Strasbourg, 25 January 2012

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EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS XIX-3 (2010) OF THE EUROPEAN SOCIAL CHARTER

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

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

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

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

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I. Introduction

1. This report is submitted by the Governmental Committee of the European Social Charter 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 concerned Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Netherlands (Antilles, Aruba), Poland, Slovakia, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom. Reports were due by 31 October 2009 at the latest; they were received between October 2009 and December 2010. Hungary, Luxembourg and the Netherlands in respect of Aruba 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 XIX-3 (2010) of the European Committee of Social Rights were adopted in December 2010 (Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Netherlands (Antilles), Poland, Slovakia, Spain, "the former Yugoslav Republic of Macedonia" and United Kingdom). In the absence of a report in due time, no conclusions were adopted in respect of Hungary, Luxembourg and the Netherlands (Aruba).

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, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

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. 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).

9. The Governmental Committee was satisfied to note that since the last supervisor cycle, the following ratifications 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 Charter: Articles 2§3, 2§6, 4§5, 7§7, 8§5, 22 (Part b), 27§2, 25 and 29.

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

II. Examination of Conclusions XIX-3 (2010) of the European Committee of Social Rights

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

12. 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 III to the present report for a list of these Conclusions);

The Governmental Committee also takes note of Conclusions deferred for lack of information or because of questions asked for the first time, and invites the States

concerned to supply the relevant information in its next report (see Appendix III to the present report for a list of these Conclusions).

13. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix III to the present report, it used the voting procedure for 10 of them, and adopted 6 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.

14. 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.

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

16. 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 XIX-3 (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 Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Netherlands (Antilles), Poland, Slovakia, Spain, "the former Yugoslav Republic of Macedonia" and United Kingdom);

Having regard to the failure to submit a report in due time by Hungary, Luxembourg and the Netherlands (Aruba);

[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, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

Considering Conclusions XIX-3 (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 XIX-3 (2010) of the European Committee of Social Rights and in the report of the Governmental Committee.

EXAMINATION ARTICLE BY ARTICLE[1]

to Conclusions XIX-3 (2010) – 1961 Charter (ESC)
Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Netherlands (Netherlands Antilles, Aruba), Poland, Slovakia, Spain, "the former Yugoslav Republic of Macedonia" and United Kingdom

Article 2§1 - Reasonable working time

ESC 2§1 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 2§1 of the Charter on the ground that regulations permit daily working time of 14 hours over long periods in various seasonal occupations.

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

> The new Labour Act (Official Gazette No. 149/09 and 61/11), Article 43 paragraph 2 provides following:
> "(2) Full time may not exceed forty hours a week."
> Furthermore, Article 45 stipulates the following:
> "(1) In case of force majeure, an extraordinary increase of the scope of work or in other cases when that is absolutely necessary, an employee has to work longer hours than full-or part-time working hours (overtime) at the request of the employer, but maximum up to eight hours a week.
> (2) Overtime of each employee shall not exceed thirty two hours a month or more than one hundred eighty hours per year.
> (3) If a working time of a certain worker takes for four weeks or more consecutive weeks than twelve weeks during a calendar year, or if he works overtime exceeding ten percent of the total working time in a given month on overtime work the employer must notify the labor inspector within eight days of the occurrence of any of these circumstances.
> (4) If the labor inspector believes that overtime work is harmful to health, work ability and safety of workers, he/she will determine the period within which the employer must obtain an expert medical opinion authorised by a special regulation.
> (5) It is forbidden to work overtime for underage workers.
> (6) Pregnant empoyees, a parent of a child under three years old, single parents with children under six years of age and a worker who works part-time employment, may work overtime only if the employer submits a written statement of voluntary consent to such work, except in the case of force.
> (7) The labor inspector shall prohibit overtime work if it has adverse affects on health, work ability and safety or if contrary to the provisions of this Article."

18. 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] States in English alphabetic order.

ESC 2§1 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 2§1 of the Charter on the ground that daily working hours may be extended to 16 hours in various occupations.

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

> The reduction of the rest period per day between the shifts up to 8 hours is drawn up in a way so that it could only be used in an exceptional, exhaustive list of situations defined by law. Should there not be such an option allowed by the Labour Code, it would not be possible for the employer to instruct the employee to work overtime, being defined by the Labour Code as work exceeding the weekly working time and work outside the shift schedule of the employee.
>
> It is true that the Labour Code allows that the employee can work up to 16 hours per day, but in the vast majority of cases this means overtime work which can only be done exceptionally and can be requested by the employer only for serious operational reasons. Therefore, it can be derived that the employer cannot schedule the work overtime in advance, and can request the employee to work overtime only in sudden emergencies (e.g. during natural disasters, breakdowns or for momentary illness of another employee). The performance of work up to 16 hours is thus an option, which is entirely exceptional, marginal and not regular.

20. 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.

ESC 2§1 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 2§1 of the Charter on the ground that under certain collective agreements the reference period for the calculation of average working hours can be extended beyond 12 months.

21. The representative of Germany explained once again the situation in regard to working time and flexible working time arrangements. He recalled that under section 7.8 of the Working Time Act (*Arbeitszeitgesetz – ArbZG*) average weekly working hours could not exceed 48 hours when averaged over 12 calendar months. When a collective agreement provided for a reference period in excess of 12 months (that is, 24, 27 or 36 months), this did not signify any deviation from the abovementioned requirement. Therefore, the average of 48 hours was respected in all collective agreements, irrespective of their length. He gave an example of how the adjustment of average working hours in a collective agreement with a reference period of 36 months could be a more favourable solution for employees, which, moreover, was not objectionable from a health and safety perspective. He was of the opinion that this situation was not in breach of the Charter.

22. The Secretariat recalled that under Article 2§1, the existence of reference periods longer than one year was not permissible. This was a question of legal security, since in principle the longer a reference period, the more flexibility the social partners had to distribute working hours unevenly, a situation which could lead to unreasonably long working weeks, of more than 60 hours.

23. The Committee invited the representative of Germany to clarify in the next report whether German legislation on working time was in compliance with EU Directive 2003/88/EC concerning certain aspects of the organization of working time, namely whether the European Commission had raised any objections with the Government on the implementation of this Directive, including on the question of the reference period.

ESC 2§1 ICELAND

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

- the social partners can agree to extend daily working time to 16 hours in various occupations;
- working hours for seamen may go up to 72 hours per week.

First ground of non-conformity

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

> The Ministry of Social Affairs and Social Security has taken notice of the ECSR's conclusion on the situation in Iceland is not in conformity with the Social Charter on the ground that the social partners can agree to extend daily working time to 16 hours in various occupations. The Ministry has informed the Social Partners of the conclusion and started a dialogue on this issue. More information on this issue will be given in its next report to the ECSR.

25. 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

26. The representative of Iceland stated that under the Seamen's Act No. 35/1985, the maximum working week for seamen was limited to 48 hours on average calculated over a reference period not exceeding 12 months. When calculating the maximum number of working hours per week over a twelve month period, the following limits had to be respected: maximum working time should not exceed 14 hours in any 24 hour period or 72 hours in any seven day period. These rules tool account of the specific conditions of seamen on fishing vessels which more often than not need latitude to be able to retrieve valuable catch from the sea when the fishing is good. These special circumstances had also been taken into account in the relevant rules of the ILO and EU. Nevertheless, the Ministry of the Interior, responsible for this area, would look into the case with the social partners to evaluate the best way of bringing the situation into conformity with the Charter.

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

ESC 2§1 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 2§1 of the Charter on the ground that regulations permit daily working time of more than 16 hours in various occupations.

28. The representative of Poland indicated there had been no changes to the legal framework permitting extended working days of 16 or 24 hours for jobs such as surveillance of machines and for guards. She mentioned that such regulations had the approval of the social partners and that her authorities did not consider necessary an amendment to the law in this area.

29. The representative of ETUC stated that working for 24 hours was too long, and could have a negative impact on health and safety, especially if it involved the running of machines. Moreover, considering that the Government had no intention of changing the situation, he considered this was a serious situation. The representative of France was of the same opinion.

30. The representative of the IOE underlined the specificity of the legislation examined which provides additional guarantees and compensatory rest. She indicated that extensions of working time seem to apply only to limited categories of workers in practice and asked for further information on the proportion of the workforce affected by this regulation. While recognizing the need for protection of safety and health of workers, she indicated that since the regulations had been agreed by the social partners they had more legitimacy.

31. The representative of Poland clarified that the extension of the working day to 24 hours was limited to guardianship jobs of goods or persons (parkings, buildings, etc) and that the extension to 16 hours applied in surveillance of machine occupations.

32. The Committee voted on a warning which was not carried (12 votes in favour, 10 against and 9 abstentions).

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

ESC 2§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 2§1 of the Charter on the ground that the Labour Code permits daily working time of up to 16 hours in certain types of work.

34. The representative of Slovakia informed the Committee that under Article 92 of the Labour Code an employer was obliged to arrange working time so that an employee had, between the end of one shift and the start of a second, a minimum rest period of 12 consecutive hours. This rest period could be reduced to 8 hours in non-stop operations and in the case of timetabled transport work, in the case of urgent repair works for averting danger to life or health of employees and in emergencies. He indicated that even where in exceptional cases an 8-hour break between two shifts was possible, the working time must be scheduled so that the maximum 12-hour length of working time over the course of 24 hours is not exceeded.

35. The representative of the ETUC noted that there had been no change to the situation previously found not to comply with the Charter.

36. The Committee asked the Government to provide information in the next report on the modalities of reduction of the rest period to 8 hours, whilst ensuring that the employee concerned did not work more than 12 hours in every 24 hour period (as it seemed that in such cases the employee would end up working 16 hours in a 24 hour period). This clarification was necessary in order for the ECSR to make a correct assessment of the situation.

ESC 2§1 SPAIN

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

- the Workers' Statute sets out, as a general rule, a reference period of 1 year for the calculation of average working hours;
- the Workers' Statute, as well as specific legislation for certain categories of workers, permit weekly working time in excess of 60 hours.

First and second grounds of non-conformity

37. The representative of Spain considered that no specific length of reference period could be inferred from the wording of Article 2 § 1 of the Charter. As to working time, he recalled that legislation established a maximum 40-hour working week calculated as an average over one year. Nevertheless, it was also possible to introduce by collective agreement flexible working schemes with an uneven distribution of working time in the different weeks of the year, for example, working 50 hours one week and 30 in another. In the case of uneven distribution of working time, the mandatory rest periods had to be respected, including a minimum rest period of 12 hours in a 24 hour period. He was of the opinion that the situation was in compliance with the Charter, as it was only in very few exceptional and justified cases when the 60 hour per week limit might be exceeded.

38. The Committee toke note of the detailed information and clarifications provided by the Spanish representative. It recalled the importance of submitting such information in the next report, as this had not been done in the preceding one, to enable the ECSR to make a correct assessment of the national situation.

Article 2§2 - Public holidays with pay

ESC 2§2 CROATIA

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

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

Law on Holidays, Memorial Days and Non-Working Days in the Republic of Croatia (Official Gazette No. 33/96, 96/01, 13/02, 136/02, 112/05, 59/06 and 55/08) prescribes non-working days during whose all of employees are entitled to salary compensation.

Specifically, it is stipulated in Article 5 the same Act which provides following: "Employees in days listed in Article 1 and Article 3 shall have the right to salary compensation". Article 1 and Article 3 stipulate that these are the days of the year designated as holidays, Memorial or non-working days in Croatia:

“Article 1

Holidays in Croatia are:

- 1st January - New Year
- 6th January - Epiphany or Three Kings
- Easter Monday
- Corpus Christi
- 1st May - Labor Day
- 22nd June - Day of Antifascist Struggle
- 25th June - Statehood Day
- 5th August - Victory Day and National Thanksgiving, Day of Croatian Veterans
- 15th August - Assumption Day
- 8th October - Independence Day
- 1st November - All Saints
- 25th December - Christmas Day
- 26th December, the first day after Christmas, St. Stephen.

During the days of holidays in Croatia are not working days.”

Article 3

Croatian citizens who celebrate Christmas on 7th January in the day, the Islamic religion in the days of Ramadan Bairam and Kurban Bairam, and the Jewish religion in the days of Rosh Hashanah and Yom Kippur are entitled not to work. Furthermore, the right for increased salary is prescribed by the Labor Act, Article 86 which provides following: "For the more difficult working conditions, overtime and night work and for work on Sundays, holidays or other days for which law proscribes as no working days, worker has the right for increased salary...”.

40. 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.

ESC 2§2 GREECE

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

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

> The legal framework respecting public holidays with pay remains as it was described in the previous Greek report.
>
> More specifically, in accordance with articles 1 and 3 of Royal Decree 748/1966, any industrial, handicraft, commercial work as well as any type of occupational activity in general, is prohibited on Sundays and on public holidays (as these are provided for by article 4 of the same Decree); similarly, the employment of their personnel is also prohibited. Work on public holidays is allowed only in the cases where this is explicitly provided for by the relevant provisions and under the preconditions determined by Royal Decree 748/66.
>
> Furthermore, by virtue of the provisions of article 2 of Legislative Decree 3755/57, as amended by L.D.147/73 and L.D.435/1976 and currently in force, as well as by virtue of the provisions of the Joint Ministerial Decision No 8900/1946 of the Ministers of Labour and of Finance, it is provided for that the personnel of all enterprises in the country, who, due to the nature of their job have to work on the days which are established by law as exceptional holidays, receive for these days their legal daily wages increased by 75%.
>
> Apart from the increase in remuneration, no compensatory rest is provided for. In any case, the lawful employment on public holidays must be carried out in accordance with the weekly working hours (five-day or six-day working week), as well as with the payment of the aforementioned increased remuneration.
>
> Finally, it should be noted that, in our country, the decisions on crucial matters relating to labour legislation are taken by means of consultations with the Social Partners. Moreover, Labour Collective Agreements and Social Dialogue constitute a main and significant parameter in the formulation of Labour Law in Greece. Hence, a possible increase in the additional remuneration that the workers are entitled to when working on public holidays (75%) must be the result of dialogue with the Social Partners at the appropriate level, as – thus – Social Consensus is achieved and the decisions taken are accepted by all.
>
> No change has been made since the previous Greek report relating to persons employed in public services, Public Bodies Corporate and Local Self-Government Agencies, who work on the day of weekly rest, as well as on a public holiday. Specifically, Act No1157/1981 defines public holidays and public semi-holidays and everything concerning the day of weekly rest, and also stipulates that the entire staff or part of it will work both on Sundays and on public holidays if this is imposed by the conditions under which the enterprise operates or by the type of work or service provided; thus, the said Act provides for that persons working on these days are granted a compensatory rest day within the following week (as amended by article 23 of Act No1735/1987).
>
> Furthermore, we would like to inform the Committee that Saturday or Monday – as the case may be – are not considered public holidays (they are days that may not be public holidays for certain categories of workers); hence, the increases in remuneration that are provided for by law are not paid to those working on these days.
>
> Finally, Act No3979/2011 increased weekly working hours and they are now set to forty (40) for permanent employees of the Public Sector as well as for those bound by a working relationship under private law for an indefinite period of time in the Public Sector, the self-government agencies of first and second degree and the rest public bodies corporate, as well as for the personnel of services and bodies of the Public Sector and of the broader Public Sector who have these working hours.
>
> The in-accordance-with-the-above increase of weekly hours of work does not constitute overtime or any other type of additional work and is not ensued by any increase in remuneration or earnings or special allowances of any kind.

42. 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.

ESC 2§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic 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.

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

> Under article 2 paragraph 2 the Slovak Republic, as a signatory to the Revised European Social Charter, has undertaken to provide paid public holidays. In connection with this commitment an employee who works on a public holiday has under § 122(1) of the Labour Code a legal claim to remuneration higher than their normal remuneration; analogous entitlements are contained also in other labour laws.
>
> Since the actual amount of wage benefits for work on a public holiday under the provisions of the Labour Code is arranged in a collective agreement or in an employment contract with the employee, the Labour Code governs only the minimum lower limit of this claim: The employee has, in addition to the wage achieved, a claim also to an increased wage (no less than 50% of their average wage) or may draw compensatory leave for work on a public holiday.
>
> We consider it necessary to mention that if an employee and employer agree on the drawing of compensatory leave, the employee, while losing the claim to an increased wage for work on a public holiday, nevertheless has the option to not work on a day agreed with the employer and which would otherwise be a working day for the employee. If an employee draws compensatory leave for work on a public holiday, he shall have a legal claim to compensatory leave for wage compensation in the amount of his average earnings.
>
> This provision of the Labour Code guarantees fulfilment for an employee also at a time when the employee did not work on a public holiday due to drawing compensatory leave. This fulfilment is provided in the amount of the employee's average earnings, which as a rule is significantly higher than the employee's tariff wage that the employee would otherwise receive if he had worked on that day.

44. 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

ESC 2§3 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 2§3 of the 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.

45. The representative of Denmark said that under the Paid Leave Act, employees were entitled to five weeks' holiday provided that they had worked for a year prior to the holiday year. Some private and public sector employees were entitled to an additional week of paid holiday, meaning that they had six weeks in total. Employees who fell ill after the beginning of their leave were not entitled to financial compensation. It was rare for an ordinary illness during one or more leave periods to last long enough to impinge on the two weeks' leave provided for by the Charter. A revision of the rules on compensatory holiday is currently under consideration. In December 2009 the Danish Government set up a working group to study possibilities for and consequences of such an amendment to the Danish Holiday Act which would entitle employees to holiday in compensation of holiday lost through illness. The working group delivered a report in October 2010 in which it described the possible models for changing the Holiday Act in that respect. Meanwhile, a case conserning compensation for illness during holiday has been brought before the Danish courts, and the government awaits a judgment by the Supreme Court on the matter. At all events, the law provides for over four weeks of annual holiday with pay.

46. In reply to a question from the representative of Belgium, the Secretariat explained that Article 2§3 required only the postponement of annual leave in the event of illness or accident and made no provision for financial compensation for workers who had lost their leave owing to illness.

47. The Committee noted the information, invited the Government to supply detailed information on the Supreme Court's judgment in the next report and decided to await the ECSR's next assessment.

ESC 2§3 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 2§3 of the 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.

48. The representative of Spain said that there had been a change in the situation since the ECJ judgment of 10 September 2009 in Pereda v. Madrid Movilidad SA. However, the ECJ judgment related to a situation of temporary incapacity to work which began before the period of leave and not after it had begun. At any rate, the 36-day period of paid leave to which employees in Spain were entitled was longer than the two-week period required by the Charter.

49. The Committee noted the information, invited the Government to remedy the situation and supply detailed information in the next report and decided to await the ECSR's next assessment.

ESC 2§3 UNITED KINGDOM

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

50. The representative of the United Kingdom said that in 2009, annual leave entitlement had been extended to 5.6 weeks, which was more than what was required by the Charter. He also referred to the ECJ judgments of 20 January 2009 in Stringer and Others v. Her Majesty's Revenue and Customs (C-520/06) and of 10 September 2009 in Pereda v. Madrid Movilidad SA, both of which had related to the postponement of annual leave in the event of illness.

51. The Committee noted the information, invited the Government to amend the relevant legislation and supply detailed information in the next report and decided to await the ECSR's next assessment.

Article 2§4 - Reduced working hours or additional holidays in dangerous or unhealthy occupations

ESC 2§4 AUSTRIA

The Committee concludes that the situation in Austria is not in conformity with Article 2§4 of the Charter because it has not been established that, despite the risk elimination policy, workers employed on dangerous or unhealthy work are entitled to appropriate compensation.

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

The negative conclusion of the European Committee of Social Rights is primarily based on the information given by Austria in the last report on Article 2 § 4.
This information was admittedly an abbreviated version of what actually is a very complex legal situation.

The Austrian authorities are of the opinion that the full picture of the situation – which will be given in the next report - will most likely alter the Committee´s conclusions.

More detailed information has already been given in previous reports, but the last report mainly focused on very specific questions raised by the Committee, primarily concerning § 21 of the Working Time Act.

Furthermore, Austria has already ratified the revised Charter and will soon be bound by Article 2 § 4 in its revised version, which clearly states that prevention has to be the priority and Member States are primarily required to eliminate risks in inherently dangerous or unhealthy occupations.

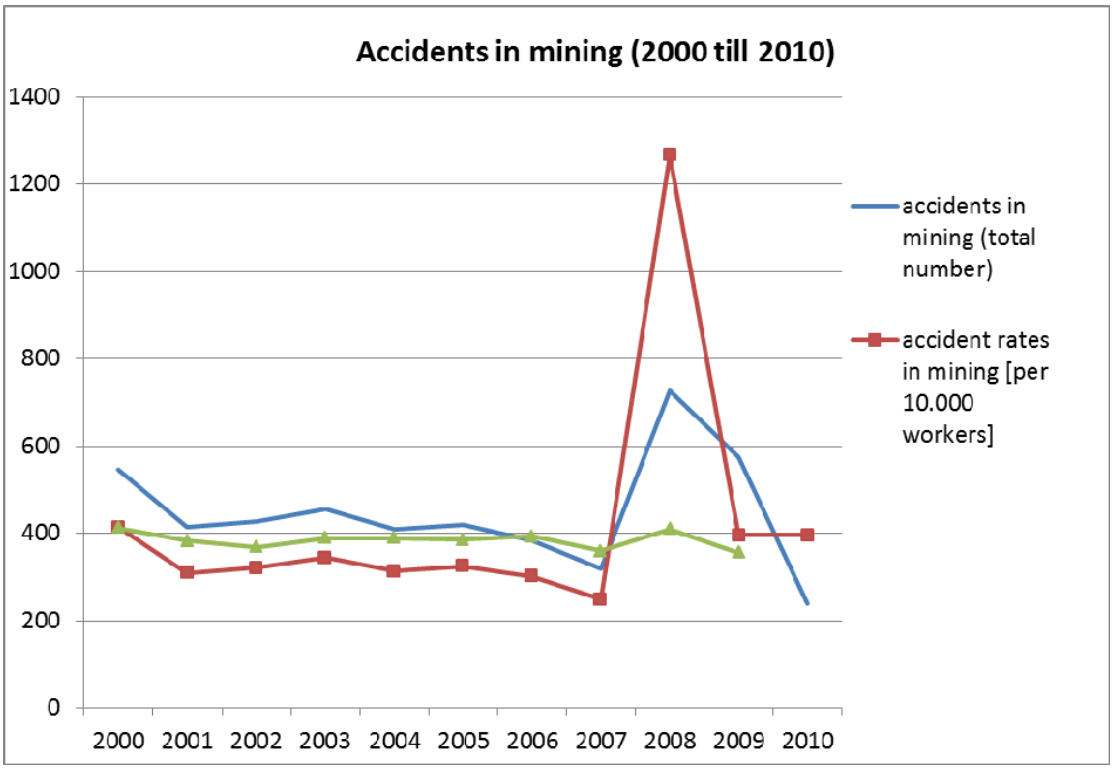
The Austrian legislation generally aims at preventing, avoiding and reducing risks to the employees' health and safety. Preventive action for avoiding hazards is primarily laid down in the Occupational safety and health Act and, for employees in agriculture and forestry, in the Agricultural Labour Act

In this regard, reference is made to the Austrian report on Article 3 of the Charter.

Over the last 20 years (from 1990 onwards) the number of occupational accidents has decreased by 35,4% over all sectors. Fatal accidents have even declined by 46,6 % (Source Statistics Austria). This can be seen both in low risk as well as in high risk sectors.

For example in the mining sector the accident numbers as well as the accident rates also show a falling trend. What makes the estimation of accidents in mining difficult was the change in the classifying system what is considered to be mining in 2008 which caused a freak value. In this year companies that process mining products were taken out of the mining sector leaving only real mining plants in which the accident rates are always higher. Still with these concentrated data on "real mining" the accident rates have fallen below of those in 2000 (2010: 395; 2000: 414) and are just slightly above the average accident rate (2009: 356)

In total it can be said that accident rates are declining even in high risk sectors as mining.



This decline in accidents at work is based on

- continuing improvement of the occupational safety and healthregulations,
- updated state of technology,

- continuing improvement of work equipment and working procedures,
- preventive measures in the workplace (based on risk assessment),
- rising awareness for occupational safety and health within the companies,
- the obligation to consult preventive services, as well as the activities of safety representatives
- prevention work performed by the labour inspection and by the accident insurance institutions,
- enforcement by labour inspection as well as taking an active part in industrial licencing procedures

In addition to that, compensational measures for particularly dangerous jobs were laid down in the Heavy Night Work Act.

Daily working hours are reduced by granting rest periods of at least 10 minutes that have to be counted as working time and thus reduce overall daily and weekly working hours.

Additional paid annual leave from 2 to 6 days depending on the length of service is also granted for these jobs.

Workers are covered by these compensatory measures if they perform night work under specific conditions, which are listed in the Heavy Night Work Act, in particular:

- Work in the mining sector under extremely wearing conditions, such as underground mining,
- work entailing exposure to special cold or heat stress or permanent loud noise.
- the use of equipment, machines or vehicles exposing the body to vibration with adverse health effects.
- regular wearing of respirators (with filters or backpacks) for at least four hours of working time,
- working on computer workstations,
- permanent effects of noxious inhalable pollutants that can cause occupational disease,
- work on special firing installations in hot furnaces,
- if heavy physical work is performed with simultaneous exposure to special heat stress.

Apart from the Heavy Night Work Act several other statutory measures have been introduced:

The Working Time Act authorizes the labour inspection to require additional rest breaks for companies, departments or specific activities (such as assembly line work), if such heavy work or any other factor affecting workers' health so require.

The Working Time Act also stipulates that workers performing work that involves special health hazards may be ordered by ordinance to work fewer hours or to take longer rest breaks or rest periods than other workers. This authorisation has not been exercised to date because the Heavy Night Work Act entered into force in 1981. Legislators at that time decided to create a comprehensive statutory framework for employees working under extremely wearing conditions rather than making use of the authorisation to issue ordinances.

The health protection for groups of employees subject to the Heavy Night Work Act was continually extended through amendments of the Working Hours Act (e.g. the amendment granting additional rest periods if the daily working time of eight hours including overtime is exceeded) or by extending its scope to include other groups of employees (e.g. nurses).

Occupational safety and health for miners is regulated both in the Occupational Safety and Health Act as well in some specific provisions for the mining sector (Mineral Raw Materials Act and General Mining Regulation Ordinance).

As a consequence the same rules have to be observed as in other sectors with a few exceptions specific to the particular character of mining.

The General Mining Regulation Ordinance e.g. stipulates that if the temperature is 30 degrees Celsius or higher, the working time has to be reduced to a maximum of 6 hours. Work entailing exposure to that kind of heat stress is only permissible for a duration of up to one month. After having worked in a hot environment, workers may only perform work in a cool environment for a whole month following this period.

Finally it has to be pointed out that 1- to 2-hour reductions of working hours as compared with the statutorily determined normal 40-hour working week are laid down by collective agreements for branches of economy, which are considered unhealthy and dangerous.

In the chemical industry the normal working week is 38 hours. In the metallurgical and metal processing industries, the iron and metalworking trade and in the wood treatment industry it is 38.5 hours. In building and carpentry it is 39 hours.

Pursuant to the Heavy Night Work Act, collective agreements may also put other work activities as defined by the Act on the same level as heavy night work if they entail extraordinary demands or if the employees are exposed to harmful substances or radiation. The Collective Agreement for Non-

University Research Institutions for instance made use of this option and included work under exposure to ionising radiation.

The Collective Agreement for Hospitals of Religious Orders in Upper Austria provides for an additional paid annual leave of 4 days for technical personnel in X-ray departments and in departments for nuclear medicine.

The Collective Agreement for Private Hospitals provides for an additional paid annual leave of 5 days for employees who work in radiation departments (X-ray, CT, MRT). Personnel in departments for nuclear medicine, laboratory services, isolation wards and tuberculosis departments are entitled to an additional paid annual leave of 6 days.

For these reasons the Austrian authorities feel confident that the European Committee of Social Rights will reconsider its finding of non-conformity with Article 2 § 4. The next report will contain comprehensive and up-dated information on the implementation of Article 2 § 4 of the Charter.

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.

ESC 2§4 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 2§4 of the Charter on the grounds that some workers in the mining industry do not benefit from compensatory measures due to the arduous nature of their work.

54. The representative of Greece pointed out that this conclusion related only to some workers. Many mine workers worked only in surface mines, not underground ones. Following the Committee of Ministers' resolution, the Ministry of Labour had invited the trade union of the company concerned, the employer and the mediator to a meeting. The government had made proposals to remedy these problems by means of collective agreements between the social partners but no request had been made by the employees' trade unions. Only five companies in Greece were concerned by this problem and no more than 600 people worked in underground mines.

55. In reply to the representative of the Czech Republic, the representative of Greece said that the government would address the matter when new collective agreements were drawn up.

56. The representative of France asked if there had been a move to improve the situation and what the timetable for such measures was and expressed surprise that the social partners had failed to make any demands.

57. The representative of Greece said that in the report submitted in 2009, information had been given on Article 3. The Committee had found the situation to be in conformity in this respect. The state was making every effort to improve working conditions.

58. The representative of Estonia said that it had to be borne in mind that additional leave did not reduce the risks linked with dangerous occupations.

59. The representative of Greece said that all mine workers were considered to be engaged in an occupation that was particularly arduous. They were entitled to retire five years before other workers.

60. The Committee noted the information provided and the proposal concerning a planned agreement with the social partners. It decided to await both the outcome of this collective agreement and the ECSR's next assessment.

ESC 2§4 UNITED KINGDOM
The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§4 of the Charter on the ground that it has not been established that measures reducing exposure to risks are provided.

61. The representative of the United Kingdom said that the Government's work focused more on prevention than compensation. He insisted on the need to reduce risks and this reflected the approach adopted by the ILO under Convention 187.

62. The Chair, supported by the representative of France, proposed that this matter could be discussed at the next joint meeting of the Bureaux of the GC and the ECSR.

63. The Committee noted the information, asked for information in the next report on measures to prevent risks and decided to await the ECSR's next assessment.

Article 2§5 - Weekly rest period

ESC 2§5 CZECH REPUBLIC
The Committee concludes that the situation in the Czech Republic is not in conformity with Article 2§5 of the Charter on the grounds that agricultural workers may, pursuant to collective agreement or individual contract, postpone weekly rest so as to permit an excessive number of consecutive working days.

64. The representative of the Czech Republic said that the possibility of postponing weekly rest periods stemmed from the specific nature of the farming sector and its dependence on climate conditions. Farm workers did have to be respected though and this was ensured through individual contracts and collective agreements. This was why there had been no change in the situation. At all events, there had been no demands from the trade unions for the legislation to be changed. Even if the legislation was changed, there were times in farming where workers had to keep on working otherwise harvests would be lost.

65. In reply to the Chair, the representative of the Czech Republic confirmed that the labour inspectorate did carry out checks.

66. The representative of the IOE said that agriculture was regarded as a special case because of the nature of the activity, there being periods when it was imperative to work to bring in the harvest. Some account needed to be taken of the distinctive features of the farming sector and the fact that there was sufficient protection at national level through collective agreements and the activities of the labour inspectorate. This meant that there were no problems with this provision as things stood.

67. The Chair noted that the Government did not appear to want to change the situation.

68. The representative of France asked if for example employees who had worked for three weeks in a row were awarded financial compensation for the six rest days during which they had worked.

69. The representative of the Czech Republic said that they were entitled to compensatory time off after the working period and to financial compensation. However,

employers could suspend application of this rule when it was impossible to interrupt work during the harvest season.

70. The representative of Lithuania said that the explanations given by the Czech Republic were unsatisfactory and proposed that the Committee should vote for a warning.

71. The representative of the Czech Republic considered that the situation was different and exceptional because the seasons and climate conditions dictated the rhythm of work in farming.

72. The Chair considered that even if the situation was exceptional, not all the necessary safeguards were in place.

73. The representative of Azerbaijan said that there was no need to vote for a warning.

74. In reply to his question, the representative of the Czech Republic said that there had been no complaint from the trade unions.

75. The representative of France said that little was known about the real problems. It would be useful to have detailed information such as the number of accidents in the sector or the exact length of time that people have to work during certain seasons.

76. The representative of the IOE said that there were different types of harvest and the issue at stake was seasonal work. In her view, the situation related to Article 2§5 of the Charter, not to the article relating to employment injuries. According to the information provided, the situation was covered by collective agreements.

77. In reply to the representative of Norway, the representative of the Czech Republic said that the upper limit on daily working hours was 12 hours but that this could be extended to 16 hours. The norm was eight hours a day and 40 hours a week.

78. The representative of Lithuania said that the situation was rather serious and daily working hours were excessive.

79. The representative of Cyprus said that in view of the seasonal nature of farm workers' activities and the fact that there was a collective agreement, there was no need to adopt a warning. The government had to be given time to take measures.

80. The Chair called for a vote on a warning, which was rejected (1 vote for, 20 against and 14 abstentions).

81. The Committee urged the Government to take the necessary measures to guarantee workers their right to a rest period and decided to await the ECSR's next assessment.

ESC 2§5 GERMANY

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

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

According to section 12 (2) of the Working Time Act (ArbZG) a collective agreement or a works or establishment agreement based on a collective agreement may specify the time limit within which compensatory time off has to be granted. This means that the two-week time frame for the day off to compensate for work on Sunday laid down in section 11 (3) of the Working Time Act may be prolonged by the parties to collective bargaining. It cannot be ruled out that, in exceptional cases, employees may work more than 12 days in succession.

With this exemption clause the German legislator makes it possible for the parties to collective agreements to provide for derogations for sectors of employment where compliance with the requirements of section 11 (3) of the Working Time Act is not feasible. Here the legislator's specific focus was on part-time businesses (whose operations are limited to specific seasons) and seasonal businesses (which have an exceptional workload at particular times of the year).

The provision of section 12 (2) of the Working Time Act does not amount to a departure from the basic conditions that have to satisfied when employees are required to work on Sunday. Work on Sunday is only allowed if the specific requirements are met. According to section 10 (1) of the Working Time Act exceptions from the prohibition of work on Sunday are only possible in specific sectors and only when the work cannot be done on workdays. It is not permissible to arrange for a waiver of compensatory time off for work on Sunday. The only permissible measure is a prolongation of the time span within which compensatory time off has to be granted.

Collectively agreed arrangements have to respect the objectives of the Working Time Act; hence working time arrangements must be such as to safeguard the health and safety of employees at work (section 1 (1) of the Working Time Act).

The right to bargain collectively with a view to the regulation of terms and conditions of employment is one of the fundamental rights and protected by Article 6 of the European Social Charter. In Germany, the delegation of powers to the social partners is one of the fundamental principles of the social market economy and traditional practice. The social partners play a significant role also in the area of health and safety at work. The social partners are in a better position than the legislator to assess the working conditions and the work-related strain in the undertakings in their respective sectors and to find practical, adequate and effective solutions that meet the needs of the companies while taking into account occupational health and safety considerations.

The Federal government is of the opinion that this approach, which incidentally is also in line with the EU Working Time Directive, is in conformity with Article 2 (5) of the Charter. In its view the term "weekly rest period" does not mean that in all cases a day off has to granted within each week, but rather that one day-off per week has to be granted. The Committee seems to assume the same since it generally accepts a time frame of two weeks for granting compensatory time off. Against this background the view upheld by the Committee that the time frame must be limited to 12 working days, without exception, does not appear plausible. It must be possible for the social partners in exceptional cases to settle for a longer time frame for granting compensatory time off as long as the health and safety of the employees is guaranteed.

83. 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.

ESC 2§5 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 2§5 of the Charter on the grounds that domestic staff and seamen are not covered by the legislation guaranteeing a weekly rest period.

84. The representative of Greece pointed out that this conclusion related only to seafarers and domestic staff. Seafarers were covered by Presidential Decree No. 152/2003, under which daily working hours were limited to eight hours and there was one rest day per week plus public holidays. By contrast, domestic staff were not covered by Presidential Decree No. 76/2005. This matter was being looked into by the European Parliament. A motion of 2011 had asked for the framework directive to be extended to

domestic staff. At the next meeting of the ILO conference in June 2011, a convention was due to be adopted, and Greece would bring its legislation into line with this.

85. The representative of Estonia said that there had been an improvement in the situation of seafarers and some account had to be taken of the new information that had been provided. There was still a problem with regard to domestic staff.

86. The Committee noted the information with regard to seafarers and urged the Government to bring the situation into conformity with regard to domestic staff.

ESC 2§5 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§5 of the Charter on the grounds that there are inadequate safeguards to prevent that workers may work for more than twelve consecutive days without a rest period.

87. The representative of the United Kingdom said that the list of situations in which it was possible to postpone weekly rest periods and work for more than 12 consecutive days came from the working hours directive, which provided for exceptions. He considered therefore that adequate protection was provided.

88. The representative of the Czech Republic considered that the Government should be urged to bring the situation into conformity with the Charter.

89. The Committee urged the Government to bring the situation into conformity with the Charter.

Article 4§1 - Decent remuneration

ESC 4§1 GERMANY

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

90. The representative of Germany made the following statement:

> Wages in Germany are agreed by the parties to collective agreements and employment contracts on their own responsibility. The State has no influence on the wages agreed. The outcome of the wage negotiations is however accompanied by state regulations. Firstly, it is possible to set minimum sectoral wages on the basis of the Posted Workers Act (*Arbeitnehmer-Entsendegesetz*) and of the Minimum Working Conditions Act (*Mindestarbeitsbedingungengesetz*). The number of sectors in which it is possible to set minimum wages has been considerably expanded since 2006. This process is being continued whilst respecting autonomy in collective bargaining. Secondly, employees who are unable to make a living for themselves or their family though remunerated employment receive supplementary employment benefit.
> The economic and social security of all employees is hence guaranteed, regardless of the amount of their remunerated employment.

91. The Committee took note of the positive developments announced and invited the Government to provide all the relevant information enabling the ECSR to assess the situation properly in its next report, in particular as regards the supplementary employment benefit.

ESC 4§1 ICELAND

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

92. The representative of Iceland presented the following information:

In Iceland, there is currently no easily available data on average wages over the whole economy. Statistics Iceland publishes data on wages in the private sector and the Ministry of Finance publishes data on wages for employees working for the central government. The two data sets are not completely compatible but Statistics Iceland is currently working on including the whole economy in statistics on wages, so in the near future there should be data available on the average wage in Iceland as a whole

Minimum and average monthly wages in the private sector, after deduction of pension-fund premiums and taxes, 2003-2010

Year	Net average *daytime wage*	Net average *aggr. wage*	Net minimum *wage*
2003	162.507	192.003	80.508
2004	170.187	204.386	86.459
2005	190.920	234.559	90.192
2006	209.453	261.697	103.750
2007	235.789	293.178	109.286
2008	253.100	314.192	123.512
2009	262.859	297.223	136.857
2010	269.022	301.683	143.649

While that data base is incomplete it has been deemed appropriate, after thorough consideration, to use the data provided by Statistics Iceland as it holds the greatest number of wage earners and therefore gives the most accurate view of the Icelandic labour market. However it must be noted that the numbers apply exclusively to the private sector.

The method used for determining the net average wage and the net average aggregate wage in the table above is the same as the one used in the 23rd report of the Icelandic Government, both refer to private sector wages. The net average daytime wage is the remuneration for regular working hours, that is ordinary working hours according to collective agreements, both daytime and shift-work hours. The net average aggregate wage is the total remuneration per month including piecework, irregular bonuses and various other irregular payments.

The net minimum wage quoted in the table is the bare minimum wage (*tekjutrygging*) guaranteed for full employment on the Icelandic labour market according to Icelandic collective agreements. The minimum wage quoted in the 23rd report is the starting wage between a specific trade union and the Confederation of Icelandic Employers. It is somewhat lower than the one listed in the table above as an employee that has been continuously employed for four months gains rights to bare mininum wage. The minimum wage quoted in the table paints a more accurate picture of the net minimum wage on the Icelandic labour market as it is, conditions fulfilled, the guaranteed minimum wage for full-time employment.

In its Conclusions the Committee asks for a clarification of the divergence between reports, in particular what was the method used in reports 23 and 20 to calculate net wages. The method of the 23rd report has been clarified above. The method of the 20th report has unfortunately not been clarified. After thoroughly reviewing the available data, the method used for the table above has been deemed to give the most accurate picture of the Icelandic labour market, that is until the data base for the whole economy will be complete.

In its Conclusions XIX-3, the Committee concludes that the situation in Iceland is not in conformity with Article 4§1 of the Charter on the grounds that the minimum wage is not fair. To be considered fair, a net minimum wage should amount to no less than 60% of a net average wage. If the wage lies between 50% and 60%, a state is asked to demonstrate that the wage is sufficient for a decent standard of living.

The Government concurs with the Committee that the proportions between the relevant numbers presented in the table above do not exceed the 60% mark. For the years 2009 and 2010 the net minimum wage represented 46% and 48% of the net average aggregate wage. The proportion to

the net average wage is higher and equals 52% and 53% respectively. When comparing these proportions there are, however, a few issues the Government would like to raise.
As explained earlier, the numbers for the net average daytime wage and the net average aggregate wage refer exclusively to the private sector. Average wages in the private sector are known to be higher than those paid in the public sector. If the net minimum wage was to be compared to daytime wages and aggregate wages in the central government the proportion would be 62% and 51% respectively. The public and semi-public sector comprises over thirty percent of the Icelandic labour market so the net average wages over the whole economy are somewhat lower in reality than those presented in the table above.
When examining the table, a trend is obvious. Net minimum wages have risen by 31% from February 2007 to February 2010. For the same period of time the net average wages for daytime work and the net average aggregate wages rose by 14% and 3% respectively. In the period 2007-2010, the proportion of the net minimum wages to the net average daytime wages has risen from 46% to 53%. For the same time period, the proportion of the net minimum wages to the net average aggregate wages has risen from 37% to 48%. This trend is likely to continue as there has been a rich and a conscious emphasis on raising the lowest wages in collective bargaining in Iceland. The most recent collective agreement between trade unions and the Confederation of Icelandic Employers gives clear evidence of this trend. This agreement, signed on the 5th of May 2011, states that the guaranteed minimum wage in Iceland will rise by 23,6% by the 1st of February 2013. Regular wages will in the same time period rise by 11,4%.
Furthermore, the Government hopes that with the newly signed collective agreement, the minimum wage will within the next few years rise above the 60% mark and be in full compliance with the European Social Charter.

93. The representative of Iceland said that the information provided in the previous report contained some incorrect data and the correct version would be sent later. In reality the minimum wage was around 55% of the average wage.

94. The Committee took note of the developments and urged Iceland 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.

ESC 4§1 SLOVAK REPUBLIC

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

95. The representative of the Slovak Republic made the following statement:

The amount of the minimum wage in Slovakia is set based on negotiations between the social partners each year. While in2009 the minimum wage constituted more than 50% of the average wage, in 2010 it was slightly above 51%. The rather slow increase was partly caused by the global economic crisis, but we are nevertheless expecting the minimum wage to represent a slightly higher share of the average wage in 2011, but the exact data are not available yet.
Besides the negative impact of the economic crisis, this continuous increase by small steps is also caused by significant economic differences between the individual regions of the Slovak Republic, where f. e. the average wage of the capital city region was higher than the average wage for the whole Slovak Republic by more than 30%. The large regional differences between the Bratislava Region and particularly the eastern parts of the Slovak Republic are historically given and caused by geographical differences and different economic development.
Assessing the relative level of the minimum wage according to the data for the whole of the Slovak Republic does not take into account these facts. However, the new Government of the Slovak Republic together with the social partners pays close attention to these differences when deciding on the amount of the minimum wage and is also aware of the possible negative impact of an inappropriate increase in the nationwide amount of the minimum wage. Disproportionate increase in the amount of the minimum wage without adequate economic development to back it up would

only lead to further widening of the social disparities between the regions and to a growth of unemployment.
We have also analysed the possibility of introducing regionally differentiated minimum wage. The new Government discussed this with the social partners and the OECD, however it was discovered that the result would be similar, meaning it would result in serious widening of social differences between the individual regions.
I would also like to point out that while the minimum wage is rising each year, the number of employed people actually earning the minimum wage is rapidly getting lower. According to the Statistics Office of the Slovak Republic in 2010 the number was only 1.36%.

96. The representative of the Slovak Republic further said that a number of persons earning the minimum wage had been decreasing and now makes only 1,3%. Besides, according to him, such persons are also entitled to apply for social assistance benefits.

97. The Chair underlined that the minimum wage does not only have social implications but is also linked to and predetermined by the facts such as economic growth, information, unemployment etc.

98. The representative of the Czech Republic suggested to note a positive change and urge the Government to provide information in the next report. The Lithuanian representative agreed that the Government should provide information as requested on the gross and net values of the minimum wage and any additional benefits paid to a single person earning the minimum wage.

99. The Committee noted that the minimum wage is now more than 50% of the average wage. The Committee asked the Government 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.

ESC 4§1 SPAIN

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

100. As indicated in the 19th report, Royal Decree 3/2004 of 25 June 2004 on the rationalisation of the regulations on and the level of the minimum income was the start of a process to raise the general minimum wage, with a view to recovering the purchasing power that had been lost in the preceding years. This was because the minimum wage had been set annually and inflation forecasts had differed from actual price increases. The decree had raised the minimum wage by 6.6% and had set an objective for 2008 of € 600 per month (or € 700 with the inclusion of special supplements).

101. Thereafter, the cumulative increase in the minimum wage over the period 2004-2008 was 30%.

102. In 2009, against a background of an unfavourable economic climate, the minimum wage rose by 3.5% and in 2010, when the situation remained difficult, it increased by 1.5%, to € 633.30 per month (€ 738.85 with two special supplements).

103. The uprating of the minimum wage in 2011 has to be seen against the highly publicised background of the economic crisis and its major impact in terms of job losses. This situation, which is extremely serious and has continued for two and a half years, has

to be taken into consideration in any decisions on wages and incomes policy, since the latter has a major impact on job creation.

104. The 2011 Royal Decree on the minimum wage incorporates a conceptual change compared with previous years, as a result of an amendment to article 26.1 of the Labour Statute in Act 35/2010 of 17 September on emergency measures to reform the labour market. This excluded any payments in kind from the minimum wage. As a result, employers must at the very least always pay their employees the total level of the minimum wage in cash, using any generally accepted payment method. They are no longer allowed, as they were previously, to include in the minimum wage the imputed value of income in kind, such as housing or other forms of non-financial support.

105. This change improves the pay of employees such as domestic workers who receive an income in kind, since the cash part of their remuneration prior to the change must be raised to at least the level of the minimum wage. The entry into force of Act 35/2010 now makes it impossible to impute the value of income in kind to their minimum wage.

106. The Committee also asks for the number of employees who receive the minimum wage. According to the latest figures published by the national employment survey, relating to the third quarter of 2010, 124 300 employees (0.7% of the total) had earnings equal to the national minimum wage.

107. It appears from these figures that the number of persons on the minimum wage is very low. It needs to be borne in mind that it applies to employees not covered by collective agreements, and of these ones who are fairly unqualified. The high level of collective bargaining coverage in Spain means that the majority of employees are covered by minimum wages laid down in collective agreements.

108. According to the national statistical institute's labour cost survey, the average net income in 2008, after the deduction of taxes and social security contributions, was € 1 545 per month (or € 1 244 excluding special supplements). So the minimum wage has risen in recent years and is now almost 50% of the average wage. However it again needs to be emphasised that very few employees receive the minimum wage, which in 2008 was € 600 per month, or € 700 with the inclusion of two special supplements.

109. The Committee noted that the minimum wage has now approached the 50% of the average wage. The Committee urged the Government 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.

ESC 4§1 UNITED KINGDOM

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

110. According to the representative of the United Kingdom, the UK National Minimum Wage (NMW) has been increased from £5.73 per hour in 2008 to £6.08 per hour from October 2011. The Government estimates that the October increase means that the NMW as a percentage of median earnings remains at around 51%.The Government receives annual recommendations on the appropriate NMW rate from the independent Low Pay

Commission (LPC) which conducts extensive research and consultation before deciding on the appropriate rate to recommend to Government.
The representative underlined that the NMW is not, and never has been, designed as a living wage. It is a wage floor below which wages cannot fall. The NMW must therefore be considered in the context of state benefits that are available to low paid workers. Trying to use the NMW alone to increase in-work income would mean setting it at a level that would mean job losses for low-skilled workers. According to him, it is estimated that the October 2011 adult minimum wage will be around 28% higher in real terms (compared to consumer prices) and around 17% higher in real terms (compared to retail prices) from its introduction in 1999.
Changes in this year's Budget, have taken 1.1 million of the lowest earners out of income tax altogether. The Government has also just announced a major change to the benefits system, which combines benefits and tax credits into a single, easier to understand 'Universal Credit' system. Universal Credit aims to increase the advantages of being employed - employees will effectively get to keep more of their earnings, and not need to rely on welfare.

111. The Chair recalled that the last time the Committee adopted a warning in respect of the United Kingdom.

112. The representative of France drew the Committee's attention to the fact that this was the case of 24 years of non-conformity and it was surprising that there was a problem of data availability.

113. The representative of Lithuania also underlined that it was important to provide information on the net amounts of both minimum and average wages. The representative of Ireland stated that in his opinion the level of the minimum wage, together with benefits can ensure that the situation is in conformity.

114. The Secretariat clarified that the problem with lack of information mainly concerned the net average wage for which the Government was invited to give an estimate.

115. The Committee voted on a warning with 12 votes for, 15 against and 5 abstentions. The warning was not carried.

116. The Committee urged the Government 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

ESC 4§2 DENMARK

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

- it has not been established that flexible working time arrangements have not impacted negatively on the right of workers to increased remuneration for overtime;
- workers in the private sector do not have adequate legal guarantees ensuring them increased remuneration for overtime.

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

Background information

The Danish labour market model was established as far back as in 1899 as a result of a major industrial dispute on the Danish labour market. The industrial dispute took place during 3 years and ended in 1899 where the social partners recognised each other and made an agreement about the rules on the labour market. The agreement is still valid today although it has been revised over the years.

The Danish labour market is very well functioning and very peaceful compared to many other countries. “The Danish model” is famous world wide due to its special division of labour between the state and the social partners.

In general, the state has the responsibility for the social provisions and measures such as economic support during sickness and unemployment, employment service (placements responsibilities) and occupational safety and health, while the social partners have the responsibility for regulating wage, hours of work and other working conditions at the workplace.

The philosophy of the Danish model is that the social partners are more willing to respect and follow terms and conditions which they have themselves negotiated and accepted.

Apart from the strong labour market organisations one of the main reasons for the success of the model is the extensive right for the unions to take industrial action and sympathetic action in order to obtain collective agreements with employers. Strike, boycott and sympathetic action are types of collective industrial action that trade unions may take. The lawfulness of an industrial action depends on whether the action concerns work that falls within the trade union’s usual field of activity. But it is not a condition that the trade union has members employed in the enterprise. Questions concerning the lawfulness of an industrial dispute may be brought before the Industrial Court that decides the question through a special summary procedure.

The Danish model with its special feature of leaving the regulation of pay and other working conditions to the social partners is supported by all parties in the Danish Parliament.

First ground of non conformity

As concerns the question of whether flexible working time arrangements have a negative impact on workers rights to increased remuneration for overtime, the government has no information that this should be the case.

According to a survey from Statistics Denmark from 2006, 735.000 employees have flexible working hours (29% of all employees). Flexible working time arrangements are regulated in the collective agreements or in agreements concluded at the workplace. In these agreements it is regulated when work is considered flexible working time and when it is considered overtime. If one of the parties to a collective agreement breaches the agreement, this party may be liable to pay a penalty. The amount of the penalty may be negotiated by the parties or be imposed on one of the parties by the Industrial Court.

Flexible working time arrangements are popular among the employees especially among families since flexible working hours facilitate a better balance between family and working life.

Second ground of non conformity

As far as the Committee’s comment about the absence of legal guarantees to ensure increased remuneration for overtime, it can be informed that Denmark does not have mandatory legislation concerning remuneration, including minimum wage and overtime. The state has delegated the responsibility to regulate remuneration, including minimum wage and overtime to the social partners.

Payment for overtime is regulated in the collective agreements and these collective agreements have a significant rub-off effect in fields that are not covered by any collective agreement. Therefore, the collective agreements determine the general level of remuneration in Denmark, including overtime.

In case that wage dumping should take place on the part of non-organised employers, the trade union would start negotiations with the employer in order to avoid that their negotiated level of remuneration should be undermined. If this fails, the union can support its demand by taking industrial action against the employer. Boycott and sympathetic action are very effective tools against employers. Even the possibility of taking industrial actions has in itself a positive effect

giving non-organised employers an incentive to follow the level in the collective agreements even though they are not legally complied to do so.

118. 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.

ESC 4§2 POLAND

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

119. The representative of Poland informed the Committee that the announced changes to the legal framework had still not taken place. She indicated once again that an amendment to the Labour Code was under consideration with a view to compensating overtime in the proportion of 50% extra time off for employees that requested this type of compensation. She could not however provide a calendar or time-frame when the amendment would be adopted. Moreover, she stated that the authorities had no intention of pursuing the previously announced amendment to the Law on Public Service on the question of compensation of overtime work of civil servants. The draft on this matter would not be submitted to Parliament.

120. The Committee considered that this was a serious and long-standing breach of the Charter, which did not recognise that overtime represented an increased effort on the part of the worker deserving enhanced compensation. It therefore proceeded to vote on a warning which was adopted (14 votes in favour, 3 against and 17 abstentions).

121. The Committee urged the Government to make the necessary legislative amendments to bring the situation into conformity with the Charter.

ESC 4§2 SLOVAK REPUBLIC

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

122. The representative of the Slovak Republic informed the Committee that when an employee agreed with the employer to have overtime compensated in time off (instead of remuneration), the Labour Code established that an equivalent number of hours of compensatory leave should be granted as a minimum. The parties could however agree on longer compensatory leave, as this was solely a matter of individual agreement. He indicated that the social partners had not complained about this system.

123. 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 Charter.

ESC 4§2 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 4§2 of the Charter on the grounds that the Workers' Statute does not guarantee workers the right to an increased remuneration or to a longer rest period in compensation for overtime.

124. The Spanish representative indicated that Article 35.1 of the Workers Statute set out two options to compensate overtime: (i) pay in the amount that is fixed by collective agreement or the employment contract, which can be no less than the standard hourly rate; (ii) compensation with equivalent time off, an option that the legislation gives priority to in the absence of an agreement between the parties.

125. He also mentioned that in 2009, 55.99% of the registered collective agreements – covering 52.2% of workers – contained clauses providing for an increased remuneration of overtime. Likewise, 19.3% of collective agreements set compensation for overtime with longer time off than what was legally established, which represented 17.3% of workers.

126. The Committee noted there had been some positive practical developments concerning the proportion of workers receiving enhanced compensation for overtime (in money or time) via collective agreements.

127. The representative of the Czech Republic stated, however, that there had been no changes in the legislation and that the Spanish Government had failed to provide any information on Article 4.2 in its report. On these grounds she proposed to vote a warning or recommendation.

128. The representative of ETUC shared this opinion. He underlined the absence of any legal changes and since a warning had already been addressed to Spain last time without any impact, considered that a recommendation should be voted this time.

129. The Committee proceeded to vote on a recommendation which was not carried (5 votes in favour, 29 against and 1 abstention). It then voted on a warning which similarly was not carried (18 votes in favour, 13 against and 2 abstentions).

130. The Committee considered that this was a serious and long-standing breach of the Charter, which did not recognise that overtime represented an increased effort on the part of the worker deserving enhanced compensation. It reiterated that the warning addressed at the previous meeting (and being itself already a second warning) was still valid and urged the Government to take adequate measures to bring the situation into conformity with the Charter.

ESC 4§2 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§2 of the Charter on the grounds that workers do not have adequate legal guarantees ensuring them increased remuneration for overtime.

131. The representative of the United Kingdom stated that there was no statutory right to increased remuneration for overtime in his country. He reiterated that this was a matter determined freely between the employer and employee, and subject to English Law of Contracts. Guidelines had nevertheless been issued by the authorities with certain recommendations in this area.

132. The representative of the IOE considered that the sole fact there was no legislation on the right to increased remuneration for overtime was not a breach of the Charter *per se*. She considered that more information was needed, in particular on the agreements at company level dealing with this matter, before reaching a conclusion.

133. The representative of ETUC stated that the situation was not in conformity since 1999, and the United Kingdom Government had systematically failed to provide evidence in its reports on the percentage of workers that were actually paid overtime at an enhanced rate or with longer time off.

134. Bearing in mind that this was a serious and long-standing breach of the Charter, overtime representing an increased effort on the part of the worker deserving enhanced

compensation, the Committee voted on a recommendation which was not carried (9 votes in favour, 12 against and 11 abstentions).

135. It then proceeded to vote on a warning which was adopted (27 votes in favour, 4 against and 3 abstentions).

136. The Committee asked the Government to make the necessary legislative amendments to bring the situation into conformity with the Charter.

Article 4§3 - Non-discrimination between and women men with respect to remuneration

ESC 4§3 GERMANY

The Committee concludes that the situation in Germany is not in conformity with the Article 4§3 of the Charter on the ground that there is a ceiling on the compensation payable to employees dismissed as a reprisal.

137. The representative of Germany provided the following information:

> The representative of Germany stated that should an employee be dismissed as a reprisal, only the employee – and not the employer – may lodge an application for the court to dissolve the working relationship in accordance with section 9 of the Dismissal Protection Act (Kündigungs¬schutzgesetz) if the court has found that the dismissal is socially unjustified within the meaning of the Dismissal Protection Act and it is not reasonable to expect the employee to continue the working relationship.
> An application for a court to terminate the working relationship on payment of a settlement despite the fact of the court having found that the dismissal is ineffective is an additional option granted to the employee. If he/she does not avail him/herself of this possibility, the working relationship is continued under the previous conditions. If he/she applies for its termination, he/she knowingly and voluntarily accepts the maximum limits for the settlement payment determined by law.
> The settlement to be determined by the court serves as damages and compensation for the socially-unjustified loss of the job. The settlement acts as an equivalent in lieu of the continuation of the working relationship. The amount of the settlement is to be determined by the court according to duty-bound discretion, taking the respective circumstances of the individual case into account. Factors applied in the assessment are in particular the amount of the remuneration, the duration of the working relationship, age, the maintenance obligations, the possibility of placing the employee on the labour market, as well as the degree of social unacceptability of the dismissal. If a dismissal is not only socially unacceptable, but also ineffective for other reasons (e.g. because of a breach of the prohibition of victimisation contained in section 612a of the Social Code [BGB]), this also forms one of the circumstances of the individual case which are to be taken into consideration in the court's finding on the settlement. The amount of the settlement thus to be assessed is appropriate
> Unlike the law applicable until 18 August 2006, compensation and damage claims on the part of persons who have been discriminated against can now be found in an easy-to-apply form contained in one provision. Compensation and damage claims are regulated by section 15 of the Dismissal Protection Act, section 15 subs. 1 of which provides for compensation to be provided by the employer for the material damage incurred in case of a breach of the ban on discrimination as set out in section 7 of the Dismissal Protection Act (read in conjunction with section 2 subs. 1 No. 2 of the Dismissal Protection Act in the case of unequal treatment with regard to remuneration). If an employee is discriminated against in remuneration because of sex, he/she has a right to payment of the difference in the remuneration owed.
> In accordance with section 15 subs. 2 of the Dismissal Protection Act, in addition to the payment of the difference in the remuneration incurred, the injured party may demand appropriate compensation for the damage which is not pecuniary damage. The amount of the compensation must be appropriate; no maximum limit is provided for in the case of discrimination in terms of remuneration.

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

ESC 4§3 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 4§3 of the Charter on the grounds that:

- legislation does not permit pay comparisons to determine whether there is equal pay for equal work or work of equal value beyond a single employer;
- law makes no provision for declaring a dismissal null and void and/or reinstating an employee in the event of a retaliatory dismissal connected with a claim for equal pay.

First ground of non conformity

139. The representative of Iceland provided the following information:

> Last time I informed you of the review of the Act on Equal Status and Equal Rights of Women and Men in 2007 and 2008 where there was a committee reviewing the Act which paid particular attention to the ECSR's conclusions concerning the implementation of the Social Charter in Iceland.
> The Government feels that it is a matter of great importance to find ways to fight the chronic problem of gender-based wage discrimination and to increase wage transparency.
> In the Act from 2008, a new provision was added stipulating that employees are at all times permitted to disclose their wage terms if they so choose; companies may no longer prohibit employees from discussing their salaries with a third party. The article on gender wage equality is otherwise unchanged.
> The act does not permitted the employers to pay an employee of one sex less than the other for equal-value and comparable work. However, the employers are free to negotiate with their employees on better wages than the appropriate collective agreements predict, for example for the reason that their enterprises show good earnings. Of course the enterprises have different profits and therefore have not the same potential to pay their employees for their work. In fact the employers are free to decide how much they would like to pay their employees as long as their respect the appropriate collective agreements and the Gender Equality Act. It should also be noted that contracts made between individual employee and employer on poorer working terms than those specified in the general collective agreement shall be void.
> However, the Minister of Welfare has decided to look again into this case in order to see how the Act can be amended to bring it into conformity with the Social Charter. Hopefully, this will be done in the year 2012.

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

Second ground of non conformity

141. The representative of Iceland provided the following information:

> It is not compatible with Icelandic law to put individuals into employment positions by a court order; this applies equally whether the employer does not wish to engage a particular worker or whether the worker does not wish to do the work. This is a basic principle which applies on the Icelandic labour market according to a very long tradition and has very often been confirmed by case law.
> In general, an employer is free to engage or dismiss workers. He/she is, however, bound by the rules applying to these activities in law, collective agreements and employment contracts. In the same way, the worker has the choice of whether or not he/she is prepared to accept a particular job.
> Under the Act on Equal Rights and Equal Status of Women and Men, an employee who seeks redress on the basis of the Act may not be dismissed for that reason. The employer shall also ensure that no employee is subjected to injustice in his/her occupation, e.g. regarding safety and health at work, working terms or the assessment of his/her performance, due to the fact that he/she has complained about sexual harassment or discrimination on the basis of gender. If evidence is

presented of direct or indirect discrimination due to sex, the employer shall be obliged to prove that other reasons than gender were the main consideration in the decision.
The same applies if the employer is in breach of the prohibition of dismissal, in which case he/she has to demonstrate that the dismissal or alleged injustice was not based on the employee's demand for redress or his/her charge concerning sexual harassment or other gender discrimination. This rule will not apply if the dismissal is made more than a year from the time of the employee's demand for redress on the basis of the Act.
In cases of violation of the Gender Equality Act when people have not been engaged or have been dismissed from a job, the remedy applied by the courts has been to award compensation to the person concerned so as to put him/her in the same position as he/she would have been in if he/she had been engaged or retained the job.
It cannot be a good practice to force any employer to hire an employee or to have the employee working for a longer period if it does not suit him/her. The same applies according to the employees, they should be free to choose for whom they are working and they should decide as well if they would like to quit their jobs which they dislike. The employment relationships assume mutual dismissal rules which the employer and the employee should both respect. The flexibility of the labour market is very important, especially where there are so many small and medium sized enterprises which are vulnerable to changes in the economy. The Government is on that opinion that further restrictions in this matter are not defensible, at least not those which proceed from the Government itself.

142. The representatives of Lithuania and Portugal expressed their concern about the seriousness of this situation.

143. The Committee took note of the information provided, expressed its concern about the consequences of a lack of legislation and urged the Government to take adequate steps to remedy the violation.

Article 4§4 - Reasonable notice of termination of employment

ESC 4§4 CZECH REPUBLIC

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

144. The representative of the Czech Republic said that her country's authorities believed there was no need to amend the legislation on periods of notice. This was largely because they were concerned not to change the situation of other workers, and the fact that the social partners seemed satisfied with the legal provisions in force.

145. The representative of the IOE asked for additional information on the periods of notice laid down in individual contracts. The representative of the Czech Republic said she had no specific information in that regard. The parties concerned could reach agreement on periods above two months, the minimum laid down by law.

146. The representative of the Czech Republic pointed out that periods of notice exceeded two months in any case as they began on the first day of the month following the announcement of the employee's dismissal.

147. The representative of the ETUC said that his organisation was unaware of the Czech social partners' satisfaction with the provisions currently in force and of their lack of interest in making any changes. However, he noted that with respect to the Charter the Governmental Committee's task was not to assess the conduct of the social partners in the different countries but, rather, that of their governments.

148. The representative of the IOE thought it was not appropriate to refer to the position of representatives of national social partners in their absence, as the Committee did not have any reliable information at its disposal in this regard. It was up to States to assume responsibility for the situation and undertake initiatives to improve it when necessary. In her opinion, there was also a lack of information on the content of the collective agreements in question. In her opinion, there was also to practice as no specific information on the content of the collective agreements in question had been provided.

149. The representative of the Czech Republic emphasised that the situation of non-conformity related only to a small group of workers, namely those with more than fifteen years' service.

150. The representative of Lithuania asked about the number of individual contracts or collective agreements that provided for periods of notice above the minimum laid down by law. In her opinion, the category of workers with more than fifteen years' service, even if small in number, should at any rate not be "sacrificed" compared with other categories.

151. In reply, the representative of the Czech Republic said she had no information on any extensions to the periods of notice agreed in the context of collective bargaining or individual negotiations.

152. On the Chair's proposal, the Committee urged the Government to take all necessary measures to guarantee a reasonable period of notice for workers with more than fifteen years' service.

ESC 4§4 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 4§4 because manual workers with fewer than twenty years' service are not entitled to an adequate payment in lieu of notice.

153. The representative of Greece said that the level of compensation and periods of notice were regulated solely by collective agreements. Those matters were part of the social dialogue and constituted a pillar of the welfare state. The social partners had agreed that it was fair in the context of collective bargaining to give priority to long-serving manual workers as they were one of the categories of employees most affected by the economic crisis and had considerable difficulties in re-entering the job market.

154. She also pointed out that in the context of collective bargaining trade union representatives had never raised the question of changing the periods of notice of manual workers with less than twenty years' service.

155. On the Chair's proposal, the Committee urged the Government to take all necessary measures to guarantee a reasonable period of notice for workers with less than twenty years' service.

ESC 4§4 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 4§4 of the Charter on the ground that the two weeks' notice period for employees with more than six months' service, covered by the collective agreement between the Confederation of Icelandic Employers and Skilled Construction and Industrial workers, is not reasonable.

156. The representative of Iceland said the Government acknowledged that the two weeks' notice period provided for in the collective agreement between the Confederation of Icelandic Employers and the Skilled Construction and Industrial Workers was not reasonable for workers with more than six months' service.
She confirmed that the Government had accordingly begun discussing this matter with the social partners with a view to revising the collective agreements concerned and that this discussion could lead to a change in the relevant legislation.

157. The ETUC representative observed that the Government of Iceland had already committed itself in the past to begin discussions with the social partners so as to bring the situation into line.
He therefore considered that it would be appropriate for the Governmental Committee already to send a strong message to the Government of Iceland, calling on it to take rapid action with a view to bringing the situation into conformity with the Charter.

158. The Chair asked the representative of Iceland whether the lack of progress with regard to this situation of non-compliance was due to the consequences of the economic crisis.
The representative of Iceland confirmed that discussions with the social partners had begun and could result in amendments to the collective agreements concerned. She nonetheless pointed out that the trade unions involved were not interested in changing the notice periods.
That said, she added that, should the Government refer this question to Parliament with a view to amending the legislation, it would not begin to deal with the matter before the spring or the autumn of 2012.

159. The representative of France considered that the question of notice periods was a complex issue.
She thought that the ECSR's conclusions on this subject were not sufficiently precise, as they did not stipulate the reasonable period to be complied with, or at least criteria making it possible to determine that period. She also considered that the case-law of the ECSR in this matter was inconsistent.

160. The Secretariat drew the Committee's attention to the fact that, on the issue of notice periods, the ECSR had always referred to specific cases and had deliberately avoided giving abstract indications regarding the reasonableness of the period in question.

161. The ETUC representative noted that Iceland's representative had been unable to provide any new information on this matter and wished to receive additional details.

162. The representative of Belgium pointed out that the Icelandic Government had recognised that the conclusion of non-conformity was founded and, on this basis, had confirmed its willingness to pursue discussions with the parties concerned with a view to possibly modifying the collective agreements and the legislation in question.
That being the case, he proposed that the Governmental Committee await the outcome of the above-mentioned discussions.

163. At the Chair's suggestion, the Committee called on the Icelandic Government to take appropriate steps to bring the situation into conformity with Article 4§4 of the Charter.

ESC 4§4 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 4§4 of the Charter on the ground that a two-week notice period granted to workers who's working relationships are terminated before the end of the fixed-term contracts is not long enough.

164. The representative of Poland said that it was important to consider the aim of fixed-term contracts, namely the necessity to ensure a working relationship for a limited period of time, which could meet either the employer's or the worker's needs. In such a context, the anticipatory termination of a contract should be treated as an exception. She added that the Labour Code provided for a period of notice of two weeks, which was a minimum requirement and the contracting parties could provide for longer periods. This had been little discussed by legal writers and there was no relevant case law.

165. She also pointed out that that it was up to the courts to determine whether a fixed-term contract had been concluded in good faith. A court could take the view that the reason for concluding such a contract for a very long term was to circumvent the law (there was a 2005 High Court judgment on that subject) and thus consider it an indefinite contract, with all the consequences that that entailed for the protection of the rights of the worker concerned, including periods of notice.

166. The representative of the ETUC noted that the European Union's Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by the ETUC, UNICE and CEEP on fixed-term employment had not been adopted with the purpose of opening the door to discrimination such as had emerged in Poland.

167. The representatives of Lithuania and the Czech Republic asked if the law laid down any limits concerning the duration of fixed-term contracts. The representative of Poland replied that, even though limits were not permissible as a general rule, a law had laid down in 2009 that until 2011, during the period of economic crisis, fixed-term contracts could not exceed 24 months. However, that law did not deal with the question of periods of notice.

168. Responding to a question from the representative of the Czech Republic, the representative of Poland also said that she had no data on the number of fixed-term and indefinite contracts.

169. On the Chair's proposal, the Committee urged the Government to take all necessary measures to guarantee a reasonable period of notice in cases of anticipated dismissal in the context of fixed-term contracts.

ESC 4§4 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§4 on the ground that the length of service of employees who work fewer than fifteen hours a week is not taken into account when calculating notice periods.

170. The representative of Slovak Republic said that Law No. 574/2009, which had come into force on 1 March 2010, had amended a number of provisions of Chapter 49 of the Labour Code.

171. Under Article 49(5) of the Labour Code, a part-time employee could currently not be given priority over or placed at a disadvantage compared with another employee, even with regard to periods of notice.

172. With the aim of complying with the principle of the non-discrimination of part-time workers, an amendment to the Labour Code had removed from Chapter 49 Articles 6 and 7, which permitted discrimination regarding periods of notice.

173. The new legal situation meant that all workers were entitled to notice calculated on the basis of their length of service, with no possibility of discrimination.

174. The representative of the ETUC thought that the amendments made were an example of the correct application of the European Union's Directive 1999/70/EC concerning fixed-term work.

175. The Committee took note of the positive legislative changes brought about, congratulated the Government on the progress made and looked forward to the next assessment by the ECSR.

ESC 4§4 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 4§4 of the revised Charter because:

- workers with fixed-term contracts of less than a year whose contracts are broken before they end have no right to notice;
- workers with fixed-term contracts of more than one year whose contracts are broken before they end are entitled to only fifteen days' notice.

176. The representative of Spain made the following statement.

First and second grounds of non-conformity

I would first of all like to make some comments in response to the arguments in the Committee's conclusion. With regard to the obligation to notify a worker that his or her contract is going to be terminated, whether it be upon expiry of the agreed term or upon completion of the work or service contracted for under the conditions initially agreed, it should be borne in mind that that the period of notice varies according to the type of temporary contract, as the legislation makes a distinction between contracts of a duration of less than one year and those of a duration of more than one year (the period provided for in the latter case being two weeks). Another, very different, matter is, in relation to the Committee's conclusions, the relevant period of notice when a temporary contract ends early, that is to say before the end of the term initially provided for, in which case the general rules contained in the Workers' Conditions of Service concerning periods of notice would be applicable.

These general rules – which also apply to temporary contracts that, either due to their nature or for reasons other than the fact that they are of fixed duration, end before the expiry of the term initially provided for – provide for differentiated periods of notice depending on the reason for the termination of the occupational legal relationship. The period of notice therefore depends on why the contract is terminated.

In the case of collective redundancy for economic, technical, organisational or production reasons, authorisation is required from the labour authority. The application for that authorisation, in addition to resulting in the opening of a period of consultations with the workers' representatives, would be equivalent to the notice we are analysing in terms of its intended purpose. The consultation period will be thirty days or, in the case of businesses with less than fifty workers, two weeks (Article 51 of the Workers' Conditions of Service).

In the case of a dismissal for objective reasons, the notice of termination of the contract is two weeks, beginning on the date of the delivery of the personal notification to the worker, (Article 53 of the Workers' Conditions of Service).

When the contract ends for one of the reasons giving rise to disciplinary dismissal, the employer's decision must be notified to the worker in writing, setting out the facts justifying the dismissal and the date when it will take effect.

Other formal requirements for termination of contract may be laid down by collective agreement.

Where the worker is the legal representative of the workers or a trade union delegate, inter partes proceedings will be initiated and, in addition to the individual concerned, the remaining members of

the representative body to which he or she belongs shall be heard. If the worker belongs to a trade union and the employer is aware of the fact, the employer shall hear the delegates of the relevant trade union section beforehand (Article 55 of the Workers' Conditions of Service).
To conclude these preliminary comments, contracts that end before the expiry of the time agreed or upon the completion of the work or service contracted for, including for reasons not associated with the time element, are subject to the general regulations on periods of notice.
In the light of the above, we believe that our regulations on periods of notice comply with the requirements of the Social Charter, interpreted in accordance with ILO Convention 158 on the termination of employment on the initiative of the employer, which makes it possible not to apply the Convention to workers with a fixed-term contract or engaged to carry out specific work. We therefore do not understand why the Committee believes that the period in question must be 30 days or why this should also apply to the termination of fixed-term contracts of a duration of less than one year, given the reference to the reasonable nature set out in the provision.

177. The representative of the ETUC said that the information given provided nothing new compared with what had already been established by the ECSR.

178. The representative of Spain noted that the situation had changed with regard to the first ground of non-conformity. On this subject, the Chair proposed that the Committee take note of this and await the next ECSR assessment.

179. With regard to the second ground of non-conformity, since the situation had not changed, the Chair proposed that the Committee vote either on a proposal for issuing a warning to Spain or directly on a proposal for a recommendation.

180. The representative of the ETUC asked whether the proposal for issuing a warning was based on the lack of information established by the ECSR or on a matter of substance, namely the non-conformity of the situation described by the representative of Spain.

181. The representative of Lithuania, with support from the representative of Norway, thought that it would be appropriate to adopt a warning to Spain with reference to the two grounds of non-conformity.

182. In view of the details provided by the Secretariat on the ECSR's previous conclusions concerning Spain's implementation of Article 4§4, the Chair pointed out that the ECSR had noted the lack of information in the Spanish report concerning reasonable periods of notice in cases involving the termination of employment. The ECSR accordingly believed that there had been no change in the situation regarding that aspect, which had previously been considered not to be in conformity with the Charter. It therefore concluded that the Spanish situation was not in conformity with Article 4§4 of the Charter with respect to the two grounds in question.

183. The representative of the IOE thought that, on the basis of the information provided by the representative of Spain, national regulations seem to be in line with the provisions of the Charter. The Chair believed that those changes – and the information provided on the second ground of non-conformity – should be assessed by the ECSR.

184. The Committee adopted a warning to Spain with 18 votes in favour, 5 against and 8 abstentions concerning the two grounds of non-conformity.

ESC 4§4 UNITED KINGDOM
The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§4 of the Charter on the ground that notice periods for employees with less than three years' service are too short.

185. The representative of the United Kingdom said the situation had not changed. The government noted the ECSR's negative conclusion. However, he indicated that the Government believed the present situation was balanced and took account of the various interests involved, and that the legal provisions guaranteeing employees minimum periods of notice of termination of employment are part of a framework of fair minimum standards in the workplace. He also indicated that the terms and conditions of employment above statutory minima are best left to negotiation and agreement between employers and employees.

186. In response to the ECSR's request, the next report would contain some examples of periods of notice that were the subject of negotiations between parties to a contract of employment.

187. The Chair was of the opinion that the periods of notice were insufficient and pointed out that the law in question did not comply with Article 4§4 of the Charter. Accordingly, in her capacity as the representative of Portugal she proposed voting on a proposal for a recommendation against the United Kingdom.

188. The Committee rejected the proposal for a recommendation with 13 votes in favour, 14 against and 3 abstentions.

189. In the light of the above and with reference to the Committee's Rules of Procedure, the representative of Lithuania proposed voting on issuing a warning to the United Kingdom. The warning was adopted by the Committee with 23 votes in favour, 3 against and 5 abstentions.

Article 4§5 - Limits to deduction from wages

ESC 4§5 POLAND
The Committee concludes that the situation in Poland is not in conformity with Article 4§5 of the Charter on the ground that the wages of workers with the lowest wages, after deductions, do not ensure means of subsistence for themselves and their dependants.

190. The representative of Poland firstly observed that although the ECSR did describe the legal framework in detail, the Conclusion itself was too general. She reiterated the information provided in the report, namely that both deductions and limitation on deductions from wages were provided by law. She added that in case of a dispute the courts take into account the interests of both parties and do not allow anyone to fall into poverty. She undertook to explain the situation again in the next report.

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

ESC 4§5 SLOVAK REPUBLIC
The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§5 of the Revised Charter on the ground that deductions from wages may deprive workers of the means of subsistence required to provide for themselves and their families.

192. The representative of the Slovak Republic made the following statement:

> The Slovak Republic in Act no. 460/2008 amended the provision of §131(4) of the Labour Code to the effect that the limitation on the possibility of making deductions at most in the scope set by a separate regulation was extended also to payroll deductions under §20(2) of the Labour Code. The separate regulation is Slovak Government Regulation no. 268/2006 Coll. on the extent of payroll deductions in enforcement of a decision:
> (1) The basic amount that may not be deducted from the worker from his monthly wage is 60% of the subsistence minimum for an adult person applicable in the month for which the deductions are made.
> (2) For each person dependant on the worker, 25% of the subsistence minimum for an adult person is added (applicable in the month for which the deductions are made; this applies likewise also for a spouse of the obligor who has a separate income).
> (3) If payroll deductions are made from the payrolls of both spouses, 25% is added to the subsistence minimum for an adult person applicable in the month for which the deductions are made for a child they jointly provide for, each of them separately.
> (4) 25% of the subsistence minimum for an adult person applicable in the month for which the deductions are made, is not subtracted for a person in whose favour enforcement of a decision for recovering a maintenance claim is under way.
> Where this concerns the maintenance of a minor, the basic amount that may not be deducted from the obligor's monthly wage is 70% of the basic amount determined under § 1.
> On the basis of this amendment to the Labour Code an employer may not make payroll deductions against an employee above the scope set by the mentioned Slovak government regulation even in the case of deductions made on the basis of an agreement on payroll deductions for satisfying rights and obligations from employment relations, including deductions for satisfying an employer's claim against the employee, for example in the case of compensation for damage caused by the employee.
> This adjustment to the Labour Code established a limit below which it is not possible to make deductions even on the basis of a written agreement between the employer and employee.

193. The Committee took note of the positive developments announced and decided to await the next assessment of the ECSR.

Article 5 - Right to organize

ESC 5 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 5 of the Charter on the ground that it has not been established that depriving members of the Security and Intelligence Service from the right to form trade unions (Section 49 of Act No. 154/1994 on the Security and Intelligence Service), and prohibiting them from forming any type of association to protect their economic and social interests was justified.

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

> Under Act No. 154/1994 Coll., on the Security and Intelligence Service, as amended, the Security and Intelligence Service (SIS) is an armed intelligence force of the Czech Republic. Within the meaning of Act No. 361/2003 Coll., on the Service of Members of Security Corps, SIS is a security corps.
> The intelligence services can traditionally be distinguished as civil and military ones and further as internal and external. SIS is an internal civil intelligence service.
> The tasks of SIS are executed by members of SIS who are authorised to hold and carry service weapons. There are also employees working at SIS. These are persons who are not in service relationships but work under employment contracts and do not participate in fulfilling the legally prescribed scope of work of SIS and execute only such activities that can be characterized as supportive. Pursuant to Section 48 (2) of Act No. 361/2003 Coll. only a member of the intelligence service cannot be a member of the trade union.

It follows from this that there are two categories of persons within SIS – the members of the service and the employees. The members of the services cannot be members of trade unions. The right of employees to form trade unions and their freedom of association in trade unions is not limited and it must be said that there is a trade union of the employees working with SIS.
It cannot be derived from the fact that the members of security services cannot be organised in the trade unions, that their economic and social interests are not protected. Section 77 of Act No. 361/2003 Coll., places upon the security corps duties regarding the care for their members and it should be said that many duties are connected with economic and social area. The members have right to receive information and to hold discussion of matters concerning the execution of the service even if there is no trade union working within the security corp. The decision regarding the rights of the member can only be taken by a decision in proceedings in service relationships matters, against which a legal remedy can be lodged (appeal or remonstrance) and against potential decision in the second instance an action can be taken. The member is entitled to bring his case before the court even if the infringement of rights and obligations is caused by other act than through a decision of an official or when his rights to equal treatment are breached. It can therefore be summed up that if economic, social or other rights resulting from the service relationships are infringed without due cause, these rights are subject to judicial protection (that is, protection independent from the security corps).
Given the fact that SIS is an organisation, which is part of the state security forces and that the limitation of the freedom of association pertains only to the members of SIS and not to the employees, the Czech Republic believes that Article 5 of the Charter is fully applicable.

195. 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.

ESC 5 DENMARK

The Committee concludes that the situation is not in conformity with Article 5 of the Charter on the ground that the legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark.

196. The representative of Denmark reiterated the explanations given on the previous occasion (see document T-SG (2007)10). She added that the framework agreement reached between the ship owners' associations and Danish seafarers' unions laying down minimum working conditions also for foreign seafarers had seen its scope gradually broadened. It allows for the participation of Danish unions to negotiations between the ship owners' association and non-Danish seafarers' unions to ensure that working conditions are satisfactory. She also added that the 2009 amendments to the legislation on the International Ships Register were of a technical nature and concerned alignment with EU legislation.

197. Further to a question of the representative of Turkey, she indicated that the distinction was solely based on residence, and that Danish nationals who did not have residence in Denmark were in the same situation as seafarers of other nationalities not having residence. The UK representative underlined that it was therefore not a question of discrimination based on nationality.

198. The Committee reiterated that Recommendation RecChS(95)2 was still in force. It urged the Government to take steps to bring the situation into conformity.

ESC 5 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 5 of the Charter on the ground that the existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment infringes the right not to join trade unions.

199. The representative of Iceland indicated that the Icelandic Constitution guarantees the right not to join a trade union (Article 74). She said that the conclusion of the ECSR had been communicated to social partners. She went on to say that priority clauses had a long history and were originally introduced to protect the right to unionise. Priority clauses organised by a trade union do not prevent the establishment of other such clauses by other trade unions in the same branch of activity. The Icelandic Government is of the view that intervention through legislation would risk having a disruptive effect on the labour market as priority clauses were entrenched in the way the labour market functions.

200. The representative of Italy noted that this was a long-standing structural problem and enquired about whether the original motive of protecting the right to organise still justified the existence of priority clauses.

201. The representative of Lithuania underlined the importance of the right to organise and proposed that a warning be addressed to Iceland to remedy the situation.

202. The Committee voted on a warning which was carried (19 votes in favour, 1 against and 17 abstentions) and urged the Government to take all adequate steps to bring the situation into conformity with the Charter.

ESC 5 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 5 of the Charter on the ground that a minimum of 50 members or at least one quarter of the employees of an undertaking are required to form a trade union, which is an excessive restriction on the right to organise.

203. The representative of Latvia reiterated that Section 3 of the Trade Union Act states that trade unions can register provided they have at least 50 members or one quarter of the employees of an enterprise, institution, organisation, profession or branch. In addition, she indicated that branches of existing trade unions can be set up with 3 members only. She also pointed out that the two requirements were not cumulative and that in smaller undertakings the requirement of one quarter of the employees applied. This meant that, for instance, in an undertaking of twelve employees, only three members were required to be able to form a trade union. However, she indicated that further to the conclusion of the ECSR, the Ministry of Welfare and Free Trade Union Confederation had held initial discussions and were planning to organise a second round of discussions in the near future to reach a common position on this issue.

204. The representative of the ETUC indicated that the situation had not changed but that discussions between the Government and social partners had indeed begun on this question.

205. The Committee took note of this positive development and invited the Government to bring the situation into conformity.

ESC 5 POLAND

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

- some categories of civil servants (deputies to the voïvodeship veterinary offices, to the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, and the Office for Forest Seed Production) cannot perform trade union functions;
- part of the staff of the Internal Security Agency do not enjoy the right to organise;
- home workers do not enjoy the right to form trade unions.

First ground of non conformity

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

> Le 21 novembre 2008 une nouvelle loi sur le service public (abrogeant la loi du 24 août 2006 sur le service public) a été adoptée. Dès son entrée en vigueur (le 24 mars 2009), en vertu de l'article 67, paragraphe 6 de la loi les fonctions dans les syndicats peuvent être exercées par les membres du corps de la fonction publique, à l'exclusion de hauts fonctionnaires de la fonction publique (ceux exerçant la puissance publique) uniquement. En vertu de la loi (article 52), les postes de hauts fonctionnaires sont les suivants :
> 1) directeur général de l'office,
> 2) chef du département ou d'une unité équivalente de la Chancellerie du Président du Conseil des Ministres, chef du département ou d'une unité équivalente de l'office du ministre, chef du département ou d'une unité équivalente de l'office assurant les services au président du comité faisant partie du Conseil des Ministres, chef du département ou d'une unité équivalente de l'office d'administration gouvernementale et du département ou d'une unité équivalente à l'office de voïvodie, et ses adjoints,
> 3) médecin vétérinaire de voïvodie et ses adjoints,
> 4) chef d'une unité organisationnelle à l'Agence d'enregistrement des produits médicaux et produits biocides et à l'Office des semences forestières, ainsi que ses adjoints.
>
> A la communication de la conclusion négative la question des droits syndicaux de trois groupes des fonctionnaires particulières (médecin vétérinaire de voïvodie et ses adjoints, chef d'une unité organisationnelle à l'Agence d'enregistrement des produits médicaux et produits biocides et à l'Office des semences forestières, ainsi que ses adjoints) a été soumise à l'analyse. Suite à cela la nécessité d'interdire d'exercer de fonctions syndicales a été confirmé. Il n'est pas prévu que les dispositions en vigueur soient amendées.
>
> 1/ Service Vétérinaire
>
> Les adjoints du Chef de l'Inspection Vétérinaire sont des subordonnés du Chef et ses employés. Ils ont leur propre champ de responsabilité, en plus en cas d'absence du Chef de l'Inspection Vétérinaire ils le remplacent. Cela veut dire qu'aux termes du Code du travail ils peuvent assumer les fonctions dans le cadre de relations de travail avec d'autres fonctionnaires de l'Inspection. Il en ressort qu'ils ont droit d'entreprendre des actes du droit de travail, y compris la conclusion ou la dissolution des relations de travail. Le fait d'exercer les fonctions syndicales dans les syndicats qui représentent les travailleurs pourrait créer des conflits d'interrêts dans de tels cas.
>
> Il est donc justifié que les personnes qui assument de telles tâches s'abstiennent d'exercer de fonctions syndicales.
>
> 2/ Office d'enregistrement des médicaments, appareils médicaux et produits biocides, Office des semences forestières
>
> La situation est similaire dans ces deux Offices.
>
> Les chefs des cellules organisationnelles et leurs adjoints sont responsables pour le travail effectué par ces cellules et les décisions prises. Le chef de la cellule est le supérieur du personnel de la cellule, en son absence ce sont ses adjoits qui assument ces tâches. Vu le risque de conflit entre les tâches du chef (et de ses adjoints) et la mission d'un fonctionnaire syndical les dispositions légales en vigueur qui limitent les droits syndicaux sont pleinnement justifiées
>
> La position et les tâches des chefs des cellules organisationnelles et de leurs adjoints peuvent être assimilées à la position et les tâches des chefs des départements dans l'administration gouvernementale et de leurs adjoints. Par conséquent ces chefs et leur adjoints n'ont pas de droit d'exercer des fonctions syndicales ce qui a été jugé conforme à la Charte par des experts indépendants.

207. 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

208. The Polish representative indicated that only civil servants of the Internal Security Agency who have specific duties linked to the defence of the country see their right to organise removed. This is justified by their duties which include the identification and prevention of threats on territorial integrity, the defence of borders, the protection against

threats on economic interests, the fight against corruption, terrorism, etc. She stated that her Government had no intention to amend the relevant legislation and considered that the assessment made by the ECSR had not fully taken into account all the duties of the civil servants concerned and their specificity which were in direct link to the defence of the country. She underlined that States were better placed to decide on such exceptions. She did not understand why the ECSR had considered that such staff directly involved in national defence could not be deprived of their right to organise. Several representatives were of the same opinion (Czech Republic, Estonia, and Lithuania).

209. The representative of the ETUC underlined that the Committee should take into account the fact that there had been no change to the situation which had been found not to be in conformity, and that there was no intention to change it.

210. 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.

Third ground of non-conformity

211. The Polish representative indicated that a reflexion process had been initiated concerning home workers and the fact that they could not form trade unions, but that there was no calendar for the moment.

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

ESC 5 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 5 on the ground that it has not been established that representatives of trade unions other than the most representative have access to workplaces.

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

> Le Comité conclut que la situation de l'Espagne n'est pas conforme à la Charte Sociale Européenne en ne réglementant le droit d'accès aux lieux de travail des représentants syndicaux différents des plus représentatifs.
> Cette conclusion ne correspond pas à la réalité de notre ordre juridique social, qui a été expliqué à plusieurs reprises.
> En la matière, des informations ont été fournies sur le système de représentation des travailleurs dans l'entreprise qui comporte deux aspects : unitaire, en vertu des résultats des élections syndicales correspondantes (comités d'entreprise et délégués de personnel), et syndical.
> La représentation syndicale est développée à différents niveaux ou instances syndicales. L'article 8.1 de la Loi Organique de la Liberté Syndicale prévoit la possibilité pour les travailleurs affiliés à un syndicat de constituer dans leur entreprise ou lieu de travail des sections syndicales, qui seront régies par les statuts dudit syndicat. Ces travailleurs peuvent organiser des réunions (avec notification préalable à l'employeur), recouvrer des cotisations et distribuer des informations syndicale en dehors des heures de travail et sans troubler l'activité normale de l'entreprise, ainsi que recevoir l'information remise par le syndicat.
> Par ailleurs, le paragraphe 2 de l'article 8 de la Loi Organique de la Liberté Syndicale concerne les syndicats les plus représentatifs et ceux qui sont représentés dans les comités d'entreprise et dans les organes de représentation ayant des délégués du personnel, auxquels l'on attribue une position juridique à part, produisant des effets tant pour la participation institutionnelle que l'action syndicale.
> En conséquence, les travailleurs d'une entreprise qui sont affiliés à un syndicat différent de ceux qui ont une plus grande représentativité ont néanmoins accès à l'entreprise en tant que travailleurs et peuvent exercer des fonctions syndicales dans les conditions susmentionnées.

214. 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.

ESC 5 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 5 of the Charter on the ground that Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992, which makes unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and Section 65 of this Act, which severely restricts the grounds on which a trade union may lawfully discipline members, represent unjustified incursions into the autonomy of trade unions.

215. The representative of the United Kingdom indicated that it was the Government's firm belief that the limitation provided for under Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992 was necessary in a democratic society with a view to protecting the rights of others. He added that the scope of this provision was quite narrow, and underlined that Section 15 only applies where unlawful acts are perpetrated by particular individuals. As regards the disciplining of union members, the representative of the United Kingdom stated that the law in issue provided considerable scope for unions to discipline their members and the Government did not consider the rules in this respect excessively restrictive.

216. The representative of the ETUC stressed that this was a serious situation, and that it could be appropriate to vote on a renewal of the Recommendation.

217. The representative of France raised the question of whether the most appropriate way forward was to adopt a new recommendation or simply reiterate the existing one considering that the situation has remained the same since its adoption.

218. Several representatives (Iceland, Lithuania, and Portugal) were in favour of reiterating the Recommendation, rather that voting on a new one as the subject-matter remains the same.

219. The representative of the Netherlands expressed support for the position expressed by the United Kingdom representative, and saw no need for any measures to be taken.

220. The Committee expressed concern about the long-standing situation of non-conformity and urged the Government to take all adequate steps to bring the situation into conformity with the Charter, bearing in mind the importance of Article 5 and the Recommendation already addressed to the United Kingdom.

Article 6§1 - Joint consultation

ESC 6§1 CROATIA

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

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

> The Economic and Social Council was established (Treaty establishing the Economic and Social Council, Official Gazette No. 34/11).to determine and implement coordinated activities to protect and promote the economic and social rights and interests of workers and employers, harmonized

economic, social and development policies; to encourage the conclusion and implementation of collective agreements and their compliance with the measures of economic, social and development policy.,
Activities of the Economic and Social Council are based on trilateral cooperation between the Croatian Government (hereinafter: Government), trade unions and employers.
The Economic and Social Council is established by agreement of the Government, trade unions and employers' associations. This agreement sets out the powers of the Economic and Social Council. The Economic and Social Council may establish committees and commissions for specific matters within its competence. The Economic and Social Council shall adopt rules that will govern its decision making. Each member of the Economic and Social Council may submit a proposal for consideration of issues, or for making decisions within the competences of the Economic and Social Council.

222. 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

ESC 6§2 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 6§2 of the 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.

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

The negotiation and the conclusion of collective contracts in Croatia for civil servants is limited only by the extent of the amount for the base salary which is regulated by a law and by the procedure on the basis of which the Croatian Parliament decides the amount of the budget allocated for the salaries of civil servants. Thus, civil servants have almost the same collective labor rights as the workers in the sector of economy.
The Government and civil service unions have concluded on 31st July 2008 the collective agreement for civil servants (Official Gazette No. 93/08) which was concluded for a period of four years.
In the meantime, the following have also been agreed: an amended version of the Collective Agreement for Civil Servants and Employees Act (Official Gazette No. 23/09), an Annex to the Collective Agreement for Civil Servants and Employees Act (Official Gazette No. 39/09) and Annex II to the Collective Agreement for State Officials and Clerks (Official Gazette No. 90/10).
With these collective agreement the rights of civil servants related to weekly working hours, vacations and holidays, salary supplements and other benefits of civil servants such as the right to reimbursement, severance pay in case of retirement or conditions according to which the families of servants and employees shall be entitled to assistance, are regulated.
This collective agreement was concluded under the same conditions as all other collective agreements in Croatia. So, this agreement is a legal document signed by two authorized parties, who agreed about workers' rights and obligations of employers in the area for which the collective agreement was concluded. Regarding the conditions, content, the period of validity and the way of publication of the Collective Agreement for Civil Servants and Employees applies the Labor Act (Official Gazette No. 149/09 and 61/11), which is the general regulation governing labor relations in the Republic of Croatia.

224. 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.

ESC 6§2 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 6§2 of the Charter on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

225. The Danish representative asked to deal with this ground of non conformity with the one under Article 5 of the Charter. She explained that both grounds were like two sides of a same coin. Reference is therefore made to the report under Article 5 for more information on the presentation of the situation and the discussion that followed.

226. The Committee reiterated that Recommendation RecChS(95)2 was still in force. It urged the Government to take steps to bring the situation into conformity. Finally, it invited the Government to provide all relevant information in its next report and decided to await the next assessment of the ECSR.

ESC 6§2 LATVIA

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

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

> The Committee notes from statistics from the European industrial relations observatory (ERIO) and the European trade union institute (ETUI) that it is estimated that approximately 20% of the workforce is covered by collective agreements. The Committee considers this coverage to be too weak and thus not in conformity with Article 6§2 of the Revised Charter.
> We would like to draw your attention that all minimum requirements, detailed rights and duties of employers and employees are incorporated mainly in laws (Labour Law, Labour Protection Law etc.) and in regulations of the Cabinet of Ministers. Both parties – employers and employees, often prefer to use these minimum requirements instead of conclusion of the collective agreements. This practice may be reason why percentage of workforce covered by collective agreements is rather small.
> The purpose of the Law "On the Remuneration of State and Local Government Institutions Officials and Employees in 2009", which was in force till 10 January 2010, was to restrict all state and local government institutions expenditures of officials (employees) remuneration. This Law was developed having regard of the current economic situation and taking into account requirements of the International Monetary Fund – to restrict budget expenditures regarding officials (employees) remuneration in state and local government budget funded institutions. Previously laws and regulations stated supplements, bonuses, benefits and compensations, that caused substantial budget expenditures.
> The State and Local Government Institutions Officials and Employees Remuneration Law of 1 December 2009 is in force at present. It prescribes prohibition to bargain and include into a collective agreement remuneration conditions that differ from those enshrined in the Law (Paragraph 3 of Article 3). In 2010, the Informative Report "On Proposals for Solutions to the Application of Legal Provisions Included in Collective Agreements in current economic conditions" was developed to identify problems and possible solutions to collective bargaining in the public administration and to improve legal regulations inter alia legal provisions included in The State and Local Government Institutions Officials and Employees Remuneration Law. Objective of the aforementioned report is to develop proposals for amendments in The State and Local Government Institutions Officials and Employees Remuneration Law.
> Amendments of 14 October 2010 in The State and Local Government Institutions Officials and Employees Remuneration Law were elaborated with purpose to promote the collective bargaining in the public administration. These amendments envisage that the state or the local government institution may provide additional fee related activities by collective agreements in the framework of granted means:
> – reduction of the length of the working day over one hour before holidays;
> – one paid day off in the first school day due to the child's education commencement in the primary school (from first till fourth grade);
> – no more than three paid holidays owing to entrance into marriage;
> – one paid holiday in graduation day, when an official (employee) or his (her) child finishes educational institution;
> – prize-money no more than one minimum monthly salary amount due to the significant event (achievement) of an official (employee) or a state or local government institution, taking into account a contribution of an official (employee) in respective institution attainment of objective;

– ensuring of collective activities of the state or the local government institutions officials (employees). The Cabinet of Ministers determines organization order and financing restrictions of such activities (Paragraph 4 of Article 3).

These additional social guarantees do not provide the right to request additional financing from the state or local government budget. In the opinion of social partners of Latvia such regulation significantly limits right to bargain collectively for the public administration workers and reduces their possibility to agree on better employment conditions.

Collective agreements in institutions subordinated to the ministries

No.	Ministry	Number of institutions	Number of institutions with valid collective agreement
1.	**Ministry of Finance**	5	2
2.	**Ministry of Interior**	8	1
3.	**Ministry of Culture**	33	7
4.	**Ministry of Welfare**	11	7
5.	**Ministry of Transport**	5	1
6.	**Ministry of Justice**	11	1
7.	**The Ministry of Environmental Protection and Regional Development**	7	6
8.	**Ministry of Healthcare**	11	6
	Total:	91	31

*Source: Information of the **Ministry of Welfare** for May, 2010*

Statistics shows there are approximately 34% valid collective agreements in the public sector but 16% of the workforce in the public sector is covered by collective agreements. According to statistics from the Central Statistical Bureau and the Free Trade Union Confederation of Latvia approximately 11,6% of the workforce in the private sector is covered by collective agreements.

228. 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.

ESC 6§2 SLOVAK REPUBLIC

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

- it has not been established whether the development of collective bargaining is encouraged;
- it has not been established that police officers are entitled to participate in the processes that result in the determination of the regulations applicable to them.

First and second grounds of non-conformity

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

Employers associations are formed under Act no. 83/1990 Coll. independently from the state. The state cannot interfere in their freedom, cannot compel them to enter an association and, likewise, cannot prevent them from leaving an association. Through such an approach the state would interfere in their freedoms of coalition.

Responsibility for deriving accountability for a breach of employment law and for breaches of obligations arising from collective agreements, for supervision over compliance with employment law lies within the competence of the labour inspectorate, whose activity is regulated by Act no. 125/2006 Coll. on the labour inspectorate and amending Act no. 82/2005 Coll. on illegal work and illegal employment and on consequential amendments. The labour inspectorate imposes penalties for breaches of statutory regulations laid down in the Labour Code and for non-compliance with obligations agreed in collective agreements. *The frequency of penalties is shown below:*

Number of penalties imposed on organisations found in breach of the Labour Code and Act no. 2/1991 Coll.:

2005	5
2006	1
2007	3
2008	2
2009	0
2010	8

Despite the fact that sufficient legal frameworks are created in the Slovak Republic for the problem-free operation of collective bargaining, available data indicate that approximately only 30% of employed persons are covered by collective agreements in the Slovak Republic.
In 2010 in total 19 collective master agreements, 14 collective master agreements and 5 addenda to collective master agreements were filed with the Ministry of Labour, Social Affairs & Family of the Slovak Republic (hereinafter simply the "Ministry"). Of these, 4 collective master agreements were concluded in the public sector and 8 collective agreements, including addenda, were in the private sector.
During the first quarter of this year a total of 15 collective master agreements, 11 collective master agreements and 4 addenda to collective master agreements were filed with the Ministry. The number of collective master agreements is thus expected to be higher by the end of 2011 than the figure for last year, whereby it may be concluded that collective bargaining in Slovakia is growing.
Collective master agreements in 2010 covered 374 employers; however, the number of employees covered by collective master agreements in the private sector cannot be calculated. This information is not collected in the SR and is not precisely monitored; it is estimated that 30% of the total number of employees are covered by collective master agreements.
By contrast, in the public sector this data is monitored and collective master agreements cover approximately 195 652 civil servants and public servants.
In 2011, collective master agreements applied to 261 employers. The number of employees in the civil service remains unchanged; we expect this to rise by a further 30 000 employees.
On 31 December 2010 Act no. 557/2010 entered into effect, amending Act no. 2/1991 Coll. on collective bargaining as amended, on the basis of which the Ministry of Labour, Social Affairs & Family of the Slovak Republic (hereinafter simply the "Ministry") can extend a collective master agreement by a generally binding legal regulation published in the Collection of Laws in its complete wording at the joint written proposal of the contracting parties and provided that the employer to whom the collective agreement is to be extended consents to its extension, though the Ministry shall not extend a collective master agreement unless it fulfils the conditions set by law.
Social dialogue in Slovakia is supported by the government; is one of the government's priorities and its plan of legislative tasks seeks also to support and develop social dialogue in Slovakia, something which the social partners themselves have endorsed. Currently in interdepartmental comment is an amendment to Act no. 311/2001 Coll. as amended, the Labour Code, which should enter into effect on 1 September 2011. This amendment gives social partners great room for negotiating working conditions, with many institutes being left to the agreement of the social partners, though the Labour Code does set certain limits on them. Collective bargaining should, therefore, again grow in the Slovak Republic and achieve a certain momentum, since the Labour Code will no longer contain numerous binding provisions from the past and employers will have an appetite also for conditions that provide for simpler communication with employee representatives.
In this regard it should be noted that members of the SR police force have the right to act to protect the rights and eligible interests of police officers in the respective trade union organisations, as laid down in §§ 225 – 230 of Act no. 73/1998 Coll. on the service of members of the police force, Slovak Information Service, Prison and Court Guard of the Slovak Republic and railways police. The act also prohibits the dismissal of a police officer's for performing a union function in a trade union body.

230. 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.

ESC 6§2 "the former Yugoslav Republic of Macedonia"

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 6§2 of the Charter as during the reference period the requirements to enter negociations infringed the right to bargain collectively.

231. The representative of "the former Yugoslav Republic of Macedonia" provided the following information in writing:

> As it is clearly noted by the European Committee of Social Rights in its **Conclusions XIX-3 (2010)** concerning the situation in the Republic of Macedonia in respect to the Article 6/Paragraph 2 of the European Social Charter, during the reference period of the Report , i.e. the period 2005-2008, the situation in the country was not in conformity with the requirements of the respective Article of the Charter, due to the very high requirements for the representatives of the trade unions at various levels (i.e. 33% of the employees) in order to enter into collective bargaining and to sign collective agreements.
> Being aware of this situation, of the imposed restrictions and the problems created in the practice due to the excessive percentage requirement for determining the representativeness of certain trade union and/or employers' association, the Government of the Republic of Macedonia during 2009, in consultation with the social partners in the country and in consultation with international experts in this field, has prepared and proposed the amendments to the Law on Labour Relations.
> The **Law amending the Law on Labour Relations** was adopted by the Parliament of the Republic of Macedonia in October 2009 and it was published in the "Official Gazette of the Republic of Macedonia" No. 130/2009, dated October 28, 2009.
> The most important amendments to the Law on Labour Relations Law were the ones related to the provisions defining the threshold of representativeness of the trade unions and employers' association, the introduction of a clear definition of the criteria for representativeness, together with the clear establishment of the manner and procedure for determining the representativeness.
> The provisions specified that the representativeness of the employers and the trade unions is determined for the purpose of collective bargaining, participation in tripartite bodies and tripartite delegations of social partners.
> The amendments to the Law regulate new criteria for **representativeness of the trade unions at the national level.** The new conditions for representativeness, which the trade union need to cumulatively fulfill in order to be representative at the national level, are the following:
> - to be registered in the trade union Registry, kept in the Ministry competent for issues in the area of labour (i.e. the Ministry of Labour and Social Policy);
> - to have a membership of at least 10% of the total number of employees in the Republic of Macedonia, which pay membership fee to the trade union;
> - to affiliate at least three trade unions on national level from different branches or sectors that are registered in the Registry of trade unions;
> - to act on a national level and to have registered members in at least 1/5 of the municipalities in the country;
> - to act in accordance with its statute and democratic principles;
> - to affiliate trade unions that have signed or joined to at least three collective agreements on a level of branch or sector.
>
> The same article of the Law (Article 212), also determines the criteria for representativeness of a trade union in the public sector, on the level of the private sector, on a level of branch or sector and the trade union on a level of employer.
> In this respect, the representative **trade union at a public sector level** is the one registered in the Registry of trade unions in the Ministry, with membership of at least 20% of the number of employees in the public sector that pay membership fee.
> A representative **trade union at a private sector level** in the field of economy is the trade union registered in the Registry of trade unions kept in the Ministry, with membership of at least 20% of the number of employees in the private sector in the field of economy that pay membership fee.
> Representative **trade union at a branch or sector level** is the one registered in the Registry of trade unions kept in the Ministry, with membership of at least 20% of the number of employees in the branch or sector that pay membership fee. Representative **trade union at an employer level**

is the trade union with membership of at least 20% of the number of employees employed by that employer that pay membership fee.

The Law (Article 213) also, establishes the new criteria for **representativeness of the employers' associations** on a national level, on a level of private sector and on a level of branch or sector.

The representative employers' association on the territory of the Republic of Macedonia is the one that cumulatively fulfils the following conditions:

- to be registered in the Registry of employers' associations, kept by the Ministry competent for issues in the area of labour (i.e. the Ministry of Labour and Social Policy),
- to have membership of at least 5% of the total number of employers in the private sector in the field of economy in the country or the employers that are members of the association should employ at least 5% of the total number of employees in the private sector in the Republic of Macedonia;
- the members of the association to be employers from at least 3 branches or sectors;
- to have members in at least 1/5 of the municipalities in Macedonia;
- to have signed or joined to at least three collective agreements on a level of branch or sector;
- to act in accordance with its statute and democratic principles.

Representative **employers' association at a private sector level** in the field of economy is the association registered in the Registry of employers' associations maintained by the Ministry, which has a membership of at least 10% of the total number of employers in the private sector or the employers - members of the association, should employ at least 10% of the total number of employees in the private sector.

The representative **employers' association at a branch or sector level** is the association registered in the Registry in the Ministry, that has a membership of at least 10% of the total number of employers in the branch or sector or the employers - members of the association, should employ at least 10% of the total number of employees in the branch or sector.

The Law amendments established also the body competent for determining the representativeness of the trade unions and employers' associations on a national level, public and private sector level and on a level of branch or sector, i.e. the **Commission for determining the representativeness.**

In addition, the composition and the manner of work for the Commission are defined as well. The Commission is composed of nine members, with the possibility for the registered trade unions and employers' associations to determine their representatives that will participate in the work of the Commission in order to provide transparency of the process.

In addition, the Law in details defines the procedure for determining the representativeness, the applications, necessary documentation and the manner of work of the Commission and the decision making process.

In accordance with the provisions from the Law Amending the Law on Labour Relations, a procedure for re-registration of the trade unions and the employers' associations on higher level and registration of new trade unions and employers' associations was initiated and also, in February 2010 the Commission for establishing the representativeness was established and it started working on the submitted applications for establishing the representativeness of the trade unions and employers' associations registered on a higher level.

By the end of 2010, 36 trade unions and 2 newly registered trade unions have been re-registered, as well as 7 employers' associations. 16 trade unions obtained the representative status on a branch level.

In accordance with the prescribed procedure, the Commission for establishing representativeness, after reviewing the submitted requests and documentation, established that the "Association of Trade Unions of Macedonia", "Confederation of Free Trade Unions" and the "Organization of Employers of Macedonia", fulfill the conditions for representativeness at the level of the territory of the Republic of Macedonia, i.e. at national level. Based on these findings, the Minister of Labour and Social Policy issued the decisions for representativeness at national level for those two trade unions and one employer's association.

Following this, on the 25th of August 2010, the new Agreement establishing the **Economic and Social Council** has been signed by the Government and the social partners - representative at national level.

The agreement defined the competencies, requirements and the manner of work of the Council and it precisely defined the composition and competencies of the Economic and Social Council as a body with advisory and consultative role in the creation and implementation of economic and social strategies and policies, influencing the creation of conditions for economic and social stability in the country.

> By describing the content of the relevant legislative changes, as well as some of the developments in the area of social dialogue and collective bargaining that took place after adoption of the amendments to the Law on Labour Relations, we believe that the situation in Macedonia in this respect is substantially improved and that the legislation and the practice in this field is now in conformity with the requirements prescribed by the corresponding provisions of the European Social Charter, accepted by the Republic of Macedonia. We expect that this will also be confirmed by the European Committee of Social Rights in its next assessment of the situation in the country.

232. 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.

ESC 6§2 UNITED KINGDOM

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

- workers do not have the right to bring legal proceedings against employers who made offers to co-workers in order to induce them to surrender their union rights
- and, in such cases, trade unions too cannot claim a violation of the right to collective bargaining.

233. The representative of the United Kingdom highlighted that the Government did not consider that Article 6§2 of the Charter guarantees a right for co-workers or trade unions to bring proceedings regarding offers to induce the surrender of union rights. It however pointed out that the Government recognises that preventing workers from being induced to surrender their trade union rights is a part of the individual right to bargain collectively. He further explained that in this regard the Government was convinced that the introduction of a statutory prohibition on offers to induce workers to surrender their union rights was in conformity with the obligation to ensure the effective exercise of the right to collective bargaining arising under Article 6§2 of the Charter. He further pointed out that in practice, since this prohibition was introduced, there have been no proceedings alleging that an employer has attempted to offer an inducement to workers to give up their right to be represented in collective bargaining.

234. 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

ESC 6§3 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 6§3 of the Charter on the ground that it has not been established that arbitration procedures exist in the public sector.

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

> Provisions of Labour Act include the possibility of conciliation and arbitration for solving collective labor disputes. Regarding the question of mediation, Article 270 of Labour Act prescribes mandatory mediation.
> According to Paragraph 1 of this Article in case of dispute which could lead to a strike or other form of industrial action, the parties must conduct the conciliation process prescribed by this Act, if the parties have not agreed on some other peaceful resolution. So, the statutory conciliation proceedings prescribed have a subsidiary character, since it applies only if the parties of collective employment relations are not bound by a collective agreement setting out agreed conciliation procedures.
> Arbitration is provided for by Article 274 of Labour Act. According to this Article, the parties can resolve collective labor dispute by arbitration,. the appointment of an arbitrator or arbitrators and other matters of arbitration, may be governed by collective agreement or by agreement of the parties made after the dispute.

According to Article 275 of Labour Act, a on arbitration, the parties shall determine the issue to the arbitration. Arbitration can only decide on issues brought before it by the parties to the dispute. Arbitration according to Labour Act - is voluntarily.
The sole exception of Labour Act provides for the case when the union and the employer can not reach an agreement on production and maintenance assignments and essential tasks that can not be interrupted during the strike.
Under Article 278th Paragraph 4 of the Labour Law, if an employer and union fail to reach agreement within fifteen days from receipt of the proposal of the employer, the employer or union can for fifteen days, request that these matters fall under arbitration. Arbitration consists of one trade union representative and one representative of the employer and an independent chairperson by agreement between the union and the employer.
On the 4th October 2010 Government has concluded the Basic Collective Agreement for Employees in the Public Sector with the trade unions (Official Gazette No. 115/10), which defines the rights and obligations at work and on the basis of work for civil servants and public services to which the Act on salaries of employees in public services applied.
The provision of Article 7 above the Basic Collective Agreement stipulates that, in case if there is a collective labor dispute that could lead to a strike, the procedure of conciliation by the Labour Act and the provisions of the Ordinance on the selection of conciliators and conciliation proceedings will be followed (Official Gazette No. 122/10 and 56/11).
According to Article 9 of the collective agreement the parties may agree that the dispute go before arbitration. If the parties agree to arbitration, and otherwise agree the composition of the arbitration procedure, the composition of the arbitration and the arbitration procedure will apply the provisions of the Labour Act that govern arbitration in case of jobs that can not be interrupted during the strike.
Article 10 of the collective agreement governing the issue of mandatory arbitration, and according to it, if in a public service strike is prohibited by law, in the case of a collective dispute it will be arbitration.

236. 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

ESC 6§4 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 6§4 of the Charter on the ground that the right to call a strike is reserved only to trade unions the formation of which may take up to thirty days which is excessive.

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

The provision of Article 226 Paragraph 1 Labor Law stipulates that workers have the right, without any difference according to their discretion, establish a trade union and join it with conditions that may be prescribed by the statute or the rules of that union. In Paragraph 3 explicitly states that the association can be established without any prior approval, which relates primarily to the influence of government on the establishment of associations. Labor Law of Article 232 to Article 241 regulates the procedure of establishment and registration of associations. According to the provisions of Article 236 Act on the work of the application for registration, the association must provide: the deed records at the founding assembly, the statute, the list of founders and members of the executive authority, name and surname of the person or persons authorized to represent. In accordance with the provisions of Article 239 Paragraph 1 the Labor Law authority responsible for registration shall make a decision on an application for registration of associations within thirty days from the filing requirements. If the competent authority does not issue a decision within thirty days, it shall be deemed that the association has registered the following day from the expiration of that period. The above provision comes as the deadline of thirty days is the maximum period within which the authority responsible for registration shall make a decision on an application for registration of associations and that the procedure can be carried out within a shorter period. The above-mentioned provisions should protect unions from time-consuming procedures, since in the event the decision on registration within the prescribed period is considered that the association has registered the following day of the deadline. Also, past practice has shown that properly

submitted claims are resolved in a shorter time that limits prescribed by the Act, in particular provision of Article 239 Paragraph 1 Labor Law, and founder of the association so far had no objection to the above provision.

238. 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.

ESC 6§4 CZECH REPUBLIC

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

- all categories of personnel are prohibited from striking at nuclear power stations, oil or gas pipelines, in the fire service and air traffic control centres;
- it has not been established that the restrictions on the right to strike in health care and social care establishments and in telecommunications are in conformity with Article 31 of the Charter .

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

First ground of non-conformity

The conclusion that all categories of personnel are prohibited from striking at nuclear power stations, oil or gas pipelines, in the fire service and air traffic control centres is wrong. The restriction does not cover all employees.

Under Section 17 of Act No. 2/1991 Coll., on Collective Bargaining, regulating the strikes when a collective agreement is concluded, the strikes of **operators of equipment** at nuclear power stations, equipment working with fissile materials and equipment of oil and gas pipelines and **employees at air traffic control centres** are deemed as illegal. This concerns only employees working at **specifically determined workplaces,** which meet the requirement that the work stoppage would threaten the rights of persons, public interest, national security and public health within the meaning of Article 31 of the Charter.

The strike of the members of the fire protection corps and company fire protection personnel during the term of a collective agreement would be illegal if lives or health of citizens or the property, as the case may be, were jeopardized by the strike. When a strike occurs it will be assessed ad hoc, which members of the fire protection cannot participate in the strike so that the lives and health of citizens or the property are not jeopardized. In practice, the trade unions and confederations post methodical instruction on their websites how to organise and hold strikes without lives and health of citizens being jeopardized.

The Czech Republic believes that its legislation and practice limiting the right to strike is in conformity with Article 31 of the Charter."

Second ground of non-conformity

The limitation of the right to strike for employees of medical care facilities, social care facilities, and employees securing the operation of telecommunications is a subject to the strict condition - the **strike should not jeopardize the lives and health of citizens**.

The right of all other employees in the above mentioned facilities is not limited. However, in the above mentioned cases the specific workplaces cannot be listed; therefore the legal definition can only be of general nature. The condition given above must be interpreted and applied according to the circumstances of any individual case. This is also a common practice. The relevant workplaces or employees are determined with the individual employers based on the characteristics generally defined by law. In practice, the trade unions and confederations post methodical instruction on their websites. Such instructions are sometimes general and sometimes concern the particular strike (for instance CMKOS, Trade Union of Health Service and Social Care of the Czech Republic). These also contain instruction how to ensure the so called minimum level of service and secure workplaces where strikes are not allowed. This requirement of minimum level of service is met by trade unions. The agreement on specific service levels and workplaces can have a form of an agreement between the employer and the trade union or be made part of the collective or other agreement, be set by an in-house corporate standard or ad hoc, if needed.

We have no signals that the above mentioned legal provisions would raise problems in practice. In cases where the employees resorted to collective actions, strike alerts and strikes, e.g. in the

health care industry, the minimum service levels were always ensured according to the specific circumstances so that there would be no limitation of the right to strike in excess of Article 31 of the Charter."

240. 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.

ESC 6§4 DENMARK

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

- the Public Mediator's power to apply, without any pre-established criteria, the linkage rule constitutes an undue restriction of the right to strike;
- civil servants employed under the Civil Service Act are denied the right to strike;

First ground of non-conformity

241. The representative from Denmark provided the following information:

The linkage rule allows the Public Mediator to combine mediation proposals during the collective bargaining process.
The Danish labour market is characterised by a very high degree of co-influence and participation. And generally pay and working conditions are among the best also in a European context. There are some very strong organisations, especially on the workers' side; but also on the employers side . Approximately 73 per cent of the workforce is covered by collective agreements. This means that the society has safely left it to the social partners themselves to regulate pay and working conditions. The social partners have concluded their own agreement *[Hovedaftalen]*, the so-called Basic Agreement containing the rules on the labour market including the workers' right to organise and collective bargaining and the provisions on the notice to be given in case of industrial action. The state does not interfere in the social partners' negotiations. The only legislation in relation to collective bargaining is the Act on Conciliation in Industrial Disputes which has the aim of conciliating the parties, especially in connection with the renewal of collective agreements.
A very large number of collective agreements have been concluded on the Danish labour market. In the private sector alone there are more than 600 collective agreements. Contrary to several other countries, Denmark does not have industrial unions and thus no collective agreements covering all occupational groups within the various industrial and business areas.
The Danish trade unions are traditionally built up as national, professional- and training-related organisations. A Danish collective agreement is therefore professionally delimited.
As the collective agreements have been concluded on the basis of occupational sector or work functions, there are usually several collective agreements in the individual enterprise regulating the workers' pay and working conditions. This is the background as to why the renewal of the individual collective agreements is designed to take place simultaneously and why the social partners aim at achieving a uniform development on the organized labour market.
Denmark does not by statute extend collective agreements to apply for other than those who have concluded the agreements. This means that no erga omnes system exists. Collective agreements in Denmark are considered to be private agreements and thus the Danish Government has only little knowledge of the precise content of the individual collective agreements.
It is important to understand the implications of the Danish structure of collective agreements: If the collective agreement within one single (minor) occupational field in an enterprise cannot be renewed, a dispute will affect or maybe even prevent work at the whole enterprise even though new collective agreements have been concluded in other fields.
Due to this very special structure the linkage rule has been established.
Basically, the linkage rule is a logic consequence of the way that the Danish wage earners' and employers' organisations have wanted to organise the system given the specific Danish union structure and bargaining practice.
The Conciliation Service is a machinery for voluntary negotiation. One of the most important purposes of the Conciliation Service is to offer assistance - at its own initiative or at the request of the social partners - in connection with the renewal of collective agreements.
During the conciliation process the Public Conciliator is authorised to recommend concessions which may seem appropriate for a peaceful settlement of a dispute. But the Public Conciliator may not dictate any conciliatory solution to the parties – but is authorised to come up with a compromise

proposal when he or she finds it appropriate to do so. In such cases the Public Conciliator is only to evaluate the possibilities for the adoption of the proposal.
A compromise proposal will not be put forward against the wish of the parties. If a compromise cannot be reached, strikes and lockouts will be the consequence.
Furthermore, disputes concerning the powers of conciliators may be brought before the Industrial Court. In addition, it should be noted that the social partners have an important influence when conciliators are appointed.
Another important element is the autonomy of the conciliators – both in relation to the social partners and in relation to the Government. Thus, It is often a judge who exercises the function, the conciliators are not subject to instructions from the Government, and no financial considerations are taken into account when compromise proposals are submitted.
The linkage rule does not mean that the parties are prevented from negotiating and exerting influence. The mediation proposal is only put forward when all negotiation options are exhausted. The individual member is ensured influence as the mediation proposal is put to a vote.
A compromise proposal always takes the negotiation between the parties as a starting point. And bargaining results obtained without the assistance of the Conciliation Service form part of the compromise proposal if that is the wish of parties.
The linkage rule ensures solidarity in situations where a majority of the included wage earners have voted yes to the mediation proposal. The rule prevents that a number of bargaining units are involved in a dispute just because a group that happens to be organized as a separate bargaining unit, but which constitutes a minority – maybe even a very small minority - for one reason or another has voted no.
Finally, the linkage rule has the full support of the social partners. Prior to this meeting, the government contacted the most representative organisations of workers and employers in Denmark in order to be sure of their position on the linkage rule in the light of the ECSR conclusions. The organisations concerned all confirmed their support for the rule. The organisations are: the Danish Employers Confederation, the Federation of Danish Trade Unions, the Federation of Danish Public Servants' and Salaried Employees´ Organisation the Danish Confederation of Professional Associations and the National Association of Local Authorities in Denmark.

242. The Committee noted the information provided, in particular that the Government had consulted the social partners who wished there to be no change to the situation, and urged it to continue its efforts to bring the situation into conformity with the Charter.

Second ground of non-conformity

243. The Danish representative provided the following information:

Civil state servants have very generous terms of employment, including a generous so-called pay as you go pension. The civil state servants' pension can be compared to a pension scheme where the employer during the employment has paid a monthly pension contribution equivalent to 30 percent of the employee's monthly pay.
Thus, civil state servants are vastly compensated for the lack of a right to strike.
In December 2000 the Minister of Finance issued a circular letter about the employment of civil state servants under the Civil Servant's Act. The purpose of the circular letter was to limit civil servant employment in the Danish state sector.
According to the circular letter, it is only possible to employ new civil state servants in certain positions and in accordance with Article 31 of the Social Charter.
Consequently, new civil state servants will only be employed in positions where it is accepted that there is no right to strike following article 31 in the Social Charter.
In 2000, at the coming into force of the circular letter, a number of civil state servants were employed in positions which in the future would not qualify for employing persons as state civil servants. It was decided that these civil servants (already employed in the state sector) maintained their employment status as civil state servant, including the advantageous employment and pension scheme and no right to strike.
As of September 2011 the Danish state sector employs approximately 50.000 civil servants. Approximately 25.000 of these civil state servants are employed in jobs that are outside the scope of the Civil Servant's Act after the implementation of the circular letter. When a civil state servant *not* comprised by the circular letter leave his or her current civil servant position, the person

replacing the civil state servant will not be employed as a civil servant but will have the same working conditions as regular state employees, including the right to strike.
This means that as from 2030 and the number of civil state servants will be approximately 25.000 civil state servants – out of the total Danish workforce that amounts to app. 2.8 million workers.

244. The French representative pointed out that there had been no change even if the situation wiould eventually change. The recommendation should be renewed.

245. The Estonian representative stated that there had been positive developments and that this should be noted.

246. The Committee recalled the recommendation already addressed to the Danish Government on this issue and urged it to take all the necessary steps to bring the situation into conformity with the Charter.

ESC 6§4 GERMANY

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

- strikes not aimed at achieving a collective agreement are prohibited;
- the requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constitute an excessive restriction to the right to strike.

First and second ground of non conformity.

247. The German representative provided the following information:

Germany submits the following comment in response to the Governmental Committee's view that the implementation of Article 6 (4) of the Charter (right to bargain collectively / right to strike) is not in conformity with the law:

Admissible purposes of collective action

Whereas the Committee notes that strikes continue to be prohibited pursuant to German legislation unless they aim at the conclusion of a collective agreement, the Federal Government continues to hold the view that the criteria for the admissibility of strikes as developed by the case law of the Federal Labour Court - strikes must be related to collective agreements and they must be organised by a trade union - are compatible with Article 6 para 4 of the Charter.

There are no prospects for changes in the present legal situation. A modification of the legal situation would only be possible if the right to collective action were codified. However, this would require at least minimal consensus in society about the substance of a law on collective action. But the groups of society are deeply divided on the issue of strikes and lock-outs. Considering the fundamentally opposed positions of the political forces on collective action it is not possible in our domestic policy context to agree on legislation to regulate collective action.

Furthermore it should be noted that collective action aimed at asserting demands that cannot be regulated by collective agreements (e.g. sympathy strikes or so-called political strikes) is practically insignificant in Germany.

Who is entitled to take collective action?

In Germany, collective action is governed by the ultima-ratio principle. Therefore Germany has a strike culture which only rarely leads to major strikes such as the strike for a continued payment of wages in the event of sickness in the 1950s or the fight for the 35 hour working week in the 1980s. This has to be borne in mind when reading the strike statistics attached to the report. It is the view of the German Government that these statistics in no way suggest that the requirements for a lawful strike are hard to satisfy. Germany's case law on the right to collective action deliberately rules out the lawfulness of strikes instigated by a small group of employees outside trade union organisations with collective bargaining powers; this is in line with the principle that effective collective agreements can only be concluded by trade unions with the capacity to bargain collectively in a collective bargaining framework - and if possible without collective action.

248. The Lithuanian representative stated that this was a serious situation and noted that the recommendations were still in force.

249. The Committee expressed its concern at the continuing situation. It recalled that two Recommendations addressed to Germany were still in force and urged the Government to take all adequate steps to bring the situation into conformity with the Charter. Meanwhile it decided to await the next assessment of the ECSR.

ESC 6§4 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 6§4 of the Charter on the ground that restrictions on the right to strike for persons working in nuclear power stations or those employed in air traffic control go beyond those permitted by Article 31 of the Charter.

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

> The right to strike is guaranteed by law to an employee to interrupt work in an organised manner. The right to participate in a strike is an individual right of an employee. The act may exclude certain professions from exercising this right. An employee need not be bound by any trade union organisation to be able to participate in a strike. The legal subject for declaring a strike is the trade union body competent under the statutes of the trade union organisation.
>
> Under the act on collective bargaining a strike is understood to mean the partial or complete mass interruption of work by employees. It is a social expression of a group of employees to interrupt work. A strike is an expression of a conflict of group interests that has reached the stage of a collective dispute. A legal strike is not a breach of work discipline and does not mean an interruption of the employment relationship or lead to its termination. The Act on Collective Bargaining governs only the conditions of a strike addressing a dispute arisen in connection with the conclusion of a collective agreement.
>
> The right to strike is codified in the Constitution of the Slovak Republic in article 37, paragraph 4, which defines the job categories to which this right does not apply, namely judges, prosecutors, members of the armed forces.
>
> Under the present legal state, we distinguish two types of strikes:
>
> 1. Strikes regulated by law as a means of solving a collective labour dispute arisen in connection with the conclusion of a collective agreement,
> 2. Other types of strikes outside the framework of the act on collective bargaining.
>
> Where a strike occurs in connection with the conclusion of a collective agreement, its legal regime is governed by the act on collective bargaining. If a strike occurs for other reasons, the participants should, with regard to the absence of specific law, be governed by the general principles codified in the Constitution of the Slovak Republic, the fundamental principles of the Labour Code and by international labour law contained in particular in the conventions of the International Labour Organisation in accordance with article 7 of the Constitution of the Slovak Republic.
>
> The act on collective bargaining also regulates business, sectoral and solidarity strikes. In terms of the legality of a strike we distinguish legal and illegal strikes. The act on collective bargaining deems a solidarity strike to be a strike in support of the demands of employees striking in a dispute over the conclusion of another collective agreement (e.g. over the conclusion of a collective master agreement). A solidarity strike, however, may be deemed legal only if it is a strike in which the employer can influence the course or consequence of the strike of the employees in support of whose requirements the solidarity strike has been declared. Else, in the absence of the condition of economic or other connection, a solidarity strike is illegal pursuant to § 20(e) of the act.
>
> A strike as the extreme means of solving collective labour disputes is to be considered only in cases where a collective agreement has not been concluded or following proceedings before a mediator and where the contracting parties do not apply to an arbitrator to resolve the dispute. The legality of a strike is reviewed by the competent regional court. The filing of a petition at court, however, has no suspensive effect, i.e. up until the court decision on the strike's legality the employees' strike may continue.
>
> The reasons for the illegality of a strike are exhaustively set out in the provision of § 20 of the act, where any illegality of a strike concerns only strikes relating to collective bargaining regulated by the act.
>
> The right to strike may not be exercised by:

- employees of healthcare or social care facilities, if the strike would endanger the life or health of citizens,
- employees operating nuclear power plant facilities, facilities with fissile material and oil or gas pipeline facilities,
- judges, prosecutors, members of the armed forces and armed corps and air traffic controllers,
- members of the fire brigade, members of rescue teams set up under special regulations for the respective workplaces and employees ensuring telecommunications operations, if the strike would endanger the life or health of systems, or property,
- employees working in areas affected by natural disasters in which emergency measures have been announced by the relevant state authorities.

The right to strike for other, for example, political reasons, unrelated with collective bargaining, is unprejudiced by the provision of § 20 of the act on collective bargaining. The illegality of a strike declared or commenced for reasons other than those referred to in § 16 of the act, relates only to labour disputes that are the subject of regulation by the act on collective-bargaining.

The conditions for declaring and commencing a legal strike are laid down in the provision of § 17 of the act on collective bargaining. Any non-fulfilment of these conditions will mean that the strike is deemed illegal.

Material condition for declaring a strike:

A strike, under the act on collective bargaining, is admissible only in the case of a dispute over the conclusion of a collective agreement. In the case of a solidarity strike, employees may strike also in support of the demands of another employer's employees. Employees' demands contained in the operative part of the collective agreement is legally secured through the courts. The fulfilment of other employer obligations codified in the commitment part of a collective agreement is achieved through specific rules of procedure before a mediator or arbitrator.

Procedural condition for declaring a strike:

Under the act on collective bargaining a strike is one of the procedural means of resolving a collective dispute on the conclusion of a collective agreement. The declaration of a strike must be preceded by proceedings before a mediator. A procedural condition for a strike is its declaration in the manner prescribed by law.

The right to declare a strike and decide on its commencement lies with the competent trade union body. A legal condition of the decision of a trade union body to declare a strike is the consent of at least half the employees whom the collective agreement is to concern, including those who, for reason of barriers at work or for other reasons are not working, and therefore cannot participate in the balloting. On the other hand, employees operating nuclear power plant facilities, facilities with fissile material and oil and gas pipeline facilities, judges, prosecutors, members of the armed forces and armed corps, members and employees of fire corps and rescue corps and air-traffic controllers, employees working in areas affected by natural disasters in which emergency measures have been declared by the relevant state authorities, and employees performing work for an employer on the basis of agreements on work performed outside employment are not included in the total number of the above-mentioned employees, they cannot, therefore, participate in balloting on a strike.

The act on collective bargaining requires the results of the balloting be minuted, which in the case of any court dispute may be one of the means of proving the strike's legality. A strike in a dispute over the conclusion of a collective master agreement is declared by the competent higher trade union body, if approved by at least half the employees to whom the agreement relates. The same procedure is required also in the case of declaring and commencing a solidarity strike.

The act on collective bargaining in connection with a strike codifies the obligations of the relevant trade union bodies in relation to the employer. The trade union body is obliged to notify the employer in writing at least three working days in advance when the strike will start, its reasons and objectives, a list of the names of representatives of the relevant trade union body authorised to represent participants during a strike (a "strike committee"). It has this obligation also in the case of any changes in this list.

Under the act on collective bargaining the authorisation to declare a strike lies exclusively in the competence of the relevant trade union bodies of the employer or respective higher trade union bodies. An employee who has consented to the strike is deemed a strike participant throughout its duration. An employee who joins a strike later also has the status of a strike participant. The employee becomes a strike participant from the day of joining the strike.

Trade union body representatives authorised to represent strike participants are obliged to allow adequate and safe access to the employer's workplace, they may not prevent employees who want

to work, at the entrance to this workplace or prevent their exit from it or threaten them with any harm whatsoever.
A strike as an extreme means of resolving collective labour disputes severely interferes with the work process. Is necessarily disrupts its course and continuity, naturally affecting also the interests and overall legal standing of employees who are not strike participants.
The employer is obliged to enable employees who are not strike participants to perform work. If in consequence of the strike they cannot work their wage claims are assessed according to the provisions on the wage in the case of performing different work, or in the case of a barrier at work on the side of the employer with the obligation of wage compensation in the amount of the average earnings.
As regards strike participants, participation in a strike causes temporary suspense of employment, which the act on collective bargaining deems a barrier at work for which the employee is not entitled to wage compensation. The legal qualification for participation in a strike as excused absence from work does not entitle the employer to end employment for example due to a breach of professional misconduct. It is concurrently a guarantee that the employer will not recruit new employees to the jobs of striking employees.
The legal qualification for participation in a strike as excused absence from work is, though, fundamentally changed in the case where an employee continues in a strike even after a court has found the strike to be illegal. Participation in a strike after a final court decision on its illegality may be deemed misconduct with all labour law consequences, including the possibility of dismissal for a breach of work conduct. During participation in a strike the strike participant is not entitled to wages or wage compensation.
Under the provision of § 23 of the act on collecting bargaining, responsibility for damage caused during the course of a strike is assessed under the Civil Code. Strike participants are not liable for damage caused exclusively through the interruption of work by the strike. Should damage occur in securing the protection of the employer's facilities against damage, loss, destruction or in ensuring essential activity and operation of a facility during a strike, responsibility for damage caused is assessed under the Labour Code.
No strike has yet been declared illegal by a court in the Slovak Republic. In one case the court issued an interim measure and ordered the strikers to return to work, though no decision has been made on the legality of the strike, since the employer's at that time eventually retracted litigation.

251. 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.

ESC 6§4 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 6§4 of the Charter, on the ground that legislation authorises the Government to impose compulsory arbitration to end a strike in cases which go beyond the derogations permitted by Article 31 of the Charter.

252. The Spanish representative stated that :

Article 28 of the Spanish Constitution recognised the right to strike as a fundamental right and added that the legislation regulating this right must establish specific guarantees to maintain essential public services.
These were the two key aspects of the right to strike under the Spanish system.Firstly, recognition as a fundamental right, to be protected at the highest level, and, secondly, the sole restriction allowed, consisting in the duty to preserve essential public services, which was directly linked to respect for the rights and freedoms of third parties affected by a strike.
Further, during the period 2005-2008 there had been no incidence of compulsory arbitration. The legislation is used very exceptionally and only in the most limited and serious of situations.
Compulsory arbitration was used to terminate strikes in public service enterprises and was the procedure to be followed solely in the exceptional circumstances provided for by law:

- Extended strikes or those with serious consequences,
- Considerable differences of opinion between the parties, and
- Serious harm to the national economy

According to case-law these exceptional circumstances were cumulative in nature, with the result that they must all exist for the Government to be able to avail itself of this power. This instrument was rarely used, and, although it was compulsory, did entail arbitration, which meant that the arbitrator's impartiality must be guaranteed and judicial supervision could be exercised, it being

specified that, in accordance with the Constitutional Court's judgment 11/1981 of 8 April, Article 10.1 of royal decree 17/1977 of 4 March on employment relationships, which governed such situations, did not permit the Government to order a return to work, but solely authorised it to institute compulsory arbitration.

253. The Icelandic representative stated that in her opinion the mere existence of the legislation constituted a serious threat to the right to strike even if it was exceptional.

254. The Portuguese and Lithuanian representatives asked whether a trade union could contest the decision to use the legislation before the courts.

255. The Spanish representative stressed that the legislation in question only allows compulsory arbitration in three situations and stated that the decision to have recourse can be contested before the courts.

256. The Icelandic representative stated that whether or not there was a right of appeal was irrelevant, as any strike will already have been terminated and she proposed voting on a warning.

257. The Committee voted on a warning which was not carried (8 votes in favour, 23 against and 8 abstentions).

258. The Committee noted the information provided by the Spanish Government, and bearing in mind the importance of the issue urged the Spanish Government to take all the necessary steps to bring the situation into conformity. Meanwhile it decided to await the next assessment of the ECSR.

ESC 6§4 UNITED KINGDOM

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

- the scope for workers to defend their interests through lawful collective action is excessively circumscribed;
- the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive;
- the protection of workers against dismissal when taking industrial action is insufficient.

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

259. The representative from the United Kingdom stated that as regards the first and third ground of non-conformity there has been no change to the situation.

260. The Icelandic and French representatives asked for a vote on a warning on the first ground.

261. The Committee voted on a warning which was carried (21 votes in favour, 2 against and 17 abstentions) and urged the Government to take all adequate steps to bring the situation into conformity with the Charter.

262. Turning to the third ground of non conformity the Chair pointed out that there was already a recommendation addressed to the United Kingdom and this should be recalled.

263. The Committee recalled that a recommendation had been addressed to the Government of the United Kingdom it expressed concern about the long-standing situation

of non-conformity and urged the Government to take all adequate steps to bring the situation into conformity with the Charter, bearing in mind the importance of the right to strike.

Second ground of non-conformity

264. The representative from the United Kingdom pointed to a very recent case which has confirmed that the obligations on trade unions are not excessively onerous. Judgement was given on 4 March this year by the UK's Court of Appeal in the cases of Aslef v Midland Mainline and RMT v Serco. The UK Government asked that the ECSR examine this important judgment in detail before drawing conclusions about UK law in this area.

265. Among other things, the judgment interpreted the law as not creating a duty to keep accurate records or to acquire further information to compile the notice if the information held by the union was not as accurate as is reasonably practicable. The notice had to be based only on 'information possessed by the union.

266. The Court also concluded that a union is not expected to achieve 100% perfection in the notices. And any small errors in compiling the notices could be disregarded.

267. The Court's judgement contained other elements which reinforce the UK Government's view that the legislative requirements on trade unions in this area are reasonable.

268. The Government considers that these legal requirements regarding ballot notices serve a useful and constructive purpose, necessary to protect the public interest, and are proportionate.

269. The representative from the ETUC stated that the Court of Appeal judgement referred to did not alter the statutory restrictions on the right to strike.

270. The Committee took note of the information provided on the judgment of the Court of Appeal, it highlighted the importance of the right to strike 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.

Article 2 of the 1988 Additional Protocol - Right of workers to be informed and consulted

ESC 2 Additional Protocol CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 2 of the Additional Protocol of the Charter on the ground that it has not been established that legal provisions governing the information and consultation of workers cover all categories of workers and all undertakings.

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

> According to Article 2§2 of Additional Protocol to the European Social Charter, the Republic of Croatia in the provision of Article 136 of Labour Act prescribes that workers employed by an employer who employs at least twenty workers are entitled to participate in decision making on issues related to their

economic and social rights and interests. Workers exercised their right to elect a workers council in free and direct elections. Employer towards works council has a number of obligations: the provision of Article 148 of Labor Act prescribes the matters in/on which the employer must inform the works council, the provision of Article 149 of Labour Act states on which important decisions an employer with workers' council must be consulted and the provision of Article 150 of Labour Act lists the decisions that an employer can make only with prior consent of the works council. Also note that the provision of Article 152§3. of Labour Act stipulates that if an employer is not upon motivated workers' council, then his rights and obligations (except for the appointment of worker representatives in the body of the employer) can take over the trade union representative.

272. 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	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04	07/10/08	
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	06/11/09	**26/02/03**	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	**03/11/99**	
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

AUSTRIA	ESC 2§4
CROATIA	ESC 2§1, 2§2, 6§1, 6§2, 6§3, 6§4, 21, 2 Additional Protocol 1988
CZECH REPUBLIC	ESC 2§1, 5, 6§4
DENMARK	ESC 4§2
GERMANY	ESC 2§5 (no information provided)
GREECE	ESC 2§2
ICELAND	ESC 2§1 (1st ground)
LATVIA	ESC 6§2
POLAND	ESC 5
SLOVAK REPUBLIC	ESC 2§2, 6§2, 6§4
SPAIN	ESC 5
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	ESC 6§2

ii) Oral examination (decision of the Bureau)

ICELAND	ESC 4§1
UNITED KINGDOM	ESC 6§2

B. Renewed Conclusions of non-conformity

CZECH REPUBLIC	ESC 2§5, 4§4
DENMARK	ESC 2§3, 5, 6§2
GERMANY	ESC 2§1,4§1, 4§3, 6§4
GREECE	ESC 2§4, 2§5, 4§4
ICELAND	ESC 2§1 (2nd ground), 4§3, 4§4, 5
LATVIA	ESC 5
POLAND	ESC 2§1, 4§2, 4§4, 4§5, 5
SLOVAK REPUBLIC	ESC 2§1, 4§1, 4§2, 4§4, 4§5
SPAIN	ESC 2§1, 2§3, 4§1, 4§2, 4§4, 6§4
UNITED KINGDOM	ESC 2§3 2§4, 2§5, 4§1, 4§2, 4§4, 5, 6§4

APPENDIX IV

List of deferred Conclusions

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

AUSTRIA	ESC 4§1
CZECH REPUBLIC	ESC 2§2, Article 3 Additional Protocol
DENMARK	ESC 2§2
GERMANY	ESC 2§2
GREECE	ESC 4§1
SLOVAK REPUBLIC	ESC 2§3, 5, Article 3 Additional Protocol
SPAIN	ESC 2§2
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	ESC 2§1, 2§2, 2§3, 5, 6§1, 6§3, 6§4

APPENDIX V

Warning(s) and Recommendation(s)

Warning(s)[1]

Article 4, paragraph 2 **(Increased remuneration for overtime work)**
– Poland
Time off granted to compensate overtime is not sufficiently long.

Article 4, paragraph 2 **(Increased remuneration for overtime work)**
– United Kingdom
Workers do not have adequate legal guarantees ensuring them increased remuneration for overtime.

Article 4, paragraph 4 ***(*****Reasonable notice of termination of employment)**
– Spain
-Workers with fixed-term contracts of less than a year whose contracts are broken before they end have no right to notice;
-Workers with fixed-term contracts of more than one year whose contracts are broken before they end are entitled to only fifteen days' notice.

Article 4, paragraph 4 ***(*****Reasonable notice of termination of employment)**
– United Kingdom
Notice periods for employees with less than three years' service are too short.

Article 5 **(Right to organise)**
– Iceland
The existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment infringes the right not to join trade unions.

Article 6, paragraph 4 **(Collective action)**
– United Kingdom
-The scope for workers to defend their interests through lawful collective action is excessively circumscribed;
-The protection of workers against dismissal when taking industrial action is insufficient.

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.