Strasbourg, 27 March 2012

T-SG(2012)2_final

EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS 2010 OF THE EUROPEAN SOCIAL CHARTER (revised)

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

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

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

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

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I. Introduction

1. This report is submitted by the Governmental Committee of the European Social Charter made up of delegates of each of the forty-three states bound by the European Social Charter or the European Social Charter (revised)[1]. Representatives of international organisations of employers and workers (presently the European Trade Union Confederation (ETUC) and the International Organisation of Employers (IOE)) attend meetings of the Committee in a consultative capacity. BUSINESSEUROPE is also invited to attend but did not participate.

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 the 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 (revised) concerned Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia, Sweden, Turkey and Ukraine. Reports were due by 31 October 2009 at the latest; they were received between June 2009 and December 2010; Finland and Ireland did not submit a report in time. The Governmental Committee repeats that it attaches great importance to the respect for the deadline by the States Parties.

5. Conclusions 2010 of the European Committee of Social Rights were adopted in October and December 2010 (Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, France, Georgia, Italy, Lithuania, Malta, Republic of Moldova, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia, Sweden, Turkey and Ukraine). In the absence of a report, no conclusions were adopted in respect of Finland and Ireland.

6. The Governmental Committee held two meetings (2-5 May 2011, 17-20 October 2011), which were both chaired by Ms Alexandra PIMENTA (Portugal).

7. The Governmental Committee decided that the new Bureau would be elected at its 125th meeting on 26-30 March 2012. In the meantime, the Committee decided that as from

[1] List of the States Parties on 1 December 2011: 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, 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.

1 January 2012 a provisional Bureau would be operational composed of the current members - without Ms PIMENTA and with the addition of Ms WITSØ-LUND (Denmark).

8. The Governmental Committee decided that the new Bureau will be elected for the period from 1 January 2012 to 31 December 2013.

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

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

- on 20 May 2011 Austria ratified the Revised Social Charter

- on 7 September 2011, by notification to the Secretary General, Cyprus accepted the following additional Articles of the Revised Social Charter: Articles 2§3, 2§6, 4§5, 7§7, 8§5, 22 (Part b), 27§2, 25 and 29.

11. The state of signatures and ratifications on 1 December 2011 appears in Appendix II to the present report.

II. Examination of Conclusions 2010 of the European Committee of Social Rights

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

13. The Governmental Committee applied the rules of procedure adopted at its 117th meeting (16 May 2008). In applying these measures and according to the modalities decided by the Bureau in December 2010, 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 Bureau decided in December 2010 that the Committee should proceed to an oral examination 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 12 December 2011 to send a letter to the Permanent Representations of the States concerned, asking to submit this information in view of an oral examination during the 125th meeting in March 2012.

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

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

14. The Governmental Committee examined the situations not in conformity with the Revised European Social Charter listed in Appendix III to the present report, it used the voting procedure for 9 of them, and adopted 4 warnings (see Appendix V). The detailed report which may be consulted at www.coe.int/socialcharter contains more extensive information regarding the cases of non-conformity.

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

16. The Governmental Committee urged governments to continue their efforts with a view to ensuring compliance with the European Social Charter (revised).

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

Resolution on the implementation of the European Social Charter during the period 2005-2008 (Conclusions 2010), provisions related to the thematic group "Labour rights")

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

The Committee of Ministers,[1]

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

Having regard to Article 29 of the Charter;

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

Having regard to the failure to submit a report in due time by Finland and Ireland;

[1] At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those states which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter". The states having ratified the European Social Charter or the European Social Charter (revised) are: 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, 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.

Considering Conclusions 2010 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 2010 of the European Committee of Social Rights and in the report of the Governmental Committee.

EXAMINATION ARTICLE BY ARTICLE[1]

Conclusions 2010 – Revised Charter (RSC)

Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprous, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Republic of Moldova, the Netherlands, Norway, Portugal, Romania, Slovenia, Sweden, Turkey and Ukraine

Article 2§1 - Reasonable working time

RSC 2§1 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 2§1 of the Revised Charter on the ground that regulations permit weekly working time of more than 60 hours in various sectors of activity.

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

> The average working time has not been calculated in the law. The reference periods are in the Council of Ministers Decisions issued for implementing Article 97 of the Labour Code.
> The Council of Ministers Decision no 356, dated 25.03.1996 and no 431, dated 25.03.1996 shall be revised in cooperation with the other state institutions responsible for bringing the provisions of these CMDs in conformity with the Labour Code of the Republic of Albania, the Revised European Social Charter and *acquis communautaire* of EU pertaining to this issue. It has been scheduled that following the approval of the changes in the Labour Code of the Republic of Albania, the four aforementioned by-law acts shall be amended.

19. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§1 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 2§1 of the Revised Charter on the ground that the Labour Code permits daily working time of up to 24 hours in certain types of work.

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

> According to the Article 139 of the Labour Code of RA the duration of working time of certain categories of employees (of health care, care (custody), child care institutions, specialised electricity gas heating supply organisations, specialised communications services and specialised services for elimination of the effects of accidents etc.) may be up to 24 hours per day.
> However the duration of working time of such employees must not exceed 48 hours per week, and the rest period between working days must not be shorter than 24 hours. The list of such jobs shall be approved by the Government of the Republic of Armenia.

[1] States in English alphabetic order.

Meanwhile, currently new amendments to the Labour Code are in the process of discussions and the Article 139 of the Code is one of the articles considered to be changed. Particularly, the limit of sixteen hours per day working time will be taken into account.

21. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§1 ESTONIA

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

- shifts of up to twenty-four hours may be authorised for employee categories such as security guards, health care professionals, welfare workers, fire and rescue workers etc.;
- the authorised working hours of crew members on vessels engaged in short sea shipping may go up to 72 hours in any seven-day period.

First and second grounds of non-conformity

22. The representative of Estonia provided information on the new Employment Contracts Act which had entered into force in 2009, and the ECSR had not taken into account in its assessment as it did not cover the reference period. She mentioned that the new Act introduced many changes in the working time regulations. The maximum working time per day was 13 hours, but some exceptions were still permitted. As regards the 72 weekly working hours for seamen, a draft amendment to the Seafarers Act was underway which would replace this limit by mandatory rest time rules.

23. The Committee took note of these positive developments and invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§1 FRANCE

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

- the weekly working hours authorised for managers who fall under the annual working days system is excessive and the legal guarantees in the collective agreements system are not sufficient;
- on-call periods where no effective work is performed are assimilated to rest periods.

First and second grounds of non-conformity

24. The representative of France indicated that this conclusion was based on the most recent complaints against her Government, namely the decisions of 23 June 2010 on the merits of *Confédération Générale du Travail (CGT) v. France (*Complaint No. 55/2009*),* and of *Confédération française de l'Encadrement (CFE-CGC) v. France* (Complaint No. 56/2009*),* where the ECSR had again held that the maximum working time (78 hours per week) of managers falling under the annual working days system was manifestly excessive and could not be considered reasonable within the meaning of Article 2§1 of the Revised Charter. She mentioned that an Act of 20 August 2008 on reforming social democracy and working time had introduced a number of changes to the annual working days system, but this had not had an impact on the ECSR's conclusion. She referred to the resolutions adopted by the Committee of Minister in these complaints (ResolutionsCM/ResChS(2011)4 and 5, adopted on 6 April 2011), where the Committee of Ministers had taken note of the situation and had invited France to submit any new developments in its next report, but had not requested France to take any measures.

25. The representative of the IOE supported the intervention made by the representative of France and considered that the law contained sufficient guarantees for managers under the annual working days system. She underlined the specificity of the managerial functions of such employees and the appropriate guarantees in the current regulations.

26. The Committee took note of the information provided and invited the Government to provide any new developments in its next report and decided to await the next assessment of the ECSR.

RSC 2§1 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 2§1 of the Revised Charter on the ground that the Labour Code permits employers and workers to agree on working time without fixing a maximum limit on weekly working hours.

27. The representative of Georgia provided the following information in writing:

- **Limitation of Daily and Working Hours**

The Article 2§1 of the Part II of the Revised Social Charter stipulates, that: "With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: 1. **to provide for reasonable daily and weekly working hours,** the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;"

According to the Article 14 of the Labour Code of Georgia:
"1. Unless otherwise provided by the contract of employment, duration of the working day determined by the employer during which the employee performs assigned work shall not exceed forty one hours per week. Break and leave is not included in the work time.
2. Duration of leave between working days (shifts) shall not be less than 12 hours."

Article 14 of Georgian Labour Code, states and defines limitations of working hours, both weekly and daily. The duration of rest time between working days (shifts) shall not be less than 12 hours which implies that the Code sets the daily limits on working time.

Accordingly, workers' right to reasonable limits on daily and weekly working hours, including overtime is guaranteed through national legislation, collective and individual agreements.

The Article I on Implementation of the Undertakings Given of the Part V of the Revised Social Charter stipulates that: "Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:
a. laws or regulations;
b. agreements between employers or employers' organisations and workers' organisations;
c. a combination of those two methods;
d. other appropriate means."

Therefore, the Revised Social Charter does not prohibit determining issues envisaged by the Articles 1 to 31 of the Part II by the agreements between the employer and employee.

It should be emphasized that there not cases regarding breaches of working hours.

Consequently, situation in Georgia is in conformity with Article 2§1 of the Revised Charter, because the Labour Code fixes limit for daily and weekly working hours as well as permits employers and workers to agree on working time by the both individual and collective agreements and this possibility is also given by the Revised Social Charter.

- **Reference Period for the Calculation of Average Working Hours**

The Committee states that: "It recalls in this respect that the reference period for the calculation of average working hours should not exceed four to six months, or 12 months in exceptional circumstances (General Introduction to Conclusions XIV-2)."

This issue could be discussed under the Tripartite Partnership Social Commission.

- **'On Call'**

The Committee wishes to know whether time spent at the workplace being ready for work is regarded as working time.

Time spent at the workplace being ready for work is considered as working time in case of 'On call' which should be remunerated.

In addition it should be emphasized, that According to the Labour Code, during forced distraction due to the employer the employee will be given full remuneration unless otherwise stated by the agreement.

- **Labour Inspection**

The Committee also asks the next report to provide information on the supervision of working time regulations by the Labor Inspection, including the number of breaches identified and penalties imposed in this area.

It should be emphasized that, for the most sensitive areas labour inspection is institutionally integrated in the following way:
• The Police is responsible for the inspection of infringements related to the child labour.
• The Technical Supervision and Construction Inspection Agency is responsible for infringements in industrial sectors and hazardous enterprises.

The newly established Tripartite Social Partnership Commission is responsible to study and analyze all concerned labour related issues. Accordingly, the Tripartite Social Partnership Commission has a mandate to monitor working hours' issue.

Currently, the discussion on the above-mentioned issue in the frame of social dialogue format was not held yet, because the issue was not raised by any social partner. The reason is that there was not observed any case regarding infringement or breach regarding working hours. If there is raised such issue by the any social party, the Tripartite Social Partnership Commission will be oblige to study the issue and find acceptable solution.

In case of breaches regarding working hours, employee is able to apply to the court.

Conclusion:

The situation in Georgia is in conformity with Article 2§1 of the Revised Charter, because the Labour Code fixes limit for daily and weekly working hours as well as permits employers and workers to agree on working time by the both individual and collective agreements and this possibility is also given by the Revised Social Charter.

28. The Governmental Committee invited the Government of Georgia to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§1 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 2§1 of the Revised Charter on the ground that regulations permit weekly working time of up to 72 hours in the fishing industry.

29. The representative of Italy indicated there was no new information to provide. She recalled that working hours in the fishing industry were governed by several Community directives, including Directive 2003/88/EC which specifies that working time for workers on sea-going fishing vessels may not exceed 14 hours in a day and 72 hours in a week. The same limits were contained in ILO Convention 188 on work in fishing. This was an exceptional sector and the specific working limits were justified.

30. The representative of the IOE was of the same opinion that specific norms for work on sea-going vessels were justified. She also mentioned that the actual wording of Article 2.1 did not set any limits and only contained the notion of 'reasonable daily and weekly working hours'. She indicated that the Committee should refrain from too rigid interpretations which are in contradiction with the flexibility contained in the text of the provisions of the Charter. Consideration should be given to specific categories of workers and national circumstances.

31. The Committee took note of the information and decided to await the next assessment of the ECSR.

RSC 2§1 LITHUANIA

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

32. The representative of Lithuania underlined that the categories of employees whose duration of working time could go up to 24 hours per day was exceptional, and subject to strict approval by the Government, that is, they had to be included in a list of exceptional occupations adopted by the Government. The nature of such work was normally related to being on watch. Such employees were granted compensatory rest after their 24 hour shifts.

33. The representative of ETUC noted that some of the occupations where 24 hour shifts were permitted involved caring for people, which therefore gave the breach a more serious character.

34. The Committee voted on a warning which was not carried (9 votes in favour, 9 against and 14 abstentions).

35. The Committee urged the Government to take adequate measures to bring the situation into conformity with the Revised Charter.

RSC 2§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 2§1 of the Revised Charter on the ground that the Labour Code permits companies, as a general rule, to set reference periods up to 12 months for the calculation of average working hours.

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

> Le temps de travail journalier et hebdomadaire sont régis en général par l'article 43 de la Constitution de la République de Moldova et les articles 95-105 du Code du Travail. Ces normes n'ont pas subi des amendements essentiels depuis leur adoption.
> Faisant référence à l'article 99 du Code du Travail qui régit la computation globale du temps du travail il faut mentionner que la Charte ne contient pas de normes expresses relatives a la durée des périodes de référence dans le cadres des régimes de travail, elle oblige seulement a fixer une durée raisonnable du temps du travail journalier et hebdomadaire, ce que, selon nous, nous avons réalisé en adoptant les articles 95-105 du Code.
> En même temps, on ne peut pas être d'accord avec l'affirmation que l'article 99 du Code du Travail établit la période de computation d'un an en tant que règle a suivre pour toutes les entreprises qui ont introduit le computation globale du temps du travail. En conformité avec la norme respective, un an est la durée limite de la période d'évidence dans le cadre de l'évidence globale du temps de travail. La durée concrète de cette période est établie par l'employeur et peut être beaucoup moins longue.
> Suite a la demande du Comite, on vous informe aussi qu'aucun salarié ne peut pas travailler plus de 60 heures par semaine en vertu de l'article 100 al. (6) du Code du Travail, car en conformité avec cette norme, la durée journalière de 12 heures doit être suivie d'une période de repos d'au moins 24 heures. La même chose est valable aussi pour une durée journalière du temps du travail de moins de 12 heures - en vertu de l'article 101 al. (6) du Code, la durée de repos entre les rotations ne peut pas être inferieure a la durée double du temps du travail de la rotation précédente (y compris la pause déjeuner). Dans les conditions ou la semaine a seulement 168 heures, les personnes qui travaillent 12 heures travailleraient encore moins que 40 heures, de cette façon l'apparition d'une situation similaire indiquée par le Comite n'est pas possible.

37. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§1 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 2§1 of the Revised Charter on the ground that legislation provides that total working hours in a 24 hour period may, in certain cases, go up to sixteen hours.

38. The representative of Norway informed the Committee that working hours of up to 16 hours per day was restricted to exceptional cases. The employer and the employees' elected representatives in undertakings bound by a collective pay agreement could agree to derogate from the maximum daily limit of 13 hours, provided that the total working hours did not exceed 16 hours per 24 hours. In such cases, the employee would be ensured compensatory rest after the work. She considered that the legislation was in compliance with the Revised Charter.

39. The representative of ETUC asked what types of jobs were concerned. The representative of Norway indicated this was a general regulation which could be used in any given sector if the requirements in the law were met.

40. Several representatives indicated that the fact that the extension of working time was agreed with the involvement and approval of employees' elected representatives gave such an extension more legitimacy.

41. The Committee nevertheless expressed concern at the possibility provided by legislation of extending working time to 16 hours and urged the Government to take adequate measures to bring the situation into conformity with the Revised Charter.

Article 2§2 - Public holidays with pay

RSC 2§2 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 2§2 of the Revised Charter on the ground that work performed on a public holiday is not compensated at a sufficiently high level.

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

> According to the Albanian labour legislation, provision may be made in the collective labour agreement for the employee to work on the days of official holidays only where the latter agrees to it. The work accomplished on the weekly holiday or on the official holidays shall be compensated with an increase in remuneration not less than 25 percent or leave equal to the work duration accomplished adding up an additional leave of not less than 25 percent of the work duration, which shall be taken one week before or after its accomplishment. The same proportion is observed also for compensation by leave.
> Relying on the Conclusion issued by ECSR, to the effect of avoiding the irregularities in the interpretation and implementation of Article 87 of the Labour Code, we hold that an amendment should be made to include in the draft-law "On some addenda and amendments to the Law no 7961, dated 12.07.1995 (as amended) "Labour Code of Republic of Albania"" (as amended). We think that the wording of this amendment should include providing for separately to what extent shall be the reward for the work done during the official holidays and the reward for work done during the weekly holidays. We think that the wording should be done taking account of the requirements of the Revised European Social Charter (Article 2, paragraph 2) as well as conclusions of ECSR.

43. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§2 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 2§2 of the Revised Charter on the ground that work performed on a public holiday is not compensated at a sufficiently high level.

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

> La législation italienne prévoit, en cas de travail effectué un jour férié, en dehors de la rémunération journalière ordinaire, chaque élément accessoire compris, la rémunération pour les heures effectivement travaillées, plus la majoration pour le travail effectué pendant le jour férié.
> Dans le cas de travail effectué le dimanche, il y a lieu de payer, outre le jour férié payé, chaque élément accessoire compris, une rémunération additionnelle correspondent à la quote-part journalière (*aliquota giornaliera*) (loi n°260 du 27 mai 1949).
> La quantification du pourcentage de majoration est renvoyée à la négociation collective.
> Le Comité, qui a examiné les dispositions contenues dans les conventions collectives des secteurs agroalimentaire, du transport des marchandises et logistique, de la métallurgie et de la mécanique, citées à titre d'exemple dans le IXe rapport et, en particulier, les taux de majoration qui y sont prévus (une majoration de 50% par rapport à la rémunération normale), a conclu que la situation de l'Italie n'est pas conforme à l'article 2§2 de la Charte révisée.
> Le Comité rappel qu'il y a lieu de payer, outre le jour férié payé, une rémunération qui ne peut être inférieure au double de la rémunération habituelle. Dans le cas où la rémunération est remplacée par un congé compensatoire, il doit correspondre au moins au double des jours travaillés.
> Le cadre normatif, et les dispositions contenues dans les conventions collectives analysées, n'ont pas subi des modifications depuis le dernier rapport.
> Cependant, il est nécessaire de mettre en évidence que la convention collective, seule source de réglementation des majorations de la rétribution, est l'instrument par lequel les organisations des employeurs et des travailleurs, en vertu du pouvoir d'auto-réglementation qui est leur reconnu, définissent de manière uniforme, pour un secteur d'activité déterminé, les relations de travail.

Seuls les sujets contractants et, en particulier, les organisations syndicales des employeurs et des travailleurs peuvent décider du contenu des accords en vertu du principe de liberté et d'auto-détermination syndicale garanti par l'article 39 de la Constitution italienne.
Par conséquent, seuls les partenaires sociaux, dans le respect de leur autonomie décisionnelle, pourront choisir s'ils acceptent de modifier les conventions collectives dans le sens indiqué par le Comité.
Il convient de préciser que l'employeur est toujours tenu de garantir à ses employés une rémunération suffisante et proportionnée à la qualité et à la quantité de son travail, selon les dispositions de l'article 36 de la Constitution.
La jurisprudence interprète cela dans le sens que la rémunération considérée suffisante et proportionnée est celle établie dans les conventions collectives conclues par les organisations syndicales de la catégorie économique d'appartenance de l'employeur les plus représentatives (Cass. 29/7/2000,n.1002), y compris les aspects relatifs aux majorations de salaire.

45. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§2 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Republic of Moldova is not in conformity with Article 2§2 of the Revised Charter on the ground that it has not been established that the right to public holidays with pay is guaranteed.

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

Les conventions et les contrats collectifs du travail conclus par les partenaires sociaux ne peuvent qu'augmenter le volume des droits des salariés prévus par la législation en vigueur. En ce qui concerne les jours fériés payés, ceux-ci ne peuvent prévoir qu'un montant de rémunération augmenté qui est maintenu pour les jours respectifs ou pour le travail effectué pendant ces jours. En vertu de l'article 12 du Code du Travail, les clauses des contrats individuels du travail, des contrats collectifs du travail ou des actes juridiques émis par les autorités publiques locales et centrales de spécialité, qui détériorent la situation des salariés par rapport à la législation du travail, sont nulles et ne produisent pas d'effets juridiques.

47. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§2 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 2§2 of the Revised Charter on the ground that the right of workers to a longer rest period in compensation for work carried out on a public holiday is not guaranteed.

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

According to the provisions of Article 137 of the Labour Code, the employees working in the units provided for in Article 135 (of medical assistance and of public alimentation) and those carry out the activity in labour place whom activity can not be interrupted due to the product process or specific activities, shall be provided adequate compensatory time off in the next 30 days.
Also, if, on justified grounds, no days off are granted, the employees shall benefit, for the activity performed during the public holidays, from an extra pay added to the basic pay, which may not be lower than 100% of the basic pay corresponding to the activity performed within the normal work schedule.
The Labour Code also provides, in its Article 138, that the applicable collective agreement may establish other days off.
According to the article 139, paragraph 1 from the Law no.53/2003-Labour Code, republished, the public holidays with pay on which no work is performed shall be:
- the 1st and 2nd of January;
- the first and second days of Easter;
- the 1st of May;

- the first and second day of Pentecost;
- the Assumption of the Virgin;
- the 1st of December;
- the first and second days of Christmas;
- 2 days for each of the 3 annual religious holidays, declared thus by the legal religions cults other than Christian ones, for persons belonging to such religions.

The days off shall be granted by the employer.

According to the article 140 from the same normative act, through Government decision shall set up the adequate work schedules for sanitary and public-catering institutions, with a view to ensuring sanitary assistance, and, respectively people's supply with basic food products; the implementation of such schedules shall be mandatory.

At the article 141 from the labor code republished, is settled that the provisions of art 139 shall not apply at work places where activity may not be interrupted due to the characteristics of the production process or typical features of activity.

According to the article 142 paragraph (1) the employees who work in the institutions stipulated under Article 140, as well as at the work places stipulated under article 141 shall be compensated with adequate time off during the next 30 days.

According to the article 142 paragraph (2) of this normative document, if, for justified reasons, no days off are granted, the employees shall benefit, for the work performed on lawful holidays, from a benefit added to their basic wages which may not be less than 100% of the basic wages corresponding to the work performed during the normal work schedule.

Therefore, these employees are benefiting, besides the payment of the labor hours effected of a bonus, established by negotiation between parties, which can not be less than 100% of basic salary accordingly to the work performed in the normal working hours.

Also, we state that the rights of the employees who, for justified reasons working on the legal holidays, above mentioned, have the minimal character, the parties are able to negotiate additional benefits.

49. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 2§3 - Annual holiday with pay

RSC 2§3 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 2§3 of the Revised Charter on the ground that employees may relinquish annual leave in return for increased remuneration.

50. The representative of Albania said that under Article 11 of the Labour Code, the two parties could negotiate an agreement whereby annual leave could be waived and replaced by remuneration but this applied only to leave over and above the legal minimum. A draft amendment to this law had been prepared in 2010, after consultation with the social partners and the EU Joint Committee. A tripartite committee had been set up and international standards should be taken into account. Albania had to take measures to transpose Community law into domestic labour law. In 2011, the draft legislation would be examined to ensure that it was compatible with Community standards. The ILO was due to help with the amendments to the Labour Code. The result of the expert appraisal would be available by the end of 2011 and the law would be passed at some point in 2012.

51. The Committee noted the information, expressed concern about the current situation, invited the Government to amend the relevant legislation and decided to await the ECSR’s next assessment.

RSC 2§3 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 2§3 of the Revised Charter on the grounds that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

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

> Considérant que l'exécution d'un contrat de travail ne peut être suspendue simultanément pour deux raisons différentes, la doctrine et la jurisprudence belges admettent généralement qu'il convient de privilégier la cause de suspension qui est la première à intervenir sur le plan chronologique.
> Le problème du chevauchement entre la cause de suspension résultant de la prise des vacances annuelles et celle résultant de la maladie reçoit une solution différente selon que la maladie débute pendant ou avant la période de vacances annuelles.
> Dans le premier cas, le principe décrit ci-avant joue pleinement de sorte que si la prise des jours de vacances annuelles est planifiée avant que ne se déclare la maladie, il y a lieu de considérer que l'unique cause de suspension de l'exécution du contrat de travail réside dans la prise des vacances annuelles. Dans cette hypothèse, la cause de suspension résultant d'une maladie survenue durant la période de vacances est tout simplement inexistante; il ne se conçoit dès lors pas que le travailleur puisse reporter les jours de congé durant lesquels il a été malade. Si la maladie se prolonge au-delà de la période de vacances, l'exécution du contrat de travail est suspendue pour raison de maladie et la rémunération du travailleur est, malgré l'absence de prestations de travail, garantie.
> Dans le second cas, le principe décrit ci-avant connaît un tempérament : même si la prise des jours de vacances annuelles est planifiée avant que ne se déclare la maladie, la législation relative aux vacances annuelles permet de reporter les journées de vacances qui se chevauchent avec une journée de maladie, pour autant que celle-ci débute avant la période de vacances (Voy. art. 68, 2°, b), de l'arrêté royal du 30 mars 1967 déterminant les modalités générales d'exécution des lois relatives aux vacances annuelles des travailleurs salariés).

53. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§3 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 2§3 of the Revised Charter on the ground that it has not been established that the right to take leave days "lost" to illness or accident at another time is guaranteed.

54. The representative of France provided the following information in writing:

> La situation de la France s'agissant du droit au report des congés payés annuels des salariés en cas de maladie ou d'accident a profondément évolué ces dernières années.
> S'agissant des salariés ayant été dans l'impossibilité de prendre leurs congés payés annuels du fait d'une absence due à la maladie, la Cour de Cassation a tout d'abord reconnu le droit au report de leurs congés payés lorsque le salarié était absent du fait d'une maladie professionnelle (Cass. soc. 27 septembre 2007, n° 05-42293).
> Cette jurisprudence a été étendue au salarié absent pour maladie par un arrêt de la Cour de Cassation du 24 février 2009 (Cass.soc. 24 février 2009, n° 07-44488).
> Dans ces différentes hypothèses, la rupture du contrat de travail doit donner lieu à l'indemnisation des jours non pris par le salarié (Cass. soc.25 mars 2009, n° 07-43767).

55. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§3 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 2§3 of the Revised Charter on the ground that it has not been established that the right to annual holiday with pay is guaranteed.

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

> L'article 43 de la Constitution et l'article 112 du Code du Travail garantissent le droit au congé de repos annuel payé pour tous les salariés. Conformément à cet article tout salarié qui travaille sur la base d'un contrat individuel du travail bénéficie d'un droit de congé annuel. Le droit au congé ne peut pas être l'objet d'une cession, d'un renoncement ou d'une limitation. Toute entente, qui suppose le renoncement à ce droit, total ou partiel, est nulle.
> Faisant référence aux commentaires du CEDS nous communiquons ce qui suit.
> 1. En vertu de l'article 122 du Code du Travail, dans la situation où le salarié est rappelé du congé, le salarié doit utiliser les jours restants après la situation respective ou à une autre date établie par un accord entre les parties durant la même année calendaire.
> L'utilisation de la partie restante du congé par le salarié est effectuée à la base d'un ordre (disposition, décision) de l'employeur. Le refus du salarié d'utiliser la partie restante du congé annuel est considéré nul.
> En plus nous communiquons que par « situations de service imprévus », établies par le Code du Travail en tant que raisons de rappel, l'on entend tous motifs objectifs liés aux besoins opérationnels de l'entreprise (augmentation inattendue du volume du travail, besoin de remplacer des salariés qui ont démissionné ou sont partis en congé de maternité, etc).
> 2. Les situations énumérées sont aussi prises en considération par l'article 118 al(3) du Code, stipulant que lorsque l'octroi du congé annuel de repos à un salarié pendant l'année en cours peut affecter négativement le bon fonctionnement de l'entreprise, le congé du salarie peut être reporté à l'année suivante. Dans ce cas, le salarié bénéficiera de 2 congés l'année suivante, qui peuvent être cumulés ou divisés à la base d'une demande écrite. Le non-octroi du congé annuel de repos pendant 2 années consécutives est interdit.
> En même temps, il faut souligner qu'en vertu de la norme citée, l'ajournement du congé pour l'année suivante ne peut avoir lieu qu'à titre exceptionnel et seulement avec l'accord écrit du salarié et des représentants des salariés.
> 3. Conformément à l'article 118 al. (6) du Code du Travail, la durée des congés médicaux, ceux de maternité et d'études n'est pas incluse dans la durée du congé annuel de repos. En cas de coïncidence totale ou partielle du congé avec l'un des congés mentionnés, à la base d'une demande écrite du salarié, le congé de repos annuel non-utilisé intégralement ou partiellement est reporté à la période convenue par un accord écrit des parties ou il est prolongé, respectivement, avec le nombre de jours indiqués dans le document justifiant délivré dûment concernant l'octroi du congé respectif durant la même année calendaire.
> 4. La réduction de la durée du congé annuel par conventions ou contrats collectifs du travail n'est pas possible en vertu des prévisions de l'article 112 al. (2) et de l'article 12 du Code du Travail susmentionnés.
> Conformément à l'article 112 al. (2), le droit au congé ne peut pas être objet d'une cession, renoncement ou limitation et toute entente par laquelle on renonce, intégralement ou partiellement, à ce droit est nulle. De plus, en vertu de l'article 12, les clauses des contrats individuels du travail, des contrats collectifs du travail et des conventions collectives ou des actes juridiques émis par les autorités de l'administration publique, qui détériorent la situation des salariés sont nulles et ne produisent pas d'effets juridiques.
> *Nous tenons à mentionner que l'information présentée avait été déjà fournie au Comité européen des droits sociaux dans le premier rapport sur la réalisation de la Charte, ainsi que dans les réponses du Ministère du Travail, de la Protection Sociale et de la Famille sur les commentaires 2007.*

57. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 2§4 - Elimination of risks in dangerous or unhealthy occupations

RSC 2§4 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 2§4 on the following grounds:

- there is no prevention policy for the risks in inherently dangerous or unhealthy occupations;
- ground that workers exposed to residual risks to health and safety cannot benefit from reduced working hours or additional paid holidays, or other sufficient compensation.

First ground of non-conformity

58. The representative of Albania stated that with a view to implementing policies on health and safety at work, Law No. 10237 of 18 February 2010, on “Safety and Health at work” had been adopted. The law transposed the *acquis communautaire* in the field of safety and health at work, and also met commitments of ILO Convention no 155. The novelty of this law was the obligation for employers to prepare evaluation and risk prevention documents, containing the measures of a technical, organisational and hygiene-sanitary character, which they were to apply according to the specific conditions of the workplace and activity. The law also set out general principles of prevention that the employers had to apply, such as: avoiding risks, fighting against risks at the source, adjusting the work process to the employee, adjusting the work process to the development of technologies, replacement of dangerous equipment, taking preventive, all-inclusive and coherent measures, etc.

59. Also with a view to providing a better response to problems, some amendments to Law No. 7961, of 12 July 1995 “Labour Code of RA”, had been prepared, providing a series of amendments in the chapter on safety and health at work. As regards limits for protection against air pollution, chemical substances, radiation, noise and vibration at the work place, the professional value limits contained in the corresponding European directives were now referred to.

60. The Committee took note of the positive developments described by the representative of Albania and decided to await the next assessment of the ECSR

Second ground of non-conformity

61. The representative of Albania said that the government had taken the necessary measures to bring the situation into conformity. The Decree of 2002 had been amended by Decree No. 409 (2009). Through individual or collective agreements, employers and employees could decide to limit weekly working hours in occupations considered to be dangerous to 48 hours. The decree took account of Directive No. 2009/88/EC of 30 July 2009 on dangerous or unhealthy occupations. Decrees No. 107 (2011) and 1012 (2010) also contained rules on safety in the workplace.

62. The Committee noted these positive developments, congratulated the Government for the measures it had taken, and decided to await the next assessment of the ECSR.

RSC 2§4 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 2§4 on the following grounds:

- there is no prevention policy for the risks in inherently dangerous or unhealthy occupations;
- it has not been established that the right to just conditions of work in case of risks in inherently dangerous or unhealthy occupations is guaranteed.

First ground of non-conformity

63. The representative of Italy said that the national prevention system on safety and health at work was based on a new Legislative Decree No. 81/2008. This text was the basis of the national system enabling public administrations to coordinate their activities and prevention strategies. It also enabled the discussion on health and safety topics and the elaboration of guidelines covering prevention and vigilance issues. The guidelines are developped by regional and national authorities at a national Committee level. Within a permanent consultative Commission specialized on health and safety at work, which was established to this effect, the decisions concerning the most sensitive sectors of activity are taken of which the social partners are confronted whith. Moreover, a national information system (database) on prevention (SNIP) had been set up as an important operational tool in the new system.

64. The Committee took note of the information provided and decided to await the next assessment of the ECSR.

Second ground of non-conformity

65. The representative of Italy indicated that the revised consolidated text on occupational health and safety (Legislative Decree No. 81/2008) set out the obligation to eliminate risks at the source, and when this was not technically possible to reduce them to a minimum. As a result employers were under the obligation of ensuring that the workplace was in a condition that did not harm the health and safety of those who worked there, especially if the activities were dangerous. The principle whereby employers should take all the necessary measures to minimise risks for the health and safety of workers was also laid down in several decisions by national courts. In addition, employers could now face criminal liability for breaches of the law in this area.

66. The representative of ETUC considered that no explanations had been provided on compensation measures in situations where risks had not been completely eliminated.

67. The representative of Italy explained that with regard to asbestos, following the ban on this product by law in 1992, the cash benefits and early retirement schemes were only applicable to those workers that had been exposed to asbestos in the past. As regards workers exposed to ionising radiation, she said that they were entitled to 15 days additional paid holidays per year (Law of 23 December 1994).

68. The representative of ETUC mentioned that harmful effects of asbestos revealed themselves much later after exposition, and asked what measures applied to those working with the product now.

69. The representative of Italy indicated that persons working in companies that specialised in removing asbestos from buildings were entitled to rest breaks in accordance with the physical requirements of the job and safety considerations. The breaks always took place in special places and after decontamination of workers.

70. The Committee took note of the information and decided to await the next assessment of the ECSR.

RSC 2§4 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 2§4 of the Charter on the ground that no steps have been taken to eliminate or reduce the risks associated with dangerous or unhealthy work.

71. The representative of the Republic of Moldova indicated that the text of Government Decision No. 1223 of 9 November 2004, containing the list of occupations and functions deemed to be dangerous or unhealthy, which had been requested by the ECSR, had not been sent due to some omission, but was available in Russian.

72. With regard to the reduction of risks, she indicated that for the implementation of the Law on Safety and Health at Work, of 10 July 2008, the Ministry of Labour, Social Protection and Family had prepared a number of normative acts on health and safety at work with the aim of harmonising national legislation with relevant EU standards. There were nine new drafts in various stages of preparation on questions such as protection against back injury, use of protective equipment individually and collectively, safety and health of workers exposed to a potential risk of explosion, noise, mechanical vibration, electromagnetic fields, or the safety and health of workers in temporary or mobile sites.

73. She indicated that under the Labour Code, persons working in dangerous or unhealthy conditions were entitled to additional leave and a reduction in the length of the workday. Detailed information on all these questions would be submitted to the ECSR in the next report.

74. The Committee took note of the information and decided to await the next assessment of the ECSR.

RSC 2§4 THE NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 of the Revised Charter on the ground that there is no provision for reduced working hours, additional paid holidays or another form of compensation in dangerous and unhealthy occupations.

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

> Introduction
> Dutch OSH-legislation is strictly applicable to risks related to ‘inherently dangerous and unhealthy’ vocations. In this way it is stimulated that such labour can be done without damages to persons and the setting they work in. Consequently, there is, in the Netherlands no need for supplementary legislation concerning working hours, more specifically reduction of working hours or the establishment of longer holidays.
> Division of OSH- responsibilities between government and social partners
> The current Dutch OSH-legislation is to a large extend the implementation of the general ‘Framework Directive’, 89/391/EU and the specific directives based upon it. Dutch OSH-legislation aims, at the one hand to stipulate the responsibilities of the government. On the other hand it aims at enlarging the responsibilities of social partners for OSH-policy.
> The government primarily takes care of adequate legislation, formulated in the form of goals that are to be met, in order to reach certain levels of OSH-protection. When and wherever possible the government will provide for specific norms or limiting values in relation to the goals. An example of such a goal, is the obligation to employers to have a risk assessment and to organize labour in their companies in accordance with the technical and scientific state of the art. Furthermore OSH-legislation prescribes that labour, especially in ‘inherently dangerous or unhealthy’ vocations, may

only be done if employers and employees have had the relevant certified training and when the tools/measures are approved by a certified organization. Moreover, they have to comply with international norms such as ISO and NEN. Finally, the Labour Inspectorate (i.e. government) supervises the compliance with the goals of OSH-legislation.
Social partners bear prime responsibility for filling in the goals as formulated by the government. Since January 1, 2007 Dutch OSH-legislation has been designed in such a way that filling in of goals, is left to social partners. The underlying idea is that relevant partners in a sector have a much better understanding of OSH-risks in a sector. Therefore they can best agree upon the most adequate way the labour in their sector can be done. Often in the Netherlands, these 'own' norms of social partners are formulated for a sector as a whole (i.e. in the form of so-called osh-catalogues, that establish means, tools, ways of working, good practices etc., from which employers can choose in order to attain safe and healthy working conditions on the workfloor). In this way companies and sectors can make choices that fit best to their specific situation (custommade solutions).
The following may serve as an illustration of the Dutch system.
Dutch OSH-legislation prescribes that labour with too much noise, dangerous substances, overpressure etc., has to be done in a safe and healthy way. The actual way to do so, is primarily up to the sector. Part of this is reduction of the exposure to the risks in such a way that international limit values are respected. It is of course possible that, in addition, social partners in a specific sector find it necessary to agree upon longer holidays or the reduction of working hours in order to decrease risks. However, in the Dutch system, this is left to social partners by the government. Dutch labour market has a great variety of branches and vocations. Only they themselves have an adequate insight in what situation or vocation less working hours or longer holidays, can be proper supplements to OSH-policy within their branche. Therefore in the Dutch approach, there is no relevance in formulating a general legal obligation concerning less working hours or longer holidays in relation to 'inherently dangerous and unhealthy vocations'.
In short
For several reasons the Netherlands is of the opinion that no additional legal measures have to be formulated explicitly in terms of reduction of working hours or longer holidays.
Firstly, this would not be in line with the system of the Dutch OSH-legislation and the related division of responsibilities between government and social partners (that put responsibility with filling in goals by means, instruments etc. with social partners).
Secondly, under the existing current OSH-legislation 'inherently dangerous or unhealthy vocations', are already sufficiently reduced.
Thirdly, in line with article 2, paragraph 4 of the Revised Charter, no additional measures are obliged in case the risks involved with 'inherently dangerous or unhealthy vocations', have been already sufficiently reduced.
Conclusion
The Netherlands complies with article 2, par. 4 of the Revised Charter.

76. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§4 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 2§4 of the Revised Charter on the ground that there is no provision for reduced working hours, additional paid holidays or another form of compensation in dangerous and unhealthy occupations.

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

Since 2008 there was some change in the legal framework of work performed in public sector. One of the main principles of public employment reform was related to the alignment of employment relationship in public sector with the private sector.
The general principles of safety, hygiene and health at work in public sector are similar to the principles of private sector and the worker is entitled to perform work under conditions of safety.
The public employer entity is obliged to organise activities of safety, hygiene and health at work targeting the prevention from professional risks and promotion of health of the worker.
The implementation of safety and health measures in all phases of the activity shall ensure the following prevention principles:
a) Planning and organisation of prevention from professional risks;

b) Elimination of factors of risk and accident;
c) Assessment and control of professional risks;
d) Information, training, consultation and participation of workers and their representatives.
e) Promotion and surveillance of workers' health.
Decree nº 53-A/98 was revoked by Law nº 12-A/2008, 27/02/2008 which defined the new framework of the job attachment, career and remuneration systems of staff fulfilling public functions. Article 73 defines conditions for granting remuneration supplements and states that staff are entitled to remuneration supplements when they perform their work in a permanent way, in conditions arising from the provision of hazardous, arduous and unhealthy work and shift work. The remuneration supplements are only due while last the working conditions that determine their grant. Remuneration supplements are created and regulated by law, and, or, in the case of public employment legal relationships constituted by contract, by collective agreement with observance of provisions set out in Law 12-A/2008.
Law no. 59/2008, 11/09/2009 adopted the employment contract regime in public functions and in article 130 related to the reduction of maximum limits of normal working periods establishes that maximum limits of normal working periods may be established by collective labour regulation instrument. The reduction of the maximum limits of the normal working periods may not result in a reduction of the remuneration of workers.
Since the enter in force of this Law 21 collective labour regulation instruments were adopted (12 in 2010 and 9 in 2011) but there is not any specific provision about pay supplements and other forms of compensation for dangerous and unhealthy work in the public services involved.
The Labour Conditions Authority (ACT) is the national body competent to promote labour conditions and the health and safety in work in private and public sector. ACT controls the compliance with legal requirements of labour law.

78. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 2§5 - Weekly rest period

RSC 2§5 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 2§5 of the Revised Charter on the ground that this provision does not apply to the great majority of the workers concerned.

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

As regards data on inspections, non-compliance related to this provision was 68.8% in 2008, and not the majority of employees which corresponds to 80%. Actually the State Labour Inspection is under the process of developing statistical data on this matter.

80. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§5 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 2§5 of the Revised Charter on the ground that it has not been established that the right to weekly rest period is guaranteed.

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

The issues related to non-conformity of national legislation with Article 2.5 of the Revised Social Charter are currently in the process of discussion with social partners in order to initiate legislative changes.

82. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§5 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 2§5 of the Revised Charter on the ground that the time in which a weekly rest day is granted may exceed twelve successive working days.

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

> L'article 2, 1°, de la loi du 17 mars 1987 relative à l'introduction de nouveaux régimes de travail dans les entreprises permet à la convention collective de travail conclue au sein d'un organe paritaire, ou à défaut d'une telle convention, à la convention collective de travail conclue au sein de l'entreprise s'il existe une délégation syndicale dans l'entreprise, ou, à défaut de délégation syndicale, au règlement de travail, de déroger aux dispositions légales relatives à l'interdiction du travail dominical et au délai d'octroi du repos compensatoire prévus respectivement par les articles 11 et 16, premier alinéa, de la loi du 16 mars 1971 sur le travail. L'employeur peut dès lors accorder le jour de repos compensatoire dans un délai plus long que le délai normal de 6 jours.
> L'Etat belge insiste sur le fait que ce régime de flexibilité ne dispense nullement l'employeur d'accorder le repos compensatoire d'une journée ou d'une demi-journée suivant que les prestations dominicales ont dépassé 4h ou non.
> D'autre part, il rappelle le rôle de gardes-fous joué par les représentants des travailleurs. En ce qu'ils disposent d'une pleine connaissance des réalités, économiques et sociales, propres à chaque secteur d'activités ou entreprises, ces derniers, étroitement associés au processus d'introduction d'un nouveau régime de travail (qui ne pourra être instauré sans leur aval), sont les mieux placés pour assurer la défense des intérêts des travailleurs. La fixation de la période dans laquelle le jour de repos compensatoire doit être octroyé constitue un élément qui, parmi d'autres, est soumis à la négociation collective et à l'accord des représentants des travailleurs.

84. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§5 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 2§5 of the Revised Charter on the ground that it has not been established that the right to weekly rest period is guaranteed.

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

> La conclusion négative a été adoptée à la suite de l'avis du CEDS que le Comité n'avait pas reçu de réponse exhaustive à sa question.
> Nous présentons ce complément d'information et des explications sur la possibilité qui existe de reporter le repos hebdomadaire sur la période suivante:
> Aux termes de l'art. 153, alinéa 1 du Code du travail, dans le cas d'une semaine de travail de cinq jours le salarié a droit à un repos hebdomadaire d'une durée de deux jours consécutifs, dont l'un est par principe un dimanche. Dans ce cas-là le salarié bénéficie d'au moins 48 heures de repos hebdomadaire ininterrompu.
> Selon la disposition de l'art. 154, alinéa 2 du Code du travail, citée dans le rapport, le Conseil des ministres peut changer les jours de repos pendant l'année.
> Pour ce faire, le Conseil des ministres (CM) adopte une décision sur chaque cas concret, qui est publiée dans le Journal officiel. Le changement vise à éviter de couper la semaine de travail par le jour de la fête officielle et à ne pas provoquer des distorsions au niveau du processus de travail, ainsi qu'à assurer une utilisation plus efficace des jours de repos en les ajoutant aux fêtes officielles nationales.
> Lorsqu'on change les jours de repos, on doit toujours respecter l'exigence du Code du travail quant à la durée de la semaine de travail: celle-ci ne doit pas dépasser 48 heures et la durée du repos hebdomadaire ne doit pas être inférieure à 24 heures. Autrement dit, la période la plus longue pendant laquelle le salarié peut travailler avant de bénéficier d'un repos hebdomadaire est de 6 jours ou 48 heures (6 jours de travail x 8 heures).
> Lorsqu'on change les jours de repos, le samedi devient un jour travaillé, mais le dimanche, qui est traditionnellement considéré comme repos hebdomadaire, est toujours garanti comme un jour de repos. D'autre part, le samedi, qui est travaillé, est généralement celui de la semaine qui suit la

semaine de la fête nationale et des jours déclarés non-travaillés par décision du CM et dont la durée est inférieure à 40 heures.
Le changement des jours de repos intervient dans le cadre d'un seul mois du calendrier pour :
- éviter toute modification dans le nombre des jours de travail pendant le mois et
- pour garantir pendant le même mois aux salariés le nombre de jours de repos dont ils auraient bénéficié si le CM n'avait pas procédé à leur changement.

86. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 2§5 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 2§5 of the Revised Charter on the ground that it has not been established that the right to weekly rest period is guaranteed.

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

En conformité avec l'art. 98 al. (2) du Code du Travail, pour les entreprises, ou, en vertu du travail spécifique, l'introduction de la semaine de travail de 5 jours n'est pas réalisable, il est admis, en tant qu'exception, l'établissement, par le contrat collectif du travail et/ou par le règlement interne, d'une semaine de travail de 6 jours et un jour de repos. De cette façon, pour les salariés qui ont une semaine de travail de 6 jours le repos hebdomadaire constitue 24 heures et il est accordé le dimanche.
En ce qui concerne les entreprises qui fonctionnent 5 jours par semaine, en vertu de l'article 109 du Code du Travail, en cas ou un repos simultané pour tout le personnel de l'entreprise pendant les samedi et dimanche porterait préjudice a l'intérêt public ou compromettrait le fonctionnement normal de l'entreprise, le repos hebdomadaire peut être accordé aussi pendant d'autres jours, établis par le contrat collectif de travail ou par le règlement interne de l'entreprise, a condition qu'une des jours libres soit dimanche. Dans les entreprises ou le repos hebdomadaire ne peut pas être accordé le dimanche, les salariés bénéficient de deux jours de repos au cours de la semaine ainsi que d'un supplément salariale établi par le contrat collectif du travail ou par le contrat individuel du travail. La durée du repos hebdomadaire ininterrompu en cas de la semaine de travail de 5 jours ne doit pas être inferieure à 42 heures.
Chacune des normes citées est appliquée pour tous les salariés qui font partie de la catégorie visée (art. 98 al. (2) – tous les salariés qui travaillent 6 jours par semaine, et l'article 109 – pour tous les salariés qui travaillent 5 jours par semaine).
En général, le droit au repos hebdomadaire est consacre de manière expresse dans l'article 43 de la Constitution et dans l'article 9 al. (1) du Code du Travail, qui énumère les droits des salariés.
L'information citée peut être trouvée tant dans le premier rapport national ainsi que dans la réponse du Ministère du Travail, de la Protection Sociale et de la Famille aux commentaires du Comité de 2007.

88. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 2§6 - Information on the employment contract

RSC 2§6 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 2§6 of the Revised Charter on the ground that it has not been established that the right to information ot the employment contract is guaranteed.

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

L'art. 58 du Code du Travail prévoit l'obligation de conclure le contrat individuel de travail seulement par écrit, ce qui suppose la familiarisation du salarié avec les conditions du contrat au

plus tard au moment de sa signature. Le Code établit en même temps une procédure supplémentaire d'information du salarié concernant les aspects du contrat individuel de travail – en conformité avec l'article 48, avant la conclusion du contrat individuel de travail l'employeur est obligé a informer la personne qui demande a être engagée sur les principales clauses du contrat. Les clauses minimales qui seront inclues dans le contrat individuel de travail sont établies dans l'article 49 du Code du Travail.
Une partie d'information concernant le travail à prêter par le salarié a la base du contrat individuel de travail (date a partir de laquelle celui-ci doit exercer sa fonction, les droits salariaux, éventuellement la période d'essai, etc.) est aussi contenu dans l'ordre d'engagement, que l'employeur est obligé a émettre et de porter à la connaissance du salarié contre signature, au cours de 3 jours ouvrables a partir de la date de signature du contrat de travail.
Une série d'entreprises dressent des fiches de poste, qui représentent aussi un instrument d'information du titulaire du poste concernant ses attributions et taches en exerçant le poste en cause.
L'information citée peut être trouvée tant dans le premier rapport national ainsi que dans la réponse du Ministère du Travail, de la Protection Sociale et de la Famille aux commentaires du Comité de 2007.
Concernant les délais de préavis, voir l'information sur l'article 4, par. 4.

90. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 2§7 - Night work

RSC 2§7 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 2§7 of the Revised Charter on the ground that it has not been established that the right to just conditions of night work is guaranteed.

91. The representative of the Republic of Moldova indicated that the Labour Code prohibited the carrying out of night work to certain categories of workers such as persons under 18 years or pregnant women.National legislation did not require a compulsory medical examination for workers prior to being employed on night work (night work was not listed in the occupations for which a medical examination was required at the time of hiring in the Order of the Ministry of Health No. 132 of 17 June 1996). However, the Labour Code did stipulate the requirement of a medical examination for employees who during six months carried out at least 120 hours of night work. If the medical examination showed that the worker required lighter work, transfer to another job would be ordered in agreement with the employee. Regarding consultation of workers' representatives on night work, she mentioned that the overall work program of a company was approved in agreement with the representatives of workers.

92. The representative of ETUC mentioned that this provision required continuous consultation with workers' representatives on the introduction of night work and its conditions.

93. The Secretariat indicated that detailed information on all the questions previously asked by the ECSR was necessary, and recalled that under Article 2.7 of the Revised Charter national legislation should set out a compulsory medical examination for workers prior to being employed on night work (which did not seem to be the case in the Republic of Moldova).

94. The Committee asked the Government to provide all relevant information in the next report and urged it to bring the situation into conformity with the Revised Charter.

RSC 2§7 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 2§7 of the Revised Charter on the ground that there is no provision in the legislation for a compulsory medical examination for persons about to take up night work.

95. The representative of Ukraine indicated that measures would be taken to bring the situation into conformity with the Revised Charter. The new draft Labour Code provides a list of occupations/employees which will be subject to compulsory medical examinations. The terms and procedures for medical examinations will be determined by a special executive body on health. The new list of occupations will include the requirement of medical examination for workers performing night work.

96. The Committee noted these positive developments and congratulated the Government for the measures taken, and decided to await the next assessment of the ECSR.

Article 4§1 - Decent remuneration

RSC 4§1 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 4§1 of the Charter as the minimum net wage is manifestly unfair.

97. The representative of Albania provided the following information:

> The minimal gross wage for 2008 and 2009 amounted to 18 000 lek per month and for 2010 the Government of Albania increased the minimal wage to 19 000 lek per month. The average wage at national level for 2008 was 34 277 lek, while in 2009 was 36 075 lek (According to INSTAT "structural survey of enterprises 2006-2009").
>
> By Council of Ministers Decision no. 527, dated 20.7.2011, it was decided to increase the minimum basic wage. According to this Decision of the Council of Ministers, the monthly minimum basic wage in the country is for employees 20 000 lek. This is an increase of 5.2 % compared with the previous minimum wage.
>
> Based on these data, the ratio net minimal wage / maximal wage are calculated to be 50%. So, in the coming years there will be an improvement in the ration minimum wage / average wage.
>
> Under the salary system of support staff, supplements are provided for healthcare, special kind of work, seniority, etc., which range on average up to 50% above the minimum base wage. With these supplements, the minimum salary for employees in the public sector is about 30 000 leks per month on average.
>
> With the current structure and wage levels of public administration, only about 3 % of support staff are paid at the level of minimum wage.
>
> The minimum wage is mandatory for all legal and natural entities, domestic or foreign, and its level is determined by applying the procedure foreseen in the Convention No. 26 of the ILO, "The mechanism of setting minimum wages", which was ratified by the Republic of Albania by law No. 8775, on 23.04. 2001. Discussions with representatives of employers and employees are meant that the draft is approved by the Wage and Pensions Tripartite Committee of the National Labour Council.
>
> Deductions from the minimum wage are only made for contributions to social and health insurance at the level of 11.2%, and for income tax to the amount of 10 %. The taxable amount is the amount of the minimum wage minus 10 000 lek. So in the case of the minimum wage of 20 000 leks per month, a total of 3 240 leks are paid in taxes and social insurance and thus the net wage amounts to 16 760 per month.

98. In reply to the question asked by the representative of the ETUC the representative of Albania said that less than 1% of employees of the public sector received the minimum wage.

99. The Committee took note of the positive developments and urged Albania to provide information in its next report on the evolution of the minimum wage. Should this minimum wage not reach the threshold of 60% during the next reference period, the report should demonstrate that the minimum wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.

RSC 4§1 AZERBAIDJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage is manifestly unfair.

100. The representative of Azerbaijan informed the Committee that the Ministry of Labour and Social Protection of the Population had addressed the Cabinet of Ministries regarding the situation of non-conformity. The Cabinet of Ministries ordered relevant state bodies to discuss and submit appropriate proposals to increase the amount of minimum wage. Relevant proposals were being made with a view to drafting new legislation.

101. The Committee took note of the positive developments and urged Azerbaijan to provide information in its next report on the evolution of the minimum wage. Should this minimum wage not reach the threshold of 60% during the next reference period, the report should demonstrate that the minimum wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.

RSC 4§1 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 4§1 of the Revised Charter on the ground that it has not been established that the minimum wage can guarantee a decent standard of living.

102. The representative of the Italy made the following statement:

> In Italy, the principle of the sufficient minimum wage is sanctioned in the Italian Constitution, under the Article 36 where "The worker is entitled to a remuneration proportional to quantity and quality of his work and in all cases sufficient to ensure to himself and his family a dignified and free existence."
> The general agreement among the Union confederations and the employer's confederation of April 15 2009, concerning the reform of contractual orders, has brought a number of innovations compared to the previous agreement of 23 July 1993.
> Finally, we shall notice that the issue of minimum wages is the object of attention from part of the legislator, as it is currently to the examination of the Parliament a draft law concerning exactly "Norms in matter of introduction of the minimal wages and the social salary, introduction of minimum social security, recovery of fiscal drag".

103. The Committee took note of the positive developments and urged the Goverment to provide information in its next report on the evolution of the minimum wage. Should this minimum wage not reach the threshold of 60% during the next reference period, the report should demonstrate that the minimum wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.

RSC 4§1 LITHUANIA

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

- it has not been established that a decent wage is guaranteed to all workers;
- the minimum net wage is manifestly unfair.

First ground of non conformity

104. The representative of Lithuania stated that due to a misunderstanding in the national report, the situation was not interpreted correctly. According to her, all workers in Lithuania received at least the minimum wage and there was no legal possibility to receive less than the amount establish by law.

105. The Governmental Committee took note of this information, asked the Government to provide detailed information in the next report and decided to await the next assessment of the ECSR.

Second ground of non conformity

106. The representative of Lithuania informed the Committee that there was a proposal to raise the minimum wage as of 2012. She said that despite a wage cut in the public sector, the minimum wage had not been affected. Therefore, since the average wage was affected by the cut, the ratio of the minimum to average wage was now higher. The representative of the ETUC underlined that even in the times of crisis the situation of a worker and his pay should remain a priority.

107. The Committee took note of the developments and urged Lithuania to provide information in its next report on the evolution of the minimum wage. Should this minimum wage not reach the threshold of 60% during the next reference period, the report should demonstrate that the minimum wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.

RSC 4§1 NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage paid to workers aged 18-22 is manifestly unfair.

108. The representative of the Netherlands indicated that the “dispute” between the Government of the Netherlands and the Council of Europe on the issue of the minimum wage was an old dispute. The situation in which different age groups receive different wages had not changed. The arguments have remained the same, such as, for instance, giving priority to education and training for young people rather than their integration in the labour market. According to the representative, only 8% of young people received the minimum wage. Most of them were still in education and they did not have to support families. Those whose income fell below the poverty threshold, received social assistance. Besides, lower minimum wage also facilitated the creation of jobs for the young.

109. The representative of the ETUC said that everyone had the right to a dignified life irrespective of age. The representative of France indicated that the general unemployment rate in the Netherlands was around 4,5% whereas that of the youth stood at 9% which represented a remarkable difference. The representative of the Netherlands replied that, through the economic crises of the last decades, there was a downward trend in youth unemployment. The representative of Iceland repeated that the aim was to keep the young in education for as long as possible.

110. In reply to the question raised by the Belgian representative, the representative of the Netherlands said that youth wages were agreed upon in collective agreements. In addition, 70% of them earned at least 120% of the statutory minimum wage.

111. The representative of Turkey referred to Article E of the Charter and asked whether this was the case of age discrimination. The Lithuanian representative, the Chair and the Deputy Executive Secretary underlined that the ECSR has never addressed the issue of age discrimination in the Netherlands vis à vis this provision. It was recalled that Article 7§5 of the Charter allowed young persons to be paid less but the age group concerned was 15-18 and not up to 22 as was the case of the Netherlands. The representative of France also noted that this situation was not fair as it concerned young people *in employment* and not *in training* who did the same job as older people for less pay. She also wondered why the law could not be changed if so few people were concerned.

112. The Committee voted on a recommendation with 1 vote for, 20 against and 19 abstentions. The Recommendation was not carried. The Committee then proceeded to vote on a warning with 16 votes for, 7 against and 17 abstentions. The warning was adopted.

RSC 4§1 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage is manifestly unfair.

113. The representative of Portugal informed the Committee that in general, wages in Portugal, including the minimum wage were lower than in other EU states. According to her, despite the very low economic growth the minimum wage was raised by 5,6%. However, the violation of the Charter had not been remedied.

114. The representative of Iceland noted that it was not the role of the Government to decide about the minimum wage since in many countries the social partners were responsible for fixing the minimum wage. The Deputy Executive Secretary recalled that ultimately it is the state that is bound by the Charter and not the employers and employees organisations. Therefore in negotiations it is the duty of the Government to bring the situation into conformity.

115. The representative of the ETUC agreed that it was the responsibility of the State to remedy the violation and not the trade unions or employers organisations.

116. The Committee stressed importance of this provision and urged Portugal to provide information in its next report on the evolution of the minimum wage. Should this minimum wage not reach the threshold of 60% during the next reference period, the report should demonstrate that the minimum wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.

RSC 4§1 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage is manifestly unfair

117. The representative of Romania made the following statement:

During 2009 and 2010 the amount of the guaranteed minimum gross wage was established by consulting trade unions and employers associations taking into account the assessments issued by the International Monetary Fund and the Ministry of Public Finance and the objectives planned in the framework of agreements concluded with International Monetary Fund.
The guaranteed gross minimum wage in 2011 (670 lei) increased by 11.6% given that established in 2010 (600 lei).
In 2008 the Parliamentary Decision no. 31/2008 (published in the Official Monitor of Romania no. 869 of 22 December 2008) was approved. The action plans provided in Chapter 7 "Labour Market", annex. 2 "Governance Program 2009-2012" include:
• Increasing the minimum gross wage on economy up to 50% of the gross average wage on economy by the end of 2012.
• Increasing the rated average gross wage on economy in the period 2009 - 2012 by 55%.
The Tripartite Agreement concluded in July 2008 (between the Romanian Government, trade unions and employers' confederations representatives at national level) provided an accelerated increase of minimum gross wage in the period 2008-2014, to reach the target of 50% share of gross monthly minimum wage in the average gross monthly income in 2014.
This will be an objective in the next years and will be taken into account in establishing the value of the guaranteed minimum gross wage in 2012 and in the following years.
Remuneration of budgetary sector during January 2009 - present
In 2009 the remuneration of the budgetary staff was regulated by Emergency Government Ordinance no. 1/2009, Government Emergency Ordinance no. 31/2009, and Emergency Government Ordinance no. 41/2009.
According to these acts, the provisions of the Government Ordinance no. 9/2008 on the remuneration of civil servants in the public sector for 2008 and the Government Ordinance no. 10/2008 on the remuneration of contractual staff employed in the public sector in 2008 remain in force also for 2009.
In 2010, remuneration for the staff paid from public funds was regulated by the Framework Law no. 330/2009, the Emergency Government Ordinance no. 1/2010 and the Law no. 118/2010.
The Framework Law no. 330/2009 provided that by special laws are established the annually wage increases thus the share of gross domestic product (GDP) estimated for the personal expenses of the public sector's staff to reduce progressively (wage increases necessary to achieve this objective takes into account the macroeconomic indicators and social indicators evolution).
In 2011 the remuneration of staff paid from public funds is regulated by the Framework Law no. 284/2010, Law no. 285/2010, and Order no. 42/77 of (13.01.2011) of the Minister of Labour, Family and Social Protection and the Minister of Public Finance. The Framework Law no. 284/2010 states that the implementation of the law will be carried out in phases - legislative changes will be made by way of annual special laws.
The data on wages will be provided in detail in the next report.

118. The Committee noted that the minimum wage has now approached the 50% of the average wage. The Committee urged the Government to continue its efforts in order to bring the situation into conformity, and to provide information in its next report on the evolution of the minimum wage. Should this minimum wage not reach the threshold of 60% during the next reference period, the report should demonstrate that the minimum wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.

RSC 4§1 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage is manifestly unfair.

119. The representative of Slovenia provided the following information:

In line with the conclusions adopted by the European Committee of Social Rights concerning Article 4, paragraph 1, of the Revised European Social Charter we wish to point out that the Slovenian Government was aware of the fact that after several years of non adjusting minimum wage for past inflation, the legal minimum wage lagged behind the growth of consumer's prices so much that changes were necessary. The minimum wage in net terms did not cover the minimum needs of a person any more. That is why the MOLFSA ordered a research by the Institute for Economic Research (IER), an

autonomous non-governmental research organisation with a long tradition in the field of macroeconomic and microeconomic analysis, on the needs and the purchasing habits of the lowest paid group o the population in order to establish the necessary amount of money to cover the basic needs of a worker, that should be consider when fixing minimum wage.

On the basis of the results the new Minimum Wage Act (Uradni list RS, No. 13/2010) adopted in February 2010, set a minimum wage at 734,15 EUR, that meant cca 23% increase of the existing minimum wage. In order to prevent laying off workers or even closing the enterprises by the employers facing severe economic problems there are provisions in the Minimum wage act that under certain conditions allow for the payment of lower minimum wages. To be entitled to pay lower minimum wages, but not lower than the prescribed transitional amount, an employer should have a written agreement with trade unions or other workers representatives at the level of enterprise. According to the statistical data around 12.000 workers, that is around a third of the workers being paid the minimum wage, receive a reduced amount. The reduced minimum wage, which is also fixed by law, in year 2010 amounted to 654,69 EUR, in year 2011 it amounts to 698,27 EUR, and has to be gradually increased to 734,15 EUR (and additionally increased for the inflation in 2010 and 2011) by 1 January 2012.

According to the new Minimum wage act the minimum wage is increased once a year for the past inflation and the yearly decision on the new minimum wage amount is taken by the minister of labour after consultation with the social partners.

Besides the obligation that the minimum wage should be adjusted for the previous inflation the Minimum wage act additionally defines the following criteria that should be taken in account when determining the minimum wage:

- Wage trends,
- Economic condition and economic growth
- Employment trends

In addition, the representative of Slovenia informed the Committee that as of July 2011 the minimum wage was set at €748 (€ 572 net) and the average net wage made €975. The minimum wage represented 58% of the average wage.

120. The Committee took note of the positive developments and urged Slovenia to provide information in its next report on the evolution of the minimum wage. Should this minimum wage not reach the threshold of 60% during the next reference period, the report should demonstrate that the minimum wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.

Article 4§2 - Increased remuneration for overtime work

RSC 4§2 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 4§2 of the Charter on the grounds that:

- the Labour Code does not contain adequate legal guarantees ensuring workers increased remuneration for overtime;
- it has not been established that overtime compensated in the form of time off is longer than the additional hours worked.

121. The Representative of Armenia provided the following information in writing:

First ground of non-conformity

According to the RA Law on Amendments to the Labour Code adopted in 7 August 2010 the Article 184 of the Code was amended as follows: “Each overtime hour of work, besides the hourly wage, shall be compensated with increased remuneration which shall not be less than 50 percent (30 percent for night work) of the hourly wage”.

According to the amendments, the provision which allowed the Parties to determine the overtime remuneration rate upon their agreement was removed. The Parties can agree only on higher remuneration rate than is prescribed by the Labour Code.

Second ground of non-conformity

The work performed on a rest day and in holiday and memory days, unless it is not envisaged in

the work schedule, can be compensated for by granting the employee another rest day during the month or by adding that day to his annual leave.
This is the only provision of the Labour Code which is regulating the time off for overtime.

122. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 4§2 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 4§2 of the Revised Charter on the ground that that time off granted to compensate overtime is not sufficiently long in the public sector.

123. The representative of Belgium informed the Committee that her authorities had the intention of amending the Law of 14 December 2000 on the organisation of working time in the public sector. However, the political situation in the country currently made it difficult to proceed with such an amendment. Moreover, she recalled that the situation was only partially in breach of the Charter, given that federal civil servants were guaranteed the right to enhanced remuneration, the problem only being when they opted for time-off, in which case they would only be granted equivalent time, not longer.

124. The representative of ETUC indicated that the Federal Public Service was a large sector in Belgium, a new Government should therefore be incited to make the necessary amendments to the law in question.

125. The representatives of France and the United Kingdom also considered that once there was a better political situation in the country, any new Government should be called on to take legislative action on this matter.

126. The Committee took note of the information and asked the Government to make the necessary legislative amendments to bring the situation into conformity with the Revised Charter.

RSC 4§2 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 4§2 of the Revised Charter on the grounds that the Labour Code does not guarantee workers under an “open-ended working hours scheme” the right to an increased remuneration or a sufficiently long rest period in compensation for overtime work.

127. The Representative of Bulgaria provided the following information in writing:

On maintient l’avis, exprimé dans le rapport national, et on avance les arguments complémentaires suivants :
Aux termes de l’art. 139a, paragraphe 1 du Code du travail, pour certains emplois, vu leur caractère spécifique, l’employeur peut, après avoir consulté les représentants des syndicats et les représentants des salariés conformément à l’art. 7, paragraphe 2 du Code du travail, introduire des horaires de travail à durée indéterminée. Les salariés, dont la durée de travail est indéterminée, sont tenus, en cas de besoin, à continuer à remplir leurs obligations professionnelles même après la fin des horaires normaux pendant les jours de travail.
Dans ce cas la durée du travail est mesurée non seulement à l’aune du temps astronomique, mais aussi du point de vue du besoin de continuer à remplir l’obligation professionnelle même après la fin de la journée de travail. La mesure du travail est spécifique parce que la nature elle-même du travail est spécifique: il est évalué en fonction de deux critères – l’établissement d’une durée de travail normale et le champ et le caractère des obligations que le salarié est appelé à remplir. La nature de l’emploi peut parfois exiger que le travail soit effectué même après la fin des horaires normaux.
Le travail effectué en dehors des horaires normaux n’est pas systématique, il est plutôt ponctuel,

voilà pourquoi on ne peut pas parler de compensation des 100 heures citées dans le cadre d'une année civile. Par conséquent, dans ce cas il ne s'agit pas d'heures supplémentaires aux termes de l'art. 143 et suivants du Code du travail.
Les salariés dont la durée du travail est indéterminée ont droit aux repos prévus par l'art. 151 du Code du travail et à un repos d'au moins 15 minutes après la fin des horaires normaux.

128. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 4§2 FRANCE

The Committee concludes that the situation is not in conformity with Article 4§2 of the Revised Charter on the ground that the number of hours of work performed by employees who come under the annual working days system and who do not benefit from a higher rate for overtime, under this flexible working time system, is abnormally high.

129. The Committee referred to its decision under Article 2§1.

RSC 4§2 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 4§2 of the Revised Charter on the grounds that:

- the Labour Code permits employers and workers to agree on overtime hours without limitations;
- the Labour Code does not guarantee workers the right to an increased remuneration or a longer rest period in compensation for overtime work.

130. The representative of Georgia provided the following information in writing:

- **Overtime Hours Without Limitations**

The Article 4§2 of the Revised Social Charter stipulates, that: "With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: … 2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;"

In this regard, the GoG would like to drop the Committee attention on the following arguments:

1. The Article 17 of the Labour Code recognize right of workers to receive remuneration for overtime work: "3. Fulfilling the work by the employee within the timeframe the duration of which exceeds the working time defined by the employment agreement is considered overtime work. If the employment agreement
does not specify the working time, fulfilling the work within the period of time whose duration does not exceed 41 hours a week or the working time defined by the employer within the limits if 41 hours in accordance with part 1, article 14 of the present Code, is considered as overtime work. 4. Terms and conditions for working overtime are specified on the basis of the agreement of parties."

2. Accordingly, working overtime is guaranteed through the Labour Code collective and individual agreements and this gives the parties the opportunity to agree on the longevity of overtime work on the basis of their interests and due to the agreement of them. It should be emphasized, that according to the Labour Code, the overtime working hours are limited; Because, daily and working hours are limited, also the duration of rest time between working days (shifts) shall not be less than 12 hours (which implies that the Code sets the daily limits on working time), at least one hour break is given during the working day (which is not considered as working hour), and there is at least one day-off during the week.

- **Overtime Payment Higher than the Normal Wage Rate**

The Revised Social Charter does not stipulate that overtime payment should be higher than the normal wage rate.

The right to increased remuneration for overtime applies to all types of work. It should be mentioned, that the right to increased remuneration for overtime is envisaged by the Revised Social Charter and according to the Georgian legislation Social Charter is an integral part of Georgian legislation and dominate

over the national legislation. Article 6 II of the Constitution grants priority to “an international treaty or agreement of Georgia over domestic normative acts provided they comply with the Constitution of Georgia”.

- **Labour Inspectorate**

The Committee asks the next report to provide information on whether the Labor Inspection has identified any breaches related to the failure to pay overtime wages. It should be emphasized that, for the most sensitive areas labour inspection is institutionally integrated in the following way: • The Police is responsible for the inspection of infringements related to the child labour. • The Technical Supervision and Construction Inspection Agency is responsible for infringements in industrial sectors and hazardous enterprises.

The newly established Tripartite Social Partnership Commission is responsible to study and analyze all concerned labour related issues. Accordingly, the Tripartite Social Partnership Commission has a mandate to monitor overtime related issues. Currently, the discussion on the above-mentioned issue in the frame of social dialogue format was not held yet, because the issue was not raised by any social partner. The reason is that there was not observed any case regarding infringement or breach regarding overtime work. If there is raised such issue by the any social party, the Tripartite Social Partnership Commission will be oblige to study the issue and find acceptable solution In case of breaches regarding payment of overtime wage, employee is able to apply to the court.

Conclusion:

The situation in Georgia is in conformity with Article 4§2 of the Revised Charter, because the Labour Code recognize the right of worker for overtime work fixes as well as permits employers and workers to agree on terms and conditions of overtime work by the both individual and collective agreements and this possibility is also given by the Revised Social Charter.

131. The Governmental Committee invited the Government of Georgia to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 4§2 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 4§2 of the Revised Charter on the ground that time off granted to compensate overtime is not sufficiently long under the collective agreement in the food industry sector.

132. The Representative of Italy provided the following information in writing:

> Le cadre législative de référence n’a pas été modifié.
> En particulier, la contestation formulée par le Comité Européen des Droits Sociaux se réfère, à l’absence, dans le domaine de la convention collective de l'industrie alimentaire, d’une disposition qui permette au travailleur de jouir d’un repos compensatoire plus long par rapport aux heures supplémentaires réellement effectuées.
> À cet égard, on retient que l'observation du Comité n'est pas acceptable parce que, aux sens de l'art. 4 paragraphe 2 de la Charte sociale européenne, afin d'assurer l'exercice effectif du droit à une rémunération équitable, les Parties s'engagent “à reconnaître le droit des travailleurs à un taux de rémunération majoré pour les heures de travail supplémentaires, exception faite de certains cas particuliers”.
> Selon le “Digest de jurisprudence du Comité Européen des Droits Sociaux”, le recours à un congé en compensation des heures supplémentaires est conforme à l’article 4§2 à condition que ce congé soit plus long que la durée des heures supplémentaires accomplies.
> Comme déjà indiqué dans le précédent rapport du gouvernement italien, en Italie la réglementation de référence, pour ce qui concerne les heures supplémentaires, est le décret législatif n° 66/2003.
> L'article 5, paragraphe 5, du cité décret, prévoit que les heures supplémentaires doivent être calculées séparément et compensée par des augmentations de salaire exigées par les conventions collectives. En tout cas, les conventions collectives peuvent permettre que, en alternative ou en plus des augmentations de salaire, les travailleurs peuvent bénéficier d’un repos compensatoire.
> En effet, la convention collective du secteur alimentaire, parmi les autres, permet au travailleur de

choisir une rémunération ordinaire majorée pour les heures supplémentaires effectuées en plus d' un repos compensatoire correspondant aux heures effectivement travaillées grâce à l'institut de la soi-disant banque d'heures et, par conséquent, le principe de l'obligation de l'augmentation à la rémunération normale prévus dans la Charte Sociale est respecté.
À titre d'exemple**,** on indique les dispositions contenues dans les conventions collectives de travail (CCNL) de l'industrie métallurgique privés et la mise en place d'installations, CCNL des entreprises exerçant des services de télécommunication: "Aux travailleurs qui déclarent formellement… de vouloir la conversion en repos compensatoire , la seule majoration qui comprend tout, égal à **50%** (ou bien aux majorations indiquées dans les tableaux) et prévue pour le travail supplémentaire, sera payée".
Encore la convention collective Nationale pour le personnel employé d'entreprises des exerçant des services de télécommunication établit que pour « les heures de travail supplémentaire qui confluent dans la banque des heures seront payées selon la majoration égale à **50%** de celle prévue pour le travail supplémentaire…".
Donc, il convient de souligner qu'en Italie, au travailleur est reconnu le droit important de choisir, à sa discrétion, comment utiliser le surplus de temps:
1) recevoir une rémunération supplémentaire ou
2) bénéficier d'un repos compensatoire.
Dans ce dernier cas, le travailleur bénéficie, à côté du repos compensatoire, d'une majoration économique pour les heures de travail supplémentaire effectivement travaillée selon les prévisions des contrats collectifs.
En conclusion, à la lumière des informations données précédemment, il est possible d'affirmer avec raison que la réglementation nationale est conforme aux prescriptions stipulées dans l'article 4 paragraphe 2 de la Charte Sociale Européenne.

133. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 4§2 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 4§2 of the Revised Charter on the ground that the right of workers to a longer rest period in compensation for overtime work is not guaranteed.

134. The Representative of Romania provided the following information in writing:

According to our domestic (internal) legislation, namely Art. 120 of Law no.53/2003, Labor Code, revised, work performed outside the normal duration of the weekly work time, as stipulated under Article 112, shall be considered overtime.
The same normative Act stipulates the non-compulsory nature of overtime. Thus, according to Art.120 paragraph 2, overtime may not be performed without the employee's consent, except for force majeure or urgent works meant to prevent accidents or to remove the consequences of an accident.
Therefore, overtime is exceptionally, compulsory for the employee, in case of force majeure or for the urgent works meant to prevent accidents or remove the consequences of an accident.
The provisions of Labor Code stipulate that overtime work shall be compensated with paid time off during the next 30 calendar days after the work has been performed.
Therefore, framework legislation, namely Law no.53/2003-Labour Code, takes into account safety and health protection of employees, by giving proper rest to the employees who have performed an activity over normal working hours, establishing thus protective measures for these employees.
We also state that the measures mentioned above are of a minimal character, the parties are able to negotiate additional benefits.
According to the provisions of article 122 of the Labor Code (revised) overtime work shall be compensated with paid time off during the next 60 calendar days after the work has been performed.
Under these conditions, the employee shall benefit from the adequate wage for the hours performed beyond the normal work schedule.
In the periods of reduction of the activity, the employer shall have the possibility of granting paid days off from the overtime hours that are going to be carried out during the following 12 months.

According to the provisions of article 123 if the compensation with paid time off is not possible within the term stipulated under Article 122 (1) during the next month, the extra work shall be paid to the employee by adding a benefit corresponding to its duration to the wages.
The benefit for extra work, granted under the terms stipulated by paragraph (1), shall be established by negotiation, within the collective labor contract or, as applicable, the individual labor contract, and may not be lower than 75% of the basic wages. Young people under 18 years of age may not perform overtime.
For non-respect of the provisions regarding overtime work, during 1st January 2005-31 December 2008, Labor Inspectorate sanctioned 1.208 employers, the total value of fines being in a value of 1.988.050 RO currency (lei) thus:

	2005	2006	2007	2008
Number of employers sanctioned	98	317	406	387
Value of fines (lei)	151400	523150	684500	629000

Framework for the public sector
Under the provisions of Art. 21 of Law no. 188/1999 regarding the Statute of civil servants (republished 2), with subsequent amendments and additions, the National Agency of Civil Servants is a specialised body of Romanian central public administration, aimed at creating and developing a professional, stable and impartial civil service.
Given the area of competences and legal powers of the National Agency of Civil Servants, and regarding the specified non-compliances for the period 2005-2008, it is noted that:
Regarding "the pay for overtime of civil servant's work", by granting appropriate time off we mention that, in the civil servants' case, this aspect is regulated by art. 33 of Law no.188/1999 regarding the Statute of civil servants, republished (2), with subsequent amendments and additions, and by art.18 paragraph (1) and (2) of Law no. 284/2010, framework law on salaries of staff paid from public funds, as subsequently amended and supplemented.
According to the statutory provisions, civil servants have an usual duration of working time of 8 hours per day and 40 hours per week, having the right to benefit of free days or payments, plus a bonus of 100% of basic salary, for the hours worked over normal time or during holidays or non-working days, as a task given by the manager of the public institution or authority.
The referred legal provisions show that civil servants benefit of free time granted for overtime work, where the overtime was completed as a task from the manager, but not to exceed 360 hours annually.
However, during the current year according to art. 9 paragraph (1) of the Law nr.285/2011 on salaries of staff paid from public funds, in 2011, the overtime working hours of the staff employed in public sector in executive or leading functions, and the work performed in weekends, holidays and other nonworking days, will be compensated only with time off.
According to the above, and, taking into account that, regarding the provisions of article 117 of Law no. 188/1999 regarding the civil servants' Statute, republished, with subsequent amendments and additions, it is established that the provisions of the normative act above mentioned are completing the Labor Code, as well as the common, administrative and penal law regulations to the extent that they do not contravene the specific civil servants' legislation in force, the Labor Code represents the normative act which determines the forms and limits in which one can granted compensation with free time or a remuneration for the additionally performed hours.

135. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 4§4 - Reasonable notice of termination of employment

RSC 4§4 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 4§4 of the Revised Charter on the ground that:

- five days notice is insufficient for workers with less than three months' service, even in the probationary period;
- in the case of written agreement or a collective agreement, one month is not a sufficient period of notice for workers with five or more years' service;

First and second grounds of non-conformity

136. The representative of Albania said that the government was considering passing a law enabling the situation to be brought into conformity with Article 4§4 of the Charter.
She pointed out that the changes in the law referred to both the first and second grounds of non-conformity and had been approved by the social partners. The bill would be discussed by the government in 2012 in preparation for its final approval by the Parliament.

137. On the Chair's proposal, the Committee took note of the information provided, urged the government to change the legal framework concerning the periods of notice to ensure conformity with Article 4§4 of the Charter and decided to await the next ECSR assessment.

RSC 4§4 ARMENIA

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

- notice periods and severance pay are not calculated in the light of an employee's length of service;
- one month is not a reasonable period of notice for employees with more than one year's service;
- employees who fail to fulfil or inadequately fulfil their obligations or in whom employers have lost confidence or who are performing military service, may be dismissed without notice.

First, second and third grounds of non-conformity

138. With regard to the first and second grounds of non-conformity, the representative of Armenia said that amendments to the Labour Code had recently been adopted by parliament and had come into force in July 2010. The periods of notice were currently based on length of service. The Code had established the following principles:
- an employee with less than one year's service was entitled to 14 days' notice;
- an employee with between one and five years' service was entitled to 35 days' notice;
- an employee with between five and ten years' service was entitled to 42 days' notice;
- an employee with between ten and fifteen years' service was entitled to 49 days' notice;
- an employee with more than fifteen years' service was entitled to 60 days' notice.

Collective agreements and individual contracts could lay down longer periods. The principles referred to the following cases involving the termination of employment:
- changes to the basic working conditions;
- worker unsuitable for the duties to carried out;
- long-term inability to work;
- the age of retirement if nothing was provided for in the contract.

The severance pay was calculated according to the length of service. Specific scales were provided for by law.

139. With regard to the third ground of non-conformity, the representative of Armenia said that pursuant to Article 123 of the Labour Code the employer was entitled to terminate a contract without notice if the employee:
- did not carry out his or her duties;

- was guilty of a breach of trust;
- was under the influence of alcohol or narcotic or toxic substances during working hours;
- took leave without good reason for a full working day;
- refused to undergo a compulsory medical examination;
- had responsibilities relating to financial matters and caused damage for the employer;
- had responsibilities in the field of education and exhibited conduct incompatible with his or her duties;
- revealed secrets or passed on confidential information to competitors.

140. The representative of Armenia said that those provisions could also be revised in the future.

141. The Committee took note of the positive legislative developments on the subject of the first and second grounds of non-conformity, congratulated the government on the progress made and looked forward to the next assessment by the ECSR.

142. With regard to the third ground of non-conformity, the Committee urged the Government to amend the legal framework and decided to await the next ECSR assessment.

RSC 4§4 BELGIUM

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

- 28 days' notice is insufficient for workers with three or more years service;
- 56 days' notice is insufficient for workers with ten or more years service;

143. The Representative of Belgium provided the following information in writing:

First and second grounds of non-conformity

1. Situation actuelle :

Le Comité conclut à la non-conformité au motif qu'un préavis de 28 jours ne constitue pas un délai raisonnable lorsqu'un travailleur a trois ans et plus d'ancienneté et qu'un préavis de 56 jours ne constitue pas un délai raisonnable lorsqu'un travailleur a dix ans et plus d'ancienneté. Ce faisant, il critique « le socle minimal garanti par la loi relative aux contrats de travail », qu'il juge non conforme à l'article 4, § 4, de la Charte révisée.

Ce « socle minimal » est fixé par l'article 59, alinéa 1er à 4, de la loi du 3 juillet 1978 relative aux contrats de travail, qui dispose que les délais de préavis à octroyer aux ouvriers du secteur privé en cas de licenciement sont fixés à 28 jours lorsque l'ouvrier n'est pas demeuré sans interruption au service de la même entreprise pendant au moins 20 ans et à 56 jours dans l'hypothèse inverse.

L'Etat belge insistera sur le fait que cette disposition légale est, à l'heure actuelle, peu appliquée en cas de licenciement ordinaire.

En effet, soit l'ouvrier est occupé par un employeur relevant d'une commission paritaire visée par un arrêté royal pris sur la base de l'article 61, § 1er, de la loi du 3 juillet 1978, auquel cas les délais de préavis en cas de licenciement prévus par cet arrêté royal, globalement plus favorables que les délais légaux, sont applicables. Soit l'ouvrier est occupé par un employeur relevant d'une commission paritaire qui n'est pas visée par un arrêté royal pris sur la base de l'article 61, § 1er, de la loi du 3 juillet 1978, auquel cas les délais de préavis en cas de licenciement prévus par la convention collective de travail n° 75 du 20 décembre 1999, conclue au sein du Conseil national du travail, relative aux délais de préavis des ouvriers (dont la force obligatoire a été étendue par l'arrêté royal du 10 février 2000) sont applicables (pour autant que le licenciement ait lieu en dehors de la période d'essai et que le travailleur comptabilise une ancienneté de 6 mois dans l'entreprise). Les délais de préavis en cas de licenciement contenus dans cet instrument

conventionnel ont été établis sur la base d'une estimation dressée par le Comité. Pour le surplus, ce dernier a jugé que lesdits délais de préavis sont conformes à la Charte (Conclusions XVI-2).
Les délais de 28 et 56 jours prévus par l'article 59, alinéa 1er à 4, de la loi du 3 juillet 1978 ne sont aujourd'hui plus appliqués qu'à titre résiduel. A titre illustratif, certains arrêtés royaux pris sur la base de l'article 61, § 1er, de la loi précitée renvoient à leur application en cas de licenciement en vue de la prépension. La prépension est un système où le travailleur d'un certain âge bénéficie, à la suite de son licenciement, d'allocations sociales et d'une indemnité complémentaire à charge de son ex-employeur. Dans ce cas, la norme qui fixe un délai de préavis en cas de licenciement plus court ne poursuit pas un objectif déraisonnable ou injustifié étant donné que le travailleur âgé accède, directement après l'écoulement du délai de préavis, au système avantageux brièvement décrit ci-avant.
Le Comité doit également être informé des efforts déployés afin d'offrir aux ouvriers une plus grande sécurité d'existence. C'est ainsi que depuis l'entrée en vigueur de la loi du 30 décembre 2009 portant des dispositions diverses, tout ouvrier licencié à partir du 1er janvier 2010, dont le contrat de travail est résilié sans motif grave par son employeur, avec ou sans respect d'un délai de préavis, a droit à une prime forfaitaire de 1.666 euros (Art. 148 et s. de la loi du 30 décembre 2009. Cette mesure a été prolongée jusqu'au 31 décembre 2011 par la loi du 1er février 2011 portant la prolongation de mesures de crise et l'exécution de l'accord interprofessionnel).

2. Situation à partir du 1er janvier 2012 :

Les autorités belges ont, en concertation avec les partenaires sociaux, décidé d'instaurer un nouveau régime de licenciement plus favorable aux ouvriers. Organisé par la loi du 12 avril 2011 modifiant la loi du 1er février 2011 portant la prolongation de mesures de crise et l'exécution de l'accord interprofessionnel (annexée à la présente), il entrera en vigueur le 1er janvier 2012.
Le nouveau régime de licenciement prévoit des règles différentes selon que l'exécution du contrat de travail d'ouvrier a débuté avant ou à partir du 1er janvier 2012.

2.1. L'exécution du contrat de travail a débuté avant le 1er janvier 2012 :

Dans ce cas, les délais de préavis en cas de licenciement sont fixés, soit par ou en vertu des dispositions actuellement en vigueur de la loi du 3 juillet 1978, soit par la C.C.T. n° 75 (*cf.* remarques formulées sous 1) à ce propos).
Le Comité notera toutefois que la sécurité d'existence de l'ouvrier concerné sera renforcée. En effet, en cas de licenciement, celui-ci aura également droit à une allocation de licenciement dont le montant sera de (Art. 40, § 2, de la loi du 12 avril 2011, en vigueur le 1er janvier 2012) :

- 1.250 € si l'ancienneté dans l'entreprise de l'ouvrier licencié est inférieure à 5 ans;
- 2.500 € si l'ancienneté dans l'entreprise de l'ouvrier licencié est d'au moins 5 ans mais inférieure à 10 ans;
- 3.750 € si l'ancienneté dans l'entreprise de l'ouvrier licencié est d'au moins 10 ans.

2.2. L'exécution du contrat de travail débute à partir du 1er janvier 2012 :

Dans ce cas, l'ouvrier licencié bénéficiera de nouveaux délais de préavis plus longs. Ceux-ci ont été déterminés en tenant compte du souhait exprimé par les partenaires sociaux de multiplier par un coefficient de 1,15 les délais de préavis actuellement prévus par la C.C.T. n° 75.
Les nouveaux délais de préavis sont fixés par l'article 12 de la loi du 12 avril 2011 (insérant un article 65/2 de la loi du 3 juillet 1978, en vigueur le 1er janvier 2012) :

Ancienneté dans l'entreprise	Nouveaux délais de préavis (en jours)
< à 6 mois	28
de 6 mois mais < à 5 ans	40
de 5 ans mais < à 10 ans	48
de 10 ans mais < à 15 ans	64
de 15 ans mais < à 20 ans	97
de 20 ans ou >	129

Ces nouveaux délais de préavis ne joueront pas en cas d'application d'un délai de préavis dérogatoire prévu au niveau sectoriel, soit par un arrêté royal pris sur la base de l'article 61, § 1er, de la loi du 3 juillet 1978, soit par une convention collective de travail ou un accord collectif. Ces délais dérogatoires seront donc provisoirement maintenus, la loi mettant néanmoins en place un mécanisme invitant les secteurs à examiner l'opportunité d'adapter ces délais dérogatoires dans la même proportion que celle appliquée aux nouveaux délais de préavis (Art. 13 de la loi du 12 avril 2011 qui insère un article 65/3 de la loi du 3 juillet 1978, en vigueur le 1er janvier 2012).
Tout ouvrier licencié aura également droit à une allocation de licenciement, d'un montant unique de 1.250 € (Art. 40, § 1er, de la loi du 12 avril 2011, en vigueur le 1er janvier 2012).

Annexes [1]:
Loi du 12 avril 2011 modifiant la loi du 1er février 2011 portant la prolongation de mesures de crise et l'exécution de l'accord interprofessionnel.

144. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 4§4 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 4§4 of the Revised Charter on the ground that fifteen days' notice is not a reasonable period of notice for employees with six or more months' service under contract for work in addition to their principal occupation.

145. The representative of Bulgaria said there had been no change in the situation and the Government's standpoint concerning the situation of non-conformity was still the same.

146. In reply to the questions posed by the ECSR in its conclusion as to whether employees were covered by a collective agreement at national level and to the application of provisions of the Labour Code alongside the collective agreements, she provided the following information: the collective agreements referred to employment relationships not governed by law; these agreements, which could not be less favourable than what was laid down by law, concerned specific sectors or branches. There were no collective agreements at national level. The sector or branch collective agreements could be broadened to other sectors or branches with the Government's authorisation. This possibility was increasingly utilised in Bulgaria and was an encouragement to social dialogue.

147. With regard to the situation of non-conformity, the ETUC representative asked for more details concerning "additional work"; in particular, he wished to know whether this corresponded to overtime or to supplementing of part-time work.

148. The representative of Bulgaria replied that this corresponded to additional hours worked.

149. The representative of France asked what was the basis for the ECSR's negative conclusion.

150. Referring to the information contained in Bulgaria's report, the Secretariat pointed out that the contracts in question did not enable the performance of overtime work, but rather concerned work additional to the principal employment contracts. The Bulgarian representative's reply accordingly did not seem to match the information given in the report.

151. The ETUC representative noted that this also seemed to be borne out by the fact that "additional contracts" could also be concluded with employers different from those with with the principal contracts had been entered into. He therefore considered that the issue had not been settled, although the Bulgarian authorities could have seized the opportunity of the recent amendment of the Labour Code to change the provisions and settle this matter.

152. The representative of Bulgaria confirmed that the Labour Code had not been changed with regard to the notice periods for "additional employment".

[1] Le texte est disponible dans le dossier au Secrétariat / Text available at the Secretariat

153. At the Chair's suggestion, the Committee urged the Bulgarian Government to bring the situation into conformity with Article 4§4 of the Revised Charter.

RSC 4§4 ESTONIA

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

- one month is not reasonable notice for employees dismissed because of unsuitability for the post who had five or more years' service;
- two weeks is not reasonable notice for employees dismissed because of long-term incapacity who had one or more year's service.

First and second grounds of non-conformity

154. The representative of Estonia said that, as the ECSR had pointed out in its conclusions, a new law on contracts of employment had been passed by the Estonian parliament on 17 December 2008 (entry into force: 1 July 2009). That law had changed the periods of notice on termination of employment, thus bringing the situation into conformity with Article 4§4 of the Charter.

155. The Committee took note of the positive legislative developments, congratulated the Government on the progress made and looked forward to the next assessment by the ECSR.

RSC 4§4 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 4§4 of the revised Charter on the grounds that two months is not reasonable notice for employees with more than fifteen years service.

156. The representative of France said that in cases of termination of employment the Labour Code (Article 1234-1) provided for a minimum of three months' notice when the employee's length of service was more than two years. This minimum period applied only if no law, contract of employment, collective agreement or custom provided for a period of notice or a length or service condition more favourable for the employee.
The employer and the employee were required to comply with that period of notice. If the employer failed to comply, the employee received compensation; if the employee requested that the period be waived, the employer was not obliged to agree. If the employee ignored a refusal to agree to a waiver, he or she was in breach of contract, thus entitling the employer to compensation. The requirement to give notice, designed to protect the employee, could thus be unfavourable if he or she found another job and the employer did not agree to waive it. For that reason, it was not necessarily a good thing for the period of notice to be too long.

157. The representative of France added that that question was first and foremost a direct collective bargaining matter. In certain sectors, the social partners had, incidentally, already provided for longer periods of notice than the statutory minimum. More generally, the social partners in France, called upon to hold negotiations on the modernisation of the employment market in 2008, especially "on the breach of contract provisions intended to strike a balance between the guarantee of employees' individual rights and the need for a company to safeguard its procedures", had not wanted to change the rules on periods of notice. The French provisions focused more on the payment of severance compensation, which increased substantially the longer the employee's length of service – it was at least equal to 3.6 months' pay for 15 years' service – than on continuing the employment

relationship for too long. Pursuant to Article L1 of the Labour Code, the social partners should be notified in advance of any change in the law on the subject.

158. She also pointed out that the period of notice of two months had never been challenged and that, moreover, it was considered "reasonable" under ILO Convention 158.

159. At the Chair's request, the Secretariat referred to the ECSR's decisions on severance compensation and pay received in lieu of notice.

160. The representative of Lithuania proposed that a vote be taken on issuing a warning to France. The representative of Turkey supported the proposal and pointed out that periods of notice were also established in the interests of the employers.

161. The representatives of Estonia and the Czech Republic thought that the proposal to issue a warning was unjustified.

162. The representative of the ETUC believed that the situation in France was different from the situation in the Czech Republic and that it was moving in the right direction. In view of the positive trend, the adoption of a warning would, in his opinion, be a disproportionate measure.

163. The representative of the IOE shared the ETUC's view. As noted by the Committee, as a result of Law No. 2008-596 of 25 June 2008 on the modernisation of the labour market there had been an improvement concerning employees' entitlements to severance pay: the law had doubled the statutory benefit payable to the employee where the contract was terminated on the initiative of the employer.

164. In the light of the debate, the Chair then asked the Committee to vote on whether to issue a warning to France. The warning was rejected with 6 votes in favour, 26 against and 1 abstention.

165. The representative of France asked why the ECSR had in the past considered that a period of notice of 120 days was reasonable in the case of Greece. The Chair thought that this question could be discussed at one of the next meetings of the joint ECSR-Governmental Committee Bureaux.

RSC 4§4 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 4§4 of the Revised Charter because the Labour Code does not specify any period of notice for termination of employment nor does it make any provision for a reasonable period of notice for employees during their probationary period.

166. The representative of Georgia provided the following information in writing:

- **Reasonable Period of Notice**

According to Georgian Labor Code, in case of termination of employment, employer is obliged to give **at least a one-month pay if higher payment is not envisaged by the agreement between parties.** At the same time, employee is not obliged to work during this 1 month. This gives possibility to the employees to absent themselves from work during their notice period to look for fresh employment.

According to the above-mentioned, the Labor Code stipulates notification and severance payment and employee is not obliged to work during the period after notification.

As for the Committee statement that one month's salary is unreasonable in the case of employees with more than six months' service, the following GoG arguments should be taken into account:

• The Labour Code gives possibility higher payment than one month's salary if it is envisage by the labour agreement.
• The Revised Social Charter does not set-up different amounts for severance pay based on work experience. Accordingly, the GoG asks to the Committee to specify the source in this regard.

- **Probationary Period**

The GoG asks to the Committee to specify the source regarding compensation which should be given to employee during the probationary period.

This issue could be discussed under the Tripartite Partnership Social Commission.

- **Public Service**

According to the Law on Public Service, a period of notice of one month and compensation equivalent to two months' salary in the event of termination of employment applies to all public officials without distinction, including those serving probationary periods and those working part time.

- **Immediate Dismissal**

The Labour Code does not envisage exception to the principle of notice concerns in case of immediate dismissal for serious offences.

The Labor Code envisages notification and severance payment and employee is not obliged to work during the period after notification.

- **Employees' absence to seek new employment**

As it was mentioned above, according to Georgian Labor Code, in case of termination of employment, employer is obliged to give at least a one-month pay if higher payment is not envisaged by the agreement between parties. **At the same time, employee isn't obliged to work during this 1 month. This gives possibility to the employees to absent themselves from work during their notice period to look for fresh employment.**

Conclusion

The situation in Georgia is in conformity with Article 4§4 of the Revised Charter as the Labor Code stipulates notification and severance payment and employee is not obliged to work during the period after notification. This gives possibility to the employees to absent themselves from work during their notice period to look for fresh employment.

167. The Governmental Committee invited the Government of Georgia to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 4§4 ITALY

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

- in textile, private metal-working and mechanical industries as well as food-processing sector, one week's notice is not reasonable period of notice for any worker whether or not he or she has completed six months' service;
- in private metal-working and mechanical industries sector, nine days' notice is not a reasonable period of notice for workers with five to ten years' service;
- in private metal-working and mechanical industries as well as food-processing sector, twelve days' notice is not a reasonable period of notice for workers with more than fourteen years' service.
- in textile sector, two weeks' notice is not a reasonable period of notice for workers with more than six month's service;

- in textile, private metal-working and mechanical industries as well as food-processing sector, one month's notice is not a reasonable period of notice for workers with five or more years' service.

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

168. The representative of Italy said that the period of notice was laid down in the collective agreements of the sectors concerned on the basis of the workers' length of service and the occupational categories to which they belonged. With regard to the aforementioned sectors, the periods of notice applied to workers who had successfully completed their probation and the periods which the ECSR considered too short concerned only some of the workers in each sector.
With respect to the textile industry, the representative of Italy pointed out that, compared with 2009, the collective agreement concerned had been amended and improved (cf. Article 108 of the collective agreement [CCNL] of 2 September 2010) and currently provided that periods of notice could not be less than one month (with a minimum of one month for level 1, 2, 3 and 4 workers with up to five years' service and a maximum of four months for level 7 and 8 workers with more than ten years' service).
As far as the cases of non-conformity identified by the ECSR were concerned, the collective agreement in question now provided that:

1) no worker could be given only one week's notice;
2) workers with more than six months' service were entitled to between one and four months' notice;
3) workers with five years' service or more were entitled to between one and a half and three months' notice.

In view of the foregoing, the representative of Italy was of the opinion that the situation in the Italian textile sector was now in conformity with Article 4§4 of the Charter.
With regard to the metal-working industry, the representative of Italy said the collective agreement applicable was still that of 2008.
On that basis, the periods of notice ranged from a minimum of seven days for workers belonging to level 1 with up to five years' service to a maximum of four months for workers belonging to levels 6 and 7 with over ten years' service.
As far as the cases of non-conformity identified by the ECSR were concerned, the collective agreement in question provided in particular for:

1) only one week's notice for level 1 workers with up to five years' service;
2) two weeks' notice for level 1 workers with a total of between five and ten years' service; 20 days' notice for level 2 and 3 workers with a total of between five and ten years' service; three months' notice for level 2 and 3 workers with a total of between five and ten years' service;
3) twenty days' notice for level 1 workers with over ten years' service; one month's notice for level 2 and 3 workers with over ten years' service; two months and two weeks' notice for level 4 and 5 workers with over ten years' service; four months' notice for level 6 and 7 workers with over ten years' service;
4) two weeks' notice for level 1 workers with five years' service or more; twenty days' notice for level 2 and 3 workers with five years' service or more; two months' notice for level 4 and 5 workers with five years' service or more; three months' notice for level 6 and 7 workers with five years' service or more.

With regard to the food-processing industry, the representative of Italy said that workers were divided into three different categories: *impiegati* (employees), *intermedi* (intermediaries) and *operai* (manual workers). According to Article 72 of the collective agreement (CCNL) signed on 22 September 2009, the periods of notice ranged from a minimum of six days for *operai* with up to four years' service to a maximum of four months for first-level *impiegati* with more than ten years' service.

In particular, the aforementioned CCNL provided for the following periods of notice:

1) only six days for *operai* with no more than four years' service (in no other case were the periods of notice one week or less).
2) Sixty days for *intermedi* with over ten years' service; 2 months and 45 days for *impiegati* with more than ten years' service;
3) 45 days for *intermedi* with between five and ten years' service.

169. The representative of Norway expressed her surprise that the determination of periods of notice was regulated by means of collective agreements and not through the law and asked for explanations.

170. The representative of Italy explained that the law laid down the general principle of the right to a period of notice. Consequently, if that right was not upheld the worker concerned was entitled to compensation. As each sector had its own specific characteristics, the aforementioned principle was adapted to different situations by means of collective agreements.

171. The representative of the Czech Republic thought Italy had not brought the situation into conformity and pointed out that the situation of non-conformity, which had existed since 1970, had already led to a Committee of Ministers recommendation and resolution. It was therefore unacceptable for conformity with the Charter to be dependent in practice on collective agreements.

172. The representative of Italy said the government was constantly ensuring that the social partners were made aware of the question of periods of notice so that they took account of them in their negotiations. She pointed out to the Committee that the situation of non-conformity in the food industry sector mainly involved seasonal workers.

173. The representative of the Czech Republic asked what happened when workers and/or businesses did not belong to any union. The representative of Italy replied that in that case the provisions of the sector's collective agreement had to be applied in any event and that the courts could impose penalties for any situation of non-compliance. In that connection, she emphasised that the collective agreements, which provided for minimum periods, were legally binding.

174. The representative of Norway thought the system described by the representative of Italy had several weaknesses and that the situation should be the subject of a new recommendation. In that connection, the Chair reminded the meeting that the Committee of Ministers' recommendation of 1995 was still valid, a point that should be reiterated since the situation was still not in conformity with the Charter.

175. The representative of Turkey asked how much influence the government had on negotiations leading to collective agreements to ensure that the social partners undertook to comply fully with the Charter. The representative of Italy replied that this was a political issue.

176. In the light of the Chair's proposals, the Committee took note of the positive developments concerning the collective agreement relating to the textile industry sector, reminded the participants that Resolution ResChS(2004)3, renewing Recommendation RChS(95)7 to Italy, remained valid and, with regard to drawing up future collective agreements, urged the Government to take the appropriate measures to bring the situation

into conformity with Article 4§4 of the Charter, including in the food processing industry sector.

RSC 4§4 MALTA

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

- one week notice is insufficient for employees with less than six months' service;
- two weeks notice is insufficient for employees with more than six months' service;
- four weeks notice is insufficient for employees with three to four years' service.

First, second and third grounds of non-conformity

177. The representative of Malta said the situation had not changed and no changes were planned.

178. In view of the situation, the Committee adopted a warning to Malta with 21 votes in favour, 3 against and 8 abstentions.

RSC 4§4 REPUBLIC OF MOLDOVA

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

- one month notice is not sufficient for workers with at least five years' service;
- two months' notice is not sufficient for workers with more than fifteen years' service.

179. The Representative of the Republic of Moldova provided the following information in writing:

First and second grounds of non-conformity

Les délais de préavis en cas de cessation du contrat individuel de travail sont prévus dans le Code du Travail.

En vertu de l'article 184 du Code, l'employeur est obligé à donner un préavis au salarié (par ordre, disposition, décision), contre signature, concernant son intention de résilier le contrat individuel de travail conclu pour une durée indéterminée ou déterminée, en respectant les délais suivants:

a) deux mois - en cas de licenciement dû à la liquidation de l'entreprise ou la cessation de l'activité de l'employeur-personne physique, la réduction du personnel dans l'entreprise (art.86 al.(1) lit.b) et c));

b) un mois – en cas de licenciement au motif que le salarié ne correspond pas à sa fonction ou à son poste en raison de son état de santé, conformément au certificat médical y afférent, ou en raison d'une qualification insuffisante confirmée par la décision de la commission d'attestation (art.86 al.(1) lit.d) et e)).

En cas de réduction du personnel, seuls les personnes dont les postes seront supprimés reçoivent un préavis. Pendant la période de préavis le salarié qui sera licencié bénéficie des mêmes conditions de travail existantes au moment du préavis ; un jour ouvrable par semaine au moins lui est accordé (en maintenant le salaire moyen) pour la recherche d'un nouvel emploi. Le délai de préavis n'inclut pas la période pendant laquelle le salarié se trouve en congé annuel de repos, en congé d'études ou en congé médical.

En cas de cessation d'un contrat individuel de travail à durée déterminée, l'employeur doit informer le salarié au moins dix jours ouvrables avant l'expiration du contrat (art. 83 du Code du Travail). Le contrat individuel de travail à durée déterminée conclu pour la période d'exécution des obligations du salarié dont le contrat individuel de travail est suspendu (art. 55, lit.a)) cesse le jour du retour au travail du salarié.

En cas de cessation d'un contrat individuel de travail conclu avec l'administrateur de l'entreprise, fondée sur un ordre, une disposition, une décision de l'organe habilité ou du propriétaire de l'entreprise (art. 263, lit. b)), le salarié reçoit un préavis écrit un mois avant l'expiration du contrat (sauf en cas d'actions ou d'omissions fautives).

En ce qui concerne les salariés travaillant sur la base d'un contrat individuel de travail allant jusqu'à deux mois, l'employeur est obligé de leur adresser un préavis (par ordre, disposition,

décision), contre signature, concernant la cessation du contrat au moins trois jours calendaires avant l'expiration dudit contrat (art. 278 (2) du Code du Travail).
En cas de cessation d'un contrat individuel de travail à durée déterminée relatif à des travailleurs saisonniers, ou à des salariés travaillant pour des employeurs-personnes physiques, l'employeur est obligé d'adresser aux travailleurs concernés un préavis, contre signature, concernant la fin du contrat au moins sept jours calendaires avant son expiration (art.282, al. (2) et art. 287, al. (2) du Code du Travail).
En cas de licenciement, les délais de préavis des salariés des associations religieuses, ainsi que les modalités et les conditions d'octroi des garanties et des compensations, sont établis dans le contrat individuel de travail.
Si les conventions collectives, les contrats collectifs et/ou individuels de travail ne le prévoient pas, les salariés faisant partie d'autres catégories ou qui sont licenciés pour d'autres raisons que celles mentionnées ci-dessus ne bénéficient pas d'une période de préavis. Les conventions collectives, les contrats collectifs et individuels de travail ne peuvent pas prévoir des périodes de préavis plus courtes que celles prévues dans le Code du Travail.
Conformément à la législation nationale, les délais de préavis ne sont pas établis en fonction de l'ancienneté dans l'entreprise. En vertu de l'art. 183 du Code du Travail, les salariés ayant une ancienneté importante bénéficient du droit préférentiel pour le maintien de l'emploi en cas de réduction du personnel si leurs qualifications professionnelles ou leur productivité sont égales à celle d'autres salariés.

180. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 4§4 NETHERLANDS

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

- its legislation does not require any notice of termination of employment to be given during the probationary period;
- the reduction of the notice period to a minimum of one month under collective agreements is unreasonable in the case of employees with five or more years' length of service

181. The representative of the Netherlands provided the following information :

The Dutch government disagrees with the Committee on both accounts.
First of all: in the Charter there is no rule of law which stipulates that the length of the period of notice should be in accordance with the employees' length of service.
Therefore under the Dutch legislation, collective labour agreements are authorised which contain reductions in notice periods to at least one month. One month is in general considered to be a reasonable period of notice and in accordance with the Charter.
Secondly, as far as the probation period is concerned, the Dutch government is of the opinion that during this short period a notice period is not in order. The probation period is a short period not exceeding 2 months, during which both employer and employee have the opportunity to get to know each other. During this period the employee can judge if the new job is suitable for him/her. And the employer can judge if the new employee is suitable for the job. During this probation period each of the parties concerned can end the agreement without having to comply with the rules which normally have to be taken in account before giving notice. The obligation to take into account a period of notice even when notice is given during the probation period would not be in accordance with the character and duration of the probation period.
According to the Dutch government article 4 paragraph 4 should be interpreted accordingly. This leads to the conclusion that the Netherlands are convinced that the legislation and policy practice in the Netherlands are in compliance with article 4§4.

182. In reply to a question from the Chair, the representative of the Netherlands stated that the Government's position had never been discussed directly with the ECSR.

183. Italy's representative considered that, in most cases, the notice period depended on the substance of the collective agreements and, as a general rule, governments did not intervene to bring about changes in agreements which satisfied the parties concerned. In this connection, she observed that, sometimes, a situation that the ECSR deemed unreasonable was perceived as reasonable by the parties concerned at national level.

184. While concurring with the Italian representative's views, the ETUC representative observed that Article 4§4 of the Charter referred to all workers, including - as the ECSR had specified - workers during their probationary period.

185. The representative of the Netherlands said that, in his country, what was laid down in the collective agreements was accepted by all the parties concerned: employers and employees.

186. The representative of Turkey said it was inappropriate to bring up the case-law of the ECSR. The latter committee was entitled to interpret the provisions of the Charter and the states must abide by its conclusions. Questioning the ECSR's conclusions would impede the operation of the Charter's supervisory mechanism.

187. In view of these considerations, the Chair proposed that the Committee take note of the information provided by the representative of the Netherlands and that an exchange views on the subject between the ECSR and the Government of the Netherlands be organised.

188. The representative of Norway reverted to the finding of non-compliance for lack of a period of notice during the probationary period and proposed that a vote be held on a warning to the Netherlands.

189. The Chair considered that the Committee should merely take note of the information and await the outcome of the exchange of views with the ECSR.

190. The ETUC representative supported the proposal to vote on a warning to the Netherlands concerning the situation of non-compliance for lack of a period of notice during the probationary period.

191. The Chair proposed that the vote concern a warning regarding the fact that the reduction of the notice period to a minimum of one month under collective agreements was unreasonable in the case of employees with five or more years' length of service.

192. The representative of Poland pointed out that the Norwegian representative's proposal to issue a warning to the Netherlands concerned the situation of non-compliance in that the Netherlands' legislation did not require any notice to be given during the probationary period.

193. France's representative proposed voting on a warning concerning both grounds of non-compliance.

194. In view of the above, the Chair put to the vote:

a) a warning on the lack of a period of notice during the probationary period. The warning was not adopted (10 votes for, 17 against, 14 abstentions);
b) a warning on the reduction of the notice period under the collective agreements. The warning was not adopted (12 votes for, 8 against, 18 abstentions);

195. At the Chair's suggestion, the Committee called on the Netherlands Government to take appropriate steps to bring the situation into conformity with Article 4§4 of the revised Charter. In particular, the Committee asked that all workers should benefit from a period of notice of termination of employment, including during their probationary period.

RSC 4§4 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 4§4 on the ground that fifteen days' notice is insufficient for employees with over six months' service.

196. The Representative of Portugal provided the following information in writing:

> The Labour Code (CT) was revised by Law nº 7/2009, 12/02/2009 and the new regime will be described in the next report.
> It should be stressed that the collective redundancy procedure is highly formal and includes 3 main phases: (i) communication, (ii) information and negotiation and (iii) final decision (art. 360.º, 361.º e 363.º CT); this can take some additional time further to the delay defined by law.
> According to the new Law in case of collective redundancy the employer is obliged to communicate the decision of termination of the employment contract at last 15 days prior to the date of termination (al. a), nº 1, art. 363º CT).
> In parallel, the employer communicates his/her intention of dismissal, by written procedure, to the workers' commissions/ workers' representatives/ employee. These representatives / employee can designate a representative commission (3 to 5 persons) within 5 days after receiving the communication (nº 3, art. 360.º do CT).
> After this period, the employer starts the information and negotiation phase in order to achieve an agreement about the scope and effect of the measures to be put in place.
> The competent services of the ministry responsible for labour shall take part in the negotiating process in order to guarantee the substantive and procedural conformity with the regulations and the reconciliation of the interests of the parties (n.º1, art. 362.º CT).
> When the agreement is reached or 15 days after the communication to the employee representatives / employee, the employer shall communicate the final decision, by written procedure, within a 15 days noticed period if the employee has less than 1 year service ((a), nº 1, art. 363.º CT].
> During the period for prior notice, the worker has the right to use a time credit corresponding to two days of work per week, without prejudice to his/her pay.
> *The notice periods can be longer if they are established by collective labour agreement.*
> *The Portuguese authorities consider therefore that Portuguese law is in conformity with the Revised European Social Charter.*

197. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 4§4 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 4§4 of the Revised Charter on the ground that the notice period is too short for employees with over six months' service.

198. The representative of Romania said that a number of amendments to the Labour Code had been introduced. In that connection, the amending legislation, which had come into force on 1 May 2011, had increased the periods of notice in the event of a contract of employment being terminated for reasons over which the worker had no control.
She also pointed out that the periods of notice for workers in the aforementioned situation were the minimum required and the parties could agree on longer periods.

199. With regard to periods of notice for civil servants, the representative of Romania pointed out that Section 99(3) of Law No. 188/1999, as amended, provided that when an employee resigned the public institution concerned was obliged to respect a period of notice of 30 days.

200. The Committee took note of the changes described by the representative of Romania and decided to await the next ECSR assessment.

RSC 4§4 SWEDEN

The Committee therefore concludes that the situation in Sweden is not in conformity with Article 4§4 of the Revised Charter on the ground that certain workers under 30 with five or more years' service are granted only one month's notice of termination of employment.

201. The representative of Sweden provides the following information :

> Sweden is pleased to inform (the Governmental Committee) that the situation, referred to, no longer exists. The clauses in the relevant collective agreements (that is, in the painting industry sector and the metal working industry sector) have been changed. The agreement for the metal working industry was changed over 10 years ago and the agreement for the painting industry was changed in April 2010.
> According to the new agreements, all employees regardless of age are entitled to the same notice period for termination of employment; the notice period for termination of employment is now based solely on the length of service. The current agreements correspond to the Swedish Employment Protection Act (*Lagen om anställningsskydd*, LAS) in this regard. The collective agreements thus ensure the right to a fair remuneration; recognizing the right of all workers to a reasonable notice period in cases of termination of employment.
> Information on the metal working industry agreement was provided in the 9th national report and noted by the European Committee on Social Rights in its Conclusions 2010. Further information regarding the changed agreement in the painting industry will be included in Sweden's next relevant national report.
> To conclude, to the Government's knowledge, there is today no collective agreement left, which is not in conformity with Article 4§4 of the Revised European Social Charter. The criticised agreements have been amended so as to follow the terms specified in the Employment Protection Act, and are now in conformity with Article 4§4 of the Charter.

202. At the Chair's suggestion, the Committee took note of the positive developments described by the representative of Sweden and decided to await the ECSR's next assessment.

RSC 4§4 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 4§4 because eight weeks' notice is not reasonable in the case of employees who have been working in the same company for fifteen years or more.

203. The Representative of Turkey provided the following information in writing:

> Les informations relatives à la législation nationale concernant le droit à un délai de préavis en cas de cessation de l'emploi et aux mesures à prendre afin de mettre la législation en conformité avec l'article 4§4 figurent ci-après.
> **1- La situation de non-conformité**
> Le Comité européen des Droits sociaux (CEDS) a examiné en 2010 notre deuxième rapport national sur l'application de la Charte sociale européenne révisée et il a conclu que la situation de notre pays n'est pas conforme à l'article 4§4 au motif qu'un préavis de huit semaines pour les travailleurs justifiant de quinze ans ou plus d'ancienneté dans la même entreprise - prévu dans l'article 17 de la Loi sur le Travail no : 4857 - n'est pas raisonnable.
> Selon la conclusion du CEDS, afin de mettre notre situation en conformité avec la Charte sociale européenne, il est nécessaire de modifier les dispositions de l'article susmentionné afin que le préavis soit supérieur à huit semaines pour les travailleurs justifiant de quinze ans ou plus d'ancienneté.
> **2- La législation nationale relative au délai de préavis**
> Les articles 15, 17, 25 et 27 de la loi sur le travail n° 4857 se réfèrent au droit de préavis garanti par l'article 4§4 de la Charte révisée.

a) L'article 15 intitulé « Le contrat de travail prévoyant une période d'essai ».
Si une période d'essai est prévue dans le contrat de travail, elle ne peut dépasser deux mois ; elle peut aller jusqu'à 4 mois si des conventions collectives de travail le prévoient.
Pendant la période d'essai, les deux parties peuvent mettre fin au contrat de travail sans préavis ni indemnité. Le travailleur conserve son droit à la rémunération pour les jours travaillés et les autres droits acquis.
b) L'Article 17 intitulé « La résiliation anticipée du contrat de travail ».
Le paiement des indemnités de préavis est régi par cet article qui prévoit, d'une part, que les parties sont tenues de notifier leur intention de mettre fin au contrat de travail à durée indéterminée avant sa résiliation, et, d'autre part, que la partie qui ne respecte pas les délais de préavis, allant de deux à huit semaines selon la durée du service, est tenue de payer une indemnité compensatrice égale à la somme des salaires correspondant à la durée totale du préavis.
L'article 17 établit un délai minimal de préavis en cas de cessation d'emploi. Ce délai peut être prolongé par des contrats individuels et des contrats collectifs.
La partie qui ne respecte pas la règle de notification est obligée de payer une indemnité égale à la somme des salaires correspondant à la durée du préavis.
c) L'article 25 intitulé « Le droit de licenciement immédiat par l'employeur pour motifs justifiés ».
Cet article précise les cas pour lesquels l'employeur peut résilier immédiatement un contrat de travail à durée déterminée avant son terme et les contrats à durée indéterminée sans préavis.
d) L'article 27 intitulé « Congé pour la recherche d'un nouvel emploi »
Pendant la période de préavis, le travailleur est autorisé à s'absenter deux heures par jour - avec maintien de sa rémunération - pour rechercher un nouvel emploi. Si le travailleur donne son accord, ces deux heures peuvent être cumulées et prises en une seule fois. Si l'employeur ne respecte pas ce droit, une somme correspondante au congé en question est payée au travailleur.
Si l'employeur fait travailler le salarié pendant son congé pour la recherche d'un nouvel emploi, il est tenu de verser au salarié la rémunération correspondant aux heures travaillées avec une majoration de 100%.
3- Mesures prévues pour la mise en conformité
Afin de mettre notre législation nationale en conformité avec la Charte sociale européenne, une réunion d'évaluation a eu lieu le 30 juin 2011 au Ministère du Travail et de la Sécurité sociale, avec les partenaires sociaux et les représentants de l'Administration publique concernée du Ministère susmentionné.
Lors de la réunion, les participants ont été informés du mécanisme de contrôle de la Charte sociale, des rapports nationaux, de l'article 4§4 et de la décision de non-conformité du CEDS concernant l'application de cet article dans notre pays. Les participants ont également échangé des avis et discuté des propositions quant aux mesures à prendre afin de rendre notre législation nationale conforme à la Charte.
Les représentants des confédérations de syndicats des travailleurs de TÜRK- İŞ et DİSK se sont exprimés en faveur de la révision de la loi sur le travail n° 4857 afin que les délais de préavis soient conformes à la conclusion du CEDS.
Le représentant du syndicat d'employeurs TİSK s'est opposé à toute modification du délai de préavis, en insistant sur le fait que les délais actuels sont suffisamment longs dans notre pays et que la prolongation de ces délais aurait des effets néfastes sur la croissance, l'emploi et la compétitivité des entreprises.
Le gouvernement turc prendra dûment en compte, dans les projets de loi d'amendement du Code du Travail, la conclusion du CEDS sur la non-conformité des dispositions de la législation nationale relatives au droit de préavis, notamment l'article 17 mentionné ci-dessus, ainsi que les demandes des partenaires sociaux et les conditions socio-économiques du pays.

204. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 4§4 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§4 of the Revised Charter because two months notice is insufficient for workers with ten or more years' service.

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

> The situation has not changed since Conclusons (2010). It should be noted that the Ministry of Social Policy has approved an order establishing an inter-ministerial working group to take measures to bring the situation into confirmity with Article 4§4.
> The information will be provided in next report.

206. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 4§5 - Limits to deduction from wages

RSC 4§5 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 4§5 of the Revised Charter on the ground that it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

207. The representative of Albania provided the following information:

> The payment of salaries in the Republic of Albania is guaranteed by law. The salary shall be paid in Albanian currency with the exception of cases when parties decide differently in the agreement. (Article 118, point 1, of the Law no 7961, dated 12.07.1995 (as amended) “Labour Code of the Republic of Albania). The salary shall be given by the employer recurrently every two weeks if salary is calculated based on hours, days or weeks and at the end of each month, if it is calculated in months. An exception consists only in those cases when parties decide differently in written agreement (point 1, Article 116, the Law no 7961, dated 12.07.1995, “Labour Code of the Republic of Albania”, as amended).
> The employer may subtract from the salary of employees only the income tax and social and health insurance contribution, provided for by law, by-law acts, collective contracts or individual contracts. (Point 1, Article 117, the Law no 7961, dated 12.07.1995, “Labour Code of the Republic of Albania”, as amended).
> In the event of delayed payment, the annual percentage of interest in the event of delay is not less than 10% the outstanding amount and under all circumstances not less than 150% of the inflation during the delay period. (Article 120, the Law no 7961, dated 12.07.1995, as amended).
> The salary shall be considered to be untouchable to the extent that it is necessary to ensure the living for the employees and their families. The untouchable salary shall be set out on case basis by the court. The court shall, in its decision take account of the necessary expenses for food, rent, clothing, as well as fiscal obligations for mandatory social insurance of the employee and his family. Upon the court deciding that it does not find it possible to evaluate all the elements needed to set out the untouchable salary, this shall be equal to the minimal salary at country scale, determined by CMD (Article 123, the Law no 7961, dated 12.07.1995, as amended).

208. The Committee took note of the information and asked the Government to provide relevant information in the next report and decided to await the next assessment of the ECSR.

RSC 4§5 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 4§5 of the revised Charter on the ground that it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

209. The representative of Armenia informed the Committee of the new legislation enacted (amendments to the Law on Minimum Monthly Salary). Besides, according to her,

new amendments to the Labour Code were being discussed which also concerned deductions from minimum salary.

210. The Committee took note of the information and asked the Government to provide relevant information in the next report and decided to await the next assessment of the ECSR.

RSC 4§5 ITALY

The Committee concludes that the situation is not in conformity with Article 4§5 of the Revised Charter on the ground that it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

211. The representative of Italy made the following statement:

> We shall take into account the observations in the 2010 Conclusions of the European Committee of Social Rights about article 4 paragraph 5 and to this end to confirm what has already been represented in the previous report of the Italian Government, we shall closely observe the Italian situation again concerning the above subject.
> In this regard, it is useful to reiterate here that Article 36 of the Italian Constitution confirms that "The worker is entitled to a remuneration proportional to quantity and quality of his work and in all cases sufficient to ensure to himself and his family a dignified and free existence. "
> This article contained in the Constitution binds the ordinary law that cannot depart from it and must be interpreted in twofold meanings: one in positive order and the other one in negative order. As regards to the first one, we shall observe that an immediate effect of the now recalled constitutional disposition is to bind the ordinary law, the bargaining and every other source that disciplines the matter of which it is dealt with, to a positive aim that makes the retribution not inferior to that threshold that allows the worker and his family to live a dignified and free existence.
> As to the second meaning (the negative one), we shall remember that if we put a limit to the concept now being expressed, we will be facing a rigidly formalistic interpretation and application of Article 36 of the Constitution, which would betray the spirit, since it is true that the employee must be paid a salary that has the listed characteristics above, it is equally true that if the state did not forbid the remuneration so as to deduct more than the threshold a constitutional guarantee, the spirit of the rule would in fact be rejected.
> However, this may not happen, where the article 36 of the Constitution is only (positively) binding but the payment of wages and at the same time serves as a negative embankment to those institutions (eg. a distraint) in which a decrease of earnings is likely to deprive them from their constitutional function.
> That said, we shall observe that, as we have already pointed out in the previous report of the Italian Government, the reference norm in Italy is contained in the DPR (Decree of the President of Republic) January 5 1950, n.180, and subsequent amendments, in the “Unified Body of Laws of the concerning laws the confiscation, the seizure, and the cession of the wages, salaries and Public Administration dependents pensions”, in the article 545 of the code of civil procedure and some contained dispositions in the special law. These standards set objective limits resulting in the attachment of debts with other people.
> Moreover, the European Committee of Social Rights in the 2010 Conclusions asked how other types of debts such as taxes, debts to be paid to the employer or to the State shall be treated in practice and how a minimum income to the employees shall be guaranteed.
> The general principle previews that all the wages (including wages, pensions, subsidies, etc.),are subject to seizure and distraint within the following limits:
> 1) up to the third of assessed net of withholding taxes, food maintenance due by law;
> 2) to the extent of one fifth of the estimated net of deductions for amounts payable to the State and to other organizations, companies and businesses which depend on the debtor, arising from the relationship of employment or work;
> 3) to the extent of one fifth of the estimated net of deductions for taxes due the State, the provinces and common, being borne up by their origin, clerk or employee;
> 4) The amounts due from individuals through a salary, wages or other benefits related to employment or employment, including those due to redundancy may be foreclosed for maintenance payments to the extent authorized by the presiding judge or by a judge appointed by him.

The attachment for the simultaneous competition of the listed causes above cannot exceed half the amount of the sums above. The other limitations contained in special legislation do stay the same in any case.
In addition to this according to the Code of Civil Procedure which rules the Civil Process, the debtor's have the right to demand a reduction in seizure made by different people and a proportional reduction for each distraint or even the declaration of non validity for some distraint.
Regarding the distraint of pensions, the Constitutional Court in sentence no 506/2002, lays down the absolute defence of distraint for that part of the pension, which allowance to ensure the appropriate resources to the needs of senior life and permits the distraint the limits for the remaining part of the pension within the limits of the fifth.
Applying this principle in case law, the amount of the pension which is absolutely no to be attacked have been identified as the "monthly minimum treatment", which should ensure the pensioner the "minimum subsistence", and this threshold has been detected in the amount of so-called social pension (See Court of Nola 02/12/2009, Court of Siena 11/01/2008).
To be more complete, we consider that is the judge in the exercise of this own powers who can better than anybody else considerate the concrete reasons of the debtor and the creditor. In particular, it is true the exam of the concrete situation of the debtor that the judge can establish how much he can pay taking in due account the Constitutional principle and the basic need of the workers to provide for themselves and their dependents. (See Court of Bari, Sec. II, 21/03/2006).
As illustrated above, although the Italian legislation does not provide explicit rules that stipulate a minimum amount of salary or pension not to be attacked, we believe that the system has within itself a series of rules and institutions that do not permit an attack of salaries and which is able to reduce them below the minimum threshold, in order to ensure the subsistence of the worker and its dependents.
Indeed, the lack of a rigid monetary parameter is a useful circumstance to allow an evaluation of individual situations, according to the constitutionally principle, in order to prevent an excessive curtailment of workers' livelihood.

212. The Chair observed that there had been no change in the legislation and the Government's contribution only aimed at clarifying the current situation.

213. The representative of Czech Republic considered that the situation of non-conformity had lasted considerably long and proposed that another warning be issued.

214. The Chair proposed to reiterate the warning adopted in the previous cycle, having noted, however, the information provided, and to await the next assessment of the ECSR.

215. The representative of ETUC pointed out that the ECSR had requested information as to what the situation was in practice; he suggested that the ECSR might have wished to know the case-law on the matter.

216. The Secretariat confirmed that by requesting information on practice the ECSR wished to receive examples of the case-law demonstrating how the relevant legislation was interpreted by national courts.

217. The representative of Italy underlined that the constitutional principle always prevailed and her intention was to describe how it was interpreted by the courts. She stressed that the worker's and his family's right to the minimum level of subsistence was respected but it was difficult to provide examples because the courts examined such situations on a case by case basis.

218. The Chair noted that whenever the workers' subsistence was not guaranteed they were obliged to prove it before the Italian court. She observed that the court proceedings may be lengthy and in the meantime the worker may not have enough income to live in dignity. She suggested that the Government provide concrete examples of court decisions and proposed that a warning be reiterated.

219. The representative of France disagreed with the proposal; she suggested that either a new warning should be voted or no action should be taken.

220. The representative of the Czech Republic inquired whether the person who brought a court action had to live on a reduced wage until the court issues a decision.

221. The representative of Italy replied that the situation varied depending on the character of the debt; for example in cases of tax debt the debtor may request the State authority to pay in instalments. She also explained that the court procedure in such cases was faster.

222. The Chair requested the Government to provide detailed information on how this procedure worked in practice in the next report. She observed that the situation has not changed and was therefore still not in conformity with the Charter.

223. The Committee took note of the information provided and urged the Government to provide all relevant information in the next report. It decided to await the next assessment of the ECSR.

RSC 4§5 LITHUANIA

The Committee concludes that the situation is not in conformity with Article 4§5 of the Revised Charter on the ground that, in some cases, salaries of workers after deductions will not ensure means of subsistence for themselves and their dependants.

224. The representative of Lithuania joined the representative of Poland concern as regards the general character of the ECSR's Conclusion and expressed her wish for more detailed reasons. She reiterated that the Lithuanian legislation provided that deductions from wages could not exceed 20%. Only in exceptional cases, if they concerned compensation to the victim of a criminal act, the deductions could go up 50%. Furthermore, 70% may only be deducted from the surplus above the minimum monthly wage. She stressed that such deductions were considered to be the last solution, they may only be ordered by the court to compensate damage and the courts always take into consideration the interests of all parties.

225. The Committee took note of the information provided; it underlined the importance of this provision and decided to await the next assessment of the ECSR.

RSC 4§5 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 4§5 of the revised Charter on the ground that it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

226. The representative of Malta provided the following information:

> It should be noted that except where expressly permitted by the provisions of the Employment and Industrial Relations Act or required by any other law or where ordered by or in virtue of an order of a competent court, or permitted in an agreement entered into between an employer and a trade union, all deductions from wages are to be made at the request in writing of the employee.
> An employer can deduct fines from the wages of an employee only if such fines have been stipulated in the contract of service of the employee and that the employer has sought and obtained the approval of the Director of Industrial and Employment Relations. Such an approval is given for a period of one year, renewable for further periods of one year. One of the criteria which is considered

by the Director before giving his approval is that the amount of the fine is reasonable and in no way would be considered excessive.
As regards fines to be deducted from wages as provided for in collective agreements, it should be noted that collective agreements are negotiated between trade union representatives and the employer and the provisions of such agreement, including the limits of fines, are agreed upon between both parties.

227. The representative of the ETUC indicated that this information was already provided by the representative of Malta at the previous meeting of the Governmental Committee.

228. The Committee took note of the information provided and urged the Government to bring the situation into conformity.

RSC 4§5 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 4§5 of the Revised Charter on the ground that it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

229. The representative of the Republic of Moldova said that the Government was making efforts to reduce the tax burden. Also the minimum wage was not taxable. The limit of deductions in any case should not exceed 50% of the wage.

Wage deductions are regulated by Articles 147-150 of the Labour Code. The deductions from wages for the payment of debts to the employer are made in the following order:
a) to pay back the advance payment of the wage;
b) to pay back the surplus paid due to calculation errors;
c) to cover the upfront non-refundable and non-spent, issued for a mission of service or transfer to another locality or to the need to maintain, if the employee does not dispute the reason and amount of deductions;
d) to repair the damage caused to the enterprise due to employee's fault.
Under Section 338 of the Labour Code the employee is liable up to the full amount of damage caused due to the error of the employee against the employer in the following cases:
a) when the employee and the employer have entered into a full proprietary liability for non-assurance of asset integrity and other values, which had been forwarded to be held or for other purposes;
b) when the employee has received goods and other values for settlement at the base of a single proxy or using other unique documents,
c) when the damage was caused after his guilty intentioned actions, established by the court;
d) when the damage was caused by an employee being in a drunken alcoholic, narcotic or toxic substances;
e) when the damage was caused due to lack, the destruction and deterioration intentioned materials, semi-products of production, including during its manufacture, as well as instruments, metering devices, computers of protective equipment and other items provided to the employee to be used;
f) when in accordance with current legislation, the employee bears the full responsibility for the material damage caused to the employer at the execution of work obligations;
g) when the damage was caused outside the exercise of the function.
At the same time, an employee is exempt from liability if the material damage was caused in situations of force majeure, duly confirmed, cases of extreme necessity, of self-defense, of execution of a legal or contractual obligation as well as within the normal risk of production. Employees are not liable for losses inherent in the production process within the limits set by the technological standards or legislation in force for the material damage caused in unforeseen circumstances and could not be eliminated, as in other similar cases.
Taking into account the concrete circumstances in which the damage was caused, the employer has the right to waive, in whole or in part to repair the damage from the responsible employee. The employee bears material responsibility within the average monthly wage if the Labour Code or other legislative acts do not provide otherwise. Taking into account the degree and form of guilt, the specific circumstances and the material situation of the employee, the court may reduce the amount of damage to repair. The court has the right to approve the transaction between the

employee and the employer concerning the reduction of the amount of damage to repair. The decrease in the amount of damage to be repaired by the employee or officer of the company is not allowed in case it was caused expressly.
Other payments of wages except deductions required in section 148 of the Labor Code are: income tax, individual contributions compulsory social insurance and medical. Fiscal policy-tax in the Republic of Moldova in recent years has the objective of gradually reducing the tax burden for individuals. Therefore, for individuals tax rates on income have been established as 7% of annual taxable income of up to 25,200 lei and 18% of annual taxable income that exceeds the amount of 25,200 lei (for 2009 and 2010). The annual personal exemption for individuals was established in 2009 at of 7200 lei (monthly - 600 lei) and from 2010 to 8100 lei (monthly - 675 lei). The minimum wage which as of 1st January 2009 is 600 lei, is not subject to taxation.
The total deductions can not exceed 20%, and in some cases provided by law - 50% of salary to the employee. Deductions of up to 50% are applied in the case of existence of several binding documents: writs of execution issued by the court, decisions on administrative contraventions, contracts authentic on the payment of alimony and other binding documents, established in Article 12 of the Enforcement Code.
In the case of deductions from wages at the base of some acts enforceable, the employee keeps in all cases 50% of salary.
The limitations explained above are not applied to wage deductions in case of support for minor children. In this case, the total deduction can not exceed 70% of the salary of the employee. Parents are obliged to maintain their minor children and adult children unfit for work who require material support. The deduction of 70% that can be encountered in the case of the deductions of 20% for compensation and deductions of maintenance for 3 children or more (50%) are applied simultaneously.

230. The representative of ETUC asked whether the 70% limit had been repealed and the Moldovan representative confirmed this information.

231. The representative of Poland asked whether the ceiling of 50% concerned certain deductions or all deductions, tax included. The representative of the Republic of Moldova stated that this ceiling applied to all form of deductions.

232. The Committee took note of the information provided. It invited the Government to take necessary steps to bring the situation into conformity.

RSC 4§5 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 4§5 of the Revised Charter on the grounds that workers may waive their right to limitation of wage deductions.

233. The representative of Norway informed the Committee that following the conclusion of the ECSR, the Government took action to remedy the situation. As a result, amendments have been made to the pertinent legislation, prohibiting employees from entering into agreement with their employers to waive their right to limitation of wage deductions.

234. The Committee took note of this positive development and congratulated the Government.

RSC 4§5 ROMANIA

Pending receipt of the information requested, the Committee concludes that the situation is not in conformity with Article 4§5 of the Revised Charter on the grounds that it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

235. The representative of Romania informed the Committee that according to the Labour Code no wage deductions can be carried out except the cases and conditions provided by law.

Deductions in respect of damage caused to the employer can not be carried out unless the employee's debt has been established thus by a definitive and irrevocable court decision. In case of several creditors of the employee, the following order is observed:

a) maintenance obligations in accordance with Family Code;
b) contributions and taxes due to the state;
c) damage caused to public property by illicit actions;
d) other debts.

The net cumulated deductions from wages may not exceed half of the net wages every month. The amount established in order to cover the damages to the employer is deducted in monthly rates. Rates can not be more than a third of net monthly wage, without exceeding in combination with other deductions that the worker may have, half of the wage.

236. The representative of ETUC remarked that there were no safeguards as to the limitation of wage deductions since no exemptions were made for the minimum wage which situation may cause that in practice persons live below poverty threshold.

237. The Portuguese representative asked whether persons in extreme economic conditions had the possibility to address the court in order to reduce the amount of wage deduction.

238. The Romanian representative informed that the in these cases, persons concerned could apply for social assistance benefits or could address the court to reduce the amount of wage deduction. Also, the fees caused by the labour procces are free of charge, all labor disputes are exempted from stamp taxes. The representative also stated that next report to the ECSR will contain information about statistics regarding the situation of persons below poverty threshold.

239. The Committee took note of the information. It invited the Government to provide all the relevant information in its next report and decided to await the next assessment by the ECSR.

RSC 4§5 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 4§5 of the revised Charter because it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

240. The representative of Turkey stated that the change between the last conclusion and the previous one demonstrate that Turkey has improved its situation. He informed that the rules governing the wage deductions and their limits were set out in the Labour Code, the Act on obligations, the Act on pursuance of debts and bankruptcy and the Civil Code. There were certain categories of employees not covered by the Labour Code, such as the domestic work, apprenticeship and sport, but they were covered by other laws, as mentioned above. Section 83/1 of the Act on pursuance of debts and bankruptcy stipulated that wages and salaries are deductible, only after the bailiff decides the amount that should go to maintenance of the employee and his/her family.

241. Section 71 of the Law No. 6183 on the procedure of collection of public debts stipulates that "wages, allocations and all remuneration… may be partially deductible. The deductible part may not exceed one third, nor be below one fourth and the monthly income that does not exceed the minimum wage may be deductible within the limit of ten per cent."

242. The Turkish representative also informed about the rules governing the wage deductions and their limits pursuant to the Civil Code (Articles 175, 176, 330 and 331), according to which in cases of alimony allocations the judge takes into account the social and economic situation of the person.

243. As to the adequacy of the pay, Turkey has not accepted Article 4§1 and does not have the obligation to meet the condition of an adequate pay and therefore, also the adequacy of the pay, after deductions are applied, should not be assessed by the ECSR.

244. The representative of Czech Republic asked whether there is a possibility to waive the right to limitation of wage deductions to which the Turkish representative answered that this option was not recognized under Turkish law and any such agreement could be challenged in front of the court and be declared null and void.

245. The Committee took note of the information. It invited the Government to provide all the relevant information in its next report and decided to await the next assessment by the ECSR.

RSC 4§5 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§5 of the Revised Charter on the ground that deductions from wages are not reasonable and may deprive workers and their dependents of their very means of subsistence.

246. The representative of Ukraine provided the following information:

> According to Article 128 of the Labour Code of Ukraine at every payment of wage, total amount of all deductions may not exceed 20% and in cases specially provided for by the Ukrainian legislation, 50% of the wage.
> This rule does not apply to deductions of wage in case of correctional works and in case of recovery of alimony for minor children. In such cases, amount of deductions from wage cannot exceed 70%.

247. The representative of the ETUC indicated that this information was already provided in the report on the basis of which the ECSR considered the situation was not in conformity.

248. The Committee expressed its concern about the situation are urged the Government to bring the situation into conformity with the Charter.

Article 5 - Right to organise

RSC 5 ALBANIA

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

- police personnel do not enjoy the right to form trade unions;
- it has not been established that the prohibition from enjoying the right to form a trade union was not applied to an excessively high proportion of senior civil servants.

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

<u>First and second grounds of non-conformity</u>

> Relying on the Law No. 8549, dated 11 November 1999, “On Civil Servant Status”, the civil servant has a series of rights and obligations. It has been explicitly stated in Article 20, point d) and dh):

"Establishing and being members of the trade unions or associations. The rules for carrying on the trade union activities of the civil servants are regulated by separate law; Participating in the process of decision making pertaining to the working conditions through their trade unions or their representatives". As it is easily seen, no separation between civil servants, removing their right for trade union activity, is in place.
The civil servant trade unions have been established and they carry out their activity representing the economic and social interests of the categories as follows:
The Federation of the Civil Service Employees State Administration Trade Unions being part of the Confederation of Trade Unions of Albania, as well as the Independent Trade Union of the Civil Servants of Albania being part of the Union of the Independent Trade Unions of Albania.
There is no restriction contained in the law on the participation or prohibition of participation of the senior officials in these trade unions.

250. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 5 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 5 of the Revised Charter on the ground that police officers are prohibited from joining trade unions.

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

The Ministry of Labour and Social of RA will soon initiate discussions with the Confederation of Trade Unions of Armenia in regard the legislative issues related to this Article.

252. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 5 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 5 of the Revised Charter on the ground that it has not been established that, in practice, the free exercise of the right to form trade unions is ensured in multinational companies.

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

Concerning the conclusion of the European Committee of Social Rights that the situation in Azerbaijan is not in conformity with Article 5 of the Revised Charter on the grounds that in practice, the free exercise of the right to form trade unions is not ensured in multinational companies, we would like to inform that the Trade Unions are mostly concerned about the challenges of workers, violation of labour rights, prevention of association and other issues in transnational firms operating in the Republic of Azerbaijan. The actions taken by the Azerbaijan Trade Unions Confederation gave effect to the establishment of 3700 trade unions which unite 150 thousand members of trade unions in foreign and private companies. In 2010 with regard to requests made by employers on termination of labour agreements, trade unions have not given their consent to 452 of them.
In order to protect the violated rights of workers, representatives of trade unions organizations appear in courts as representatives and tried to assert their rights. In 2010 trade unions representatives appeared and protected the rights of 104 workers in courts and they returned to work.

254. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 5 BELGIUM

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

- it has not been established that during the reference period victims of discrimination based on trade union membership could at least obtain compensation proportional to the real damage suffered;

- it has not been established that during the reference period adequate protection existed against discimination based on trade union membership in areas other than recruitment and dismissal such as promotion;
- there were no pre-established, clear and objective criteria of representativeness for trade unions operating in the private sector during the reference period.

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

First ground of non-conformity

> C'est à la suite de trois arrêts de la Cour constitutionnelle que le législateur belge a intégré explicitement le motif de non-discrimination sur base de l'affiliation syndicale dans la loi du 10 mai 2007 tendant à lutter contre la discrimination. Ceci fut fait par la loi du 30 décembre 2009 (art.107 et 108) à laquelle se réfère avec raison le Comité européen des droits sociaux. Elle est entrée en vigueur le 31 décembre 2009. L'intégration de l'affiliation syndicale comme motif protégé de non-discrimination s'ajoute aux autres motifs protégés et a pour conséquence de rendre applicable aux travailleurs qui l'invoqueraient l'ensemble du dispositif de protection contre la discrimination prévu par la loi de 2007, donc y compris la possibilité d'obtenir une indemnité consistant en une somme forfaitaire ou correspondant au dommage réellement subi.

256. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Second ground of non-conformity (Information provided orally)

257. The representative of Belgium indicated that the Act of 30 December 2009 (Sections 107 and 108) expressly prohibits discrimination on grounds of trade union membership. It is meant to cover the whole working life and not just recruitment and dismissal. He also underlined that there is an inter-professional collective agreement whereby social partners have undertaken to contribute to the respect of non-discrimination at all stages of the working life.

258. The Committee took note of this positive development. It invited the Government to provide all the relevant information in the next report and decided to await the next assessment by the ECSR.

Third ground of non-conformity (Information provided in writing)

> La même loi du 30 décembre 2009, entrée en vigueur le 1er janvier 2010, comme le relève le Comité européen des droits sociaux, a fixé les critères de représentativité sur base desquels le Roi a constitué ensuite et notamment le nouveau Conseil national du travail. Ces critères valent pour l'ensemble du secteur privé. Auparavant, c'étaient les règles relatives à la composition du CNT qui constituaient les critères de représentativité. Cette organisation des règles avait été critiquée aussi par la commission d'experts de l'OIT.

259. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 5 BULGARIA

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

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

First ground of non-conformity

260. The representative of Bulgaria indicated that the Ministry of Labour had proposed that the impugned legislation be amended to remove the six months wage ceiling on compensation. However, further to the opposition of other ministries, the proposed amendment was dropped.

261. The representatives Iceland and Lithuania as well as the representative of the ETUC noted that the Ministry of Labour had taken steps to amend the legislation at issue and bring the situation into conformity with the Charter, and regretted that this initiative had not proved successful. They proposed to vote on a warning to stress that the Government needs to remedy the situation.

262. The Committee voted on a warning which was carried (21 votes in favour, 4 against and 12 abstentions).

263. The Committee urged the Government to take all adequate measures to bring the situation into conformity with the Revised Charter.

Second ground of non-conformity

264. The representative of Bulgaria indicated that the right to organise was governed by the Labour Act and not Ordinance No. 1 of 15 August 2002, which only regulates professional activities and requires prior authorisation for foreigners. No restrictions for foreigners concerning the setting-up of trade unions or participation in their activities are contained in the Labour Code.

265. The Committee took note of this positive development. It invited the Government to provide all the relevant information in the next report and decided to await the next assessment by the ECSR.

RSC 5 FRANCE

The Committee concludes that the situation is not in conformity with Article 5 of the Revised Charter on the ground of closed shop practices that continue to exist in the book sector.

266. The representative of France indicated that following the *Etats généraux* of the Press, which took place in January 2009, negotiations between the government and trade unions had continued with a view to reaching a “new social contract” in the sector. A new meeting took place in July 2009. A general agreement was reached in October 2009 whereby recourse by employers of the sector to the placement office, which is only managed by the *Syndicat général du Livre et de la Communication écrite-CGT*, would progressively stop. She stated that the Government and social partners had therefore agreed to the end of the placement office system which was at the heart of the ECSR’s finding of non-conformity, and concluded that the impact of the new general agreement would be progressively felt.

267. The Committee took note of the information provided. It asked the Government to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

RSC 5 GEORGIA

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

- the excessive number of members required to establish a trade union;
- the restrictions on the right to organise that may be included in employment contracts;
- the insufficient protection against discrimination based on trade union membership in the context of recruitment and dismissal.

First ground of non-conformity

268. The representative of Georgia indicated that the Trade Unions Act was adopted in 1997, while the Revised Social was ratified by the Parliament in 2005. According to Article 6 of the Constitution of Georgia, once ratified, international instruments are an integral part of national legislation and prevail over national legislation. Accordingly, the Revised Social Charter prevails over the Trade Unions Act. He also said that, according to the Civil Code, trade unions are “non-commercial units” for which there are no limitations on membership for registration purposes. He concluded by underlining that whilst the Trade Unions Act might not be in line with international standards regarding trade union membership requirements, in practice no trade unions have been refused to register on grounds of this membership requirement by the National Public Registry Agency (authority competent for the registration of commercial and non commercial entities).

Second ground of non-conformity

269. The representative of Georgia underlined that Article 46§1 of the Labour Code stipulates that both parties involved - employees and employers - may agree to limit their rights in the labour agreement. Such limitations must be directly linked to the interests of the parties (employees and employers), and must be reasonable and proportionate to such interests. According to Article 46, limitations must result of the mutual agreement of both parties concerned. He argued that employers and employees have more freedom to adapt the employment agreement to their interests. He added that the rights which can be limited refer to the “interests and powers” of both parties, and not to fundamental rights such as the right to organise. He held that paragraph 2 of Article 46 requires from the employer to give a written notification to the employee on any limitations of his or her rights. Moreover, Article 2§6 of the Labour Code stipulates that the parties must respect fundamental human rights and freedoms as guaranteed by Georgian legislation. He concluded that even if the employee agrees to a limitation of his or her fundamental rights and freedoms in the labour agreement, such agreement will be considered void.

270. The representative of the ETUC asked, in respect of the first ground of non-conformity, why the impugned provision under the Trade Unions Act has been kept if it is not applied in practice. As concerns the second ground of non-conformity and the possibility of restricting the rights of the future employee in the employment contract, he underlined that jobseekers and potential employers were not on an equal footing which could lead to abuses.

271. The representatives of Iceland, the Netherlands and Estonia noted that the right to organise was crucial and proposed that a strong message be addressed to urge Georgia to remedy the situation in respect of both grounds. The Lithuanian representative agreed that the right to organise was crucial, but it seemed that it was not problem in practice. Therefore she suggested to “ask” the Government to remedy the situation instead of “urge”. The Chairperson and other representatives supported this suggestion.

272. The representative of Azerbaijan considered it sufficient to ask for more information to be provided in the next report.

273. The Committee took note of the information provided. It expressed concern and requested from the Government to take adequate measures to bring the situation into conformity.

Third ground of non conformity

274. The representative of Georgia provided the following information in writing:

> Discrimination on Grounds on Trade union Membership
> Georgian legislation clearly prohibits any type of discrimination, including antiunion dismissals and protects against violations of these rights and includes explicit provisions banning dismissals by reason of union membership or participating in union activities.
> Georgian legislation is in compliance with the requirements of the Convention as it prohibits discrimination on the grounds of membership:
> 1) Constitution of Georgia. According to Article 14, everyone is free by birth and is equal before law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence. Article 26 of the Constitution regulates that everyone shall have the right to form and to join civil associations, including trade unions.
> 2) Law of Georgia on Trade Unions. According to Article 11, mo discrimination shall
> be admitted against a employer on the part of an employer by reason of membership or non-membership to a trade union.
> 3) Labour Code of Georgia. According to Article 2, Paragraph 3, any type of discrimination due to race, color, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations". According to the Code "in the course of employment relations the parties should adhere to basic humans rights and freedoms as defined by Georgian legislation (Article 2, Paragraph 6).
> 4) Criminal Code of Georgia. According to Article 142, violation of equality of humans
> based on race, color of skin, language, sex, attitude to religion, confession, political or other view, national, ethnic, social belonging, or based on membership to any association, origin, place of residence and material condition, that violated their human rights, - shall be punished by a penalty or by corrective Labour for a period up to one year, or by imprisonment for up to two years.
> 5) No application has been submitted to the relevant governmental agencies for the last several years regarding the restriction of the rights of trade union membership. The new Labour Code prohibits anti-union discrimination. As for the Article 5(8) of the Labour Code, in practice person becomes trade union member after recruitment. It should be mentioned that there are no cases that person was not recruited based on his/her membership to trade union. Accordingly, the Article 5(8) does not provide basis for antiunion discrimination.
> As for the concern related to the Article 37 (d), it should be mentioned, that Labour Code does not stipulate the provision according to which an employer can dismiss a
> worker without any reason. According to the Labour Code, ground for suspending the labour relations can be termination of the agreement. Termination of the labour agreement is possible with the initiative of one of the parties of the agreement, or the reasons of termination of labour agreement can be stipulated by the agreement. If dismissed worker appeals to the Court, the employer is obliged to provide arguments and reason of dismissal during the Court hearings.
> There is misleading information in the present comment of the Committee, namely comment states, that: "… provided the employee receives a severance pay equivalent to one month's salary (Section 37(d) and 38§3 of the Act)…" According to Georgian Labor Code, in case of termination of employment, employer is obliged to give at least a one-month pay if higher payment is not envisaged by the agreement between parties. At the same time, employee is not obliged to work during this 1 month. This gives possibility to the employees to absent themselves from work during their notice period to look for fresh employment.

According to the above-mentioned, the Labor Code stipulates notification and at least one-month severance payment and employee is not obliged to work during the period after notification.
It should be emphasized, that according to the Georgian legislation, a worker can claim unfair dismissal through appealing to the arbitration as well as to the court.
Conclusion:

- As it was mentioned above, article 26 of Constitution stipulates that everyone shall have the right to form and to join civil associations, including trade unions. Accordingly, civil association means any type of association including trade unions. Definition of civil associations includes trade unions and all the rights of civil association are fully applicable to the trade unions as well without any reservation.
- Georgian legislation prohibits discrimination in labour relations based on membership or non-membership of trade unions. It is notable, that termination of employment and recruitment processes are part of labour relations. Accordingly, prohibition of discrimination in labour legislation based on membership of trade unions is applicable both in recruitment and employment termination processes.
- Dismissal of employee because of his/her membership in trade unions is subject to punishment by the criminal code of Georgia. If an employer limits employee's right to join trade union, employer will be held criminally liable (up to 2 years).

3. Closed Shop Agreements in Practice
The Government of Georgia is not aware about existence of the closed shop agreements in practice.
Closed shop agreements are discriminatory, because for example, they may include recruitment of persons based on membership to the specific trade union. Accordingly, Georgian labour legislation prohibits such kind of agreements as discrimination based on membership to the association is prohibited by the Constitution and Labour Code.

275. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 5 LITHUANIA

The Committee concludes that the situation in Lithunia is not in conformity with Article 5 of the Revised Charter on the ground that the requirement of thirty members to form a trade union is excessive and undermines the freedom to organise.

276. The representative of Lithuania indicated that, since the adoption of the conclusion by the ECSR (Conclusions 2006, §§ 75-79), the amendments to the Law on Trade Unions and the Civil Code referred to in the report had been adopted. The minimum number of founders was lowered to twenty, or 1/10 of all employees, hence bringing it into conformity with the Charter, as already ascertained by the ESCR in its conclusion.

277. The Committee welcomed this positive development. It asked the Government to provide all the relevant information in the next report and decided to await the next assessment of the ESCR.

RSC 5 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 5 of the Revised Charter on the ground that it has not been established whether there are adequate remedies against refusals to register police trade unions.

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

This issue has been in a state of evolution for quite some time now and although all the indications are that the Police personnel will "shortly" be allowed to form part of a union, albeit with restricted rights, pinning this down to a definite date is not possible at this point in time.

By way of concrete action, towards the end of September 2011 a motion calling for the first reading of a Bill to amend the Police Act with this end in view was presented in Parliament.

279. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 5 REPUBLIC OF MOLDOVA

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

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

First ground of non-conformity

280. The representative of the Republic of Moldova indicated the Government's intention to amend Section 10 of the Trade Union Act in order to clarify the situation, and the national trade union confederation has expressed its willingness to co-operate in this matter.

Second ground of non-conformity

281. The representative of the Republic of Moldova underlined that the right to organise was an integral part of labour law and as such penalties can be imposed in case of violation in the same way as for other labour rights, even without a provision expressly saying so.

282. The Committee took note of the information provided and invited the Government to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

RSC 5 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 5 of the Revised Charter on the ground that the requirement of Romanian nationality for the representation of the two sides of industry at the Economic and Social Council is excessive.

283. The Romanian representative indicated that the new Code of Social Dialogue, which was adopted in 2011 and would soon enter into force, had removed the nationality requirement for representation at the Economic and Social Council (Article 94).

284. The Committee welcomed this positive development. It asked the Government to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

Article 6§1 - Joint consultation

RSC 6§1 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 6§1 of the Revised Charter on the grounds that:

- it has not been established that refusals of the representative status to trade unions are subject to judicial review;
- it has not been established that consultation also takes place in the public sector.

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

Background information

The membership of the National Labour Council, the highest institution of social dialogue at national level, was renewed on February 2010. The Council consists of 27 members: the Government is represented by 7 members (Ministers) and the employees and employers organisations are represented by 10 members each.
Determining the number of representatives was based on the evaluation of the representation of the Trade Unions and Organisations of Employers and in consultation with the parties. The representation formula was admitted by the majority of them. The Decision of the Council of Ministers no 132, dated 24.02.2010 "On determining the number of representatives of the Organisations of Employers and Employees at the National Labour Council" was issued, as well as the Order of the Minister of Labour no 549/1, dated 17.03.2010 "On appointing the members and candidates of the National Labour Council, representatives of organisations of employees and employers", relying on the proposals of the trade unions and organisations of employers.
Equally, considered and approved based on consensus of all parties were in the meeting of NLC dated 24 November 2010 some addenda and amendments in the Regulation of NLC. The regulation of the NLC has been drafted in cooperation with the Social Partners and with the assistance of the Regional Office of ILO Budapest, there the proposals of the Social Partners and ILO recommendations have been reflected.
The representatives of the organisations of the employers and employees participating in the National Labour Council are as follows:

Organisations of Employees:

a) Union of Independent Trade Unions of Albania (UITUA) 3 members 3 candidates
b) Confederation of Trade Unions of Albania (CTUA) 3 members 3 candidates
c) Union of Trade Unions of Employees of Albania (UTUEA) 1 member 1 candidate
ç) Trade Union of Oil Workers in Albania (TUOWA) 1 member 1 candidate
d) Trade Union Federation of Education and Science (TUFES) 1 member 1 candidate
dh) Independent Trade Union of Education in Albania (ITUEA) 1 member 1 candidate

Organisations of Employers:

a) Council of Organisations of Employers in Albania (COEA) 2 members 2 candidates
b) Confederation of Council of Organisations of Employers (CCOE) 2 members 2 candidates
c) Association of Constructors of Albania (SHNSH) 2 members 2 candidates
ç) National Chamber of Clothing Manufacturers (NCCM) 1 members 1 candidates
d) Confederation of Industrialists of Albania (Albanian Conf-Industry 1 member 1 candidate
dh) Union of Investors and Industrialists of Albania UIIA) 1 member 1 candidate
e) Council of Albanian Agro-Business (CAA) 1 member 1 candidate

i) The National Council of Professional Education and Training has been established based on Article 21 of the law no 8872, dated 29.03.2002 "On Professional Education and Training in the Republic of Albania", as an advisory organisation to the Council of Ministers on policies for the development of professional education and training. It has been composed on a three-party basis, having as its member a representative from the civil society. It is co-chaired by the Minister of Education and Science and Ministry of Labour and Social Affairs and consists of 14 members as follows:

a) 2 members, including the Minister, from the Ministry of Education and Science;
b) 2 members, including the Minister, from the Ministry of Labour and Social Affairs;
c) 1 member from the Ministry of Finance;
ç) 1 member from the Ministry of Economy;
d) 1 member from the Ministry of Agriculture and Food;
dh) 1 member from the Ministry of Health;
e) 1 member from the Ministry of Local Government and Decentralisation;
ë) 1 member from non-profit making organisations developing activity in the field of professional education and training;
f) 2 members from employers' organisations;
g) 2 members from employees' organisations.

The organisation and activity of the National Council of Professional Education and Training is regulated by a joint Council of both respective ministers no 16, dated 28.12.2002 “On organisation and activity of the National Council of Professional Education and Training”.
The functions of NCPET are:
a) Facilitating the social dialogue for the development of PET system at central, regional and local level;
b) Giving recommendations for a better coordination of the PET activity;
c) Recommending policies and strategies of PET development in Albania;
d) Encouraging mechanisms of PET system development and evaluation;
e) Giving recommendations for the use of the same infrastructure of PET;
f) Giving recommendations for the improvement of the curriculum, in accordance with the requirements of the labour market;
g) Proposing drafting/processing of the professions standards;
h) Proposing the improvement (or amendment) of the PET financing system;
i) Proposing new projects for PET system;
j) Proposing establishment of structures for supporting PET system;
k) Preparing the annual national report of PET and submitting it to the Council of Ministers;
l) Giving recommendations for administering and developing the human resources in PET system.
The Consultative Council of Business within the Ministry of Economy, Trade and Energy is bi-partisan, with representatives from business and METE. This Council consists of 20 members – whereof two are representatives of the Ministry of Transport and METE, some heads of public agencies and the other part are representatives of the commerce chambers and business associations.
Chairman is the Minister of Economy, Trade and Energy.
Part of NLC are the following trade unions:
Union of Independent Trade Unions of Albania (UITUA), Confederation of Trade Unions of Albania (CTUA), Union of Trade Unions of Workers of Albania (UTUWA), Trade Union of Oil Workers of Albania (TUOWA), Federation of Trade Unions of Education and Science (FTUES), Independent Trade Union of Education of Albania (ITUEA).

First ground of non-conformity

The right for judicial review
No provision is contained in the Labour Code of the Republic of Albania determining explicitly the right for judicial review of an act of the Council of Ministers determining the representation at the National Labour Council. However, the right to complain is a constitutional right and as such it is up to the organisations of the employees that deem that their right of representation at the National Labour Council has been infringed or denied to make use of it. Specifically, there were judicial proceedings underway at the district court of Tirana, upon the request of the KSSH with the subject matter review of the Decision of Council of Ministers dated 132, dated 24.02.2010 “On determining the number of the representatives of Employees’ and Employers’ Organisations at the National Labour Council”.
As we have stated above, the bi-partisan consultation is a legitimate right of the employees and employers organisations at enterprise or branch (sector) level. Almost all the negotiations for entering into the collective contract of labour are conducted on bi-partisan basis. Upon encountering disputes, the parties address the mediation structures for assistance. At the same time, one of the most ordinary forms if parties agree for specific cases, being part of the collective labour contract or not, they shall sign up to a specific document “agreement act”, confirming their will and transforms it into an obligation.
The central focus of bi-partisan consultations is the improvement of the working conditions, raising of salaries, benefiting the salary in kind etc. Referring the collected data so far, 8 collective contracts between the federations and ministries have been signed up; 11 collective labour contracts between the federations, institutions and public companies; 10 collective labour contracts between the federations and important corporations extending beyond one region; as well as 266 collective labour contracts signed up at enterprise level in both sectors, in the public and private sectors at country scale.
An example of the bi-partisan consultation during the reporting period for improving the working conditions is the consultation at “Kurum International” sh.a. between the employer and the employees’ organisation for raising the salary, increasing the share of the salary in kind, as well as ensuring tap water in the working premises. The parties passed through the bi-partisan

consultation process for improving the provisions of the collective contract with regard to these issues.
Collective contracting, the procedures as well as its mechanisms are dealt with in a separate chapter in the Labour Code. It has been determined in Article 159, paragraph 1, that the collective labour contract contains provisions on the conditions of employment, entering into, contents and termination of individual labour contracts, professional training, as well as on the relations between the contracting parties.
The issues of interpretation of the collective labour contract are a subject matter for consultation and agreement between the parties, however, in the event of failure to reach an agreement between parties, they shall be dealt with in the context of joint consultations in the mediation/settlement, arbitration procedures or in judicial review in accordance with the concrete provisions of the Chapter XVII of the Labour Code.

Second ground of non-conformity

Consultative bodies in public sector
The existing consultative bodies in the public sector are:
i) The three-party consultation councils in the Regional and Local Employment Offices, respectively in 12 three-party regional consultation councils and 24 three-party local consultation councils. These councils are composed of the representatives of the employment office, as well as representatives of the employees and employers organisations.
ii) The steering councils of the public institutions of professional training, being collegial authorities realising the management of the activity of public institutions of professional training. This council has, in the big institutions, in its composition not more than 6 members, while in small institutions not more than 4 members. The members of the steering council of the institution for professional training are appointed by the Minister of Labour and Social Affairs, and they are proposed by the institutions: one representative by the labour office, one representative by the Municipality, one representative by the Commerce and Industry Chamber, one representative by the employers and one by the employees. The Council shall convene as often as the interest of the institution requires it, however, not less than once a month.
The steering council shall have the following powers:
- Approving the internal regulation of functioning of the institution;
- Approving the organisational structure and determining the number of employees for the permanent activity;
- Determining the fees for courses and their maximal capacity, referring to the market demand, as well as based on the separate groups of participants;
- Determining the fees of services and prices for goods it offers;
- Approving the economic-financial program;
- Approving the annual accounts and annual report of the economic activity of the institution;
- Determining the salaries depending on the functions, indexing, their increase and rewards;
- Determining the criteria of hiring, permanent workers and instructors;
- Determining the salaries for the internal instructors and fees for external instructors;
- Preliminary consideration and approval of contracts entered into with third parties.

iii) The Coordination Council for considering the policies and organisational measures for the protection of consumers. This Council functions based on the Order of Premier no 82, dated 03.07.2008, and it consists of eight members from the state organisations, six representatives of consumers organisations, four representatives of the business organisations. The Council facilitates the encouragement of discussions, exchange of opinion, approval of statements and opinions and granting of recommendations in connection with the issues having an impact on the consumer.

286. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§1 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§1 of the Revised Charter on the grounds that:

- it has not been established that joint consultation takes place in practice;
- it has not been established that joint consulative bodies exist in the public service.

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

First ground of non-conformity

> A partir du milieu de 2009, après la constitution du Gouvernement actuel, la participation des syndicats, représentés au niveau national, aux travaux du CNCT a été rétablie. La coopération a abouti à l'élaboration de deux paquets de mesures anticrise, la généralisation de l'application de 5 conventions collectives et la signature d'un accord sur le développement de la réforme des retraites sur un horizon de 25 ans. Des accords ont été signés sur le travail à domicile et le télétravail entre les partenaires sociaux représentés au niveau national; l'accord relatif au travail à domicile a été entièrement transposé dans le Code du travail et les agences d'intérim seront bientôt réglementées.

Second ground of non-conformity

> En décembre 2008 un Groupe de travail interministériel a été formé en vue de préparer la modification de la Loi sur la fonction publique réglementant le droit à la grève symbolique dans la fonction publique, et de la Loi sur le transport ferroviaire, étant donné leur non-conformité aux standards internationaux du Conseil de l'Europe et de l'Organisation internationale du travail. Le groupe de travail réunissait des représentants du Ministère du travail et de la politique sociale, du Ministère des transports, de l'Agence nationale de l'administration ferroviaire, du Ministère de la fonction publique et de la réforme administrative, ainsi que de l'administration du Conseil des ministres.
> Les efforts du Groupe de travail de 2008 n'ont pas pu aboutir en raison de la position, soutenue par le Ministère de la fonction publique et de la réforme administrative (fermé depuis) que l'interdiction d'actions de grève effectives avait son fondement dans le statut et les fonctions des agents publics, appelés à assister les autorités publiques dans l'exécution de leurs compétences.
> Le Ministère des transports avait pris une position favorable en vue de la modification de la Loi sur le transport ferroviaire. Celui-ci proposait la mise en place d'une obligation pour les salariés et leurs employeurs de signer entre eux un accord avant le déclenchement de la grève, afin d'assurer un service minimum pour la population à hauteur de 50% au minimum des horaires des trains.
> En 2010 le Groupe de travail a repris ses travaux. Vu les changements intervenus au niveau de la structure et du personnel de l'administration et l'adoption d'un nouveau Règlement d'organisation du Conseil des ministres, sa composition a été actualisée. Son champ des compétences a été élargi pour inclure la négociation collective et la conciliation et l'arbitrage dans la fonction publique.
> Le groupe du travail a tenu des réunions et a élaboré des propositions d'amendement de la Loi sur la fonction publique. Ces propositions ont été acceptées en principe par le CM. A l'heure actuelle on discute la nécessité de préparer d'autres modifications de la Loi sur la fonction publique aussi, ce qui nous a imposé d'ajourner la discussion de ces propositions préparées jusqu' à la fin de l'année.

288. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 6§1 of the Revised Charter on the ground that it has not been established that joint consultation covers all matters of mutual interest.

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

> En vertu de l'article 25 du Code du Travail, les commissions tripartites pour les consultations et les négociations collectives sont constituées au niveau national, sectoriel et territorial. Au niveau de

l'entreprise, ce sont des commissions bipartites pour le dialogue social „employeur-salariés" qui sont instituées avec des attributions similaires.
Le centre d'équilibre du système national des négociations collectives est la Commission Nationale pour les négociations et les consultations collectives. En conformité avec la Loi nr. 245-XVI du 21 juillet 2006, la Commission a comme objectif les consultations tripartites entre les partenaires sociaux dans les domaines suivants : travail, questions socio-économiques, promotion du partenariat sociale a tous les niveaux, le soutien de la participation de la société civile à la promotion des politiques nationales et, par conséquent, le maintien de la cohésion, de la paix et de la stabilité sociale sur le territoire national.
Les sessions de la Commission sont convoquées chaque fois qu'il est nécessaire, en conformité avec le plan de travail, mais pas moins d'une fois par mois. Pour ce qui est des problèmes discutés, la Commission prend des Décisions par consensus. En absence de consensus, les décisions sur sont adoptées avec 3/4 des voix des membres de la Commission présents a la session.

Au sein de la Commission on a créé quelques conseils permanents de spécialité, parmi lesquels le Conseil sur la sécurité et la sante au travail, le Conseil sur le travail des enfants, etc.

Les commissions pour les consultations et les négociations collectives au niveau national, territorial et sectoriel ont (parmi les autres) les attributions suivantes:

- Harmoniser les intérêts des partenaires sociaux lors de l'élaboration des bases de réglementation des relations de travail et des relations socio-économiques au niveau respectif;
- Procéder aux négociations collectives, élaborer et promouvoir des conventions collectives, contribuer à leur conclusion et surveiller le procès de leur réalisation;
- Dépister, chacune a son niveau, les raisons des situations conflictuelles et des tensions sociales dans les relations de travail, organiser la préparation et l'expertise des propositions destinées à prévenir des situations similaires et des tensions;
- Présenter des propositions sur l'assurance du respect des droits et des intérêts des salariés.

Pour accomplir leur attributions les commissions tripartites pour les consultations et les négociations collectives ont le droit de solliciter et de recevoir de la part des autorités publiques et des entreprises des informations nécessaires a l'exécution de leurs attributions, ainsi que d'adopter des décisions avec un caractère de recommandation en problèmes qui tiennent de leur de compétence, des décisions, que les autorités publiques, organisations patronales et syndicales doivent examiner obligatoirement et informer par écrit les commissions sur les résultats de l'examen.
En tant qu'attributions supplémentaires spécifiques seulement à la Commission nationale pour les consultations et les négociations collectives, sauf la présentation d'avis sur les projets des actes normatifs, il faut mentionner:

- Présenter des propositions sur la ratification ou pas des Conventions de l'OIT, ainsi qu'examiner et commenter les rapports présentés a celle-ci;
- Surveiller la réalisation des engagements pris par la République de Moldova suite à la ratification des conventions de l'OIT n 98 sur l'application des principes du droit de s'organiser et de porter des négociations collectives et n 144 sur les consultations tripartites pour l'applications des normes internationales de travail.

Une autre prérogative de la Commission nationale pour les consultations et les négociations collectives est le droit d'examiner et de se prononcer concernant les projets des actes normatifs dans le domaine du travail et celui socio-économique. La Loi 245-XVI du 21 juillet 2006 (art.5 al. (3)) prévoit de manière expresse que les projets de ces actes normatifs doivent être obligatoirement coordonnés avec la Commission nationale pour les consultations et les négociations collectives, étant la procédure de participation de la Commission à l'élaboration des politiques en matière de travail. L'avis de la Commission est obligatoire et accompagne le projet d'acte normatif jusqu'à son adoption.

Sujets soumis aux consultations tripartites

En vertu de l'article 4 de la Loi n 245-XVI du 21 juillet 2006, qui régit l'activité des commissions pour les consultations et les négociations collectives, l'un des objectifs de base de l'activité de ces commissions sont les consultations entre les partenaires sociaux en problèmes **relatifs au domaine de travail et aux problèmes socio-économiques d'intérêt national, sectoriel et territorial**. En même temps, en conformité avec l'article 10 lit.j) et 22 lit. h) de la même Loi, les commissions pour les consultations et les négociations collectives fonctionnent à la base des plans de travail qu'elles les adoptent indépendamment.
Les normes citées démontrent évidemment que les commissions pour les consultations et les négociations collectives peuvent discuter, au choix des parties, tous les sujets d'intérêt commun relatifs au domaine de travail et celui socio-économique, y compris les conditions de travail, la

productivité de travail, la formation professionnelle, mesures de protections sociale, l'interprétation des accords collectifs conclus, etc. En tenant compte du principe d'égalité des parties, chacune d'entre elles est libre de participer a la détermination des sujets à discuter dans le cadre de sessions convoquées.
En ce qui concerne les consultations dans le domaine de la sécurité et la santé au travail, nous tenons à mentionner que celles-ci ont lieu pas seulement dans le cadre des commissions pour les consultations et les négociations collectives, mais aussi u sein des comites pour la sécurité et la sante au travail, qui en vertu de l'article 16 de la Loi sur la sécurité et la sante au travail, doivent être créées aux entreprises. Ces comites sont constituées a la base du principe de parité a partir des représentants de l'employeur et les salariés, a l'initiative de l'une des parties, en vue d'assurer les consultations entre les salariés et les employeurs en matières concernant la sécurité et la sante au travail, ainsi que pour informer les salariés de l'entreprises sur les mesures adoptées dans ce sens.
Ce qui a été déjà susmentionné, l'interprétation des clauses des conventions ou des contrats collectifs conclus font aussi partie des consultations tri-ou bipartites. Régulièrement, les conventions collectives stipulent de manière expresse que le droit d'interpréter ces clauses appartient aux parties.

290. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 6§2 - Negotiation procedures

RSC 6§2 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 6§2 of the Revised Charter on the ground that it has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.

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

In March 2011, upon the proposal of the social partners at the National Labour Council and following the approval of the draft in this institution, the Treaty of Social Understanding between the Council of Ministers of the Republic of Albania, as well as Organisations of Employees and Organisations of Employers, members of the National Labour Council was signed.
This high level three-party agreement of understanding sets out the fields of joint commitment, as well as mechanisms for reaching them. Three main fields of commitment have been determined in the act of agreement:
i) Labour policies and legislation being in relation with the international European standards;
ii) Institutionalisation of the social partnership and dialogue through the extension, meetings and consultations with the Government, responsible state authorities and regional and local structures;
iii) Improvement of the living level of employees.
There is no Collective Labour Contract at national level, however, the Labour Code of Republic of Albania does not impose the obligation of signing up to such a contract, neither it hinders the entering into a national collective contract. In accordance with the collective labour contracts deposited at central level, 8 collective labour contracts have been signed so far between the Federations and the Ministries in education, health, public works, art and culture, agriculture environment, covering round 74356 employees and 11 collective labour contracts between the Federations and the institutions and public companies covering round 62 295. In the private sector, 10 collective labour contracts have been signed between the Federations and important Corporations extending over to more than one region, with almost 10 000 thousand employees, as well as round 266 collective labour contracts signed up at the level of enterprises in both sectors, 131 in the public sector and 135 in the private sector, at country scale. The total number of employees covered by the collective contract at enterprise level is 64 849 employees.
As stated in Article 162/4 of the Labour Code, upon the order of the Minister of Labour, the effects of the collective labour contract may extend over all the employers of the branch, where the employers being bound to the collective contract employ at least half of the employees of the branch.
The procedures are regulated in the Decision no 312, dated 30.04.1996 "On outspread of effects of collective contract" of the Council of Ministers. In accordance with this CMD, the authority shall be

vested with the Minister of Labour, Social Affairs and Equal Opportunity, upon contracting parties, separately or jointly, address him with a written request, seeking extension of the scope of application of the collective contract where they are a party to the employers and employees belonging to the respective branch of economy or trade and not being bound by this contract. At the same time, the request for the extension of effects should, in its annex, contain the provisions of the collective contract, the effects of which shall be extended.
This procedure is subject to the three-party analysis since it starts with the publication of the request and it has a 30-day period to be objected, within which every interested employer may file an objection against the request concerning the extension of effects, this being in the form of a grounded letter in writing addressing the Minister of Labour. At the same time, CMD provides clearly for the possibility given to the contracting parties and local authorities to express their opinion in writing in connection with the objection.
The procedures of collective bargaining determined **in the Labour Code are applied for the entire employees being subject to this Code, regardless whether they are employees in the public or private sector.** Moreover, the provisions of the Code cover the fields which are not covered by the specific laws, for instance, the public sectors of education, health care, and railway transport.
In accordance with the Law "On safety and health at work" and by-law acts issued for its implementation, the participation of employees and their representatives is allowed at the discussions for issues pertaining to the safety and health at the Council of Safety and Health at Work (CSHW), being an advisory partnership authority, with representatives of employers and employees, represented evenly and aiming at the appropriate and periodic consultation on the activity of the enterprise and prevention of risks at work.

292. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§2 ARMENIA

The Committee concludes that the situation is not in conformity with Article 6§2 of the Revised Charter on the ground that it has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.

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

Due to the RA Law on Amendments to the Labour Code adopted in 7 August 2010 Chapter 2 of the Labour Code was amended according to which the Section 2 of the Labour Code is applicable for the employees of the public and local self- governing bodies, as well as for employees of the Central Bank.
According to the RA Law on Public Service the civil service is considered as public service thus the provisions of the Section 2 of the Labour Code is applicable for civil servants as well.

294. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§2 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§2 of the Revised Charter on the ground that it has not been established that suffient measures to promote collective negotiations were taken.

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

En Bulgarie des mesures sont prises pour encourager les négociations collectives et l'efficacité du dialogue social à tous les niveaux. Jusqu'à présent le ministre du travail et de la politique sociale a signé 5 ordres portant sur la généralisation des conventions collectives sectorielles dans l'industrie de la bière, du papier et de la cellulose et du travail du bois, dans le secteur alimentation en eau potable et assainissement et dans l'industrie minière. Le dialogue social a été rétabli après la reprise des travaux du CNCT ; le CNCT a examiné et adopté deux paquets de mesures anticrise ; un accord sur le développement de la réforme des retraites sur un horizon de 25 ans a été signé ; des accords ont été signés sur le travail à domicile et le télétravail entre les

partenaires sociaux représentés au niveau national ; l'accord relatif au travail à domicile a été entièrement transposé dans le Code du travail ; un accord a été signé entre les syndicats et l'Inspectorat général du travail (agence exécutive) portant sur la protection des droits fondamentaux des travailleurs.

296. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§2 GEORGIA

The Committee concludes that the situation is not in conformity with Article 6§2 of the Revised Charter on the ground that it has not been established that an employer may not unilaterally disregard a collective contract and that the conclusion of collective agreements is promoted.

297. The representative of Georgia informed that working conditions regulated by a collective contract prevail on internal labour regulations. He also informed that detailed information in this regard would be sent to the Committee shortly.

298. The representative of Georgia then provided a series of examples of collective agreements concluded after the reference period, including details concerning the number of employers and employees covered by these agreements to demonstrate that the conclusion of collective agreements is indeed promoted.

299. The Committee invited the Government to provide all relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§2 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 6§2 of the Revised Charter on the ground that coverage of workers by collective agreements is weak.

300. The Representative of Lithuania provided the following information in writing:

In order to promote the conclusion of collective agreements and the coverage of workers by such agreements, in 2007 the Government of Republic of Lithuania adopted a Programme on Strengthening Social Dialogue 2007-2011. The Secretariat of the Tripartite Council is responsible for the implementation of this Program. For instance even during the economic crises in 2010 it was allocated LTL 640 000 (€ 185 000) for the implementation of this Program, the same amount was allocated for 2011. The Secretariat of the Tripartite Council organises trainings (it should be not less than 90 within the year), consultations for the representatives of trade unions (it should be not less than 700 participants within the year) and other measures promoting social dialogue, collective agreements.

Nevertheless, currently there is only one sectoral collective agreement in force (between Lithuanian journalists' union and National newspapers publishers, established in 2007). In 2011 negotiations have started concerning second sectoral collective agreement between the Ministry of Social Security and Labour and workers who provide social services.

As there is no obligation to register simple (non sectoral) collective agreement, there is no accurate data of their amount. State Labour Inspectorate under the Ministry of Social Security and Labour of the Republic of Lithuania gather some data during visits of enterprises. In 2010 Labour inspectors inspected 12411 enterprises and determined 298 trade unions, 83 sectoral trade unions, 166 labour councils established in these enterprises. In 2010, 248 collective agreements were signed (in 2008 - 903, in 2009 - 290).[1] The decrease of collective agreement was observed in 2009-2010 due to the economic crises, as a lot of enterprises were closed.

The procedure to establish trade unions was simplified by Law: amendments to the Law on Trade Unions and the Civil Code were adopted. These amendments reduce the minimum number of founders to twenty, or to 1/10 of all employees (instead of 1/5), but no less than three.

1 Data of State Labour Inspectorate under the Ministry of Social Security and Labour of the Republic of Lithuania

(See country profile on Lithuania on the eironline website)

301. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§2 REPUBLIC OF MOLDOVA

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

- it has not been established that there is an appropriate legislative framework;
- it has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.

302. The representative of the Republic of Moldova acknowledged that the report did not contain the requested information. She then highlighted the relevant provisions in the Labour Code which provide the legislative framework with regard to collective bargaining. In particular, she referred to Articles 16, 18 and 29. She also referred to the Contraventions Code and the relevant provisions providing for sanctions in the event collective agreements are not respected. In this respect, she referred in particular to Articles 55, 59 and 60.

303. As to civil servants, she confirmed that they are entitled to participate in the processes that result in the determination of the regulations applicable to them within budgetary ceilings.

304. The Committee invited the Government to provide all relevant information in its next report and decided to await the next assessment of the ECSR.

Article 6§3 - Conciliation and arbitration

RSC 6§3 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 6§3 of the Revised Charter on the ground that the circumstances in which recourse to compulsory arbitration is authorised go beyond the limits set out in Article G of the Revised Charter.

305. The representative of Albania stated that draft legislation exists, this will be presented to the Council of Ministers in early 2012, however in order to be adopted it will need a qualified majority in Parliament and since 2009 no law requiring this has been passed by Parliament.

306. The Committee welcomed the proposed measures and urged the Government to bring the situation into conformity as soon as possible. Meanwhile it decided to await the next assessment of the ECSR.

RSC 6§3 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§3 of the Revised Charter on the ground that there is no conciliation or arbitration procedure in the public service.

307. The Bulgarian representative stated that at the end of 2010 a working group was established in order to prepare amendments to the relevant legislation in order to introduce voluntary arbitration in the public service. This has been accepted in principle by the Council of Ministers but discussions have been postponed pending re organisation of public service and will resume at the end of 2011.

308. The representative from the ETUC recalled that similar information had been provided in 2006 and that the situation was still not in conformity.

309. The Committee expressed its concern that the situation had still not been brought into conformity and recalled that this was a serious violation of the right to bargain collectively. It urged the Government to bring the situation into conformity as soon as possible. Meanwhile it decided to await the next assessment of the ECSR.

RSC 6§3 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 6§3 on the ground that there is no effective conciliation, mediation or arbitration service.

310. . The representative of Georgia provided the following information in writing:

- Development a Conciliation / Mediation Service

The Government recognizes the necessity of mechanisms of conciliation and mediation and for this purpose the conciliation and mediation mechanisms are incorporates in the Tripartite Social Partnership Commission to facilitate the resolution of collective conflicts. According to the Statute of Tripartite Social Partnership Commission, it has special tripartite Working Group to mediate with dispute resolution.

As, Charter of Social Partnership Commission is approved by the Prime Minister's order, it is a legal act. Accordingly, legislation established mechanisms to facilitate dispute settlement between the parties by involving the Tripartite Social Partnership Commission.

The following alleged collective conflict cases are being discussed in the framework of the Tripartite Social Commission:
• LTD Poti Sea Port case
• LTD BTM Textile case
• LTD Georgian Railway case
• The Educators & Scientists Free Trade Union of Georgia (ESFTUG) case
• Kutaisi Steel Plant Case (which was successfully resolved)

- Arbitration

Pursuant to the Georgian legislation, parties can appeal to the arbitration as well as to the court. **According to the Georgian legislation, the parties can bring the dispute to arbitration only based on mutual agreement between parties. Accordingly, the arbitration can not be compulsory.**

The arbitration is temporarily created private body specially established for this dispute, therefore arbitration is not a state authority, it is non-governmental (private) establishment. Accordingly, one party of dispute can not force other party to go to the arbitration.
It should be emphasized, that arbitration decision can be final if there is a preliminary mutual agreement on that while a party of the dispute expressing its willingness to agree with the other party to go to the arbitration, also agrees to act later in accordance with the decision of the arbitration.

Annex
In December 2008, a Memorandum was signed between the Ministry of Labour, Health and Social Affairs (MoHLSA), the Georgian Trade Union Confederation (GTUC) and the Georgian Employers Association (GEA) that established provisions to start institutionalization of a social dialogue in Georgia.

This process was facilitated by the ILO consultant who participated in most of the meetings held by the tripartite parties and streamlined the process in general.

The social partners have been holding sessions regularly since December 2008, at least once a month (in some cases several times a month) to discuss issues concerning the labour administration, labour legislation and other issues of labour relations. The group has started discussing the issues of the compliance of Georgian labour legislation with the ILO conventions and designed a framework for future cooperation.

During October 21- 22, 2009 a tripartite roundtable was held in Tbilisi, Georgia. The roundtable was held between the ILO delegation, representatives of the Government of Georgia (GoG), the Georgian Trade Unions Confederation (GTUC) and the Georgian Employers Association (GEA). Each party of the roundtable was represented by 6 persons.

The following issues were discussed during the roundtable:
• Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
• Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
• Current status of labour legislation in Georgia
• How to promote tripartism in Georgia
• Building consensus, tripartite discussion

During the roundtable the ILO experts provided comprehensive presentations on contemporary issues and solutions in the application of C.87 and C.98 in Europe.

The roundtable generated an interesting and useful discussion and it clarified some of the issues raised by the constituents. During the discussion, Minister of Labour, Health and Social Affairs of Georgia indicated, that the GoG pays vital attention to the process of strengthening of the social dialogue formats and would like to further develop and institutionalize tripartite cooperation. The GoG decided to engage more actively in social dialogue with all the interested parties and cooperate with them on the relevant issues.

The parties of the roundtable agreed on the following issues:
• To continue the enhancement of cooperation between the ILO and GoG.
• To strengthen social dialogue in Georgia by institutionalization of the national tripartite social dialogue commission.
• To establish secretariat for support of effective and productive cooperation between social partners.

In the framework of the roundtable, the Executive Director of the ILO, Mr. Kari Tapiola met the Prime Minister of Georgia. During the meeting of the Prime Minister of Georgia and Executive Director of the ILO, the Prime Minister underlined commitment of the GoG to the enhancement of social dialogue, further development and institutionalization of tripartite cooperation.

Following the roundtable several practical steps were made by the GoG:

• **Prime Minister of Georgia issued a decree that formalized the establishment of institutionalized Tripartite Social Partnership Commission** (Decree #335, November 12, 2009).
• **A Working Group consisting of 2 representatives from each social partner was created** to work on the statute of the newly established Tripartite Social Partnership Commission for analyzing labour related issues.
• **The national tripartite social dialogue commission was institutionalized.** For implementation of Prime Ministers' Decree on institutionalization of a Tripartite • Social Partnership Commission, the ILO provided technical and advisory services.
The ILO consultant worked with Working Group representatives of each social partner on elaboration of statute of a Tripartite Social Partnership Commission for enhancing institutionalization of social dialogue in Georgia.

In accordance with conclusions of the ILO Roundtable held in Tbilisi, 2009, for institutionalization of the national tripartite social dialogue committee, during 8-16December of 2010, 5 Working Group meetings were held aiming at drafting statute of a Tripartite Social Partnership Commission. The Minister of Labour, Health and Social Affairs opened the first meeting by asking the Working Group members to concentrate on drafting the proposed Statute of the Tripartite Social Partnership Commission. The constituents' representatives had the opportunity to express their comments and views regarding the Commission status, mandate, relationship to media, working priorities and areas. **Statute of the Commission was adopted in March, 2010.** The formalised Social Dialogue format is prepared to address all the concerns raised by the social partners and find commonly acceptable solutions.

The Tripartite Social Partnership Commission is the advisory body of the Minister of Labour, Health and Social Protection of Georgia. The Commission is chaired by the Minister of Labour, Health and Social Protection. Each party is represented by5 members in the Tripartite Social Partnership Commission. The

following state agencies are represented in Commission from the Government side:1. Ministry of Labour, Health and Social Protection
2. Advisory Group to the Prime Minister
3. Ministry of Regional Development and Infrastructure
4. Ministry of Economic and Sustainable Development
5. Ministry of Justice

• **The secretariat of the Tripartite Social partnership Commission was established.**
In accordance with conclusions of the ILO Roundtable held in Tbilisi, 2009, in May, **2010 Secretariat of the Tripartite Commission was established to support the effective and productive cooperation between social partners.**

It should be emphasized that from January 2010 to July 2011, approximately 24 Working Group meetings and approximately 10 Commission meetings were held. The Tripartite Social Partnership Commission is held on average once in a quarter. The last meeting of the Tripartite Social Partnership Commission was held in February, 2012.

The provision on *ad hoc* meetings of the Tripartite Social Partnership Commission is envisaged by the Charter of the Tripartite Social Partnership Commission and this provision was already applied in practice.

The Secretariat of the Tripartite Social Partnership Commission elaborates agenda for each meeting. The agendas are presented to the social partners before meeting to allow receiving comments and notes regarding issues envisaged by the agenda.

It should be emphasized, that the main issue is related to alleged anti-union cases raised by the GTUC. Moreover, pursuant to the recommendation of the Committee of Freedom of Association (CFA) the anti-union cases should be investigated by the Government. The Government made decision to study anti-union cases in framework of Tripartite Social Partnership Commission for ensuring of involvement of all interested parties in the process. Accordingly, the Tripartite Social Partnership Commission is oriented on analyzing the above-mentioned cases. For this purpose, the conciliation and mediation mechanisms are incorporates in the Tripartite Social Partnership Commission. According to the Charter of Tripartite Social Partnership Commission, it has special tripartite Working Group to mediate with dispute resolution.

The following alleged anti-union cases are being discussed in the framework of the Tripartite Social Commission:
• LTD Poti Sea Port case
• LTD BTM Textile case
• LTD Georgian Railway case
• The Educators & Scientists Free Trade Union of Georgia (ESFTUG) case
• Kutaisi Steel Plant Case (which was successfully resolved)

In June, 2010 the 99th Session of the International Labour Conference was held in Geneva. Georgia's case was discussed at the conference. Minister of Labour, Health and Social Protection participated in the conference. Consequently, conclusions on Georgia's case were adopted. During the Conference, the ILO took note of the establishment of Tripartite Social Partnership Commission and welcomed the steps taken by the Government of Georgia to institutionalize social dialogue in Georgia and urged the Government to intensify this dialogue.

The Governmental Committee invited the Government of Georgia to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§3 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 6§3 of the Revised Charter on the grounds that it has not been established that:

- decisions of the Court of Inquiry are binding on the parties only with their joint consent;
- there are adequate procedures for conciliation and arbitration for all public sector employees.

311. The Representative of Malta provided the following information in writing:

First ground of non-conformity

From the Department of Industrial & Employment Relations
In Article 69 of the EIRA it is stated that where a trade dispute exists or is apprehended and the parties fail to nominate or to agree on the appointment of a conciliator or where the appointed Conciliator reports a deadlock, the Director of Industrial and Employment Relations shall refer the trade dispute to the Minister responsible for industrial and employment relations. The Minister, according to the EIRA may either appoint a court of inquiry or refer the dispute to the Industrial Tribunal.
It should be noted that to date, all trade disputes referred to the Minister have been referred to the Industrial Tribunal and no Court of Inquiry has ever been appointed.
It should also be noted that the remit of a court of inquiry as established by Art 69 (4)(a) is to inquire into and establish the causes and circumstances of the *dispute.*

Second ground of non-conformity

From the Department of Industrial & Employment Relations
The conciliation and arbitration procedure under the EIRA applies to all employees in the public sector.
From Public Administration Human Resources Organisation
Definition of "Public Service employees"
"Public Service employees" are "public officers", that is, holders of any public office or persons appointed to act in any such office. "Public officers" are employees within the Public Service which is defined in Article 124 of the Constitution of Malta[1] as the service of the Government of Malta in a civil capacity. These definitions also appear in the Public Administration Act, Cap.497[2].
Moreover, in terms of article 110 (1) of the Constitution, "public officers" are appointed by the Prime Minister acting on the recommendation of the Public Service Commission, unless the Prime Minister has, acting on the recommendation of the Public Service Commission (PSC), delegated in writing such a power.
Conciliation and arbitration procedures available to public officers
The PSC[3] is an independent body established by the Constitution of Malta. The fundamental role of the Commission is to make recommendations and to tender advice to the Prime Minister in the making of appointments to public offices, the removal from public office, and the exercise of discipline over public officers.
Article 110 (3) of the Constitution provides that an appeal may be made to the Prime Minister, acting on the recommendation of the PSC, from any decision to remove any person from a public office.
In fulfilling its role, the Commission is guided by the principles of merit, equality of opportunity, impartiality, non-discrimination, the exclusion of patronage (political or otherwise), and fair and open competition, the latter within the parameters of agreements that exist between the government and the trade unions. The procedures governing these functions are set out in the PSC Regulations, 1960[4] and in the PSC (Disciplinary Procedure) Regulations, 1999[5].

[1] http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1
[2] http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8963&l=1
[3] http://www.psc.gov.mt
[4] http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8969&l=1
[5] http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8971&l=1

The PSC also serves as an appellate body in a number of instances concerning public officers. These instances, and the procedures to be followed, are codified in the Public Service Management Code (PSMC)1, as explained hereunder:-

- appeals by public officers from decisions by the Permanent Secretary of the respective Ministry to extend or terminate the probationary period for reasons of unsatisfactory performance (Section 1.1.12.7 of the PSMC);
- petitions by candidates regarding selection processes related to appointments and promotions in the Public Service (Section 1.1.17 of the PSMC);
- appeals by ex-public officers whose application for re-employment is rejected by the Re-Employment and Re-Instatement Committee (Section 1.6.2.6 of the PSMC);
- appeals from disciplinary decisions taken in terms of the PSC (Disciplinary Procedure) Regulations, 1999 (Section 10.8 of the PSMC).

From Public Administration Collective Bargaining Unit

While the above is not applicable for the public service nevertheless the public service enjoys an ad hoc conciliation mechanism. This is established through the public service collective agreement 2005 – 2010 which is currently under review. Clause 5.2 of this agreement encourages the prompt and amicable resolution of differences between the Government as the Employer and the Trade Unions. This conciliatory structure is made up of a Chairman and two members, and all members are appointed in consultation with the Unions signatories to the Agreement. The collective agreement also establishes that both parties shall endeavour to use this conciliatory structure before any industrial action is resorted to by the Unions. The application of this conciliatory mechanism has proved to be a very positive experience to both parties.

At present the Government and Unions do not have the opportunity to refer matters to the industrial tribunal.

312. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§3 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 6§3 of the Revised Charter on the ground that recourse to compulsory arbitration is permitted in circumstances which go beyond the limits set out in Article G of the Revised Charter.

313. The representative of the Republic of Moldova stated that a tripartite working group had been established in order to draft a new law on the resolution of labour disputes. This draft law will make provision for and regulate voluntary arbitration

314. The ETUC representative sought further clarification on the timetable for reform.

315. The Moldovan representative stated that the working group had only recently been established and that the precise timetable will be for the social partners to determine.

316. The Committee took note of the information provided and urged the Government to take all the necessary steps to bring the situation into conformity with the Charter. Meanwhile it decided to await the next assessment of the ECSR.

RSC 6§3 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 6§3 on the grounds that it has not been established that mediation is voluntary and recourse to compulsory arbitration is only permitted within the limits of Article G of the Revised Charter.

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

It is important to stress that the Tripartite Agreement on the New Regulation System of Labour Relations (June 2008) maintained the previous rules defined in the Labour Code about the admissibility and functioning of compulsory arbitration.

[1] http://www.mpo.gov.mt/downloads/PSMC2011.pdf

The revised Labour Code (2009) defines the collective conflicts resolution procedure: arbitration, conciliation and mediation (art. 505.º to 513.º and 523.º to 528.º).
The parties are totally free to request any of the resolution procedures. Voluntary arbitration can cover labour conflicts related with the interpretation, integration, celebration or revision of collective agreements (art. 506.ºCT). Voluntary arbitration is carried out by three arbitrators chosen by the parties involved.
Compulsory arbitration is only possible if the parties demand it and there is still conflict after fruitless negotiations have taken place, as well as conciliation and mediation, and there is no positive outcome. The compulsory arbitration can only be decided after the consultation of the Permanent Commission of Social Concertation [a), n.º 1, article 508.º CT].
The Labour Code maintains a restrictive approach to compulsory arbitration and defines two situations in which compulsory arbitration is possible: (i) If the Permanent Commission of Social Concertation adopts a recommendation in favour by the majority of the workers and employers votes cast and (ii) if essential services related with the protection of life, health and public security are involved [b) and c), nº 1, art. 508.º CT].
The Revised Labour Code (2009) allows a new possibility of compulsory arbitration, called "necessary arbitration", which is only possible if a new collective agreement is not adopted 12 months after the expiration of the time limit of the previous collective agreement and there is no collective convention applicable to at least half of the workers covered by the expired collective convention.
Considering the information given the Portuguese legislation is in conformity with article 6§3 of RESC because voluntary arbitration, conciliation and mediation procedures depend totally of the autonomy of the parties involved (art. 506.º, 507.º, 523 and 526.º CT) and compulsory arbitration is only possible in the three exceptional situations defined in the Labour Code (art. 508.º do CT).

318. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 6§4 - Collective action

RSC 6§4 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 6§4 of the Revised Charter on the following grounds:

- civil servants are denied the right to strike;
- employees in electricity and water supply services are denied the right to strike.

First and second ground of non-conformity

319. The representative from Albania provided the following information:

Currently civil servants are denied the right to strike. However, in the provisional draft new law "On Civil Service in Albania", civil servants are granted the right to strike, however, with restrictions to be clearly determined in the law, and which shall be connected to guaranteeing public health, public safety and public law and order.
Further as regards the prohibition of strikes in the water and electricity supply services, it is intended to amend the law in order to remove this restriction and ensure the provision of a minimum service.

320. The Chair asked what was the timetable for reform.

321. The representative from Albania stated that the draft amendments were to be presented to Parliament in 2012.

322. The Icelandic representative stated that these were serious violations and that at the very least a strong message should be sent, but in her view she would prefer a warning to be addressed.

323. The representative from Lithuania stated that it was enough to note the information provided and wait for the next assessment of the ECSR.

324. The representative from the ETUC pointed out that Committee were previously informed of a draft law and that there was nothing new.

325. The Committee decided to vote on a warning which was not carried (9 votes in favour, 23 against and 8 abstentions).

326. The Committee took note of the information provided, it urged the Government to take the necessary steps and meanwhile it decided to await the next assessment of the ECSR.

RSC 6§4 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§4 of the Revised Charter on the grounds that:

- civilian personnel of the Ministry of Defense and any establishments responsible to the Ministry are denied the right to strike;
- the restriction on the right to strike in the railway sector pursuant to Section 51 of the Railway Transport Act goes beyond that permitted by Article G ;
- civil servants are only permitted to engage in symbolic action and are prohibited from strike (Section 47 of the Civil Service Act).

First ground of non-conformity

327. The Bulgarian representative provided the following information:

> The Ministry of Defence upheld its position, as set out in the National Report, and provided the following supplementary information:
> "In accordance with the second sentence of Section 285 of the Act on Defence and the Armed Forces of the Republic of Bulgaria, non-military personnel do not enjoy an effective right to strike.
> It should be noted that this restriction is part of another more general prohibition, established by Section 16, point 6, of the Act on Settlement of Collective Employment Disputes (LRCCT), whereby staff belonging to the Ministry of Defence, the Ministry of the Interior, the Ministry of Justice, the public prosecution service and the Ministry of Education are denied the right to strike.
> Under Section 47, paragraph 1, of the Civil Service Act, where demands concerning employment and social relations have not been satisfied, public servants can declare a strike. Under paragraph 2 of Section 47 the strike takes the form of the wearing and displaying of appropriate signs and symbols, of posters, of banners, etc. but the civil servants are not entitled to cease work.
> It was clear from the above-mentioned provisions that the denial of the right to strike for non-military personnel of the Ministry of Defence, bodies reporting directly to that ministry and the Bulgarian army solely concerned strikes as such and did not undermine the right to engage in symbolic action, consisting in wearing and displaying appropriate signs, posters, banners, badges or other appropriate symbols, but without stopping work, as provided for in Section 10 of the Act on Settlement of Collective Employment Disputes.
> This rule was established on account of the specific nature of the duties performed by staff of the Ministry of Defence, of the bodies reporting directly to that ministry and of the Bulgarian army, which are directly linked to the national security of the Republic of Bulgaria and represent a system of political, economic, military, social and other activities geared to generating a stable security environment and to preparing the armed defence of the state's territorial integrity and autonomy, in accordance with Section 4, paragraph 1, and Section 3, paragraph 1 of the Act on Defence and the Armed Forces of the Republic of Bulgaria. The provisions cited are fully consistent with Article 50 of the Constitution of the Republic of Bulgaria, which provides that employees shall be entitled to strike in defence of their collective, economic and social interests, a right that should be exercised under the conditions and in accordance with the modalities laid down by law, and with Article 116, paragraph 2 of the Constitution, whereby the conditions of appointment or dismissal of civil servants, their membership of political parties and trade unions and their exercise of the right to strike are to be determined by law."

Second and third ground of non-conformity

In December 2008 an inter-ministerial working party was set up to prepare amendments to the Civil Service Act, regulating the right to engage in symbolic action within the civil service, and to the Railway Transport Act, in view of their non-compliance with the international standards of the Council of Europe and the International Labour Organisation. The working party brought together representatives of the Ministry of Labour and Social Policy, the Ministry of Transport, the National Railways Agency, the Ministry of the Civil Service and Administrative Reform and the administration of the Council of Ministers.

This working party failed to achieve its goal on account of the position defended by the Ministry of the Civil Service and Administrative Reform (since disbanded) to the effect that the prohibition of effective strike action had its basis in the statute and duties of civil servants, who were required to assist the public authorities in the performance of their tasks. The Ministry of Transport had come out in favour of amending the Railway Transport Act. It proposed introducing an obligation for the employees and their employers to sign an agreement before strike action was taken so as to ensure a minimum service level, guaranteeing that 50% of scheduled train services would operate.

The working party had resumed its activities in 2010. In view of the changes in the structure and staffing of the administration and the adoption of a new regulation on the organisation of the Council of Ministers, its membership was updated. It held a series of meetings and formulated proposals for amending the Civil Service Act. These proposals had been accepted in principle by the Council of Ministers. At present discussions were taking place on the need to draw up other amendments to the Civil Service Act, which had entailed postponing the discussion of the proposals already prepared until the end of the year.

328. The representative of France asked why there had not yet been a Resolution of the Committee of Ministers in this complaint.

329. The Secretariat stated that the follow of the complaint was on the agenda of the Committee of Ministers.

330. The Committee voted on a warning which was carried (22 votes in favour, 1 against and 15 abstentions) and urged the Government to take all adequate steps to bring the situation into conformity with the Charter.

RSC 6§4 CYPRUS

The Committee concludes that the situation in Cyprus is not conformity with Article 6§4 of the Revised Charter on the ground that the Trade Union laws 1955-1996 require that a decision to call a strike must be endorsed by the executive committee of a trade union.

331. The representative from Cyprus stated that a draft law on trade unions is currently before the House of Representatives which does not contain a requirement that a decision to call a strike must be endorsed by the executive committee of a trade union.

332. The representative from the ETUC asked whether the legislation was likely to be adopted.

333. The representative from Cyprus stated that it was the case.

334. The Icelandic representative suggested noting the information and sending a strong message.

335. The Committee noted the information provided by the Cypriot Government and it urged the Government to take the necessary steps. Meanwhile it decided to await the next assessment of the ECSR.

RSC 6§4 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 6§4 of the Revised Charter on the ground that all civil servants are denied the right to strike.

336. The representative from Estonia stated that there was a willingness to amend the Public Servants Act; legislation had been already put before Parliament but had had to be withdrawn due to elections. The political parties which had been in Government had been re-elected and therefore the draft legislation will be re submitted to Parliament. Its entry into force was expected in 2013.

337. The Committee noted the information provided and it urged the Government to take the necessary steps. Meanwhile it decided to await the next assessment of the ECSR.

RSC 6§4 FRANCE

The Committee finds that the situation in France is not in conformity with Article 6§4 of the Revised Charter on the grounds that:

- only representative trade unions have the right to call strikes in the public sector;
- deductions from the wages of striking state employees are not always proportional to the duration of the strike.

First ground of non-conformity

338. The French representative provided the following information :

> Firstly, I wish to inform you that, since the submission of the report on implementation of the revised European Social Charter, Law No. 2010-758 of 5 July 2010 concerning the renewal of social dialogue and containing various provisions on the civil service has radically modernised social dialogue within the civil service, particularly with regard to bargaining and to joint consultative bodies. This reform will have a considerable impact on the quality of dialogue within the civil service and on the agreements negotiated in that sector.
> The law's provisions, some of which are directly applicable, are aimed inter alia at broadening access to workplace elections by no longer imposing representativity criteria for electoral lists, fostering a high turnout in elections of staff representatives, promoting recourse to bargaining and reinforcing the guarantees afforded to staff exercising trade union responsibilities.

339. The Committee noted the information provided. It invited the Government to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

Second ground of non-conformity

340. The representative of France stated that there had been no change to the situation. However she emphasized that this is due to accounting rules and in no way should be considered as a sanction she highlighted that in 2009 1,4 17 283 million days were lost in the public sector due to strikes, this figure rose to almost 2,5 million in 2010. This shows clearly that in realty this accounting rule poses no restriction to the right to strike.

341. The representative of Lithuania stated that the right to strike was crucial, there had been no change to the situation and therefore the Committee should vote on a warning.

342. The representative of France stated that this was excessive, in certain countries there was no right to strike at all for civil servants, and this rule only affects those who go on strike for less that half a day.

343. The representatives from the United Kingdom and Estonia stated that in their view this was not a serious case and the Committee should not take any action.

344. The representative from Lithuania disagreed and stated that this rule could deter people from striking.

345. The Committee voted on a warning which was not carried (4 votes in favour, 25 against and 6 abstentions).

346. The Committee urged the French Government to take all the necessary steps to bring the situation into conformity .Meanwhile it decided to await the next assessment of the ECSR.

RSC 6§4 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 6§4 of the Revised Charter on the grounds that

- it has not been demonstrated that the Government's right to issue ordinances restricting strikes in essential public services falls within the limits of Article G of the Revised Charter;
- the requirement to notify the duration of strikes concerning essential public services to the employer prior to strike action is excessive.

First ground of non-conformity

347. The representative of Italy stated that the power to issue ordinances is not unlimited and indiscriminate; it is the Guarantee Commission that initiates an ordinance. It may concern only an essential service. In the period 2007-2008 4,000 strikes were notified and 15 87 strikes were renounced following intervention by the Guarantee Commission. The legislation is accepted by the social partners as necessary.

348. The representative of Portugal asked whether trade unions could challenge an ordinance.

349. The representative from Italy responded that the trade unions had the opportunity to express their views before the Guarantee Commission.

350. The Committee took note of the information provided, it recalled the importance of the right to strike and that any limitations must be in conformity with the Charter. It invited the Government to provide all the relevant information in the next report and decided to await the next assessment by the ECSR.

Second ground of non-conformity

351. The representative of Italy stated that the duration of a strike in essential services must be notified in order that the Guarantee Commission can assess the necessity of issuing an ordinance, and in order that a minimum service may be organized in time.

352. The Committee took note of the information provided, it recalled the importance of the right to strike and that any limitations must be in conformity with the Charter. It invited the Government to provide all the relevant information in the next report and decided to await the next assessment by the ECSR.

RSC 6§4 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 6§4 of the Revised Charter on the following grounds:

- the restrictions to the right to strike for public officials and employees in sectors such as the public administration ("internal afairs") state security sectors and national defence go beyond those permitted by Article G of the Revised Charter;
- the right to strike is denied to all employees in electricity and water supply services, telecommunication and air traffic control.

353. The representative of the Republic of Moldova stated that there was no change to the situation, although the tripartite working group referred to earlier was examining the situation, further it only affected personnel concerned with public safety or public order.

354. The representative of Portugal stated that in her opinion the restrictions seemed to be too wide in personal scope.

355. The representative of the ETUC stated that the following report should provide more precise information ion the categories of workers concerned.

356. The Committee took note of the information provided. It recalled that the restrictions on the right to strike must be must be in conformity with the Charter. It invited the Government to provide all the relevant information in the next report and decided to await the next assessment by the ECSR.

RSC 6§4 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 6§4 of the Revised Charter on the ground that legislation was enacted during the reference period in order to terminate collective action in circumstances which went beyond those permitted by Article G of the Revised Charter.

357. The Norwegian representative stated that the Government believes that its intervention to terminate a strike in the financial sector was in the public interest and its intervention in the strike in the state sector was in the interests of public health. It recalled that according to Norges Bank during the conflict it would not be possible for the public to carry out payments through the banks, as the banks would be closed, and the payment terminals, telebanks, internet-banking and minibanks (ATMs) would not be available. Neither wages nor national insurance benefits would be available at the receivers' accounts. The public could still use cash for payment of goods and services, but as minibanks(ATMs) and bank premises would be closed, people would have to depend on the cash they had at their disposal at the start of the conflict. Without access to wages or benefits many would be prevented from buying necessities as food, medicines, etc. For persons dependent on unemployment benefits, old age pensions or social service benefits the situation would immediately become difficult. According to the social insurance authorities vast amounts in unemployment compensation and social benefits including pensions were due for payment on 12 June and the following days.

358. The Government only intervened in the state strike when it affected vets, which brought about serious consequences for animal/livestock health, and could have had serious public health consequences.

359. The Icelandic representative sought confirmation that trade unions in all sectors could bargain freely and take industrial action, and after expiry of the legislation could freely negotiate. This was confirmed by the Norwegian representative. The Icelandic representative pointed out that compulsory arbitration in Norway was exceptional.

360. The Committee took note of the information provided. It invited the Government to provide all the relevant information in the next report and decided to await the next assessment by the ECSR.

RSC 6§4 PORTUGAL

The Committee concludes that the situation is not in conformity with Article 6§4 of the Revised Charter on the ground that the right to call a strike is reserved in principle only to trade unions while the forming of the latter is subject to an excessive timeframe.

361. The representative of Portugal stated that there had been no change to the situation, there was no desire neither on the part of the Government or the social partners to amend the situation. There will be no change unless the trade unions really push for it.

362. The representative of Lithuania asked why 30 days were necessary to establish a trade union.

363. The representative of Portugal explained that it was an administrative procedure, this is a general time limit, it is a maximum. In the last 20 years though no new trade union has been formed.

364. The Committee took note of the information provided. It recalled the importance of the right to strike, and urged the Government to take all the necessary steps to bring the situation into conformity .Meanwhile it decided to await the next assessment of the ECSR.

RSC 6§4 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 6§4 of the Revised Charter on the grounds that:

- a trade union may take collective action only if it fulfils representativeness criteria which unduly restricts the right of trade unions to take collective action;
- employers may have recourse to compulsory arbitration in circumstances which go beyond those permitted by Article G of the Revised Charter.

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

365. The Romanian representative provided the following information; revised legislation deletes the provisions of article 62 from the law 168/1999, allowing an employer to have recourse to compulsory arbitration if a strike exceeds 20 days.

366. According to the new provisions, a decision to suspend the strike belongs exclusively to the courts, if it is found that the strike is illegal. (Chapter V, art. 198-200).

367. On the matter of applicable restrictions, the law provides that: in public health and social assistance, telecommunications, radio and public television, rail transport, public transport facilities and sanitarian localities, gas, electricity, heat and water supply services , a strike is allowed if the strike organizers provide a minimum service (not less then one third of normal activity). (Article 205).

368. Employees of the national energy system, operating units of nuclear sectors, emergency fire service may declare a strike if they ensure at least a third of activity, which is not dangerous for the people's health and life and to ensure functions of these installations in total safety. (Article 206).

369. The Committee took note of the developments in the situation. It invited the Government to provide all the relevant information in the next report and decided to await the next assessment by the ECSR.

Second ground of non-conformity

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

> The revised legislation eliminates the provisions of article 62 from the law 168/1999, regarding the possibility of employer to claim the compulsory arbitration if the strike exceeds 20 days.
> The Law of social dialogue, no. 62/10 th of may 2011 establishes for the first time the Office for Mediation and Arbitration of Collective labour disputes under the Ministry of Labour, Family and Social Protection, in order to amiable settle the labour dispute. (**Capital IV, articles 175-180**).
> Reconciliation, the first stage of an amiable solving stands mandatory procedure. (**Capitol III, articles 166-174**), parties being in a conflict may decide, on a labour dispute period, by consensus, that the claims are subject to mediation, respectively to the arbitrage of the Office for arbitration.
> Mediation and arbitration are compulsory only if the parties agree upon this at the beginning of the conflict or during the conflict. (**Capitol IV, articles 179 and 180**).
> The strike is regulated in the Chapter V, articles 181-207. It can be declared only if, firstly have been exhausted the possibilities of solving labor dispute through the mandatory's procedures provided by this law, only after conducting strike warning and if at the moment of starting the strike warning was taken into account of employers by the employers by the organizers at least 2 working days before. (**Article 182**). Strikes may be warning strikes, solidarity and proper. (**art. 184**).
> Also, the restrictions for trigger the strike in the key sectors on the grounds of threat "humanitarian interests" as well as articles 55 and 58 of the Law no.168/1999 on the decision to suspend the strike for a period of 30 days were eliminated.
> According to the new provisions, the decision to suspend the strike belongs exclusively to the court, if is found that the strike was declared or develops non-observing the law. The court examines the request for strike and pronounces a decision that, if necessary, rejects the request for ceasing the strike or accepts the request and decides the ceasing of the strike because it is illegal. (**Chapter V, art. 198-200**)
> On the matter of applicable restrictions, the law provides that:
> In public health and social assistance, telecommunications, radio and public television, rail transport, in providing transport facilities and sanitarian localities, population supply with gas, electricity, heat and water, the strike is allowed if the strike organizers supply services, but not less then one third of normal activity. (**Article 205**)
> Employees of the national energetic system, operating units of nuclear sectors, the continuous fire unit may declare a strike if they ensure at least a third of activity, which is not dangerous for the people's health and life and to ensure functions of these installations in total safety. (**Article 206**).
> Can not declare a strike prosecutors, judges and military personnel from the defense system, public order and national security as well as the personnel from the shipping and air during their mission.(**Articles 202 and 203**).

371. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 6§4 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 6§4 on the ground that all civil servants are denied the right to strike.

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

> The situation has not changed since Conclusions (2010). It should be noted that the Ministry of Social Policy has approved an order establishing an inter-ministerial working group to take measures to bring the situation into conformity with Article 6§4. The information will be provided in next report.

373. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 21 - Right of workers to be informed and consulted

RSC 21 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 21 of the Revised Charter because it has not been established that the rules relating to information and consultation cover the majority of employees concerned.

374. The representative of Italy stated the information that the ECSR had sought was now available, namely how many workers guaranteed information and consultation rights. When considering the scope of the main legislation in this area and the many other pieces of legislation it is in fact 80%. Regarding the aspects linked to safety and health at work this percentage reaches 100% through the representative for safety, which is required in any company.

375. The Committee took note of the information provided and insisted that all relevant information be provided in the next report. Meanwhile it decided to await the next assessment by the ECSR.

RSC 21 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 21 of the Revised Charter on the ground that it has not been established that sanctions are applicable in case employers fail to fulfil their obligation to inform and consult workers within the undertaking.

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

> En tant que raison générale pour la réalisation du droit des salariés d'être au courant avec la situation économique et financière de l'entreprise ou ils travaillent est l'article 34 de la Constitution de la République de Moldova, qui consacre le droit de la personne d'avoir accès a toute information d'intérêt public.
> A son tour le Code du Travail établit le droit des salaries de participer a l'administration de l'entreprise (art. 9 al. (1) lit. j) et l'art. 42), ainsi que l'obligation de l'employeur de créer des conditions qui assureraient la réalisation du droit respectif (art. 10 al. (2) lit. m)). L'une de ces conditions est que le salarié dispose de l'information véridique et complète sur la situation économique de l'entreprise ou il travaille.
> En conformité avec le Code la participation des salariés a l'administration de l'entreprise peut être réalisée par:
> - la participation à l'élaboration des projets des actes normatifs au niveau de l'entreprise dans le domaine socio-économique;
> - la participation à l'approbation des actes normatifs au niveau de l'entreprise;
> - la sollicitation de l'opinion des représentants des salariés en problèmes relatifs aux droits et aux intérêts du collectif du travail;
> - La collaboration avec l'employeur dans le cadre du partenariat social;
> - Toutes autres formes qui ne contreviennent pas à la législation en vigueur.
>
> Tenant compte du fait que les intérêts des salariés dans le cadre du partenariat social, y compris la réalisation du droit de participation a l'administration de l'entreprise, sont régulièrement représentés par les syndicats, nous considérons nécessaire de mentionner que l'article 23 de la Loi des syndicats attribue aux organisations syndicales le droit de recevoir gratuitement des informations de la part des autorités de l'administration publique, des employeurs et des leurs associations en matières relatives au travail, chômage, développement socio-économique, a l'état de l'environnement, a la privatisation, a l'assistance sociale, soins médicaux, logement. En vertu de la norme respective les syndicats ont le droit de recevoir, transmettre et diffuser les informations par tout moyen légal. En qualité de partenaire social, ils bénéficient gratuitement des services des organes de mass-média d'Etat, ils peuvent organiser des sondages sociologiques et disposer des centres informatifs. Si les personnes détenant des fonctions de responsabilité ne présentent pas l'information sollicitée ou présentent des informations non-véridiques, ce fait est qualifié comme

empêchement a l'activité des syndicats, et les personnes coupables sont soumis a la responsabilité en conformité avec la législation.

Sauf cela, conformément a l'article 386 du Code du Travail en vigueur, en exerçant leurs droits légaux de contrôle les syndicats ont droit de solliciter et de recevoir de la par de l'employeur toutes les informations et les actes juridiques nécessaires au contrôle.

Le Code du Travail (art. 9) prévoit aussi le droit des salariés de conclure des contrats collectif de travail et des conventions collectives (par intermédiaire de leurs représentants[1]), ainsi que le droit d'être informé concernant l'exécution du contrat et des conventions qui les concernent. Respectivement, en vertu de l'article 10 du Code, les employeurs sont obligés a fournir aux représentants des salariés l'information complète et véridique nécessaire a la conclusion du contrat collectif de travail et au contrôle de sa réalisation.

Les normes citées son applicables a toutes les entreprises, indifféremment de type de propriété et de forme juridique d'organisation.

La législation nationale contient aussi des dispositions distinctes concernant l'accès des salariés à l'information qui tient de l'activité de certaines entreprises.

En conformité avec l'article 170 du Code civil, la société par actions est obligée de publier, au moins 10 jours avant la tenue de la réunion générale annuelle des actionnaires, dans ses publications le bilan comptable annuel, le bilan du profit et des pertes, la valeur comptable des actions et des obligations, d'autres données, en conformité avec la législation. La société par actions est obligée a mettre a la disposition des actionnaires, dans les conditions de la loi et de l'acte de constitution, les informations concernant l'administration et la représentation de la société, concernant la situation financière, ainsi que d'autres informations, y compris l'acte de constitution, le certificat d'enregistrement de la société et des actions, les règlements de la société; les procès verbaux des réunions générales, du conseil, la liste des membres de conseil, concernant l'administrateur, les contrats avec l'enregistreur, l'auditeur, les rapports comptables, fiscaux, les rapports du censeur. A la demande des actionnaires la société est obligée à délivrer, du compte du solliciteur, des copies et des extraits des documents mentionnés.

L'exception de l'obligation de présenter l'information concernant la situation économique et financière de l'unité, prévue dans l'article 21, par. A de la Charte, est l'information qui constitue le secret d'Etat (conformément a la Loi sur le secret d'Etat n 106-XIII du 17 mai 1994) et le secret commercial (conformément a la Loi sur le secret commercial n.171-XIII du 6 juillet 1994).

En conformité avec l'article 43 de la Loi sur les sociétés a responsabilité limitée n 135-XVI du 14 juin 2007, les associés de la société (qui sont régulièrement aussi ses salariés) bénéficient de droit de participer à la gestion de la société dans les conditions de la loi et de l'acte de constitution, d'être informés sur l'activité de la société, ainsi que d'exercer le contrôle sur le mode de gestion de celle-ci.

Dans ce contexte l'administrateur de la société par actions est obligée a présenter immédiatement, a la demande de chaque associé, des informations sur l'activité de la société et de mettre a leur disposition des livres comptables et d'autres documents de la société.

Dans le même contexte il faut mentionner qu'en vertu de l'article 7 de la Loi sur l'entreprise d'Etat n 146-XIII du 16 juin 1994, le conseil d'administration de chaque entreprise comprend obligatoirement des représentants du personnel, ce qui permet aux salariés de l'entreprise d'avoir accès a toute l'information liée à l'activité de la société.

En fonction des normes violées, pour sanctionner les violations lies à la limitation de l'accès des salariés à l'information sur l'activité de l'entreprise on applique l'article 55 du Code contraventionnel qui établit des amendes pour la violation de la législation du travail ou l'article 71 al.1 du même Code qui est reproduit ci-après:

"Article 71. Violation de la législation sur l'accès à l'information et sur la pétition. (1) La violation par une personne ayant une fonction de direction des dispositions liées a l'accès a l'information et sur la pétition est sanctionnée d'une amende de 40 à 50 unités conventionnelles."

377. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

1. Conformément à l'art. 21 du Code du Travail, dans les entreprises ou des syndicats ne sont pas institués, les intérêts des salariés peuvent être défendus par leur représentants élus lors de la réunion générale des salaries, par vote d'au moins la moitie du nombre total de salaries de l'entreprise. Le nombre des représentants élus des salariés, leurs mandats, ainsi que la durée de leur mandat sont établis a la réunion générale des salaries par un acte normatif au niveau de l'entreprise.

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

RSC 22 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 22 of the Revised Charter on the ground that employees were not granted an effective right to participate in the decision-making process within the undertaking concerning the matters referred to in this Article.

378. The representative of Albania states that new legislation had been adopted on employee participation in the field of health and safety which applied to all enterprises with over 50 employees. Following a proposal from the Lithuanian representative, the Committee congratulated Albania for these positive developments

379. The Committee invited the Government to provide all the relevant information in the next report and decided to await the next assessment by the ECSR.

RSC 22 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 22 of the Revised Charter on the ground that it is not established whether workers' representatives participate in the organisation of social and socio-cultural services set up within an undertaking.

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

> Aux termes de l'art. 7, paragraphe 2 du Code du travail les salariés peuvent, dans le cadre d'une assemblée générale, élire des représentants qui représenteront leurs intérêts collectifs sur des questions relevant des relations de travail et de sécurité sociale devant l'employeur ou devant les autorités publiques. Les représentants sont élus à la majorité de plus de 2/3 des membres de l'assemblée générale.
> Aux termes de l'art. 293 du Code du travail les modalités d'utilisation des fonds pour l'organisation de services sociaux et socioculturels au sein de l'entreprise sont fixées par l'assemblée générale du personnel. Les fonds pour les services sociaux et socioculturels ne peuvent pas être saisies ou affectés à d'autres fins.

381. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 22 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 22 of the Revised Charter on the ground that it has not been established that appeals are available for workers or their representatives in case of violation of the right of workers to take part in the determination and improvement of working conditions and the working environment.

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

> Firstly we would like to apologise for the lack of information given in our reports. In Estonia employees' representatives may bring alleged violations of their rights concerning working conditions, including work environment to labour dispute committees or courts.
> In further details the employees and their representatives right to take part in the determination and improvement of working conditions and the work environment is regulated in Occupational Health and Safety Act § 12 Section 5.
> This Act stipulates that employers and workers are required to co-operate in the creation of a safe working environment. For this purpose, employers shall consult workers or their representatives in advance on issues relating to the working environment. These issues concern the planning for measures to improve the working environment, designation of employees responsible for performance of rescue work, provision of first aid and evacuation of workers, the planning and organization of the occupational health and safety training and the choice and application of new

technology and work equipment. An employer shall, where possible, take into account the proposals and invite the workers to participate in the implementation of such plans.
According to the Occupational Health and Safety Act § 17 Section 6 working environment representatives enjoy, among other things, the right to require from the employer prescribed occupational health and safety measures and make proposals to remove the sources of danger and improve the working environment. A working environment representative shall not be placed at any disadvantage due to performance of his or her duties if there is a conflict of interests between him or her and the employer (§ 17 section 7).
These provisions show clearly that employees in Estonia have the right to participate in matters concerning the working environment.
We would also like to draw your attention to the Fifth European Working Condition Survey (2010)[1] done by European Foundation for the Improvement of Living and Working Conditions. Survey shows that 94,7% of Estonian workers are well and very well informed about health and safety risks. This number has increased over the years (2000 – 92,7%; 2005 – 93,3%). In the European Union the only countries with a higher percentage is Ireland, Hungary and Latvia. The European Union average is at 89,9%, which means that Estonia is well above the average.
The question is what the worker is able to do if his or her right to take part in the determination and improvement of working conditions is violated. More specifically the European Committee of Social Rights asks whether employees' representatives may bring alleged violations of the working conditions and the work environment before the relevant courts.
According to Occupational Health and Safety Act § 14 section 5 point 7 a worker has the right to contact working environment representatives, members of the working environment council, employees' trustees and the labour inspector if the measures implemented and the equipment provided by the employer do not ensure the safety of the working environment.
The Occupational Health and Safety Act does not exclude that employees' representatives have a right to bring alleged violations of their rights concerning working conditions, including work environment to labour dispute committees or courts. The right to be able to go to court is a fundamental right provided in the Constitution of the Republic of Estonia (§ 15). Everyone whose rights and freedoms are violated has the right of recourse to the courts.
Therefore, in Estonia, employees' representatives may bring alleged violations of their rights concerning working conditions to courts. It is their fundamental right to do so.

383. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 22 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 22 of the Revised Charter on the ground that it has not been established that a majority of employees have an effective right to participate in the decision-making process in their undertaking on matters referred to in Article 22 of the Revised Charter.

384. The representative from Italy provided the following information:

The system of workers' participation in the life of their undertaking is based on the RSAs and RSUs, concerning which the Committee requests clarifications. These are two employee representative bodies, the former established by Law 300 of 1970 and the latter by the inter-confederation Agreement of 1993, which share the characteristic of being composed of employees chosen by their fellow workers within the undertaking. They are not union leaders, but are representatives of all employees, whether or not trade union members. The RSUs can be found in both the private and the public sectors in all production units with at least 15 workers, and their number of members depends on the size of the undertaking, starting from at least three members for undertakings with up to 200 employees, with three more for every additional 300 employees up to 3,000, followed by three more for every additional 500 in undertakings with over 3,000 employees. An examination of the framework of the main legislation and of all the other relating legislative texts shows that participation is 80%. Regarding the aspects linked to safety and health at work this percentage reaches 100% through the representative for safety, which is required in any company.

[1] http://www.eurofound.europa.eu/surveys/ewcs/2010/index.htm

385. The Committee took note of the information provided. It invited the Government to provide all the relevant information in the next report and decided to await the next assessment by the ECSR.

Article 26§1 - Sexual harassment

RSC 26§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation is not in conformity with Article 26§1 of the Revised Charter on the ground that it has not been established that the Republic of Moldova guarantees the right to protection from sexual harassment in the workplace.

386. The representative of the Republic of Moldova said that in 2006 a new act on dignity in the workplace was adopted in which the notion of sexual harassment and dignity in the workplace was defined. Accordingly, the new act now covers all the workers. Also the right to judicial remedies in cases of violations is established. Section 179 of the above act sets forth the obligation that internal rules in the workplace should include rules concerning sexual harassment and dignity in the workplace. Also Article 327 of the Labour Code provides for judicial remedies in cases of violation of rights of the employees by the employers and the Criminal Code contains provisions covering sexual harassment.

387. The Committee took note of the information provided by the representative of the Republic of Moldova. It invited the Government to provide all the relevant information in its next report and decided to await the next assessment by the ECSR.

Article 26§2 - Moral harassment

RSC 26§2 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 26§2 of the Revised Charter on the ground that it has not been established that effective protection of employees against any form of moral harassment is in place.

388. The representative of Albania informed the Committee that the State Labour Inspectorate is the institution responsible for monitoring and finding violations regarding moral harassment in the workplace. Article 32 of the Labour Code and Sections 31 and 33 of the Law on Labour Inspection and State Labour Inspectorate provide for sanctions in case of violation, according to which fines of up to 30-50 fold of the minimum wage may be applied. Also Article 625 of the Civil Code provides for judicial remedies. Amendments to the Labour Code which are not yet in force will provide for a shift of the burden of proof.

389. The Committee took note of the information provided by the representative of Albania. It invited the Government to take steps to remedy the violation and decided to await the next assessment by the ECSR.

RSC 26§2 REPUBLIC OF MOLDOVA

The Committee concludes that the situation is not in conformity with Article 26§2 of the Revised Charter on the ground that it has not been established that the Republic of Moldova guarantees the right to protection from moral harassment in the workplace.

390. The representative of the Republic of Moldova said that in 2006 a new act on dignity in the workplace was adopted in which the notion of dignity in the workplace was

defined. Accordingly, the new act now covers the workers and the employees. Also the right to judicial remedies in cases of violations has been established. Section 179 of the above act sets forth the obligation that internal rules in the workplace should include rules concerning dignity in the workplace.

391. The Committee took note of the information provided by the representative of the Republic of Moldova. It invited the Government to provide all the relevant information in its next report and decided to await the next assessment by the ECSR.

Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them

RSC28 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 28 of the Revised Charter on the ground that union representatives are protected against dismissal during the performance of their functions only until their mandate expires.

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

> No provision is contained in the Labour Code providing for the protection of representatives of employees beyond their mandate in the steering authorities of the employees' organisation. With the changes which are to be prepared to the Labour Code, the finding of ECSR shall be taken into account in order to provide for specific regulations concerning these cases.

393. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 28 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 28 of the Revised Charter on the ground that trade union representatives are only protected against dismissal during the performance of their functions, until their mandate expires.

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

> The Ministry of Labour and Social of RA soon will initiate discussions with the Confederation of Trade Unions of Armenia in regard the legislative issues related to these Articles.

395. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RSC 28 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 28 of the Revised Charter on the ground that legislation does not provide for adequate protection in the event of an unlawful dismissal based on the employee's status as a trade union representative or activities linked to this status.

396. The representative of Bulgaria informed the Committee that the proposal of the Ministry of Labour and Social Policy to amend Article 225§1 of the Labour Code was not adopted by the Council of Ministers as there was no agreement on the cancellation of the restriction 6 months. The Act on protection against discrimination includes prohibition of discrimination and dismissal because of trade union membership or involvement in trade union activities. The Commission for protection against discrimination and the courts are responsible for monitoring the implementation of this law. The law against discrimination provides mechanisms for compensation for damages suffered by victims of discrimination. According to law, any person may petition the Commission to open proceedings to protect

against discriminatory treatment. If, under this procedure, the Commission is to establish the existence of discrimination, it may apply coercive administrative measures or impose administrative penalties. In the event of discriminatory dismissal and illegitimate, employees have the option to benefit from the provisions of Article 344§2 of the Labour Code or Section 71 of the Act on protection against discrimination.

397. The representative of ETUC remarked that the amendments of the Labour Code were not yet in force and the 6 months restriction remained and therefore there had been no change of the situation.

398. The Committee took note of the information provided by the representative of Bulgaria. It invited the Government to take steps to remedy the violation and decided to await the next assessment by the ECSR.

RSC 28 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 28 of the Revised Charter as it has not been established that:

- employees'representatives, other than trade union representatives are guaranteed protection against dismissal or prejudicial acts short of dismissal where they are exercising their functions outside the scope of collective bargaining.
- facilities identical to those afforded to trade union representatives are provided to other employees' representatives.

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

First and second grounds of non-conformity

La législation nationale assure les conditions les plus favorables pour la création et l'activité des syndicats, tout a en consignant le droit des salariées a l'association, en réglementant le rôle des syndicats dans le cadre du partenariat social, ainsi qu'en leur attribuant un volume important de droits et garanties en vue de réaliser leur taches statuaires.

La législation prévoit une série de garanties qui visent personnellement les représentants des salariés – tant en leur qualité des élus dans les organes syndicaux qu'en qualité de participant aux négociations collectives.

Les garanties liées a la participation des négociations collectives seront présentées sous l'article 6p.2 de la Charte (compartiment "Participation de l'Etat aux négociations collectives") – celles-ci sont applicables tans aux syndicats (s'ils existent), qu'aux représentants des salariés élus en conformité avec l'article 21 du Code du Travail.[1].Sauf les garanties mentionnées les représentants des syndicats bénéficient des garanties suivantes:

- Les membres des organes syndicaux électifs non-libérés de leur travail de base bénéficient de temps libre pendant les heures de travail pour réaliser leurs droits et obligations syndicales, en maintenant son salaire moyen *(art. 387 al. (4) du Code du Travail)*;

- Les salariés dont le contrat individuel de travail est suspendu suite a l'élection aux fonctions électives dans les organes syndicaux, a l'expiration de leur mandat, récupèrent leur emploi antérieur, faute duquel - un autre emploi (fonction) de valeur égale dans la même, ou avec l'accord de ces salariés – dans une autre entreprise. Dans le cas de l'impossibilité d'accorder l'emploi occupé antérieurement ou d'un emploi équivalent a cause de la liquidation, la réorganisation de l'entreprise, de la réduction du personnel, l'employeur respectif paye aux

[1] Conformément à l'art. 21 du Code du Travail, dans les entreprises ou des syndicats ne sont pas institués, les intérêts des salariés peuvent être défendus par leur représentants élus lors de la réunion générale des salaries, par vote d'au moins la moitie du nombre total de salaries de l'entreprise. Le nombre des représentants élus des salariés, leurs mandats, ainsi que la durée de leur mandat sont établis a la réunion générale des salaries par un acte normatif au niveau de l'entreprise.

personnes indiquées une indemnité de licenciement égale aux 6 salaires moyens mensuels (art. 388 al. (2) et (3) du Code du Travail);
- Les personnes élues dans les organes syndicaux de tout niveau et qui ne sont pas libérées de leur travail de base ne peuvent pas être soumises aux sanctions disciplinaires et/ou transférées a un autre emploi sans accord préliminaire, exprimée par écrit, de l'organe dont elles sont les membres *(art. 387 al. (1) du Code du Travail);*
- Le licenciement des salaries qui ont été élus dans les organes syndicaux n'est pas admis pendant 2 ans âpres l'expiration de son mandat, a l'exception des cas de liquidation de l'entreprise ou si le salarié a commis des actions coupables, pour lesquelles la législation en vigueur prévoit la possibilité de licenciement. *(art. 388 al. (4) du Code du Travail);*
- Les dirigeants de l'organisation syndicale primaire (organisateurs syndicaux) non-libérées de leur travail de base ne peuvent pas être licenciés sans l'accord préalable de l'organe syndical supérieur (art. 87 al. (3) du Code du Travail).
En général, conformément à l'art. 87 du Code du travail, le licenciement (licenciement a l'initiative de l'employeur) de tout membre de syndicat n'est possible qu'avec le consentement ou la consultation de l'organe (l'organisateur) syndical de l'entreprise. Ainsi, l'accord pour le licenciement de l'organe syndical est nécessaire dans les cas suivants:

- Réduction du personnel de l'entreprise;
- Constatation du fait que le salarié ne correspond pas a l'emploi occupe ou au travail prêté a cause de l'état de sante, en conformité avec le certificat médical;
- Constatation du fait que le salarié ne correspond pas à son poste ou son travail à cause de l'insuffisance de qualification, confirmée par la décision de la commission d'attestation;
- Violation répétée, au cours d'un an, des obligations de travail, si des sanctions disciplinaires ont été appliquées antérieurement;
- Absence du travail sans une bonne raison de plus de quatre heures consécutives pendant la journée de travail.

Dans d'autres cas, le licenciement est autorisé avec la consultation préalable de l'organe syndical de l'entreprise. Les organisations syndicales doivent communiquer l'accord ou le désaccord (avis consultatif) sur le licenciement du salarié dans les 10 jours ouvrables suivant la demande. Si la réponse n'a pas été reçue par l'employeur pendant cette période, l'accord (communication de l'avis consultatif) de l'organe est présumé.

400. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 29 - Right to information and consultation in procedures of collective redundancy

RSC 29 REPUBLIC OF MOLDOVA

The Committee concludes that the situation is not in conformity with Article 29 of the Revised Charter on the ground that it has not been established that the Republic of Moldova guarantees the right to information and consultation in collective redundancy procedures.

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

Comme en témoigne le contenu de l'art. 87 du Code du travail, cité dans les commentaires sur l'article 28, le licenciement des membres des syndicats suite a la réduction du personnel ne peut avoir lieu qu'avec l'accord de l'organe syndical de l'entreprise. Ainsi, en vertu de l'article 88 al. (1) lit. h) du Code, en déclenchant la procédure de réduction, l'employeur est oblige a s'adresser a l'organe syndical pour obtenir l'accord pour le licenciement.
Selon la lit. i) de l'al. (1) du même article, dans le cas ou la réorganisation ou la liquidation de l'entreprise suppose la réduction massive des empois, l'employeur est obligée a le communiquer, au moins 3 mois avant, aux organes syndicaux de l'entreprise et du secteur respectif et a initier des négociations pour respecter les droits et les intérêts des salariés.
La règle contenue dans l'art. 16, al. (3) de la Loi des syndicats n 1129-XIV du 7 Juillet, 2000 diffère légèrement de celle du Code du travail - qui oblige l'employeur à informer la section syndicale aussi en cas de situations qui pourraient entraîner une aggravation des conditions de travail des salariés: « La liquidation la réorganisation ou le changement de la forme de propriété,

l'interruption totale ou partielle du procès de production a l'initiative de l'employeur, génèrent la réduction massive du personnel ou a l'aggravation des conditions de travail, ne peuvent être effectués qu'a condition d'informer, au moins 3 mois avant, le syndicat du secteur respectif et d'initier des négociations collectives pour respecter les droits et les intérêts des salariés."

L'article 11, al. (3) de la Loi sur l'emploi et la protection sociale des demandeurs d'emploi n. 102-XV du 13 mars 2003 prévoit aussi dans pareils cas l'obligation de l'employeur de communiquer la situation aux autorités de l'administration publique centrale et locale:" La réorganisation ou la liquidation de l'entreprise et de ses sous-divisions, le stationnement total ou partiel du procès de production a l'initiative de l'administration, toute autre forme qui conduit a la réduction massive des emplois ne sont permis qu'a condition d'informer, au moins 3 mois avant de la date de son déclanchement, les syndicats respectifs et a condition de négociation collective pour défendre les droits et les intérêts des salariés, en annonçant dans le même délai aussi les autorités de l'administration publique centrale ou locale."

Conformément a l'article 88 al. (1) lit. i) du Code du Travail, les critères de réduction massive sont établis par les conventions collectives. Il faut mentionner que des critères pareils sont prévus dans la plupart dans les conventions collective au niveau de secteur. Par exemple, en vertu de la Convention collective conclue dans l'agriculture pour les années 2007-2014, le licenciement collectif constitue:

- Pour les entreprises avec un personnel de 20 à 50 – 25% par mois;
- Pour les entreprises avec un personnel de 51 à 100 – 15% par mois;
- Pour les entreprises avec un personnel de 101 à 1000 – 10% par mois;
- Pour les entreprises avec un personnel de plus 1000 – 5% par mois.

La convention collective du secteur des services communaux pour les années 2010-2013 établit les mêmes critères, avec la seule exception – pour les entreprises avec 20-50 salariés le licenciement collectifs est considéré le licenciement de 20% d leur nombre total.

Conformément à la Convention collective conclue dans le secteur de la culture pour les années 2011-2013, le licenciement collectif est considéré:

- Pour les entreprises avec un personnel de jusqu'a 9 salariés – au moins 3 salariés par mois;
- Pour les entreprises avec un personnel de salariați de10 a 49 – au moins 6 salariés par mois;
- Pour les entreprises avec un personnel de 50 a 99 – au moins12 salariés par mois;
- Pour les entreprises avec un personnel de 100 a 249 – au moins 30 salariés par mois;
- Pour les entreprises avec un personnel de 250 a 399 – au moins 50 salariés par mois;
- Pour les entreprises avec un personnel de plus de 400 salariés – au moins 100 salariés par mois.

La Convention collective au niveau de territoire (région Ocnița) conclue pour les années 2010-2014 prévoit des critères suivants de licenciement collectif:

- Pour les entreprises avec un personnel de jusqu'a 50 salariés – au moins 5 salariés par mois;
- Pour les entreprises avec un personnel de 51 a 100 – au moins 10% de son nombre par mois;
- Pour les entreprises avec un personnel de 101 a 300 – au moins 10 salariés par mois;
- Pour les entreprises avec un personnel de plus de 300 salariés – au moins 10% d e leur nombre par mois.

Dans ce contexte il faut mentionner que pas toutes les conventions collectives conclues prévoient des critères de licenciement collectif et pas dans tous les secteurs et les territoires des conventions collectives sont conclues – partant du caractère bénévole des négociations collectives tant la nécessite de conclure des conventions collectives que les problèmes qui doivent être réglementés par celles-ci, tiennent exclusivement des partenaires sociaux.

En même temps, tans le Code du Travail, que la Loi n 102, prévoient l'obligation des employeurs d'informer par écrit, 2 mois avant, concernant le licenciement futur, la respective Agence de l'Emploi de juridiction – sur chaque salarié séparément, conformément a un formulaire approuve par l'Agence Nationale de l'Emploi. Apres l'émission de l'ordre de préavis des salariés 2 mois avant, les salariés participent aux services d'avant-licenciement réalisés par l'agence, comprenant des activités suivantes:

- Information concernant les prévisions légales sur la protection sociale des personnes qui cherchent un emploi et octroi des services de placement et de formation professionnelle;
- Embauche aux emplois vacant set l'instruction sur l'utilisation des modalités de recherche d'un emploi;
- réorientation professionnelle au sein de l'entreprise ou aux cours de courte durée;

- sondage d'opinion des salariés et leur consultation, avec la participation de l'organe syndical, sur les mesures de réduction du taux de chômage.

402. The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

APPENDIX I

LIST OF PARTICIPANTS

(1) 123rd meeting, 2-5 May 2011
(2) 124th meeting, 17-20 October 2011

STATES PARTIES / ETATS PARTIES

ALBANIA / ALBANIE
Mrs Albana SHTYLLA, Director of the Legal Department, Ministry of Labour, Social Affairs, and Equal Opportunities (1) (2)

ANDORRA / ANDORRE
M. Eduard GALLEGO INSA, Inspecteur du travail du Ministère de la Justice et de l'Intérieur (1) (2)

ARMENIA / ARMENIE
Mrs. Anahit MARTIROSYAN, Head of International Relations Division, Ministry of Labour and Social Issues (1) (2)

AUSTRIA / AUTRICHE
Mrs Elisabeth FLORUS, EU-Labor Law and international Social Policy, Federal Ministry of Labour, Social Affairs and Consumer Protection (1) (2)

AZERBAIJAN / AZERBAÏDJAN
Mr. Hanifa AHMADOV, Deputy Head of International Cooperation Department, Ministry of Labour and Social Protection of Population (1) (2)

BELGIUM / BELGIQUE
Mme Marie-Paule URBAIN, Conseillère, Service public fédéral Emploi, Travail et Concertation sociale, Services du Président, Division des Etudes juridiques (1)
M. François VANDAMME, Conseiller général, Division des Affaires internationales (2)

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE
Mr. Azra HADŽIBEGIĆ, Expert Adviser for Human Rights, Ministry for Human Rights and Refugees (1) (2)

BULGARIA / BULGARIE
(Apologised/Excusé) (1)
Ms. Elitsa SLAVCHEVA, Head of International Organizations and International Legal Affairs Department, Ministry of Labour and Social Policy (2)

CROATIA / CROATIE
Mrs Gordana DRAGIČEVIĆ, Head of Department for European Integration and International Cooperation, Ministry of Economy, Labour and Entrepreneurship (1) (2)

CYPRUS / CHYPRE
Ms Eleni PAROUTI, Chief Administrative Officer, Ministry of Labour and Social Insurance (1) (2)

CZECH REPUBLIC / REPUBLIQUE TCHEQUE
Ms Kateřina MACHOVÁ, Legal Official; Department for EU and International Cooperation, Ministry of Labour and Social Affairs (1)
Ms Brigita VERNEROVÁ, Unit for EU and International Cooperation, Ministry of Labour and Social Affairs (2)

DENMARK / DANEMARK
Ms Lisbet Møller NIELSEN, Head of Section, Danish Ministry of Employment (1) (2)
Ms Lis Witsø-LUND, Head of Section, Danish Ministry of Employment (1) (2)
Mr. Søren BALSLEV, Head of Division, the Danish Pensions Agency (1)
Ms Sanne Emilie MOLIN, Deputy Head of Divison, the Danish Pensions Agency (1)
Ms Birgit Sølling OLSEN, Deputy Director-General, The Danish Maritime Authority (1)

ESTONIA / ESTONIE
Mrs Merle MALVET, Head of Social Security Department, Ministry of Social Affairs (1) (2)
Mrs Seili SUDER, Head of Employment Relations, Ministry of Social Affairs (1) (2)

FINLAND / FINLANDE
Mrs Liisa HEINONEN, Government Counsellor, Ministry of Employment and the Economy (1) (2)
Mrs Riitta-Maija JOUTTIMÄKI, Ministerial Councellor, Ministry of Social Affairs and Health (1) (2)

FRANCE
Mme Jacqueline MARECHAL, Chargée de mission, Délégation aux affaires européennes et internationales, Ministère de la Santé et des Solidarités (1) (2)

GEORGIA / GEORGIE
Mr David OKROPIRIDZE, Head of the Social Protection Department, Ministry of Labour, Health and Social Affairs (1) (2)

GERMANY / ALLEMAGNE
Mr Jürgen THOMAS, Deputy Head of Division VI b 4, "OECD, OSCE", Council of Europe, ESF-Certifying Authority, Federal Ministry of Labour and Social Affairs (1) (2)

GREECE / GRECE
Ms. Evanghelia ZERVA, Government Official, Ministry of Labour and Social Security, Department of International Relations, Section II (1) (2)

HUNGARY / HONGRIE
(Apologised/Excusé) (1)
Mme. Eszter Eva BARLA-SZABO, Ministry of National Resources (2)

ICELAND / ISLANDE
(Apologised/Excusé) (1)
Mrs Hanna Sigrídur GUNNSTEINSDÓTTIR, Head of Department, Department of Equality and Labour, Ministry of Social Affairs and Social Security (2)

IRELAND / IRLANDE
Mr John Brendan McDONNELL, International Officer, International Desk, Employment Rights' Legislation Section, Department of Enterprise, Trade and Innovation (1)
Mr Shane LAWLOR, Deputy to the Permanent Representative, Permanent Representation of Ireland to the Council of Europe (1)
Ms. Geraldine LYNCH REILLY, International Officer, International Desk, Employment Rights' Legislation Section, Department of Enterprise, Trade and Innovation (2)
Mr. Frank DOHENY, International Officer, International Desk, Employment Rights' Legislation Section, Department of Enterprise, Trade and Innovation (2)

ITALY / ITALIE
Ms Stefania GUERRERA, Ministry of Labour, Health and Social Policies, Directorate General Working Conditions (1)
Mme Rosanna MARGIOTTA, Ministry of Labour, Health and Social Policies, Directorate General Working Conditions (1) (2)

LATVIA / LETTONIE
Mrs Velga LAZDINA-ZAKA, Ministry of Welfare, Social Insurance Department, Benefits Policy Division (1) (2)

LITHUANIA / LITUANIE
Ms Kristina VYSNIAUSKAITE-RADINSKIENE, Chief Specialist of International Law Division, International Affairs Department, Ministry of Social Security and Labour (1) (2)

LUXEMBOURG
M. Joseph FABER, Conseiller de direction première classe, Ministère du Travail et de l'Emploi (1) (2)

MALTA / MALTE
Mr Frankie MICALLEF, Director (Benefits), Social Security Division (1) (2)
Mr. Edward BUTTIGIEG, Social Security Division (2)

REPUBLIC OF MOLDOVA
Mme Lilia CURAJOS, Chef de la Section des relations internationales et communication, Ministère de la Protection sociale, de la Famille et de l'Enfant (1) (2)

MONTENEGRO
Ms Vjera SOC, Senior Adviser for International Cooperation, Ministry of Labour and Social Welfare (1) (2)

NETHERLANDS / PAYS-BAS
(Apologised/Excusé) (1)
Mr Kees TERWAN, Ministry of Social Affairs and Employment, International Affairs Directorate
(2)
Mrs. Joke VERBEEK, Ministry of Social Affairs and Employment, International Affairs Directorate (2)

NORWAY / NORVEGE
Ms Mona SANDERSEN, Senior Advicer, Ministry of Labour, Working Environment and Safety Departement (1) (2)

POLAND / POLOGNE
Mme Joanna MACIEJEWSKA, Ministère du Travail et de la Politique Sociale (1) (2)

PORTUGAL
Ms Maria Alexandra PIMENTA, **(Chair/Présidente)**, Ministério do Trabalho e da Solidariedade Social, Gabinete de Estratégia e Planeamento, Equipa de Coordenação das Relações Internacionais (1) (2)

ROMANIA / ROUMANIE
Ms Roxana ILIESCU, Main Expert, Directorate for External Relations and International Organizations, Ministry of Labour, Family and Social Protection (1) (2)

RUSSIAN FEDERATION / FEDERATION DE RUSSIE
M. Viktor STEPANOV, Département de la Coopération Internationale et des Relations Publiques, Ministère de la Santé et du Développement social (1)
Mme. Elena VOKACH-BOLDYREVA, Deputy Chief, International Labour and Social Cooperation Division, Ministry of Health and Social Development (2)

SERBIA / SERBIE
Ms Dragana RADOVANOVIC, Senior Adviser, Sector for International Cooperation and European Integration; Ministry of Labor and Social Policy (1) (2)

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE
Mr. Lukáš BERINEC, Director, Department of International Cooperation and Integration of Foreigners, Ministry of Labour, Social Affairs and Family (1) (2)

SLOVENIA / SLOVENIE
Ms. Katja RIHAR-BAJUK, International Cooperation and European Affairs Service, Ministry of Labour, Family and Social Affairs (1) (2)

SPAIN / ESPAGNE
M. José Luis Ruiz NAVARRO, Conseiller technique des Relations Sociales et Internationales, Ministère de Travail et d'Immigration (1) (2)

SWEDEN / SUEDE
(Apologised/Excusé) (1)
Ms Malin Häggqvist, Departementssekreterare / Desk Officer, Arbetsmarknadsdepartementet / Ministry of Employment / International Division / Internationella enheten (2)

"the former Yugoslav Republic of Macedonia"
« l'ex-République yougoslave de Macédoine »
Mr Darko DOCINSKI, Head, Unit for EU Integration and Accession Negotiations, Department for European Integration, Ministry of Labour and Social Policy (1) (2)

TURKEY / TURQUIE
M. Hasan Hüseyin YILMAZ, Direction générale des Relations extérieures et des Services pour les Travailleurs Emigrés, Ministry of Labour and Social Security (1) (2)
Mme. Tuğçe Elif ŞENYILDIZ, Expert adjoint, Services des Travailleurs Domestiques, Ministry of Labour and Social Security (1)

UKRAINE
Mrs Natalia POPOVA, Deputy Head of the International Relations Department, Ministry of Labour and Social Policy (1) (2)

UNITED KINGDOM / ROYAUME-UNI
Mr John SUETT - ILO, UN & Council of Europe Team - International Unit, Department for Work and Pensions (1) (2)

SOCIAL PARTNERS / PARTENAIRES SOCIAUX

EUROPEAN TRADE UNION CONFEDERATION /
CONFEDERATION EUROPEENNE DES SYNDICATS
Mr Stefan CLAUWAERT, ETUC Advisor, ETUI Senior researcher, European Trade Union Institute (ETUI (1) (2)
M. Henri LOURDELLE, Conseiller, Confédération Européenne des Syndicats (1) (2)

BUSINESSEUROPE
(former UNION OF INDUSTRIAL AND EMPLOYERS' CONFEDERATIONS OF EUROPE /
ex- UNION DES CONFEDERATIONS DE L'INDUSTRIE ET DES EMPLOYEURS D'EUROPE)
–

INTERNATIONAL ORGANISATION OF EMPLOYERS /
ORGANISATION INTERNATIONALE DES EMPLOYEURS
Mme. Maud MEGEVAND Legal adviser, International Organisation of Employers (1)
(Apologised/Excusé) (2)

SIGNATORIES STATES / ETATS SIGNATAIRES

LIECHTENSTEIN
–

MONACO
Mme Céline CARON-DAGIONI, Conseiller Technique, Département des Affaires Sociales et de la Santé, Ministère d'Etat (1)
(Apologised/Excusé) (2)

SAN MARINO / SAINT-MARIN
–

SWITZERLAND / SUISSE
–

INGO's DELEGATION / DELEGATION DES OING

Mme Marie-José SCHMITT, Vice-Présidente de l'Action européenne des handicapés (AEH), Membre de la Commission «Droits de l'Homme » de la Conférence des OING du Conseil de l'Europe, Groupe de travail Charte sociale européenne, Action Européenne des Handicapés (1)

Mme Annelise OESCHGER, Honorary President of the INGO Conference of the Council of Europe / Présidente Honoraire de la Conférence des OING du Conseil de l'Europe, Mouvement international ATD – Quart Monde (ATD (1)

INTERPRETATION

Luke TILDEN (1)
Christopeh TYCZKA (1)
Martine CARALY (1)
M. Derrick WORSDALE (2)
M. Nicolas GUITTONNEAU (2)
M. Dider JUNGLING (2)

Appendix II

Table of Signatures and Ratifications - Situation at 1 December 2011

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	
Azerbaïjan	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**	
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	**31/03/05**	
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	**12** + 31 = 43	14

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

ALBANIA	RSC 2§1, 2§2, 2§5, 5, 6§1, 6§2, 28
ARMENIA	RSC 2§1, 2§5, 4§2, 5, 6§2, 28
AZERBAIJAN	RSC 5
BELGIUM	RSC 2§3, 2§5, 4§4, 5 (1st and 3rd grounds)
BULGARIA	RSC 2§5, 4§2, 6§1, 6§2, 22
ESTONIA	RSC 22
FRANCE	RSC 2§3
GEORGIA	RSC 2§1 (no information provided), 4§2 (no information provided), 4§4 (no information provided), 5 (3rd ground), 6§3 (no information provided)
ITALY	RSC 2§2, 4§2
LITHUANIA	RSC 6§2
MALTA	RSC 5 (no information provided), 6§3 (no information provided)
REPUBLIC OF MOLDOVA	RSC 2§1, 2§2, 2§3, 2§5, 2§6, 4§4, 6§1, 2,128, 29
NETHERLANDS	RSC 2§4
PORTUGAL	RSC 2§4, 4§4, 6§3
ROMANIA	RSC 2§2, 4§2, 6§4
TURKEY	RSC 4§4
UKRAINE	RSC 4§4, 6§4

ii) Oral examination (decision of the Bureau)

ALBANIA	RSC 2§4 (1st ground), 4§1, 4§5
ARMENIA	RSC 4§5
AZERBAIJAN	RSC 4§1
BELGIUM	RSC 5 (2nd ground)
GEORGIA	RSC 5 (1st and 2nd grounds), 6§2
ITALY	RSC 2§4
LITHUANIA	RSC 4§1
REPUBLIC OF MOLDOVA	RSC 2§4, 2§7, 5, 6§2
PORTUGAL	RSC 4§1
SLOVENIA	RSC 4§1
UKRAINE	RSC 2§7, 4§5

B. Renewed Conclusions of non-conformity

ALBANIA	RSC 2§3, 2§4 (2nd ground),4§4, 6§3, 6§4, 22, 26§2
ARMENIA	RSC 4§4
BELGIUM	RSC 4§2
BULGARIA	RSC 4§4, 5, 6§3, 6§4, 28
CYPRUS	RSC 6§4
DENMARK	RSC 6§4
ESTONIA	RSC 2§1, 4§4, 6§4
FRANCE	RSC 2§1, 4§2, 4§4, 5, 6§4
ITALY	RSC 2§1, 4§1, 4§4, 4§5, 6§4, 21, 22
LITHUANIA	RSC 2§1, 4§5, 5
MALTA	RSC 4§4, 4§5
REPUBLIC OF MOLDOVA	RSC 4§5, 6§3, 6§4, 26§1, 26§2
NETHERLANDS	RSC 4§1, 4§4
NORWAY	RSC 2§1, 4§5, 6§4
PORTUGAL	RSC 6§4
ROMANIA	RSC 4§1, 4§4, 4§5, 5, 6§4
SWEDEN	RSC 4§4
TURKEY	RSC 4§5

Appendix IV

List of deferred Conclusions

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

ALBANIA	RSC 2§7
ANDORRA	RSC 2§4, 2§7, 4§1, 4§4, 5
ARMENIA	RSC 6§1, 6§3, 6§4, 22
AZERBAIJAN	RSC 4§2, 4§4, 4§5, 6§2, 6§4, 22, 28
BELGIUM	RSC 4§1, 6§4
ESTONIA	RSC 4§2, 5, 6§2
GEORGIA	RSC 2§2, 2§5, 6§1, 6§4
LITHUANIA	RSC 4§2
MALTA	RSC 2§1, 2§2, 6§1
THE NETHERLANDS	RSC 2§1, 2§2, 2§3, 2§6, 2§7, 4§2
NORWAY	RSC 4§2, 21
PORTUGAL	RSC 2§6, 2§7, 22
SLOVENIA	RSC 2§1, 2§2, 6§2
SWEDEN	RSC 5
TURKEY	RSC 2§1, 2§2, 2§4, 2§5, 2§6, 22, 28
UKRAINE	RSC 2§2, 2§6, 5, 6§1, 6§2, 6§3, 28

Appendix V

Warning(s) and Recommendation(s)

Warning(s)[1]

Article 4, paragraph 1 **(Decent remuneration)**
– Netherlands
The minimum wage paid to workers aged 18-22 is manifestly unfair.

Article 4, paragraph 4 **(Reasonable notice of termination of employment)**
– Malta
- One week of notice is insufficient for employees with less than six months' services;
- two weeks of notice is insufficient for employees with more than six months' services;
- four weeks notice is insufficient for employees with three to four years' service.

Article 5 **(Right to organise)**
– Bulgaria
Legislation does not provide for adequate compensation proportionate to the harm suffered by the victims of discriminatory dismissal based on involvement in trade union activities.

Article 6, paragraph 4 **(Collective action)**
– Bulgaria
- Civilian personnel of the Ministry of Defence and any establishments responsible to the Ministry are denied the right to strike;
- the restriction on the right to strike in the railways sector pursuant to Section 51 of the Railway Transport Act goes beyond that permitted by Article G;
- civil servants are only permitted to engage in symbolic action and are prohibited from strike (Section 47 of the Civil Service Act.

Recommendation(s)

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Renewed Recommendation(s)

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[1] 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.