementation hollandaise.
Les allégations formulées par la Commission Européenne pendant cette procédure sont tout à fait éclairantes en ce qui concerne la réglementation en vigueur aux Pays-Bas et la transposition qui avait été effectuée de la Directive concernant le regroupement familial.
« L'élément déterminant, selon la Directive, est si l'intéressé lui-même dispose de ressources suffisantes pour subvenir à ses besoins élémentaires sans faire appel à l'assistance sociale. (…) le système prévu par la Directive ne doit pas être entendu en ce sens que permet à l'État membre prendre en considération tous les avantages sociaux auxquels les intéressés pourraient éventuellement avoir droit pour fixer en conséquence le seuil des revenus exigé ».
Établi ce qui précède, on signale que la situation juridique qui a lieu aux Pays-Bas n'est pas en aucun cas d'application au cas espagnol dont la réglementation part de des critères différents.
En Espagne, ni les prestations de caractère contributif ni les prestations non contributives n'ont pas le caractère d'assistance sociale, raison pour laquelle elles peuvent être prises en considération au montant de moyens économiques à justifier au moment de demander l'autorisation de résidence temporaire pour regroupement familial.
Pour terminer, et conformément à l'intéressé par le Comité dans son écrit des conclusions, ci-après figurent autorisations de résidence pour regroupement familial demandées ainsi que celles accordées pendant l'année 2010 (la Loi Organique 4/2000 est entré en vigueur le 13 décembre 2009) et pendant l'année 2011 (on rappelle que le 30 juin est entré en vigueur le Règlement de la Loi Organique 4/2000).

Année	Autorisations demandées	Autorisations accordées
2010	61.841	40.617
2011	48.783	36.921

Des données précédentes il faut conclure que la réglementation espagnole ne fait pas obstacle à l'exercice du droit au regroupement familial.
Conformément aux considérations juridiques précédemment exposées et compte tenu de l'interprétation des données précédemment mentionnées, on doit réitérer que la réglementation espagnole est pleinement conforme à la teneur de l'article 19.6 de la Charte Sociale Européenne.

2. Le texte des conclusions du Comité conclut sur la non-conformité de la réglementation espagnole pour ne pas prévoir le possible regroupement des enfants âgés entre 18 et 21 ans qui ne soient pas, incapables ou qui n'aient pas besoin de l'assistance d'une troisième personne à cause de son état de santé.
Sur ce point, le Comité rappelle que **l'article 3.4.b) de la Directive 2003/86** concernant le regroupement familial permet d'entendre la teneur de la Directive sans préjudice des dispositions les plus favorables de la Charte Sociale Européenne, de 18 octobre 1961 (…).
De même, le Comité fonde sa décision de non-conformité sur la base de la teneur de l'Arrêt de la Cour de Justice de l'Union Européenne, de 27 juin 2006, affaire C-540/03, où l'on souligne aussi ce principe.
À ce sujet, il faut remarquer que cet arrêt repousse un recours déposé pour l'annulation de plusieurs préceptes de la Directive de regroupement familial, plus précisément l'article 4.1 dernier paragraphe[11], l'article 4.6[12] et l'article 8[13].
En ce qui concerne cela, on doit souligner cependant que, par rapport à toutes les dispositions mentionnées précédemment, la réglementation espagnole permet la possibilité d'accorder l'autorisation de résidence indépendante pour ces descendants.
Finalement, on doit rappeler que le critère de la minorité d'âge auquel fait allusion la Directive et qui recueille la réglementation espagnole, a été modifié dans l'appendice à la Charte Sociale Européenne Révisée de 1996 (qui, bien que signée, est en attente de ratification par l'Espagne) puisque, à la différence de ce qui a été disposé dans le texte de 1961, établit ce qui suit dans son annexe à l'article 19.6 de son appendice :
« aux fins d'application de la présente disposition, on entend par « famille du travailleur migrant » au moins le conjoint du travailleurs et ses enfants non mariés, aussi longtemps qu'ils sont considérés comme mineurs par la législation pertinente de l'Etat d'accueil et sont à la charge du travailleur ».

Second ground of non-conformity

169. The representative of Spain said that the situation in his country was similar to the one in Greece mainly because Spain was also still bound by the 1961 Charter. He indicated that under Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain, a foreigner residing in Spain could only exercise family reunion to bring in children below the age of 18. The only exception to this age limit was if a child was handicapped. He mentioned that this was in line with EU Directive 2003/86/CE of 22 September 2003 on the right to family reunification.

[11] Exceptionnellement, lorsque un enfant soit âgé de plus de 12 ans et il arrive indépendamment du reste de sa famille, l'État membre, avant d'autoriser son entrée et sa résidence conformément à cette Directive, pourra vérifier s'il remplit quelque critère d'intégration prévu par sa législation existante à la date de l'application de cette Directive.
[12] Exceptionnellement les États membres pourront exiger que les demandes concernant le regroupement des enfants mineurs soient déposées avant les 15 ans d'âge, s'il est ainsi établi par leurs législations existantes à la date d'application de cette Directive. Si les demandes seraient déposées après les 15 ans d'âge, les États membres qui décident appliquer cette exception autoriseront l'entrée et la résidence de ces enfants par des raisons différentes du regroupement familial.
[13] Les États membres pourront exiger que l'auteur du regroupement familial ait résidé légalement sur leur territoire pendant une période de temps, qui ne pourra dépasser les deux ans, avant de regrouper les membres de sa famille avec lui. Exceptionnellement, lorsque en matière de regroupement familial la législation existante dans un État membre à la date d'adoption de cette Directive prenne en considération sa capacité d'accueil, cet État membre pourra établir une période d'attente de trois ans au maximum entre la production de la demande de regroupement familial et la délivrance d'un permis de résidence aux membres de la famille.

170. The representative of Spain announced that despite the current difficult economic and financial situation the new Spanish Government had initiated inter-ministerial consultations with a view to ratifying the Revised Social Charter.

171. The Committee encouraged the Spanish Government to ratify the Revised Social Charter, which would enable it to comply with the revised Charter as well as Directive 2003/86/CE on the right to family reunification.

Article 19§8 - Guarantees concerning deportation

ESC 19§8 GERMANY

The ECSR concludes that the situation in Germany is not in conformity with Article 19§8 of the 1961 Charter on the grounds that migrant workers and their families (not EU citizens) may be expelled for having recourse to social welfare or for being homeless or for substance abuse.

172. The representative of Germany read out a long written statement which is summarised as follows:

In Germany, the use of dangerous narcotics is a criminal offense and is being considered a threat to public security. Continued drug abuse means a continued threat to public security. The legal ground for expulsion is the person's unwillingness to undergo rehabilitation treatment and consequently the continued existence of a threat to public security. Germany does not consider this as a violation of Article 19§8 ESC.

173. Similarly, homelessness is considered a threat to public security in Germany. According to the assessment in Germany, the European Social Charter does not indicate that the concepts of public interest and national security do not include any threat to public interest and national security.

174. The Committee took note of the information given and invited the Government of Germany to include all relevant information into the next report.

ESC 19§8 GREECE

The ECSR concludes that the situation in Greece is not in conformity with Article 19§8 of the Charter on the grounds that a migrant worker may be considered as a threat to public order and therefore expelled simply where he/she has been prosecuted for a crime punishable by at least three months imprisonment.

175. The representative of Greece said that by a recent amendment of the relevant law, the part which stipulated that "the foreigner is considered as dangerous to public order or security, when he has been prosecuted for a crime punishable by a sentence of imprisonment for at least 3 months" has been deleted and therefore is no longer applicable.

176. The Committee took note of this positive development and invited the Greek Government to include this information into the next report.

ESC 19§8 LUXEMBOURG

The ECSR concludes that the situation in Luxembourg is not in conformity with Article 19§8 of the 1961 Charter on the ground that a permit to reside may be revoked where an individual has

insufficient personal resources in circumstances which go beyond those permitted by the 1961 Charter.

177. The representative of Luxembourg said that a person with a contract for work coming to Luxembourg would receive a residence permit of initially one year to be prolonged for two years. After 5 years the person would receive an indefinite residence permit. As for unemployment allowances, there would then be no difference in treatment compared with a Luxembourg national. The representative of Luxembourg underlined that the situation contested by ECSR were applied only in some few cases of "proven arranged marriages".

178. The Committee took note of the information provided. It deplored however that the situation of non-conformity existed already since the year 2000 and therefore in accordance with its Rules of Procedure called for a vote.

179. The vote on a Recommendation was rejected (1 vote in favour, 20 votes against). The Comittee then called for a Warning, which was rejected too (1 vote in favour, 20 against).

180. The Committee asked the Government of Luxembourg bring its legislation into conformity with the European Social Charter.

ESC 19§8 UNITED KINGDOM

The ECSR concludes that the situation in the United Kingdom is not in conformity with Article 19§8 of the 1961 Charter on the ground that family members of a migrant worker who are nationals of Contracting Parties that are not members of the EEA or EU, as well as children of a migrant worker who are nationals of EU member states or parties to the EEA but are aged under 17 years of age, are liable to be expelled following a migrant worker's deportation.

181. The representative of the United Kingdom said that the position remained generally as previously described. The United Kingdom's last report explained that there is nothing in particular to prevent a family member making their own application for leave to remain in the United Kingdom in their own right if a migrant parent is required to leave the United Kingdom.

Furthermore, changes to the Immigration Rules introduced in July 2012 now reflect the duty on the Secretary of State to ensure that immigration decisions are made having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. The assessment of the 'best interests of the child' is intrinsic to the proportionality assessment under Article 8 (ECHR) on the right to respect for family life, and has therefore also been incorporated into the Immigration Rules.

In assessing the best interests of the child, the question in immigration cases where a child would have to leave the United Kingdom as a consequence of the decision to remove their parent, is whether it is reasonable to expect the child to live in another country. The new Immigration Rules set out a clear framework for weighing the best interests of the child against the wider public interest in removal cases. The best interests of the child will normally be met by remaining with their parents and returning with them to the country of origin, subject to considerations such as long residence in the United Kingdom and exceptional factors.

The new Immigration Rules deal clearly with how a child, whether a British citizen or a foreign national, should be treated in cases where it would otherwise be intended to remove their parent(s) and how countervailing factors should weigh in the decision. There are some circumstances where a child may be allowed to stay on a temporary or permanent basis on best interests grounds. The key test for a non-British citizen child remaining on a permanent basis is the length of residence in the United Kingdom of the child – which the rules set out as, at least the previous seven years, subject to countervailing factors. The changes are designed to bring consistency and transparency to decision-making.

182. The Committee took note of the information given and invited the Government of the United Kingdom to provide in its next report more details with respect to the number of children expelled under the new provisions to bring its situation into conformity with the European Social Charter.

Article 19§10 – Equal treatment for the self-employed

ESC 19§10 GERMANY

The ECSR concludes that the situation in Germany is not in conformity with Article 19§10 of the 1961 Charter on the same grounds for which it is not in conformity with paragraphs 6 and 8 of the same Article.

183. The representative of Germany referred to his statement under Article 19§8.

184. The Committee referred to its decision under Article 19§8 (see under ESC 19§8 Germany of this document).

ESC 19§10 GREECE

The ECSR concludes that the situation in Greece is not in conformity with Article 19§10 of the Charter on the same ground for which it is not in conformity with Article 19§§ 5, 6 and 8 of the Charter.

185. The representative of Greece referred to her statements under Articles 19§6 and 19§8.

186. The Committee referred to its decisions under Articles 19§6 and 19§8 (see under ESC 19§6 Greece and 19§8 Greece of this document).

ESC 19§10 LUXEMBOURG

The ECSR concludes that the situation in Luxembourg is not in conformity with Article 19§10 of the 1961 Charter on the same grounds for which it is not in conformity with paragraphs 4c and 8 of the same article.

187. The representative of Luxembourg referred to his statements under Articles 19§4 and 19§8.

188. The Committee referred to its decisions under Articles 19§4 and 19§8 (see under ESC 19§4 Luxembourg and 19§8 Luxembourg of this document).

ESC 19§10 POLAND

The Committee concludes that the situation is not in conformity with Article 19§10 of the 1961 Charter on the same ground for which it is not in conformity with paragraph 6 of the same Article.

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

> Des experts indépendants ont proposé une conclusion positive à l'issue d'examen des dispositions de la loi sur les étrangers portant sur le regroupement des familles des travailleurs migrants ressortissants des états de la Charte (Conclusions XVIII-1, 2006).

Pour rappel: la loi sur les étrangers prévoit que (article 53, paragraphe 1, point 5) le permis de séjour pour une durée déterminée est délivré à un étranger ayant l'intention d'habiter avec le travailleur migrant dont il est question dans la Charte Sociale Européenne. Aucune période de résidence préalable du travailleur migrant n'est pas requise.
Comme membres de la famille sont considérés, toujours en vertu de l'article 53, paragraphe 1, point 5 de la Loi sur les étrangers, les personnes visées à l'annexe à la Charte Sociale Européenne, dans sa partie relative à l'article 19, paragraphe 6.
Le dernier rapport polonais contient des informations sur les amendements apportés aux autres dispositions légales – celles régissant la régularisation du séjour des membres de famille des travailleurs migrants (article 54 point 4) – il s'agit des étrangers qui travaillent en Pologne et membres de leur familles et qui sont couverts par la Directive 2003/86/CE du 22 septembre 2003 sur la réunification des familles.
Des ressortissants des Etats parties à la Charte sociale ne sont pas couverts par ces dispositions. Il leurs sont applicables des dispositions distinctes contenues à l'article 53, paragraphe 1, point 5 de la Loi sur les étrangers.
Il en ressort que des experts ont donné leur opinion sur les dispositions qui ne sont pas applicables aux ressortissants des Etats parties de la Charte.
Les dispositions sur la réunification des familles des travailleurs migrants ressortissants des états parties de la Charte jugées conformes à la Charte (Conclusions XVIII-1) n'ont pas été amendées durant la période couverte par le rapport, par conséquent elles n'ont pas été mentionnées dans le rapport.
C'est par le seul soin de donner l'aperçu de toute la législation qu'on a inclus dans le rapport ces informations, même si elles concernent des questions en dehors du champ d'application de la Charte.
De plus, la question n'a pas été suffisamment mise au clair dans le rapport. La faute d'où ressort le malentendu et la conclusion négative pèse entièrement sur les auteurs du rapport polonais.

ESC 19§10 SPAIN

The ECSR concludes that the situation in Spain is not in conformity with Article 19§10 of the 1961 Charter on the same ground for which it is not in conformity with paragraph 6 of the same Article.

190. The representative of Spain referred to his statement under Article 19§6.

191. The Committee referred to its decision under Article 19§6 (see under ESC 19§6 Spain of this document).

ESC 19§10 UNITED KINGDOM

The ECSR concludes that the situation in the United Kingdom is not in conformity with Article 19§10 of the 1961 Charter on the same grounds for which it is not in conformity with paragraphs 4 and 8 of the same Article.

192. The representative of the United Kingdom referred to his statement under Article 19§8.

193. The Committee referred to its decision under Article 19§8 (see under ESC 19§8 United Kingdom of this document).

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)
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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)

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GERMANY / ALLEMAGNE
Mr Albrecht OTTING, Co-ordination of Social Security Schemes, Federal Ministry of Labour and Social Affairs (1)
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GREECE / GRÈCE
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IRELAND / IRLANDE
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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)

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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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SLOVENIA / SLOVÉNIE
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SPAIN / ESPAGNE
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Mr Leif WESTERLIND, Senior Advisor, Ministry of Health and Social Affairs (1)
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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

ESC 19§6 AUSTRIA (2nd, 3rd and 4th grounds)

ESC 7§4 CROATIA
ESC 8§3 CROATIA
ESC 17 CROATIA

ESC 7§4 CZECH REPUBLIC
ESC 16 CZECH REPUBLIC

ESC 17 DENMARK

ESC 19§6 GERMANY

ESC 7§3 GREECE
ESC 16 GREECE
ESC 19§5 GREECE

ESC 16 LATVIA (1st ground)

ESC 8§2 LUXEMBOURG
ESC 19§4 LUXEMBOURG

ESC 8§4 POLAND
ESC 19§6 POLAND
ESC 19§10 POLAND

ESC 7§5 SPAIN (2nd ground)
ESC 7§10 SPAIN
ESC 19§6 SPAIN (1st ground)

ESC 17 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

ESC 19§4 UNITED KINGDOM

ii) Oral examination (decision of the Bureau)

ESC 7§1 GREECE

ESC 7§10 SPAIN

B. Renewed Conclusions of non-conformity

ESC 19§6 AUSTRIA (1st ground)

ESC 7§5 CROATIA
ESC 7§6 CROATIA
ESC 16 CROATIA

ESC 8§2 CZECH REPUBLIC
ESC 17 CZECH REPUBLIC

ESC 16 DENMARK

ESC 7§5 GERMANY
ESC 16 GERMANY
ESC 19§8 GERMANY
ESC 19§10 GERMANY

ESC 8§1 GREECE
ESC 16 GREECE (1st and 2nd grounds)
ESC 19§6 GREECE
ESC 19§8 GREECE
ESC 19§10 GREECE

ESC 16 LATVIA (2nd and 3rd grounds)

ESC 19§4 LUXEMBOURG (2nd ground)
ESC 19§8 LUXEMBOURG
ESC 19§10 LUXEMBOURG

ESC 16 NETHERLANDS (ANTILLES)
ESC 16 NETHERLANDS (ARUBA)

ESC 7§10 POLAND
ESC 16 POLAND
ESC 17 POLAND

ESC 7§5 SPAIN (1st ground)
ESC 8§3 SPAIN
ESC 16 SPAIN
ESC 19§6 SPAIN (2nd ground)
ESC 19§10 SPAIN

ESC 7§5 UNITED KINGDOM
ESC 8§1 UNITED KINGDOM
ESC 16 UNITED KINGDOM
ESC 17 UNITED KINGDOM
ESC 19§8 UNITED KINGDOM
ESC 19§10 UNITED KINGDOM

APPENDIX IV

LIST OF DEFERRED CONCLUSIONS

C. Conclusions deferred because of questions asked for the first time or additional questions (first reports and others)

AUSTRIA	ESC 16, 19§1
CROATIA	ESC 7§3, 7§10, 8§2
CZECH REPUBLIC	ESC 7§5, 7§9
DENMARK	ESC 8§1
GERMANY	ESC 7§3, 19§2, 19§3, 19§4
GREECE	ESC 7§5, 7§10, 17, 19§3, 19§4
ICELAND	ESC 17
LATVIA	ESC 8§1
LUXEMBOURG	ESC 7§3, 7§5, 7§10, 17, 19§6
POLAND	ESC 19§2, 19§4, 19§10
SPAIN	ESC 7§1, 7§3, 17, 19§3, 19§8
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	ESC 7§1, 7§2, 7§3, 7§4, 7§6, 7§9, 7§10, 8§1, 8§2, 8§3, 8§4
UNITED KINGDOM	ESC 7§3, 19§2, 19§3, 19§6

APPENDIX V

WARNING(S) AND RECOMMENDATION(S)

Warning(s)[14]

Article 17 (Right of mothers and children to social and economic protection)

Poland
The maximum length of pre-trial detention of minors is excessive.

United Kingdom (2nd ground of non-conformity)
The age of criminal responsibility is manifestly low.

Recommendation(s)

–

Renewed Recommendation(s)

–

[14] 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.