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EUROPEAN SOCIAL CHARTER
GOVERNMENTAL COMMITTEE

**REPORT CONCERNING CONCLUSIONS XIX-2 (2009) 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 Charter¹*

Written information submitted by States on Conclusions of non-conformity for the first time is of the responsibility of the States concerned and was not examined by the Governmental Committee.

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, in a consultative capacity, meetings of the Committee. BUSINESSSEUROPE is also invited 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 published 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, 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, 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. Reports were due by 31 October 2008 at the latest; they were received between October 2008 and October 2009. The Governmental Committee repeats that it attaches great importance to respect for the deadline by the States Parties.

5. Conclusions XIX-2 (2009) of the European Committee of Social Rights were adopted in October 2009 (Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Netherlands (Netherlands Antilles, Aruba), Poland, Slovak Republic, Spain, “the former Yugoslav Republic of Macedonia” and the United Kingdom).

6. The Governmental Committee held two meetings (3-6 May 2009, 11-14 October 2010), which were chaired by Mrs Alexandra PIMENTA (Portugal).

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

¹ List of the States Parties on 1 December 2010: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

8. The Governmental Committee was satisfied to note that since the last supervisory cycle, the following signatures and ratifications had taken place:

– on 3 March 2010, Montenegro ratified the European Social Charter (revised).

9. The state of signatures and ratifications on 3 March 2010 appears in Appendix I to the present report.

II. Examination of Conclusions XIX-2 (2009) of the European Committee of Social Rights

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

11. The Governmental Committee continues the improvement of its working methods by applying the new rules of procedure adopted at its 117th meeting (16 May 2009). In applying these measures, it deals with Conclusions of non-conformity in the following manner:

Conclusions of non-conformity for the first time: States concerned are invited to provide information in writing 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 (see Appendix II to the present report for a list of these Conclusions). Hungary did not submit written information;

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

The Governmental Committee also takes note of Conclusions deferred for a second time for lack of information as well as conclusions deferred because of questions asked for the first time, or due to additional questions, 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).

12. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix II to the present report; it used the voting procedure for 3 of them, and adopted 1 warning (see Appendix IV). The detailed report which may be consulted at www.coe.int/socialcharter contains more extensive information regarding the cases of non-conformity.

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

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

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

Resolution on the implementation of the European Social Charter (Conclusions XIX-2 (2009), provisions related to health, social security and social protection)

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

The Committee of Ministers¹

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, Hungary, Iceland, Latvia, Luxembourg, the Netherlands (Netherlands Antilles, Aruba), Poland, Slovakia, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom;

Considering Conclusions XIX-2 (2009) of the European Committee of Social Rights set up 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-2 (2009) of the European Committee of Social Rights and in the report of the Governmental Committee.

EXAMINATION ARTICLE BY ARTICLE²

**to Conclusions XIX-2 (2009) – 1961 Charter (CSE)
Austria, Croatia, 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 United Kingdom**

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 and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

² States in English alphabetic order.

Article 3§1 – Issue of safety and health regulations

ESC 3§1 AUSTRIA

The Committee concludes that the situation in Austria is not in conformity with Article 3§1 of the Charter on the ground that self-employed workers are not sufficiently covered by the occupational health and safety regulations.

16. The representative of Austria pointed out that the Workers Protection Act covers all workers irrespective of the type of contract. It is sufficient that the person is in a de facto working relationship. Therefore, disguised or false self-employed workers are also covered as well as volunteers, trainees or family workers.

17. As concerns genuine self-employed workers, they are covered by specific health and safety regulations tailored to their particular needs. She added that her authorities considered that as this category of workers organise their working conditions autonomously it would not be feasible simply to apply to independent workers regulations protecting other workers. Regulations have been drawn up to protect self-employed persons on construction sites or in plants, to protect self-employed owners of businesses who use dangerous equipment, and also to protect third parties such as family members, neighbours and customers.

18. She indicated however that the Austrian authorities are currently revising the Industrial Code. To the extent deemed possible, regulations will be declared applicable *mutatis mutandis* to self-employed persons. A bill will soon be submitted to Parliament and it is scheduled to be put into force before the summer.

19. She added that the Social Security Providers and the Economy Chamber provide preventive and advisory services to the self-employed, including training, investigation of causes of accidents, and preventive care to insured workers at risk of suffering from occupational diseases. The Social Security Providers also bear the cost of health monitoring for the self-employed under the motto “same hazards – same protection”. By way of example in the farming sector, the Farmers' Social Security Authority launched different schemes focusing on dangerous or toxic substances in farming and forestry (2005) and on how to manage stress (2007) and a campaign on overexposure to sun (2008 to 2010).

20. The representative of Austria pointed out that between 2000 and 2008 the number of accidents at work suffered by self-employed persons in the farming sector declined from 7,017 to 5,292. Similar developments take place in other sectors of economy, where a general decline in work accidents of the self-employed can be observed.

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

ESC 3§1 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 3§1 of the Charter on the grounds that certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.

22. The representative of Germany stated that his country attached great importance to the development of self-employment as a means of reducing the unemployment rate. In 2010 the federal government will organise a workshop entitled “from unemployment

to self-employment” in the framework of which health and safety issues will be addressed.

23. He added that the federal government will continue its occupational health strategy in respect of self-employed workers: (i) regulations for high risk sectors (for example in the farming industry); (ii) access to accident insurance schemes for self-employed workers; (iii) national action plan to improve health and safety of the self-employed. The German representative stated that since there was no evidence of a rise in work accidents of the self-employed, the federal government did not intend to change its policy strategy or to draft new regulations.

24. The representatives of the Czech Republic and France as well as the representative of the ETUC drew attention to the fact that Germany is promoting self-employment although there is no comprehensive regulatory framework on health and safety at work for self-employed workers.

25. In reply the representative of Germany first underlined that awareness-raising is organised for these workers. He then added that there are regulations in high risk sectors such as agriculture or construction.

26. The Committee reiterated that all workers, including independent workers, must be covered by health and safety regulations, and invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

ESC 3§1 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 3§1 of the Charter on the ground that the self-employed are not sufficiently covered by occupational safety and health regulations.

27. The representative of Greece indicated that no new legislation was foreseen, but a codification process in the field of occupational health and safety had begun which will also cover the self-employed. She also stated that two EU directives on health and safety requirement for works involving electromagnetic fields and for the aviation sector were to be transposed. In terms of awareness-raising and training, she indicated, *inter alia*, that training was undertaken in particular in the agricultural sector and which reached self-employed workers, leaflets have been distributed, and television adverts have been broadcast, etc. As regards the control of self-employed workers working from home, the representative underlined that by reason of the constitutional guarantee to the privacy of one’s home, it was impossible to carry out an inspection at a worker’s home without a court decision. The Greek representative also argued that no trade union had asked for more regulations.

28. The 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 3§1 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 3§1 on the ground that it has not been established that the self-employed and domestic workers are protected by occupational health and safety regulations.

29. The information concerning this non-conformity for the first time with the Article 3§1 of the Charter was not submitted by the government of Hungary.

ESC 3§1 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 3§1 of the Charter on the following grounds:

- it has been established that workers are effectively protected against the risks of benzene and its carcinogenic effects;
- regulations for temporary workers are not sufficiently effective to protect this category of workers in an adequate manner;
- self-employed workers are not sufficiently protected by health and safety regulations.

First and second grounds of non-conformity

30. The representative of Spain provided the following written information:

« 1. To issue safety and health regulations

With regard to the section on the compliance of Spanish occupational health and safety legislation with the European Social Charter in Conclusions XIX-2-2009, published by the European Committee of Social Rights on the report submitted by Spain in 2007, the ECSR finds that Spain has failed to honour its undertaking **to draw up safety and health regulations**, because it considers the following aspects of Spanish legislation to be inadequate:

- I. Protection of workers from risks connected with exposure to dangerous agents and substances at work (specific reference is made to exposure to benzene);
- II. Protection of temporary workers
- III. Protection of self-employed workers.

- I. With regard to the **protection of workers from risks connected with exposure to dangerous agents and substances at work – specifically benzene** –, the ECSR points out that the information on this subject submitted by Spain in its report of 2007 is inadequate and asks whether the benzene exposure limits set by Directive 2004/37/EC of the European Parliament and the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work are identical to those laid down in Spanish legislation. In this connection, paragraph 5 of the single article of Royal Decree 1124/2000 of 16 June, amending Royal Decree 665/1997 of 12 May on the protection of workers from risks connected with exposure to carcinogens at work, added an Appendix III to the Decree entitled **“Benzene exposure limit values (ELVs)” reproducing the ELVs given in Annex III of Directive 2004/37/EC**.

Name of agent	VALUES					
	EINECS (1)	CAS (2)	VL mg/m ³ (3)	VL ppm (4)	Notation (6)	Transitional measures
Benzene	200-753-7	71-43-2	3,25 (5)	1 (5)	Skin (6)	Limit value: 3 ppm (= 9.75 mg/m ³) until 27 June 2003.

Appendix III. Exposure limit values ([DR 1124/2000](#))

- (1) Eines: European Inventory of Existing Chemical Substances.
- (2) CAS: Chemical Abstract Service Number.
- (3) mg/m³: milligrams per cubic metre of air at 20°C and 101,3 kPa (760 mm mercury pressure).
- (4) ppm: parts per million by volume in air (ml/m³).
- (5) Measured or calculated in relation to a reference period of eight hours.
- (6) Substantial contribution to the total body burden via dermal exposure possible.

Annex III. Limit values for occupational exposure ([D 2004/37/CE](#))

Name of agent	EINECS (1)	CAS (2)	Limit values		Notation	Transitional measures
			mg/m ³ (3)	ppm (4)		
Benzene	200-753-7	71-43-2	3,25(5)	1(5)	Skin (6)	Limit value: 3 ppm (= 9.75 mg/m ³) [until 27 June 2003]

(1) Einecs: European Inventory of Existing Chemical Substances.

(2) CAS: Chemical Abstract Service Number.

(3) mg/m³: milligrams per cubic metre of air at 20°C and 101,3 kPa (760 mm mercury pressure).

(4) ppm: parts per million by volume in air (ml/m³).

(5) Measured or calculated in relation to a reference period of eight hours.

(6) Substantial contribution to the total body burden via dermal exposure possible.

The ECSR asks nonetheless whether Spanish law contains measures prohibiting the use of benzene in compliance with ILO Convention No. 136 on benzene. Reference should also be made to **Royal Decree 665/1997** of 12 May on the protection of workers from risks connected with exposure to carcinogens and to its amendments, namely **Royal Decrees 1124/2000 and 349/2003**.

II. Protection of temporary workers

The ECSR considers that in view of the excessive proportion of temporary workers in Spain and the increasing number of work accidents in recent years, Spain's occupational health and safety legislation with regard to this type of worker is ineffective. The following points should be made in connection with these allegations:

When the work accident rate of temporary workers is calculated, both temporary workers and workers on fixed-term contracts are selected, across the board and regardless of type of occupation, to make up the sample on which the comparison is based.

According to the data published by the 2008 Labour Force Survey, the rate of work accidents resulting in time off work was twice as high among temporary workers as among employees on permanent contracts. This difference reflects the situation in the building and manufacturing sectors where the disparity between temporary and permanent employees is particularly striking. Rates do, however, seem to be evening up in the agriculture and service sectors, where the difference between the two types of employee is less conspicuous. However, the key question is whether this high incidence of work accidents is caused by the temporary nature of the contracts or the different type of work performed by temporary workers.

There is reason for optimism, however, for if we look back over the figures since 2000, there is a gradual but regular decline in the frequency of accidents among temporary workers, reducing the gap between the accident rates of these workers and permanent workers. For example, in 2000 and 2001, the accident rate among temporary workers was three times greater than that among permanent employees.

DATA for 2008	PERMANENT CONTRACTS NUMBER OF ACCIDENTS per 100 000 employees (1)	TEMPORARY CONTRACTS NUMBER OF ACCIDENTS per 100 000 employees (2)	Ratio (2:1)
TOTAL	3722,0	7198,2	1,9
Agriculture	5714,8	6478,3	1,1
Manufacturing	5975,5	12536,4	2,1
Building	6008,3	13323,9	2,2
Services	2807,6	4371,1	1,6

ACCIDENTS PER 100 000 EMPLOYEES									
	2000	2001	2002	2003	2004	2005	2006	2007	2008
Permanents									
(1)	4409,6	4508,9	4018,6	4128,2	4128,2	4052,1	3948,0	4009,9	3722,0
Temporaries									
(2)	13551,2	12771,1	10856,4	9608,2	9608,2	9108,2	8686,5	8570,6	7198,2
Ratio (2:1)	3,07	2,83	2,70	2,33	2,33	2,25	2,20	2,14	1,93

The ECSR states, nonetheless, in its conclusions that states must adopt the necessary measures to ensure that temporary agency workers and fixed-term workers are afforded the necessary training, information and medical supervision to prevent them from being discriminated against in respect of health and safety in the workplace. We consider that the situation in Spain is in conformity in this respect as there is adequate Spanish legislation to protect this type of worker from any risk to which they may be exposed. Under section 28 of Prevention of Occupational Hazards Act No. 31/1995 of 8 November 1995 on employment relationships under temporary, fixed-term and temporary-agency contracts, workers concerned by such employment relationships must enjoy the same level of health and safety protection as the other employees of the company for which they are working. For this purpose, paragraph 2 of section 28 provides that employers are required to take appropriate measures to ensure that, before they begin their activity, these workers receive information in relation to the risks to which they will be exposed, particularly as regards the need for specific professional qualifications or skills, special medical examinations or specific risks pertaining to their post, along with information on protection and prevention measures. On the subject of the right to training on prevention, it provides that these workers must at all events receive adequate and appropriate training in the characteristics of the post to be occupied, taking account of their professional qualifications and experience and the risks to which they will be exposed.

With regard to medical supervision, paragraph 3 of section 28 states that workers are entitled to regular health check-ups in accordance with the provisions of section 22 of the Act.

Paragraph 5 of section 28 stipulates that in employment relationships involving temporary work agencies, client firms are responsible for all aspects of working conditions connected with occupational health and safety and hence are required to comply with the related obligations concerning information. It adds that agencies are responsible for ensuring compliance with training and medical supervision requirements.

The above subject matter is elaborated upon by **Royal Decree 216/1999 of 5 February on minimum occupational health and safety standards for employees of temporary work agencies**, which transposes Directive 91/383/EEC of the Council of 25 June 1991 into domestic law and sets out the measures to be applied by temporary work agencies and client firms when recruiting and using this type of labour to comply with their specific duties and obligations. The aim of this Royal Decree is to ensure that these workers enjoy the same level of health and safety protection as the other employees of the client firm and to establish a list of activities and occupations which must be excluded from temporary work contracts because they are particularly dangerous.

With regard to the right of workers to be given appropriate training on prevention, **section 10 of Act No. 32/2006 on subcontracting in the building sector** requires companies to ensure that workers receive the training on occupational risk prevention suited to their post or their function so as to alert them to the risks involved in their work and the measures to prevent them. These rules are fleshed out in **section 12 of Royal Decree 1109/2007** implementing Act No. 32/2006.

Lastly, it should be emphasised that in recent years, the Spanish government has adopted a series of measures designed to prevent the abuse of temporary contracts. For instance, **Act No. 32/2006** places restrictions on contracts with third sub-contractors and prohibits them from further subcontracting work assigned to them by another subcontractor or a self-employed person. It is also stipulated in **section 11 of Royal Decree 1109/2007** that 30% of the staff of companies which are regularly recruited or sub-contracted to do work in the building sector must have permanent contracts in accordance with the relevant legislation.

In view of the foregoing, we consider that **Spanish legislation provides effective occupational health and safety protection for temporary workers and workers recruited via temporary work agencies. The latter suffer no form of discrimination** as there is no difference in treatment concerning working conditions with regard to any aspect of health and safety in the workplace, as established in section 28 of the Prevention of Occupational Hazards Act. »

Third ground of non-conformity

31. The representative of Spain made reference to the following regulatory framework:

- Act 31/1995 on the Prevention of Occupational Risks (Sections 3 and 24);
- Royal Decree 171/2004 of 30 January 2004, which expands Section 24 of Act 31/1995 of 8 November 1995 on the Prevention of Occupational Risks in terms of co-operation in the field of entrepreneurial activities;
- Royal Decree 1627/1997 of 24 October 1997 which determines minimum requirements of safety and health during construction works. (Section 12);
- Act 32/2006 which governs subcontracting in the construction sector (Sections 3, 5, 7, 8 and First additional provision) and Royal Decree 1109/2007 (Section 15);
- Act 20/2007 of 11 July 2007 on the Status of Self-employment (Section 8 and Twelfth additional provision).

32. She indicated that Spain thus considered that legislation relating to the prevention of occupational risks ensures protection for the safety and health of self-employed workers. She added that a bill on domestic workers was currently being negotiated between social partners and that the resulting law should be enacted in 2010. She specified that this information had not been provided yet.

33. The 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 3§2 – Enforcement of safety and health regulations

ESC 3§2 GREECE

The Committee concludes that the situation is not in conformity with Article 3§2 of the Charter on the ground that it has not been established that the labour inspection services are effective.

34. The representative of Greece provided the following written information:

“In its Conclusion on Article 3 para 2 the Committee mentions that the situation in Greece is not in conformity with the Charter on the ground that it has not been established that the labour inspection services are effective.

- Regarding the 1st section of the paragraph on the differences in the figures of occupational accidents between the Labour Inspectorate and the EUROSTAT, we would like to inform you of the following:

For the years 2005 and 2006 accidents declared to the Social Insurance Institute (IKA) and the Labour Inspectorate (SEPE) as well as the number of the directly insured persons with the IKA are the following:

YEAR	ACCIDENTS DECLARED TO THE IKA	ACCIDENTS DECLARED TO THE SEPE (DECLARATION MADE BY THE EMPLOYERS)	ACCIDENTS ACCORDING TO EUROSTAT CONCERNING THE WHOLE LABOUR FORCE	PERSONS DIRECTLY INSURED WITH THE IKA
2005	13.755	6.043	29.742	1.965.274
2006	12.845	6.255	27.477	2.031.445

(Sources: 1. IKA occupational accident bulletins for the years 2005 and 2006, 2. SEPE activity reports for the years 2005 and 2006)

We consider that the differences in the data between IKA, the Labour Inspectorate and the EUROSTAT can be explained by the fact that declared to SEPE are accidents involving only salaried workers (case b below) and not employers, the self-employed, members of family businesses, mines and quarries, etc., while according to the data of the National Statistical Service of Greece for the 3rd trimester of 2006,

- a. the workers insured with the IKA were 1.963.562,
- b. salaried workers were 2.783.996, and
- c. the total of the labour force was 4.494.224.¹

Moreover, according to the ESAW (European Statistics on Accidents at Work) methodology, in cases where there is a financial motive for the employee or the employer (daily compensation, benefits, pensions, etc) in the declaration of occupational accidents, it is believed that the declaration rates are around 100%. On the contrary, where there is only legal obligation to declare occupational accidents, a medium rate of declaration is noted, the range of which usually fluctuates between 30% and 50% in the EU member states with similar declaration system.

Although the rate of declared occupational accidents to the SEPE is smaller than the one to the IKA, the intensification of inspections, the notifications and recommendations made to the employers during the inspections on their obligation to declare accidents as well as the legal and administrative sanctions that will be imposed upon those who do not declare occupational accidents to the SEPE, as provided for by article 8 of the Presidential Decree No. 17/1996, have led to an **important increase of declaration rates to the SEPE** (for example, for the years 2005 and 2006 referred to in the text of the European Committee of Social Rights, the increase is 3,5%). Consequently, regarding the effectiveness of the strategy of more thorough inspections and investigations in targeted sectors on reducing accidents and bearing in mind that only part of the total of the occupational accidents that occur in the country is declared to the SEPE, we consider that **the increase in the number of declarations to the SEPE during the reference period should not be considered as evidence for an increase in the number of serious accidents in our country.**

- Regarding accidents involving workers of other nationalities, we would like to inform you that the measures provided for by the Greek law concerning the protection of health and safety of workers as well as the actions taken in case of occupational accidents, (immediate mobilization of the inspection mechanism of the SEPE and drawing up of an autopsy report, forwarding it to the competent judicial bodies in order to impose the penalties provided for) are the same for all workers irrespective of their nationality.

Moreover, we would like to inform you that the inspection work of the SEPE always focused on those areas that present an increased occupational risk, for example, the constructions and industry sectors in which the majority of foreign workers are employed. The rate of inspections carried out by the SEPE in those two sectors exceeds 60%.

Finally, the Ministry of Labour and Social Security publishes, periodically, informative material (for example, "Prevention of accidents in the workplace") in 11 languages, which is distributed by the SEPE inspectors in the areas where foreign workers are employed.

- Regarding the additional information requested concerning occupational diseases, we would like to inform you that efforts are made for the organization of a more effective participation and cooperation among all the competent officials (health professionals) and bodies (insurance bodies and national health system units), aiming at the improvement of the abovementioned system and at the integrated collection and exploitation of data regarding occupational diseases in our country by the SEPE.

Therefore, in order to improve the procedure for the collection of data, a circular was sent to all the regional SEPE services, in March 2008, with a view to constantly notifying all enterprises – which, due to the nature of their works and working conditions, face an increased risk of occupational diseases – of their obligation to declare to the SEPE services not only occupational accidents, but also occupational diseases. Furthermore, a form entitled "DECLARATION OF A WORK-RELATED DISEASE TO THE SEPE" has been drawn up, so that the data be registered and collected in a unified and uniform manner. Also, it has been determined that, following the completion of the investigation of every work-related disease, an "Investigation report on the causes of the work-related disease" must be drawn up. The above data must also be forwarded to the SEPE Headquarters with a view to setting up a unified record, data processing and programming of targeted actions.

¹ Regarding the Eurostat data on the whole of the country's labour force, we consider that they must be derived by grossing up the statistical data of persons insured with the IKA to the total of the labour force (13.755 and 12.845 for the years 2005 and 2006 respectively).

Moreover, a document was sent, in August 2009, to the Ministry of Health and Social Solidarity aiming at the awareness-raising of the doctors of the National Health System and at improving the systematic procedure for the collection and analysis of data coming from the medical examination of workers. The purpose of the said document was to ensure that all the supervised healthcare institutions coming under its competence (Hospitals, Health Centres, etc) observe their obligation to declare to the SEPE all work-related diseases of both their personnel and of the patients coming to them in search of a diagnosis or treatment.

At the same time, two forms entitled "DECLARATION OF A WORK-RELATED DISEASE TO THE SEPE" were sent; the one concerned the disease of a person employed in a healthcare institution and the other the disease of a person not employed in a healthcare institution."

35. 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 3§2 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 3§2 on the ground of the manifestly high number of occupational accidents.

36. The representative of Spain indicated that the incidence rate of accidents (number of accidents per 100,000 workers) had decreased uninterruptedly between 2000 and 2008 in all sectors of activity and regarding all types of accidents.

37. She pointed out that the figures published by Eurostat, in spite of efforts made to harmonise statistics between countries, are significantly affected by the specificities of each national system in terms of collecting data on work accidents. Therefore, she argued that data provided, whilst useful and providing trends, must be carefully interpreted and drawing systematically individual comparisons between countries should be avoided as much as possible.

38. She indicated that no significant legal changes had occurred concerning the labour and social security inspection system between 2005 and 2007.

39. She added that this information had not been provided in the national report.

40. The representative of France noted that there are still differences in the collection of data of accidents at work between countries. She noted that in France, for example, data on work accidents traditionally did not include figures regarding the civil service where as a rule the number of accidents was lower with the result that the figures provided by France were higher than in other countries where data concerning their civil service was included. She underlined that the ECSR should take these differences into account when examining occupational accidents figures.

41. The 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 11§1 – Removal of the causes of ill-health

ESC 11§1 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 11§1 of the Charter because there is nothing in the report to show that sufficient measures have been taken to reduce the mortality rate.

42. The information concerning this non-conformity for the first time with the Article 11§1 of the Charter was not submitted by the government of Hungary.

ESC 11§1 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 11§1 of the Charter on the grounds that:

- life expectancy shows a clear disparity with other European countries and is not increasing sufficiently;
- the mortality rate shows a clear disparity with other European countries and is not decreasing sufficiently.

First and second ground of non-conformity

43. The representative of Latvia provided the following written information:

“Life expectancy and principal causes of death

Specific information campaigns have been carried out intended to inform public about such subjects as smoking, alcohol-related problems, excessive use of salt, which are known as causes for several diseases including cardiovascular diseases and tumors. The goal of such specific information campaigns is to generate greater awareness of, provide education in, and build up support for public health policies that prevent harm from alcohol, smoking, and unhealthy nutrition.

Educational and information campaigns on the health impact of addictive substances have been implemented for society, specialists, social workers, police, local government and municipalities employees, school teachers and children of school age, future parents, etc. Methodical materials, posters, brochures, surveys have been printed; interactive discussions and educational films were prepared; sports and recreational events have been organised; topical seminars on problems caused by addictive substances have taken place; etc.

In 2008 Program for Prevention of Domestic Violence (2008 – 2011) was adopted by the Cabinet of Ministers. This Program designates violence prevention as the strategy that requires mobilizing multi-sectoral participation and support.

The Baltic-Nordic meeting on violence prevention was organized by World Health organization (WHO) Regional Office for Europe in co-operation with the Latvian Ministry of Health in June 8-9 2009. In this meeting the role of health sector was discussed in the prevention of family violence which affects in particular women, children, elderly and people with disabilities. Special attention was paid to alcohol as a risk factor for violence. It brought together different actors and stakeholders, including policy makers and professionals working in the public health sector in the Baltic and Nordic countries.

In collaboration with WHO Regional Office for Europe guidelines for health care professionals had been developed. These guidelines will be used as a tool for strengthening of capacity in violence prevention of health sector. Guidelines will be included in study and training programmes of medical and public health students and nurses, other health care professionals, policy makers and NGOs in Latvia. The latest module of TEACH VIP on ‘Alcohol and violence’ was distributed to all participants of an international *Nordic Baltic Workshop Prevention of Family Violence – the role of health sector in multisectoral response*.

Translation, adaptation and implementation of the training programmes for violence prevention (TEACH-VIP) in curriculum of Public Health program in Riga Stradins University is part of WHO commitment to Latvia to provide systematic technical support to address domestic violence in Latvia. The work will support violence prevention activities and approaches that are being introduced in the country, in particular, the strengthening of capacity of health sector in dealing with violence.

It also notes that the number of AIDS sufferers continued to rise, increasing from 250 in 2003 to 549 in 2005 (these are official statistics, estimates could be twice more (accordingly 500 and 1000)). Antiretroviral treatment (ARVT) is provided free of charge for all AIDS patients since the very beginning. In fact, not all AIDS patients are on treatment programs, it depends also on patients’ willingness and eligibility. Due to economical crisis in Latvia and limited health budget government has to re-evaluate criteria for access to ARVT as well as choose cheaper remedies to ensure access for treatment as much as possible.

Infant and maternal mortality

Till 2007 the main policy planning document in the field of child health was “The Strategy on Mother and Children Health for years 2003-2007” (adopted on 2003) on improving of perinatal,

mother, infant and children health care, and "The Action Plan on Implementation of the Strategy on Mother and Children Health for years 2003-2007" (adopted on 2004). The action plan envisaged activities to improve perinatal care structure, coordination and quality, to ensure timely and effective health care for infants, children and adolescents and contribute the prevention and health education on sexual and reproductive health.

Several legislative documents regulate specific questions on health care of pregnant women and children. Medical treatment law prescribes that health care for pregnant women and children are priorities. Thereof health care services for children till age 18 are free of charge as well as those health services for pregnant women and women in the period following childbirth up to 42 days, if health care services related to the medical supervision of the pregnancy and during the period following childbirth, as well as to the course of pregnancy, are received. The aim of Sexual and Reproductive Health Law is to protect sexual and reproductive health of every person and the priority of sexual and reproductive health is assistance with deliveries, as well as the provision of information on sexual and reproductive health. Abovementioned law prescribes that every person has the right to obtain information from a health care practitioner regarding the basic principles of sexual and reproductive health promotion and care, birth planning and contraception.

In July 25 2006 the Regulations on puerperal care in pregnancy and postnatal period were adopted by the Cabinet of Ministers, including requirements for care of women in confinement and newborns. During pregnancy woman must be observed by gynaecologist and by midwife or general practitioner. Assistance with deliveries during birth is provided by a gynaecologist (childbirth specialist) and a midwife. This regulation also defines medical examinations during pregnancy, women in confinement and newborns.

12 maternity wards of medical institutions in Latvia has a Baby Friendly hospital status.

For early disorder detection and avoiding of further problems, such as maternal morbidity and mortality, on July 25 2006 the Cabinet of Ministers has adopted the Regulations on Puerperal Care in pregnancy and postnatal period. These Regulations include procedures on medical monitoring of pregnant women, such as visits to the gynaecologists, midwives or general practitioners, and medical examinations, including laboratory investigations. All maternal mortality cases are strictly analysed by the Health Inspectorate of Latvia.

In 2008 the Advisory Council on Mother and Child Health was established at the Ministry of Health of the Republic of Latvia, where maternal mortality cases are discussed by highly advanced health care specialists. In 2008 the conference for medical professionals was organized, where maternal mortality cases were also discussed.

Health care system

Access to health care

According to the Regulations of the Cabinet of Ministers on health care organization and financing, new rules has been adopted to widen the circle of people who are exempt from patient contributions and other payments, receiving treatment.

Patient contributions are exempt for following categories of persons:

- poor persons, assessed as such under the regulations of the arrangements for family or single person recognized as poor,
- residents and their families whose income per family member over the past three months does not exceed 120 LVL (170 EUR) per month.

For persons with income up to 150 LVL (213 EUR) per month, 50% of the patient's contribution is covered. If the surgical operation is performed, the patient's contribution will not exceed 15 LVL (21 EUR) per one hospitalization.

In order to receive state-funded health care, person visiting doctor or having treatment in hospital, must provide statement confirming person's income level. This statement is issued by municipal social services.

Persons whose income per family member over the past three months does not exceed 120 LVL (170 EUR) per month can receive state-covered medication. In order to receive it, they must provide the abovementioned statement of income level to pharmacies.

Waiting lists are the responsibility of each particular health care institution and the waiting times depend on the available resources. In current financial situation planned health care services are offered after providing acute care and health care to children and pregnant women.

Regarding waiting lists for endoprosthesis operations – from October 1, 2009 these operations are offered in one health care treatment institution only and there is one waiting list. However due to lack of financial resources waiting list have not decreased."

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.

ESC 11§1 SLOVAK REPUBLIC

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 11§1 of the Charter as it has not been established that the health care system is sufficiently accessible.

45. The representative of the Slovak Republic provided the following written information:

“Life Expectancy and Main Causes of Death

Explanation of regional differences in life expectancy, implemented studies and measures adopted for their elimination

As it is known, endogenous factors (age, gender, phenotype, etc.) and exogenous factors (economic, environmental and psychological-social) affect mortality spontaneously. As a result, it is obvious that the study of the causes of regional differences is more than difficult. Even the degree of the influence of individual factors is unknown; therefore studying them individually may provide distorted outcomes. In spite of this, there are studies which assign the greatest weight to the provision of healthcare, which is the synthesis of several economic and psychological-social factors. Due to the fact that the synthetic indicators of the median life span (at birth, in various age categories), (life expectancy, see the difference in translation in terminology) express the level of the death rate comprehensively, i.e., they reflect the level of mortality according to individual causes of death, we would like to point out the studies related to reversible mortality which adds to the causality, the already mentioned provision of healthcare with mortality.

Mortality of Children and Mothers

The main causes of infant mortality are the following in order of incidence:

1. low weight and malnutrition of the foetus, disorders related to shortened pregnancy and low birth weight, disorders related to prolonged pregnancy and high birth weight,
2. congenital defects, deformations and chromosome anomalies.

Health Care System

Availability of Healthcare

The population is covered by compulsory health insurance. We have established the public minimum network of healthcare providers including a permanent (firm) network of emergency healthcare services. The provision of healthcare and healthcare services is available to insured persons commonly and free of charge. We have introduced districts within whose framework general practitioners for adults, general practitioners for children and youth, gynaecologists and dentists provide basic medical treatment and are obliged to provide healthcare to persons with permanent residency within their district, while the free choice of the healthcare provider remains unaffected.

Methods and Procedures for the Payment of Expenditures for Healthcare, Hospital Care and Medication

The costs of the vast majority of healthcare services in the Slovak Republic are deregulated. The amount of payment for these services is the subject of contractual relations between the Health Insurance Company and the healthcare provider, within the framework of which, these subjects agree upon an adequate payment mechanism and the amount of payment with regard to their specific needs.

Costs of Health Services Paid by the Collective Bodies

Act No. 577/2004 Coll. on the Scope of Healthcare Paid According to Compulsory Public Health Insurance and on Payments for Services Related to the Provision of Healthcare incorporates a very wide range of paid healthcare from public health insurance. The provision of healthcare for the population is covered by compulsory health insurance and the provision of healthcare and healthcare services is available to insured persons commonly and free of charge.

Coverage of the Population by Public Health Insurance

An insured person is a natural person who is covered by compulsory public health insurance pursuant to Act No. 580/2004 Coll. on Health Insurance.

A natural person with permanent residency on the territory of the Slovak Republic has compulsory public health insurance.

However, a natural person with permanent residency on the territory of the SR does not have compulsory public health insurance if this person:

- is employed abroad and has health insurance on the territory of the state where he/she conducts the employment,
- carries out independent gainful employment (is a sole trader) abroad and has health insurance on the territory of the state where he/she conducts activities,
- stays abroad for a long period of time and has health insurance abroad; a stay longer than six consecutive calendar months is considered as a long-term stay abroad.

A natural person who does not have permanent residence on the territory of the Slovak Republic is also covered by compulsory public health insurance if this person does not have any health insurance in another European Union Member State or in a contractual state of the Agreement on the European Economic Area or in the Swiss Confederation (hereinafter the "Member State") and:

- is employed by an employer whose registered seat or permanent operations are on the territory of the Slovak Republic; this does not pertain to cases in which the person is employed in the Slovak Republic by an employer, who uses diplomatic privileges and immunity pursuant to international law,
- carries out independent gainful employment (is a sole trader) on the territory of the Slovak Republic,
- is an asylum seeker,
- is a student from another Member State or a foreign student studying at a school in the Slovak Republic based on an international agreement, which is binding for the Slovak Republic,
- is an underage foreigner staying on the territory of the Slovak Republic without his/her legal guardian or the natural person responsible for his/her upbringing and care is provided to him/her based on a court decision,
- is a foreigner detained on the territory of the Slovak Republic,
- is detained or is serving a sentence of imprisonment.

Fees for "Above Standard" Medicinal Services

The scope of healthcare paid based on public health insurance under the terms established by special regulations and payments for the services related to the provision of healthcare is regulated by the Act on the Scope of Healthcare Paid Based on Compulsory Public Health Insurance and Payments for Services Related to the Provision of Healthcare as amended in connection with the Government order on the amount of the payment of an insured person for services related to the provision of healthcare.

Pursuant to the Act on the Healthcare Providers, Healthcare Staff and Professional Organizations in the Healthcare Sector and on changes and amendments to certain Acts, the healthcare provider is obliged to place the pricelist of health services conducted upon request of a person or patient on a visible location and at the same time to provide this person with the list of health insurance companies, with which such provider has concluded agreements on the provision of healthcare and the pricelist of health services conducted upon request of the person, if this person is provided with healthcare at a place other than the healthcare facility.

Average Waiting Period for Hospital Admission and the Management of Relevant Waiting Lists

The edict of the Ministry of Health of the SR which establishes the details regarding the list of insured persons waiting for the provision of planned health care ("waiting lists") entered into effect on January 1, 2010.

If insured persons have to wait for more than 3 months for the provision of planned health care after the recommendations of the provider, the health insurance company shall include the insured person on the list of insured persons waiting for the provision of planned health care and keep the list separately for each provider of healthcare according to the list of selected illnesses indicated in the annex to the edict.

The waiting lists are not kept for the provision of urgent healthcare services, outpatient healthcare services, institutional healthcare services provided on the basis of court decisions, institutional healthcare services provided in natural therapeutic spas and spa health resorts, joint examination and therapeutic units, preventative healthcare services, pharmacy care, transplantation programmes or planned institutional healthcare services which the provider is able to provide within three months after establishing the cause for the provision of planned healthcare.

Reimbursement of Medications by the Insurance Company

Pursuant to the currently valid List of Drugs and Medications, Dietary Food and Health Aids Fully or Partially Compensated for Based on Public Health Insurance, the physician may prescribe the patient a medication – without any additional payment by the patient or with a minimum additional payment by the patient.

Health Insurance

The Act on Health Insurance establishes health insurance and legal relationships based on health insurance. Compulsory health insurance ensures the availability of healthcare for almost all people. However, public and individual health insurance is distinguished as follows:

- a) compulsory public health insurance, based on which persons covered by public health insurance (hereinafter the “Insured Person”) are provided with healthcare and services related to the provision of healthcare (hereinafter the “Healthcare”) under the terms established by the Act on Health Insurance to the extent established by the Act on the Scope of Healthcare Paid Based on Compulsory Public Health Insurance and on Payments for Services Related to the Provision of Healthcare,
- b) individual health insurance, based on which healthcare is provided to persons covered by individual health insurance in the scope designated in the agreement pursuant to the Civil Code.

Personal Extent of Public Health Insurance

A natural person with permanent residence on the territory of the Slovak Republic has compulsory public health insurance.

However, a natural person with permanent residence on the territory of the Slovak Republic does not have compulsory public health insurance if this person:

- is employed abroad and has health insurance on the territory of the state where he/she is employed,
- carries out independent gainful employment (is a sole trader) abroad and has health insurance on the territory of the state where he/she conducts activities,
- stays abroad for a longer period of time and has health insurance abroad; a stay longer than six consecutive calendar months is considered as a long-term stay abroad.

A natural person, who does not have permanent residence on the territory of the Slovak Republic, is also covered by compulsory public health insurance if this person does not have any health insurance in another European Union Member State or in a contractual state of the Agreement on the European Economic Area and the Swiss Confederation (hereinafter “Member State”) and:

- is employed by an employer, whose registered seat or permanent operations are located on the territory of the Slovak Republic; this does not pertain to the cases in which a person is employed in the Slovak Republic by an employer who uses diplomatic privileges and immunity pursuant to international law,
- carries out independent gainful employment (is a sole trader) on the territory of the Slovak Republic,
- is an asylum seeker,
- is a student from another Member State or a foreign student studying at a school in the Slovak Republic based on an international agreement, which is binding for the Slovak Republic,
- is an underage foreigner staying on the territory of the Slovak Republic without his/her legal guardian or natural person responsible for his/her upbringing and the care is provided to him/her based on a court decision,
- is a foreigner detained on the territory of the Slovak Republic,
- is detained or is serving a prison sentence.

Healthcare

System Description

The Slovak Republic has a compulsory health insurance system with three health insurance companies that operate as healthcare payers which provide unified comprehensive coverage to the entire population.

Healthcare provision is decentralized and based on the mixed public and private principle. Healthcare providers (health services) operate based on concluded agreements with the health insurance companies.

Availability

The population is covered by compulsory health insurance. A Government ruling established the minimum network of healthcare providers including the permanent (firm) network of emergency healthcare services. The provision of healthcare and healthcare services is available to insured persons commonly and free of charge. We have introduced districts within the framework of which, general practitioners for adults, general practitioners for children and youth, gynaecologists and dentists provide basic medical treatment and are obliged to provide healthcare to all persons with permanent residency within their district, while the free choice of the healthcare provider remains unaffected. Additional payments for medication, dental treatment or dentures and prostheses form a part of the system.

Quality

The Act on Health Insurance Companies establishes the obligation of each health insurance company to evaluate the quality of the healthcare providers and to rank them according to their level of success in meeting the criteria for the quality indicators elaborated by the Ministry of Health.

The Ministry of Health also issues guidelines for experts with the aim to introduce new, effective and unified diagnostic and medicinal methods in the treatment of selected serious illnesses that place the entire society at threat.

As a rule, the list of quality indicators is annually issued through a government order which was recently extended by further relevant indicators and its annex which was extended by economic indicators for the evaluation of the effectiveness of the use of resources.

The Ministry of Health issued an executive regulation regarding the minimum requirements for staffing and the technological material requirements for individual types of healthcare facilities with the aim to enhance the provision of healthcare and to ensure the patient's safety.

Reimbursement for Healthcare

Insured persons have the right to reimbursement for healthcare in the extent established by the Act on the Scope of Healthcare Paid Based on Compulsory Public Health Insurance and on Payments for Services Related to the Provision of Healthcare, if not stipulated otherwise.

Healthcare reimbursement is carried out by the health insurance company based on the concluded agreements with the healthcare provider according to the agreed upon price. If the healthcare provider has not concluded an agreement with the relevant health insurance company of the insured person, the insured person must pay the full price for the provided healthcare (as a private patient); only in the event of the provision of urgent healthcare is he/she entitled to reimbursement for the provided urgent healthcare in the amount that is usual at the location and time of its provision. The decision on whether this pertains to urgent healthcare shall be made by the relevant health insurance company of the insured person.

Preventative check-ups, urgent healthcare and health services leading to the detection of an illness and provided during the treatment of the illness indicated in the List of Priority Illnesses are fully reimbursed by the public health insurance.

Access of Insured Persons to Healthcare Reimbursed by Public Health Insurance

a) Outpatient Healthcare – Outpatient Medical Treatment

In the event of the need for the provision of outpatient medical treatment, direct access to a contractual physician of universal outpatient care is possible (every health insurance company shall provide information regarding their contractual physicians). The insured person must present his/her insurance card to such contractual physician. There are no charges for the provided healthcare. In the event of the need for outpatient medical treatment by a specialist, the recommendation from the physician of universal outpatient care (general practitioner) is usually necessary. Access to the physician – specialist is based on the free choice of the insured person. There are no charges for the provided healthcare by the physician – specialist.

b) Dental Medical Healthcare – Outpatient Dental Treatment

In the event of the need for the provision of outpatient dental treatment, direct access to a contractual dental physician/dentist is possible (every health insurance company shall provide information regarding their contractual dentists). The insured person must present his/her insurance card to such contractual dentist. Only treatment with the use of standard materials is covered by public health insurance. If the insured person is interested in healthcare with the use of above standard materials, he/she must pay for the difference between the standard and above standard materials. The price of the above standard material is determined by each dental office independently. Therefore the price for dental treatment and dentures differs from office to office. The dentist is obliged to inform the patients about which services involve participation and which services require direct payment and in what amount.

c) Institutional healthcare

In the event of the need for hospitalization, a recommendation from the outpatient physician is required. In the event of urgent hospitalization, this is possible even without such recommendation from the outpatient physician. The insured person must present his/her insurance card to such hospital. There are no charges for institutional healthcare (or even for the provided medications).

d) Transportation Related to the Provision of Healthcare

The provider of transportation related to the provision of healthcare (hereinafter the “Transportation Provider”) shall charge 0.07 € per kilometre for the provision of transportation. The fee is paid directly to the transportation provider upon arrival at the final destination.

e) Medications and Health Aids

If the use of medications (or health aids) is required in the event of illness, the outpatient physician will prescribe them in a prescription which can be filled at any pharmacy. The pharmacy is obliged

to provide the medication prescribed in the prescription. The fact of whether the pharmacy is a contractual pharmacy or not, is not decisive. Pursuant to the law, medications and drugs are divided into three categories:

- medication for full reimbursement by the health insurance company;
- medication for partial reimbursement by the health insurance company and the participation of the patient; and
- medication fully paid by the patient.

The prescribing physician is obliged to provide the information regarding the prescribed medication. If it pertains to medication falling within the category of the patient's participation, this is paid directly in the pharmacy. The pharmacy is obliged to issue a receipt for the amount of the payment of participation and the administration fees. The patient is not entitled to a refund of the participation and administration fees by the health insurance company.

What is paid for

The cases indicated below are cases in which the insured persons pay for treatment and medical services. The healthcare services are paid by the person who requested them.

a) Such services include:

- medical abortions, if this operation is not based on medical grounds,
- sterilizations (if this is not necessary for preserving the health of the person),
- artificial fertilizing (more than 3 cycles of assisted reproduction),
- proofs of the influence of alcohol,
- blood tests for alcohol and addictive substances,
- tuboplastic surgery or vasoreconstructive surgery following a previous sterilization.

b) Services based on reasons other than medical indications including:

- hair transplantation,
- plastic surgery due to a cosmetic defect,
- routine and ritual circumcisions,
- ear piercing,
- other surgical services based on grounds other than therapeutic ones,
- surgical services not defined more closely due to grounds other than therapeutic ones.

c) Examinations for administrative purposes include:

- examinations prior to admission to upbringing and education institutions,
- examinations for the purpose of obtaining a driving license,
- examinations prior to sporting events,
- examinations for an insurance company,
- issuance of medical certificates,
- examinations not defined more closely for administrative purposes,
- the choice of physician

d) above standard health services (above standard "medical" services).

In addition to the cases indicated above, even today, insured persons must pay extra for treatment by a dentist. Only treatment with the use of standard materials is covered by the public health insurance. If an insured person is interested in healthcare with the use of above standard materials, he/she must pay for the difference between the standard and above standard material. The price of the above standard material is determined by every dental office independently. Therefore the price for the dental treatment and dentures differ from office to office.

Payments for services related to the provision of healthcare

a) Accompanying person in a hospital

The stay of an accompanying person in hospital is also a service related to the provision of healthcare, based on the determination of the physician in charge.

The accompanying person must pay 3.32 € per day; the first and the last day are calculated as one day.

The following persons do not have to pay the fee:

- a person accompanying a child under three years of age;
- a breastfeeding mother with infant; and
- a person accompanying a person under 18 years of age admitted for oncological treatment.

b) Payments in Pharmacies

A fee of 0.17 € is paid at pharmacies and health aid distribution offices for the statistical processing of a prescription or voucher.

0.17 € is not paid in pharmacies:

- by an insured person when receiving medication prescribed on a medical prescription;

- by an insured person receiving prescription medications or dietary foods which are fully covered by this insured person; and
- when receiving vaccination substances designated by the symbol “V” in one medical prescription.

c) Cash Payments

A fee of 1.99 € is charged when providing emergency medical service (EMS) and institutional emergency service (IES) outpatient healthcare in a hospital. If the examination of the insured person at the emergency room is followed by admission to the hospital, the fee of 1.99 € is not charged.

d) Payments for Transportation

A fee of 0.07 € is paid per 1 kilometre of transportation as a service related to healthcare provision (by ambulance, not emergency health service).

The following insured persons do not pay for transportation by ambulance:

- an insured person in a chronic dialysis or transplantation programme;
- an insured person receiving oncological or cardio-surgical service;
- an insured person with severe health disability who is dependant on individual transportation by passenger vehicle; and
- an insured person who is transported from one hospital to another based on a hospital's decision.

Which Costs Are Not Paid for by Insured Persons

- They do not pay for medical materials (such as needles, syringes or bandages) in hospitals and outpatient offices.
- The costs for entry check-ups (i.e., when creating the patient's card) for a general practitioner for children and youth, a general practitioner for adults, a gynaecologist and a dentist are paid by the health insurance company if such physician has an agreement with the health insurance company. A physician is not entitled to request payment from an insured person for this service. There is also no legal right to charge for maintaining a patient's card. Pharmacies may not request a fee of 0.17 € from the insured person for a prescription if the insured person pays the full price of the medication.”

46. 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 11§2 – Advisory and educational facilities

ESC 11§2 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 11§2 of the Charter because it has not been established that free and periodical consultation and screening exist, particularly for pregnant women and children, that medical services exist at school, that periodical medical examinations are carried out throughout schooling and that screening of illnesses responsible for high premature mortality rates are organised.

47. The representative of Latvia provided the following written information:

“Education in health

Public information and awareness-raising

Specific information campaigns have been carried out intended to inform public about such subjects as smoking, alcohol-related problems, excessive use of salt, which are known as causes for several diseases including cardiovascular diseases and tumors. The goal of such specific information campaigns is to generate greater awareness of, provide education in, and build up support for public health policies that prevent harm from alcohol, smoking, and unhealthy nutrition. Educational and information campaigns on the health impact of addictive substances have been implemented for society, specialists, social workers, police, local government and municipalities employees, school teachers and children of school age, future parents, etc. Methodical materials, posters, brochures, surveys have been printed; interactive discussions and educational films were prepared; sports and recreational events have been organised; topical seminars on problems caused by addictive substances have taken place; etc.

Informative campaigns in the field of environment protection have been carried out, too, for example campaign for climate change protection – friendly school to ozone sphere. There are some campaigns on waste sorting and collection of such dangerous waste as cordless, informative campaigns on increasing of use in the households different chemical substances, for example soap-powder containing phosphorus etc.

Since September 1 year 2009 health promotion in the regions of Latvia are under competency of Health Inspectorate as the Public Health Agency was officially closed. There are twelve regional co-ordinators responsible for health promotion activities.

In addition, there are 21 “Heart Health Cabinets” throughout all country. Heart Health Cabinets were introduced to inform people on risk factors of the health of heart and health promotion. Heart Health Cabinets are free of charge and available for everyone without the prescription of family doctor. It is possible to measure weight, body mass index, circumference of waist, blood pressure, cholesterol and glucose in blood and to receive recommendations for the change of lifestyle.

Health education in schools

Sex and environmental education does form a part of the primary and secondary school syllabuses. According to general secondary education programs, sexual and reproductive education is a part of study subjects “Social sciences” or Health education”. Environmental education is included in the study subject “Natural sciences”. Environment protection questions are integrated also into other study programmes, such as chemistry, biology, physics etc.

Counselling and screening

Population at large

Due to limited budget more attention is turned to preventive measures among vulnerable groups like injecting drug users (IDUs), prisoners, men who has sex with men (MSM). Access to HIV testing is widespread, HIV tests are free of charge, and there are many low threshold centers for vulnerable groups’ testing and counseling. For public awareness-raising there is some information on website. HIV restriction programme for 2009-2013 envisages working out new guidelines for counseling and HIV testing.

Pregnant women, children and adolescents

According to the Regulation of Cabinet of Ministers No.1046 “Procedures on Health Care Organization and Financing” of 19 December 2006, free preventive examinations are ensured for children. According to the Centre of Health Economics (until October 1 2009 - the Health Statistics and Medical Technologies State Agency), statistics show that approximately 10% of children are not covered under preventive medical examination. The reason of that can be the lack of information from the family doctors that they have performed child’s preventive medical examination or that family doctors have exceeded the time limit when information on performed preventive medical examination must be sent to the Centre of Health Economics. Other reason can be that children are examined by family doctor at the time of illness.

According to the Regulation of Cabinet of Ministers No.1046 “Procedures on Health Care Organization and Financing” of 19 December 2006, health care services for children until 18 years old and for pregnant women and women in the period following childbirth up to 42 days are free of charge, if health care services related to the medical supervision of the pregnancy and during the period following childbirth, as well as to the course of pregnancy, are received. This regulation also states that free preventive examination once a year is ensured for adults. Free puerperal health care services at pregnancy period is administered by gynaecologist, by midwife or by general practitioner who is under contraction with Health Payment Center (until October 1 2009 - Health Compulsory Insurance State Agency). Procedures how the puerperal help is provided are defined in the Regulation No.611 “The Regulation on Provision of Puerperal Care” adopted by the Cabinet of Ministers on July 25 2006.

48. 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 11§2 SLOVAK REPUBLIC

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 11§2 of the Charter because it has not been established that:

- health education is incorporated into the school curriculum;
- there is a free and carried out systematically screening for illnesses responsible for high levels of early death.

49. The representative of the Slovak Republic provided the following written information:

First ground of non-conformity

“Health Upbringing and Education

Public Information and Enhancement of Information

Article No.11 Paragraph 2 of the European Social Charter (The Right to Health Protection) focuses, besides others, on the issues of the enhancement of information of the general public regarding the adopted measures or activities within the framework of the public healthcare sector aimed at the prevention of acts that are damaging to one’s health (alcohol, illegal narcotics, etc.).

The Action Plan of the Implementation of the National Anti-Drug Strategy for the Period of 2009 – 2012 in the Health Sector in Compliance with the European Strategy for Combating Drugs. The National Action Plan for Alcohol-Related Problems for the Period of 2006 - 2010.

The Public Health Authority of the SR and the Regional Public Health Authorities, when working preventatively, take into consideration the universal knowledge that the lower age categories and marginal or vulnerable groups of the population are at higher risk of the occurrence of addictions. In relation to the origin and development of alcohol addiction, young people are the population group at greatest risk. The second group, which affects the standpoints and attitudes of young people, are family and peers. From this aspect, the Regional Public Health Authorities (RPHA) conduct interventions with parents, relatives, teachers, coordinators for drug addiction prevention and school psychologists. The upbringing and education approaches and counselling activities are based on scientific knowledge and from the thematic aspect they are focused on the prevention and reduction of problems related to alcohol abuse and the abuse of other addictive substances and on the support of abstinence among children. The interventions of the RPHA within the framework of the fulfilling of the **National Action Plan for Alcohol-Related Problems for the Period of 2006 - 2010 (hereinafter the “NAPARP”), approved by SR Government Resolution No. 974/2006 (in compliance with the Framework Programme of Alcohol Policy of the WHO in the European Region) reflect these selected key areas, principles and goals (extracts from the NAPARP):**

The project will take place in 2010, the training of animators was held in December 2009:

Within the framework of the European Commission, the programme **“Preventing and Combating Crime,” the project entitled “YOUR RIGHT CHOICE” aimed at crime prevention**, and which was submitted by the Communication and Prevention Paragraph of the Police Department Presidium within the framework of the call, was approved. The project is implemented under Grant Agreement No. JLS/2008/ISEC/FPA/C3/071 and is financed with the support of the European Commission. The aim of this project is **the effort to eliminate crimes committed by persons under the influence of addictive substances and to provide information on the harmfulness of their abuse with a focus on tobacco, alcohol and herbal cannabis. This project is designated for children of 9-10 years of age, with the application of innovative approaches in working with children in the form of a creative interactive creative workshop.**

40 towns in the Slovak Republic and 20 towns in the Moravian-Silesian and Olomouc Regions are involved in this project. It is implemented by 120 trained animators, members of the PC and employees of public health authorities. In total, the participation of 28, 650 children is expected. Approximately 19,750 children from Slovakia and 8,900 children from the Czech Republic will participate.

The Public Health Authority of the SR organizes or cooperates in the following projects in the area of health support with the aim of the prevention of addictive substance abuse.

1. Organizing Stop and Win - a competition for smokers. Its aim is to help to motivate smokers to quit smoking.
2. Events connected with the Worldwide No Tobacco Day (31 May 2010), press conferences where the general public is informed through the media about the incidence and risks of addictive substance abuse.
3. The Tobacco Free Life Campaign is also implemented in Slovakia in cooperation with the European Commission. Its aim is to motivate children and youth to avoid or quit smoking through advertisements and images in the most watched TV media.

Health Education at Schools

The protection of life and health, the support of a healthy life style and the prevention of addictions to legal drugs (alcohol, tobacco) and illegal drugs is directly incorporated in the state curriculum. The education areas **“The Individual and Health”, “The Individual and Values”, “The Individual and Society”** constitute part of the state curriculum at the state elementary and

secondary schools. The support of a healthy life style and addiction prevention constitutes part of the newly introduced compulsory profile topics - **Personal and Social Development** and **Life and Health Protection**. During the upbringing and educational process, space is dedicated to upbringing for a healthy life style and the prevention of alcohol, tobacco and illegal drug addictions within the framework of subjects such as **ethics, civics, religion, science, Slovak language, chemistry, biology and class meetings**.

Many schools and school facilities implement local, community and regional activities (competitions among schools) within the framework of the **European Week of Combating Drugs, Health Week, World Day of Combating Drugs, World Health Day**, etc. Self-governing organs, NGOs, parents, representatives of towns and sponsors also get involved in several activities. Attention is also paid to preschool children to the extent adequate to this age category, especially in the sense of creating healthy living habits. The elements of universal prevention outside the teaching process are also applied in leisure time and club activities, and activities organized by the centres of pedagogical psychological counselling and prevention and school clubs. The following projects are most frequently implemented at schools: Health at Schools, Schools Supporting Health, peer programmes, the preventative programme The Road to Emotional Maturity and the programme Open School. From 2005 to 2009, the Division of the Regional School System of the Ministry of Education of the SR implemented the development project entitled "**Health at Schools**". Every year, the prevention of substance and non-substance addictions were included in the area of support within the framework of key challenges.

Health Education, as a separate subject, was not introduced within the framework of the state educational programme (SEP). The subject Training in Traffic Issues constitutes part of the SEP as a compulsory part of the upbringing and education of elementary school students. Through its specific content and orientation, it purposefully affects the ethical, intellectual, physical and psychological qualities of students. The role of traffic training is to prepare students as pedestrians, cyclists and future drivers. In the state educational programmes, we determine what the student should know in general within the framework of the educational standard.

The education goals were modified based on the requirements and experience of the schools after the first year of using the state educational programmes. The content of the education is designed according to the most recent knowledge; it also incorporates the contents of the personality development of the student, his/her protection from negative influences, the protection of health, nature, etc. The content of the elementary school curriculum is divided into educational areas, where the issues of health education and learning the basic principles of a healthy life style can be found in the area, Man and Nature. The educational area Health and Motion provides students with the basic knowledge regarding the significance of motion activities for their health, the prevention of illnesses, a healthy daily regime, etc."

Second ground of non-conformity

"Counselling and Medical Check-ups

General Public

Reimbursement of Preventative Check-ups

Pursuant to Act No. 577/2004 Coll. on the Scope of Healthcare Paid Based on Compulsory Public Health Insurance and on Payments for Services Related to the Provision of Healthcare as amended, preventative check-ups indicated in the Paragraph "Reimbursement for Healthcare" are fully reimbursed based on public health insurance.

Description of Preventative Check-ups from 2006

Beginning in 2006, two preventative check-ups at the dentist per calendar year have been covered from the sources of public health insurance for insured persons up to 18 years of age, as opposed to the previous period, when only one preventative check-up was covered per calendar year. The oral health care of children and youth has been improved by increasing the number of preventative check-ups. The expert guidelines of the Ministry of Health of the SR for early diagnostics of dental caries among children and youth regulated the method for the early elimination of dental caries with children from an early age through regular preventative check-ups at the dentist twice a year. Check-ups were introduced in intervals from the ages of 1 to 3, from 3 to 5, separately at the age of 5 and in the period from 6 to 18. Thorough instructions of parents on correct nutritional habits, methods of oral hygiene and the significance of using tooth paste containing fluorides constitute a significant part of each preventative check-up. More intensive cooperation of dentists with paediatricians was introduced by means of the fact that the paediatrician instructs the parent on the necessity to visit the dentist after the child reaches one year of age. Expert guidance at the same time defines the risk groups of children, in the case of

which special emphasis must be paid to preventative check-ups, i.e., with children with overall illnesses, prematurely born children with low birth weight, children of mothers with high incidence of dental caries, children with layers of plaque, hypoplasia, hypomineralization, enamel demineralization, children with sleeping disorders and children who consume excessive amounts of sweets.

At the same time, the circle of insured persons from registered blood donors was broadened by tissue or organ donors, who are entitled to one preventative check-up from the sources of the public health insurance per year with a general practitioner or paediatrician.

Check-ups for insured persons of 19 to 20 years of age by a gastroenterologist or a paediatric gastroenterologist for the proof of *Helicobacter pylori* in the patient's breath was another preventative check-up paid for by public health insurance. Within the above mentioned issues, The Ministry of Health of the SR passed the Expert Guidelines on Standardizing the Diagnostics of the *Helicobacter Pylori* Infection and on Standardizing Therapeutic Methods, Dispensarization and Preventative Examinations of Patients with *Helicobacter Pylori* Infection. The benefit for the patient is constituted by the early diagnosis of *Helicobacter pylori*, its eradication and thus the reduction of the relapse of ulcers and their combinations and the reduction of the probability for the development of stomach cancer.

Average Waiting Period for Hospital Admission and the Management of Relevant Waiting Lists

The edict of the Ministry of Health of the SR which establishes the details regarding the list of insured persons waiting for the provision of planned health care ("waiting lists") entered into effect on January 1, 2010.

If insured persons have to wait for more than 3 months for the provision of planned health care after the recommendations of the provider, the health insurance company shall include the insured person on the list of insured persons waiting for the provision of planned health care and keep the list separately for each provider of healthcare according to the list of selected illnesses indicated in the annex to the edict.

The waiting lists are not kept for the provision of urgent healthcare services, outpatient healthcare services, institutional healthcare services provided on the basis of court decisions, institutional healthcare services provided in natural therapeutic spas and spa health resorts, joint examination and therapeutic units, preventative healthcare services, pharmacy care, transplantation programmes or planned institutional healthcare services which the provider is able to provide within three months after establishing the cause for the provision of planned healthcare."

50. 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 11§3 – Prevention of diseases and accidents

ESC 11§3 GREECE

The Committee concludes that the situation is not in conformity with Article 11§3 of the Charter on the grounds that on the following grounds:

- it has not been demonstrated that the measures taken to reduce the high level of tobacco consumption are adequate;
- it has not been demonstrated that sufficient measures have been adopted during the reference period to improve the right to a healthy environment for persons living in lignite mining areas (follow up to Marangopoulus Foundation v. Greece complaint 30/2005, decision on the merits of 6 December 2006).

51. The representative of Greece provided the following written information:

First ground of non-conformity

"Concerning measures taken by the Greek government to reduce tobacco consumption, since the 1st of July 2009, that is after the submission of the 19th Greek Report and outside the reference period, a **new Act against smoking** is put into effect. It is **Act 3730/2008 for the "Protection of minors from tobacco and alcohol"** of the Ministry of Health and Social Solidarity (OG 262/A/23.12.2008), which is also in compliance with art. 8 and 16 of the WHO's Convention for tobacco control.

In art.3 the new Act mentions that **smoking and the consumption of tobacco products is forbidden to all public and private internal places**, contrary to the previous legislation that forbade smoking only in particular places (public transportation, health services provision units, some public places).

Also, Art.5 of the Act provides for the **establishment of a Special Service to protect minors from tobacco** as well as a special Tobacco Inspection Body under the auspices of the Health Inspection Body. Both these bodies are responsible for inspections on tobacco consumption.

Furthermore, Art. 6 provides for **administrative sanctions** in case of violations and non-implementation of the law. Other provisions provide for the **prohibition of selling tobacco products to and by minors** and for the **protection of health from passive smoking (Art.2)**.

In implementation of art.3 of the Act, Ministerial Decision 88202/30.06.09 was issued to specify the conditions and preconditions for the set and function of limited smoking places, where permitted, that is in completely separated spaces with special ventilation systems.

Furthermore, **a new law will be issued**, after consultation with the stakeholders, which will specify the control mechanism and the procedures governing the imposition of sanctions, in cases of non-compliance with the legislation.

More detailed information on the implementation of the new Act will be presented in the next Greek report.

Lastly, another measure taken which will contribute to the reduction of the level of tobacco consumption is the latest **increase on taxes imposed on cigarettes by 20%** (Act 3815/2010 for the amendment of the taxation code)."

52. 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

53. The representative of Greece stated that the Government took a series of new measures after the submission of the last Greek report and outside the reference period. These measures focus on new and important environmental investments in lignite power plants and mines aiming at reducing dust and SO₂ emissions and increasing the energy efficiency of the power stations resulting in important CO₂ emission reduction. In particular:

- the reduction of dust emissions of lignite power plants with important results so far. In Agios Dimitrios lignite power plant, the project "Upgrade of existing and addition of new ESP's" at a cost of 130 million €, was successfully completed during 2008, in the region of Kozani, from 2007 until 2010, the annual dust emissions have been reduced by 55% in Ptolemaida SES, by 90% in Agios Dimitrios SES and by 41% in Kardias SES;
- measures to reduce SO₂ emissions of lignite power plants. In the lignite power plant of Megalopolis the operation of the flue gas desulphurization unit was further improved during 2008 while, in November 2009, a new flue gas desulphurization unit was brought into operation. As a result of the implementation of the above measures, SO₂ emissions of Megalopolis lignite power plant have been drastically reduced;
- certification of Environmental Management Systems (EMS). The Environmental Management Systems (EMS) of Meliti, Amyntaion and Kardias lignite power plants have been certified, by an independent third party, during February 2009. All lignite power plants operating in Kozani – Ptolemaida prefecture have been certified with the exception of Ptolemais lignite power plant, which will be decommissioned. The West Macedonia Lignite Center has also an EMS certification according to ISO 2004. The EMS of Megalopolis A and B lignite

power plants have been successfully reviewed by TUV HELLAS and the final certificate is expected;

- air quality monitoring: the air quality monitoring network were upgraded in eleven monitoring sites located in Northern Greece;
- environmental rehabilitation of Mines areas In particular, in 2009 400.000 trees were planted in the lignite mines' dump surfaces, in West Macedonia region. To date about 7.000.000 trees have been planted in an area of 40.000.000 m², in this Lignite Center.

Finally during 2007-2009, the Special Service of Environment Inspectors of the Ministry of Environment conducted environmental controls in the areas of Kozani, Florina and Arkadia. More specifically, during 2007 two lignite power plants in Megalopolis were inspected and administrative sanctions amounting to 400.000 euros were imposed. In 2008 and 2009, in the Prefecture of Kozani, the SES of Ptolemaida, Kardias, Agios Dimitrios and Meliti and the lignite mines of Ptolemaida and Mavropigi were inspected and administrative sanctions amounting to 1.175.000 euros were imposed. In December 2009, a new environmental inspection took place at the SES of Ptolemaida and results are expected.

54. The representative of France noted the positive developments in the situation and congratulated Greece.

55. The Committee took note of the positive developments in Greece and decided to await the next assessment of the ECSR with Article 11§ 3 of the Revised Charter.

Article 12§1 – Existence of a social security system

Common concerns raised by representatives of States while discussing all situations below:

- Adequacy of benefits should not be assessed under Article 12§1 but under Article 12§2. Moreover, since several States do not have minimum benefits, it is not appropriate to assess a situation based on speculations.
- The adequacy of benefits should be linked to purchasing power rather than to 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value.
- Need to clarify why, when the amount of a benefit is below the 40% of the poverty threshold as defined above, the ECSR considers that its aggregation with means-tested kinds of benefits, including social assistance, does not bring the situation into conformity with Article 12§1.

56. The Committee decided that the above concerns should be raised during the next joint meeting of the Bureau. It also asked the Secretariat to enquire whether a member of the ECSR could come to one of its next meetings to explain its Article 12 case law in detail.

ESC 12§1 AUSTRIA

The Committee concludes that the situation in Austria is not in conformity with Article 12§1 of the Charter on the ground that the level of the unemployment benefit for a single person is manifestly inadequate.

57. The representative of Austria explained that the Austrian system consisted of two pillars which secured that no one was left with a minimum income below the poverty line: the unemployment insurance system and the minimum income scheme guaranteeing an adequate minimum income.

58. The level of the unemployment insurance benefit depends on a person's previous salary, it represents a certain percentage of the previous salary. In Austria every employee who earns more than the marginal earnings threshold of about 366€ is covered by unemployment insurance. Only a marginal part time employee might possibly receive such a low wage, because the minimum wage for full time employment in Austria is 1.000€ monthly gross wage, paid 14 times a year in case of continuous employment. The level of unemployment insurance benefit for a single person earning 366€ for his or her marginal part time employment is 60 % of the previous average net salary. In case of a very low wage paid for so called marginal part time employment the unemployment benefit cannot exceed the poverty line. But in such a case the second pillar of the social protection system takes effect and a supplement is paid in addition to the unemployment insurance benefit.

59. The representative of Austria indicated that by September 2010 Austria would implement a new "means-tested minimum income", which combined financial protection with practical support services in order to help people aged 15 to 64 who were able to work to find their way back to the labour market and that the amount of the new means-tested minimum income for a single person in the year 2010 would be 744€ per month.

60. The representative of Austria stated that the next report would describe the Austrian system and the new developments in this respect in more detail.

61. The 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 12§1 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 12§1 of the Charter on the ground that the levels of the minimum old-age, invalidity and survivors pensions as well as the level of unemployment benefit are manifestly inadequate.

62. After having supported the common concerns referred to above, the representative of the Czech Republic made the following statement:

"The Czech Republic does not guarantee either minimum level of old-age, invalidity and survivors pensions or minimum level of unemployment benefits. Minimum income provision is guaranteed but in different social protection systems – not in the pension system itself. This type of (indirect) guarantee is typical for couple of states. Current draft EU Council Conclusions "Sustainable social security systems achieving adequate pensions and social inclusion objectives" which is just discussed in the Working Party on Social Questions, working body of the EPSCO Council (The Employment, Social Policy, Health and Consumer Affairs Council) also takes into account that there is not only "minimum pension" but also "minimum income provision for older people" in a lot of states. Both instruments are equal and important with regard to the fight against poverty. The pension depends on a length of insurance period and level of income in the relevant period. Thus, the level of pension reflects a pensioner's

credit of his/her pension. This should motivate people to contribute more to the system and feel responsible for their later lives which include ageing.

Moreover, the Czech pension system recognizes quite many substitute (non-contributory) insurance periods when a person is not contributing to the system because of lack of earnings (e.g. maternity period) but these periods are counted for amount of pension as a period of contribution. Then it is not difficult to qualify for a pension. Further, we would like to draw the Committee's attention to the fact that here are cases of parallel pensions (e.g. old-age pension and widow's pension). As a consequence, an old-age pension is reduced and cannot be evaluated itself but only in a connection with the parallel pension or pensions. This probably did not happen when the ECSR assessed the Czech report. Similarly, there is no minimum unemployment benefit in the Czech Republic. The level of unemployment benefit is derived from the jobseeker's last salary. During the first 2 months of the period of support, unemployment benefit represents 65%, during the next 2 months 50% and for the remaining period it is 45% of the average net monthly earnings or the assessment base. In the event the jobseeker is unable to prove his average net monthly earnings or his assessment base or if no average net monthly earnings can be established, or if the jobseeker complied with the condition of the period of previous employment by including the substitute period and this period was taken as his last employment, unemployment benefit for the first 2 months is calculated as 15%, for the next 2 month as 12% and for the remaining period as 11% of the average wage in the national economy for the first to the third quarter of the calendar year preceding the calendar year in which the application for unemployment benefit was submitted. In addition, pensioners with low pensions are secured within the System of Assistance in Material Need. Pensioners with dependent children are secured by benefits of the State Social Support (family benefits). Pensioners (with and without children) can get housing allowance from the State Social Support system if they have not sufficient resources to cover housing costs. Finally, the Czech Republic meets the requirements and standards set by the European Code of Social Security and parts of ILO Conventions 102, 28 and 130 which were ratified.

Example of adequacy: an unemployed individual no longer eligible for unemployment benefit living in a town of 55,000 inhabitants in a standard apartment with living costs of 4,597 CZK;

- Housing allowance (State Social support): 3,660 CZK;
- Supplement for housing (Assistance in Material Need): 937 CZK;
- Allowance for living allowance (Assistance in Material Need): 3,126 CZK.

The given example shows that the housing costs are covered by benefits (housing allowance and supplement for housing), because the actual cost of living for the person stated above correspond with normative costs. Normative costs are stipulated by law and represent the average cost of living of a family or an individual for housing, according to the size of the town and the number of people living in apartment. They include the cost of rent (rented flats) or a similar cost (cooperative flats and owned flats) as well as the price of energy, services, etc. The total assistance through benefits is 7,723 CZK. The assistance provided in the Czech Republic fully complies with European standards; it is designed not to discourage people from seeking employment and not to cause dependency

on social assistance system. The level of assistance is also to be judged with regard to the level of the minimum wage and wages genuinely achieved by a high number of people. For completeness, we shall add that the statutory minimum monthly wage is 8,000 CZK, while an employee receiving the minimum wage is obliged to pay social and health insurance contributions and taxes.”

63. The representative of the ETUC pointed out that even if the levels referred to by the ECSR were to be completed with social assistance, given that the latter was low, the total would not allow persons to live in a dignified way. He therefore asked whether the Government intended to increase the contested amounts.

64. The representative of the Czech Republic reiterated that since there are no minimum levels, these could not be increased. She also reiterated that a minimum income and material need help were available when needed.

65. The representative of Estonia asked whether one had to apply for assistance money or whether it was provided automatically. In reply, the representative of the Czech Republic said that benefits would not be granted without an application and verification of the validity of the application.

66. The Committee invited the the government of the Czech Republic to provide in its next report the relevant information and figures enabling the ECSR to assess the situation properly. Meanwhile, it decided to await the next assessment of the ECSR on Article 12§1 of the Charter.

ESC 12§1 GREECE

The Committee concludes that the situation is not in conformity with Article 12§1 of the Charter on the ground that the minimum unemployment benefit for beneficiaries without dependants is manifestly inadequate.

67. The representative of Greece provided the following written information:

“Concerning the first time negative conclusion of the ESCR on Art.12 para,1, on the ground that the minimum unemployment benefit for beneficiaries without dependants is manifestly inadequate, we would like to note the following:

In accordance with the Greek Legislation (article 5§4 of Act No.3552/2007), unemployed persons, **who had not full employment** and their monthly salary was equal or less than 6-times the daily wage paid to unskilled workers, **are entitled to 50% of the basic unemployment benefit** provided for in para 3 of the above article.

In its Conclusion, the Committee notes that since 01/01/07 the minimum unemployment benefit for beneficiaries without dependants amounted to 174,75€. We should stress that, according to the abovementioned, this amount was paid to salaried employees who had been dismissed and whose monthly salary amounted up to €167,76, i.e. **the amount of the unemployment benefit is larger than that of the monthly salary**. Moreover, it has to be taken into account that the above-mentioned beneficiaries are part-time employees, whose number is very small compared with that of the unemployed as a whole (according to data provided by the Greek Manpower Organisation, the number of the unemployed in May 2010 was 207992).

Moreover, currently, the minimum unemployment benefit paid to beneficiaries without dependants, whose monthly salaries were €198,24 or less, amounts to €227,00. Of course, the rate of the unemployed falling into this category continues to be very low, i.e. lower than 2% of the subsidized unemployed.

Lastly, please note that since the amount of the unemployment benefit is connected to the minimum wage of an unskilled worker, and since the daily wage paid to unskilled workers according to the National General Labour Collective Agreement 2008-2009 amounts to 33,04€, **the daily paid unemployment benefit and the monthly paid unemployment benefit have increased to €18,17 and €454,25 respectively since 01.05.2009.**

More detailed data concerning the amount of the daily and monthly unemployment benefits are shown in the next Tables respectively:

**TABLE FOR THE CALCULATION OF THE MONTHLY UNEMPLOYMENT BENEFIT
FOR THE PERSONS SUBSIDIZED SINCE 1/5/2009**

1ST CATEGORY (FULL EMPLOYMENT OR EMPLOYMENT WITH MONTHLY WAGES HIGHER THAN 12 TIMES THE DAILY WAGES OF AN UNSKILLED WORKER)									
DAILY WAGES OF AN UNSKILLED WORKER	MONTHLY WAGES OF AN INSURED PERSON	UNEMPLOYMENT BENEFIT RATE (%) OF THE DAILY WAGES OF AN UNSKILLED WORKER	UNEMPLOYMENT BENEFIT WITHOUT DEPENDANTS	WITH ONE DEPENDANT	WITH TWO DEPENDANTS	WITH THREE DEPENDANTS	WITH FOUR DEPENDANTS	WITH FIVE DEPENDANTS	WITH SIX DEPENDANTS
33,04 €	FROM 396,49 € AND MORE	33,04 € * 55% * 25	454,25 €	499,75 €	545,00 €	590,50 €	636,00 €	681,25 €	726,75 €
2ND CATEGORY (MONTHLY WAGES HIGHER THAN 6 TIMES THE DAILY WAGES OF AN UNSKILLED WORKER OR EQUAL TO THEM OR LOWER THAN 12 TIMES THEM)									
DAILY WAGES OF AN UNSKILLED WORKER	MONTHLY WAGES OF AN INSURED PERSON	% OF THE DAILY WAGES OF THE BASIC UNEMPLOYMENT BENEFIT	UNEMPLOYMENT BENEFIT WITHOUT DEPENDANTS	WITH ONE DEPENDANT	WITH TWO DEPENDANTS	WITH THREE DEPENDANTS	WITH FOUR DEPENDANTS	WITH FIVE DEPENDANTS	WITH SIX DEPENDANTS
33,04 €	FROM 198,25 € TO 396,48 €	18,17 * 75% * 25	340,75 €	374,75 €	409,00 €	443,00 €	477,00 €	511,00 €	545,25 €
3RD CATEGORY (MONTHLY WAGES EQUAL TO OR LOWER THAN 6 TIMES THE DAILY WAGES OF AN UNSKILLED WORKER)									
DAILY WAGES OF AN UNSKILLED WORKER	MONTHLY WAGES OF AN INSURED PERSON	% OF THE DAILY WAGES OF THE BASIC UNEMPLOYMENT BENEFIT	UNEMPLOYMENT BENEFIT WITHOUT DEPENDANTS	WITH ONE DEPENDANT	WITH TWO DEPENDANTS	WITH THREE DEPENDANTS	WITH FOUR DEPENDANTS	WITH FIVE DEPENDANTS	WITH SIX DEPENDANTS
33,04 €	UP TO 198,24 €	18,17 * 50% * 25	227,00 €	249,75 €	272,50 €	295,00 €	317,75 €	340,50 €	363,25 €

**TABLE FOR THE CALCULATION OF THE DAILY UNEMPLOYMENT BENEFIT
FOR THE PERSONS SUBSIDIZED SINCE 1/5/2009**

1ST CATEGORY (FULL EMPLOYMENT OR EMPLOYMENT WITH MONTHLY WAGES HIGHER THAN 12 TIMES THE DAILY WAGES OF AN UNSKILLED WORKER)									
DAILY WAGES OF AN UNSKILLED WORKER	MONTHLY WAGES OF AN INSURED PERSON	UNEMPLOYMENT BENEFIT RATE (%) OF THE DAILY WAGES OF AN UNSKILLED WORKER	UNEMPLOYMENT BENEFIT WITHOUT DEPENDANTS	WITH ONE DEPENDANT	WITH TWO DEPENDANTS	WITH THREE DEPENDANTS	WITH FOUR DEPENDANTS	WITH FIVE DEPENDANTS	WITH SIX DEPENDANTS
33,04 €	FROM 396,49 € AND MORE	33,04 € * 55%	18,17 €	19,99 €	21,80 €	23,62 €	25,44 €	27,25 €	29,07 €
2ND CATEGORY (MONTHLY WAGES HIGHER THAN 6 TIMES THE DAILY WAGES OF AN UNSKILLED WORKER OR EQUAL TO THEM OR LOWER THAN 12 TIMES THEM)									
DAILY WAGES OF AN UNSKILLED WORKER	MONTHLY WAGES OF AN INSURED PERSON	% OF THE DAILY WAGES OF THE BASIC UNEMPLOYMENT BENEFIT	UNEMPLOYMENT BENEFIT WITHOUT DEPENDANTS	WITH ONE DEPENDANT	WITH TWO DEPENDANTS	WITH THREE DEPENDANTS	WITH FOUR DEPENDANTS	WITH FIVE DEPENDANTS	WITH SIX DEPENDANTS
33,04 €	FROM 198,25 € TO 396,48 €	18,17 * 75%	13,63 €	14,99 €	16,36 €	17,72 €	19,08 €	20,44 €	21,81 €
3RD CATEGORY (MONTHLY WAGES EQUAL TO OR LOWER THAN 6 TIMES THE DAILY WAGES OF AN UNSKILLED WORKER)									
DAILY WAGES OF AN UNSKILLED WORKER	MONTHLY WAGES OF AN INSURED PERSON	% OF THE DAILY WAGES OF THE BASIC UNEMPLOYMENT BENEFIT	UNEMPLOYMENT BENEFIT WITHOUT DEPENDANTS	WITH ONE DEPENDANT	WITH TWO DEPENDANTS	WITH THREE DEPENDANTS	WITH FOUR DEPENDANTS	WITH FIVE DEPENDANTS	WITH SIX DEPENDANTS
33,04 €	UP TO 198,24 €	18,17 * 50%	9,08 €	9,99 €	10,90 €	11,80 €	12,71 €	13,62 €	14,53 €

68. 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 12§1 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 12§1 of the Charter on the ground that the minimum monthly old age, survivor's, orphan's and disability pensions as well as the minimum monthly job-seeker aid and entrepreneurial benefit are manifestly inadequate.

69. The information concerning this non-conformity for the first time with the Article 12§1 of the Charter was not submitted by the government of Hungary.

ESC 12§1 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 12§1 of the Charter on the ground that it has not been established that the adequacy of social security benefits is secured.

70. The representative of Luxembourg provided the following written information:

"I. Percentage coverage of the population for each branch

Statistics on coverage are not available. The Luxembourg social protection system includes social security, social assistance and social aid and in principle covers the entire population.

It covers all categories of the population – active and non-active, and resident or working in Luxembourg – against sickness, maternity and dependency.

Persons who are working are also covered against risks concerned with occupational injuries and diseases, old age, invalidity, survival, unemployment and early retirement.

Persons resident and working in Luxembourg are entitled to family benefits. Children living in Luxembourg are also personally entitled to family allowances.

All persons residing in Luxembourg are eligible for the guaranteed minimum income - the poverty threshold - or a supplement if their own income does not reach this minimum.

SICKNESS AND MATERNITY

1. All persons in gainful employment in Luxembourg are covered by sickness and maternity insurance. This includes all salaried and non-salaried activities in the public and private sectors, as well as:

- apprentices in paid vocational training and persons on paid or unpaid placements designed to help them enter or return to employment;
- seafarers on ships flying the Luxembourg flag;
- persons taking part in development co-operation activities or a peace-keeping operation for an international organisation;
- the spouses or partners of self-employed persons, so long as they are at least 18 and provide necessary services to the insured person, if these services can be considered to be their principal activity;
- disabled workers;
- persons receiving a replacement income (financial allowance for sickness, accident, maternity or parental leave, unemployment or early retirement), from which sickness insurance contributions are deducted.

2. All these persons are entitled to health care and compensation for incapacity for work.

3. Compulsory insurance also covers:

- members of the Chamber of Deputies and Luxembourg representatives in the European Parliament during their term of office;
- army volunteers;
- young people taking part in voluntary activities;
- top sportsmen and women;
- members of religious associations and their equivalents;
- recipients of retirement and invalidity pensions;
- recipients of partial, complete or interim pension for industrial accidents and survivors' benefits;
- recipients of parental leave allowance;
- recipients of severely disabled persons' allowance;
- recipients of the guaranteed minimum income.

4. Minors, students and disabled persons not otherwise covered are also compulsorily insured. In these cases, and those of army and police volunteers and young people undertaking voluntary activities, the state pays the sickness insurance contributions.

5. The persons listed in 3 and 4 are only covered for health care, but they suffer no loss of income in the event of sickness or maternity.

6. Persons employed by international and European bodies who are included in those bodies' special schemes are not covered.

7. There are exemptions for paid employment of less than three months in the year, pupils and students working in the school holidays (though they are covered by accident insurance) and non-employed workers in the non-agricultural sector whose income is less than a third of the guaranteed minimum wage.

8. Also exempted on request are persons seconded to Luxembourg and covered by the social security of their country of origin, spouses assisting the self-employed in the non-agricultural sector and ancillary sports or culture-related activities for non-profit organisations if the income is less than a third of the guaranteed minimum wage.

9. Persons who are not covered by compulsory insurance on account of their work may seek protection from:

- continuing voluntary insurance following disaffiliation, if contracted in within six months;
- optional insurance beyond this period or if no prior affiliation, but health costs are not met by the sickness insurance until three months have elapsed.

10. Under the co-insurance system, principal insured persons' insurance also covers declared spouses and partners, children raised by and the responsibility of those insured persons up to the age of 30, parents and direct or collateral relatives to the third degree who, in the absence of a spouse or partner, look after the principal insured person's household.

11. Persons who do not fall into any of these categories are looked after by the social office of their local authority of residence, which pays either voluntary insurance contributions or medical costs directly. In addition, in quite exceptional circumstances, the health ministry may meet the medical or hospital expenses of persons with no means of subsistence currently staying in Luxembourg.

→The insurance system thus provides different levels of protection allowing the entire population to be covered against sickness and maternity risks. The coverage rate is therefore one hundred percent.

DEPENDENCY

12. All persons covered by sickness insurance, whether compulsory, voluntary, co-insurance or state-funded, are automatically covered by dependency insurance. However, persons who have chosen the optional sickness insurance scheme with the three month qualifying period must wait a year before qualifying for dependency benefits.

→The coverage rate for the dependency risk is therefore one hundred percent.

EMPLOYMENT INJURIES AND DISEASES

13. All persons in gainful employment in Luxembourg, whether or not salaried, are compulsorily covered (see the list in 1), as well as:

- army volunteers;
- young people taking part in voluntary activities;
- top sportsmen and women;
- members of religious associations and their equivalents;
- young children, pupils and students in nursery, pre-school, school and university education, children under six admitted to recognised institutions and teachers, lecturers and other ancillary staff;
- persons taking part in courses and exams organised or approved by the state, the local authorities or the occupational chambers, lecturers and members or substitute members of the relevant examination panels;
- representatives of the occupational branches taking part in meetings of the occupational chambers, social security governing bodies and so on;
- persons taking part in search and rescue operations;
- recipients of the guaranteed minimum income taking part in a work experience scheme;
- persons undertaking social rehabilitation or work experience under the criminal or the youth protection law;
- jobseekers on a work experience scheme;
- members of parliament and other holders of political office in the course of their duties;
- persons undertaking voluntary work for a social services agency recognised by the state or as part of a mediation process;

- insured and accompanying persons attending for examination by the medical control service or the assessment and guidance unit;
- recipients of full unemployment benefit attending the employment offices for a recruitment interview or an active employment measure.

14. Persons in similar circumstances but who work or have worked for an international body are not covered.

15. Persons seconded to Luxembourg and covered by the social security of their country of origin and spouses assisting the self-employed in the non-agricultural sector are exempted on request.

16. In the event of the death of principal insured persons declared spouses or partners and orphans are entitled to survivors' benefit.

→ **There is one hundred percent coverage of the active population. Non-insured persons who do not meet the eligibility criteria for a personal pension, survivors' benefit or another social security benefit are entitled to the guaranteed minimum income.**

OLD AGE – INVALIDITY - SURVIVAL

17. All persons in gainful employment in Luxembourg, whether or not salaried, are compulsorily covered (see the list in 1), as well as:

- recipients of a replacement income;
- parents caring for their children for a maximum of four years;
- persons assisting and caring for a dependent person;
- persons fostering a child placed by a recognised body;
- persons on parental leave;
- army volunteers;
- young people taking part in voluntary activities;
- top sportsmen and women;
- members of religious associations and their equivalents.

18. Persons not covered by compulsory insurance may:

- request continuation of the insurance, on condition that they have completed 12 months' compulsory insurance in the three years preceding the loss of their compulsorily insured status; the request must be submitted within six months of the loss of affiliation; or
- insure themselves voluntarily from the first day of the month following that of the presentation of the request for the period in which they do not work or work reduced hours for family reasons, with the approval of the social security medical control service and on condition that they have been compulsorily affiliated for at least 12 months, are not over 60 at the time of the request and are not entitled to a personal pension;
- cover or complete the corresponding periods by means of retrospective purchase, subject to certain conditions.

19. When insured persons die, spouses, divorced spouses, partners, declared ex-partners and orphans are entitled to survivors' pensions. Subject to certain conditions, survivors' pensions may also be granted to parents who have looked after insured persons' households before their death.

20. The state meets the cost of pensions contributions during periods of parental leave and those of army volunteers, the police and young people taking part in voluntary activities.

→ **There is one hundred percent coverage of the active population. Non-insured persons who do not meet the eligibility criteria for a personal pension, survivors' benefit or another social security benefit are entitled to the guaranteed minimum income.**

II. Are benefits adequate?

21. Luxembourg's social protection system guarantees access to health and long-term care of a high standard, adequate unemployment, old-age, invalidity and survivors' benefits and a minimum income offering those concerned a decent standard of living.

22. The founding principles of the health system include the free choice of a doctor and direct access to specialists and hospital clinics, and coverage of the costs of care and of assistance from a third person for the essential activities of daily living.

23. If people are unfit for work as a result of non-occupational diseases or accidents or if workers are in a situation in which they are unemployed for reasons beyond their control, social policy aims to provide a replacement income in order to maintain their standard of living. All insured persons are entitled to the minimum pension after 40 years of work, irrespective of the amount of contributions paid during their working life.

24. As regards income assistance, Luxembourg has a universally-based safety net guaranteeing a subsistence income ensuring a decent life. Income assistance is a right and, as an expression of national solidarity, helps to maintain social cohesion.

25. Family policy, based on the principle of distributive justice, is a key component of social policy providing both benefits in kind and financial compensation.

26. A list of social parameters is appended.

27. All social security benefits, except family benefits since 2008, have been price index-linked and have been adjusted accordingly. The indexation of family benefits has been replaced by a child bonus, which also replaces dependent children's tax relief. It is also supplemented by other highly family-oriented measures such as the very significant rise in places available in nurseries and childcare centres.

28. Pensions and other allowances are also aligned to salary levels using the adjustment factor, which the government revises every two years to take account of changes in earnings.

29. For statistics see: <http://www.statsecu.etat.lu/>

Risk of poverty by type of household:

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=fr&pcode=tsdsc240> ”

71. 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 12§1 POLAND

The Committee concludes that the situation in Poland is in not in conformity with Article 12§1 of the Charter on the ground that the level of the basic unemployment benefit is inadequate.

72. After having subscribed to the common concerns referred to above, the representative of Poland explained that in 2008 the unemployment benefit was increased (by 200 zloty). The full amount (717 zloty) is paid during the first three months of unemployment, then the amount is decreased (563 zloty) during the remaining nine months to encourage unemployed persons to re-enter the labour market. Special rules apply to the unemployment benefit paid to persons just before pension age.

73. The representative of the ETUC firstly pointed out that social security is meant to guarantee a means of subsistence to those who no longer work and have no other revenue. The amount of unemployment benefits should be fixed bearing this and not other strategic calculations in mind. He then asked what happens if an unemployed person does not find a job after 12 months, what was the rate of unemployment in Poland and whether there were statistics on the duration of unemployment periods.

74. The representative of Poland indicated that in 2009, unemployment was at 7.1%. She also said that after the period of 12 months during which an unemployed person is entitled to receive unemployment benefit, social assistance is provided if the relevant conditions apply. She further indicated that the unemployed may ask for training to re-qualify with a view to enhancing his/her employment opportunities. Finally, she informed the Committee that the average length of unemployment was nine to twelve months and in some regions, sixteen months.

75. Responding to a question by the representative of the Czech Republic, the representative of Poland stated that the statutory minimum wage in Poland was 1317 zloty.

76. The representative of the Czech Republic pointed out that if one compared the minimum wage with the minimum amount of benefit, it seemed reasonable. She therefore suggested to take note of the development that had occurred in Poland since 2008.

77. As to the amount of the unemployment benefit, the representatives of the ETUC and of France were of the view that a high unemployment benefit which is limited in time does not constitute a disincentive for unemployed persons to look for a new job.

78. The representative of France further observed that the Polish unemployment benefit which after the first three months was half the minimum wage could not be deemed sufficient. However, during the first three months the benefit amount was increased and this change could be welcomed.

79. Other representatives acknowledged the progress made by Poland in raising the amount of the benefit at least during the first three months.

80. The Committee took note of the developments in Poland, inviting the government of Poland to provide all relevant information in its next report to allow the ECSR to properly assess the risk of poverty of the unemployed. Meanwhile, it decided to await the next assessment of the ECSR on Article 12§1 of the Charter.

ESC 12§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 12§1 of the Charter on the ground that there is no evidence that the adequacy of social security benefits is secured.

81. The representative of the Slovak Republic provided the following written information:

"Adequacy of benefits"

Minimum wage: from 1 October 2004: SKK 6,500 (EUR 215.76)
 from 1 October 2005: SKK 6,900 (EUR 229.04)
 from 1 October 2006: SKK 7,600 (EUR 252.27)
 from 1 October 2007 to 31 December 2008: SKK 8,100 (EUR 268.87)

Minimum amount of sickness benefit

D – amount of sickness benefit for January

DVZ – daily assessment base

$D = 3 \cdot 0.25 \cdot DVZ + 28 \cdot 0.55 \cdot DVZ$

2008: $DVZ = (9 \cdot 7,600 + 3 \cdot 8,100) / 365$

$DVZ = 253.97260274$; after rounding up to 4 decimal places: 253.9727

$D = 0.25 \cdot 3 \cdot 253.9727 + 0.55 \cdot 28 \cdot 253.9727$

$D = 4101.659105$; after rounding up in Slovak crowns: SKK 4,102

2009: $DVZ = (268.87 \cdot 12) / 365$

$DVZ = 8.839562$; after rounding up to 4 decimal places: 8.8396

$D = 0.25 \cdot 3 \cdot 8.8396 + 0.55 \cdot 28 \cdot 8.8396$

$D = 142.7595$; after rounding up to 1 decimal place: EUR 142.8

Minimum amount of unemployment benefit

D – amount of unemployment benefit for January

DVZ – daily assessment base

$D = 31 \cdot 0.5 \cdot DVZ$

2008: $DVZ = (9 \cdot 6,500 + 12 \cdot 6,900 + 12 \cdot 7,600 + 3 \cdot 8,100) / (365 \cdot 3)$

$DVZ = 234.5205479$; after rounding up to 4 decimal places: 234.5206

$D = 31 \cdot 0.5 \cdot 234.5206$

$D = 3635.0693$; after rounding up in Slovak crowns: SKK 3,636

2009: $DVZ = (9 \cdot 229.04 + 12 \cdot 252.27 + 15 \cdot 268.87) / (365 \cdot 3)$

$DVZ = 8.330274$, after rounding up to 4 decimal places: 8.3303

$D = 31 \cdot 0.5 \cdot 8.3303$

$D = 129.1197$; after rounding up to 1 decimal place: EUR 129.2

Minimum amount of old-age pension (the same as for disability pension)

D – amount of old-age (disability) pension

ADH – actual pension value

$$D = \text{POMB} \cdot \text{ADH} \cdot 15(30)^1$$

2008: ADH = SKK 249.14

$$D = (0.4 + 0.6 \cdot 0.28) \cdot 249.14 \cdot 15(30)$$

$$D = 2122.673 \text{ (4245.346); after rounding up in Slovak crowns SKK } \underline{2,123 \text{ (4,246)}}$$

2009: ADH = EUR 8.9955

$$D = (0.4 + 0.6 \cdot 0.24) \cdot 8.9955 \cdot 15(30)$$

$$D = 73.40328 \text{ (146.8066); after rounding up in euro: EUR } \underline{73.5 \text{ (146.9)}}$$

Indexation in 2009: 6.95%

$$D = \text{EUR } \underline{78.7 \text{ (157.2)}}$$

Percentage of population coverage in the areas of social security

a – average monthly number of insured

b – average monthly number of employees

c – average monthly number of registered unemployed

$$\text{Coverage percentage} = (100 \cdot a) / (b + c)$$

Sickness insurance

2008: a = 2,021,255

b = 2,433,800

c = 230,433

$$\text{Coverage percentage} = 75.87\%$$

2009: a = 1,909,956

b = 2,365,800

c = 340,243

$$\text{Coverage percentage} = 70.58\%$$

Pension insurance – old-age

2008: a = 2,012,855

b = 2,433,800

c = 230,433

$$\text{Coverage percentage} = 75.55\%$$

2009: a = 1,884,684

b = 2,365,800

c = 340,243

$$\text{Coverage percentage} = 69.65\%$$

Pension insurance - disability

2008: a = 1,967,756

b = 2,433,800

c = 230,433

$$\text{Coverage percentage} = 73.86\%$$

2009: a = 1,801,905

b = 2,365,800

c = 340,243

$$\text{Coverage percentage} = 66.59\%$$

Unemployment insurance

2008: a = 1,756,778

b = 2,433,800

c = 230,433

$$\text{Coverage percentage} = 65.94\%$$

2009: a = 1,577,158

b = 2,365,800

c = 340,243

$$\text{Coverage percentage} = 58.28\%$$

Accident insurance

2008: a = 2,027,336

B = 2,433,800

c = 230,433

$$\text{Coverage percentage} = 76.09\%$$

2009: a = 1,887,539

b = 2,365,800

c = 340,243

$$\text{Coverage percentage} = 69.75\%$$

Among other conditions, unemployment benefit which is paid from the social insurance scheme is subject to the registration of the insured person (unemployment benefit recipient) as a job applicant at the relevant office of labour, social affairs and family. The Social Insurance Company, as an institution authorized to decide on the entitlement to unemployment benefit and its payment, is not competent to examine the circumstances under which the job applicant was removed from the register of job applicants. Act No. 461/2003 Coll. on social insurance, as amended, provided the insured person, who was removed from the register of job applicants during receiving unemployment benefits, the entitlement to a one-off payment of 50% of unemployment benefit for the remaining part of the supporting period, provided that the period during which the insured person received unemployment benefits lasted for a minimum of three months.”

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

ESC 12§1 SPAIN

The Committee concludes that the situation is not in conformity with Article 12§1 of the Charter on the following grounds:

- it has not been established that the levels of sickness benefits are adequate;

¹ Calculation for 15 years of insurance (in the bracket for 30 years of insurance), APWP (average personal wage point) determined to 0.4; while the APWB lower than 1 was added in 2008 with 28% and in 2009 with 24% of the difference between the value of 1 and the APWB.

- the level of unemployment benefit for unemployed without family responsibilities is inadequate.

First ground of non-conformity

83. The representative of Spain provided the following written information:

"It should be noted that the Committee refers to the process of regularising immigrant workers that started in Spain in 2005.

Under the third transitional provision of royal decree 2393/2004 of 30 December, approving the regulation of Organic Law 4/2000 on rights and freedoms of foreign nationals in Spain and their social integration, between February and May 2005 there was a process of "normalisation" (as the royal decree termed it) of the situation of foreign workers with a genuine employment contract for a minimum period of six months (or three in the case of the agricultural sector) who had arrived in Spain at least 6 months before the regulation came into force.

In the light of this and with a view to the preparation of the next report, the Committee asked for fresh information on the impact of this regularisation process, particularly with regard to social security, preferably backed up by statistics.

Without prejudice to the future submission of information on the impact of this process in the social security field, the following written information can be provided:

- in the course of the regularisation process between February and May 2005, 691 655 applications (initial residence permits and work permits on behalf of others) were lodged, of which 578 375 were accepted and 44 457 refused (the other applications were inadmissible or archived).
- Of the 578 375 foreign nationals who were granted a permit, 564 487 were registered in the social security system.
- Foreign nationals who obtained a permit and were then subsequently affiliated to the social security break down as follows:
 - 80 373 are affiliated to the special agricultural scheme (14.24%)
 - 655 are affiliated to the seafarers scheme (0.12%)
 - 187 296 are affiliated to the domestic employees scheme (33,18%)
 - Within the general social security scheme (51.46%), 56 776 are involved in hotel-related activities, 112 409 are in construction and 126 978 are in other activities.

The ECSR nevertheless concluded that the situation in Spain was not compatible with this article and this paragraph of the European Social Charter, because it had not been shown that sickness benefits were adequate.

In support of our response, the part of the annual report on Spain's application of the European Code of Social Security is attached - reference period to 31 December 2007.

Part II

Medical care

Article 9

A. paragraph c - prescribed classes of residents, constituting not less than 50 per cent of all residents – has been selected.

B. All those resident in Spain who are affiliated to the social security system or other public social protection schemes are protected, together with non-affiliated persons with no other resources.

C.iii. Article 74. Title III.

A. Number of residents protected (including rights holders and beneficiaries)	43 252 942
B. Total number of residents (including children and elderly persons)	46 157 822
C. Number of residents protected as a percentage of total residents A	93.71%

The figure in part A refers to residents protected by the national health system. The remainder of the population have no entitlement because they are above the income limit.

Part III

Sickness benefit

Article 15

A. paragraph a - prescribed classes of employees, constituting not less than 50 per cent of all employees – has been selected.

B. All employees covered by the general or special social security schemes are protected.

C. Article 74. Title I.

A. Protected employees:	
i. Under the general scheme	14 719.8
ii. Under the special schemes:	
– Agricultural employees	728.6
– Employed seafarers	51.4
– Coal mining industry	8.2
iii. TOTAL	15 508.0
B. Total number of employees	15 508.0
C. Total employees under (A.iii) as a percentage of all employees (B)	100%

Source: Ministry of Labour and Social Security Date: 31-12-2007.

Article 16

A. Article 65 has been used to calculate the benefit.

Article 65. Title I.

A. This benefit is calculated on the basis of daily contributions, obtained by dividing the previous month's base by the number of days to which the contributions correspond. A percentage of 60%, which is the daily benefit rate from the 4th to the 20th day, is applied to this base. The applicable percentage from the 21st day is 75%.

B. For the purposes of this article, the skilled manual worker is the one specified in paragraph 6c, namely a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected. The social security contributions base coincides with these earnings.

B. 1 The average earnings of protected persons are derived from the national statistical institute's occupational costs survey, which covers ordinary monthly payments, to which are added extraordinary payments divided pro rata.

B. 2 The previous earnings base period, which determines the salary of a skilled worker, corresponds to the average salary in 2007.

C. Average salary of the selected male manual worker: 2 099.78 euros per month, or 25 197.36 per year and 69.99 per day, all gross.

The net salary of such a worker without children is 54.35 euros/day or 1 630.48 euros/month (16% personal income tax and 6.35% social security contributions), or an annual salary of 19 565.75 euros. The net salary of a similar worker with two children is 57.15 euros/day or 1 714.47 euros/month (12% personal income tax and 6.35% social security contributions), or an annual salary of 20 573.65 euros.

Article 65. Title II.

Typical beneficiary: man with wife and two children and a salary equal to point C of the previous title.

D. Benefit paid during the basis period.

Basis for calculation: 69.99 euros/day.

The daily gross and net benefit levels, taking account of personal income tax (12% for a married man with non-working wife and two children) and 6.35% employee's social security contributions (4.7% for general contingencies, 1.55% for unemployment and 0.1% for vocational training), are as follows:

Payment period	Gross amount euros/day	Net amount euros/day
4 th to 20 th day	42.00	34.29
From 21 st day	52.49	42.86

E. No entitlement to family allowances as income is above the entitlement level.

F. No entitlement to family allowances as income is above the entitlement level.

G. Percentage (D)/(C).

Payment period	Gross	Net
4th to 20th day	60.0%	60.0%
From 21 st day	75.0%	75.0%

Article 65. Title V.

Beneficiary: employed woman with income equal to male skilled manual worker.

For benefits and income tax purposes, she is considered not to have any children.

D. Amount of benefits

Payment period	Gross amount euros/day	Net amount euros/day
4 th to 20 th day	42.00	32.61
From 21 st day	52.49	40.76

G. Benefits as percentage of base salary:

Payment period	Gross	Net
4th to 20th day	60.0%	60.0%
From 21 st day	75.0%	75.0%

Article 12.2 of the European Social Charter requires parties to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102 concerning Minimum Standards of Social Security. In the light of the foregoing, Spain is therefore in conformity with this article. The latest information on the subject was submitted recently and concerns 2007 data. The most recent report on the European Code of Social Security submitted in 2009 and referring to 2007 completes the formula relating to the C102 Social Security (Minimum Standards) Convention.

We therefore append the part relating to health care in the annual report on the application of the European Code of Social Security, which shows that the daily benefit ($500.25/30 = 16.6$) is above the poverty level.

In addition to social security benefits, nearly 50% of employees with a collective agreement have a supplementary insurance depending on their salary.

Nevertheless, the ECSR considered that "the level of unemployment benefit for unemployed without family responsibilities is inadequate" and argued in support of this that according to MISSOC data, unemployment benefit in Spain for unemployed persons without family responsibilities was €399.36 per month, that is below the poverty threshold, which Eurostat had calculated as €400.2.

The following written information is submitted with regard to this conclusion:

- The Committee's conclusion seems to refer to the minimum amount of contributory unemployment benefit for unemployed people without dependants referred to in section 211.3 of the General Social Security Act (LGSS), which Spain sets at 80% of the public income indicator (IPREM), increased by one-sixth, and, in addition to this amount, the payment by the social security managing bodies of a sum equivalent to the employer's social security contributions and a part of the employee's contribution.

- In 2009 the gross minimum benefit was €482 per month and the social security contributions paid by the managing body amounted to €184 per month, making a total of €666 per month. In 2010 the gross minimum was €497 per month and the social security contributions amounted to €187 per month, totalling €684 per month.

The amounts therefore exceed the poverty threshold of €400.20 per month.

- It should be noted, however, that unemployed people without dependants receiving the minimum contributory unemployment benefit accounted for only one percent of the total in January 2010, whereas the other 99% received contributory unemployment benefits well above the minimum.

- For this reason, the conclusion is that in Spain, all recipients of contributory unemployment benefits are sufficiently protected, receiving a sum that exceeds the poverty threshold, and that unemployed people without dependants account for only 1% of the total recipients of these benefits.

2. Secondly, the Committee asked "whether there is an initial period during which a jobseeker may refuse to take up a job offer on the ground that it does not meet his/her occupational requirements or experience without risking a suspension/end to his/her unemployment benefits".

The following written information is submitted with regard to this conclusion:

- According to section 231.3 of the General Social Security Act, on unemployment protection, adequate employment is deemed, among other things, to be employment sought by the individuals concerned that is consistent with their normal occupation or any other occupation compatible with their

physical abilities and training. At all events it is defined as any job that matches the last occupation of the employee concerned, so long as this lasted at least three months.

Nevertheless, after one year of uninterrupted receipt of benefits, other jobs that the public employment service considers an individual could perform may be considered appropriate.

• In such cases recipients of uninterrupted benefits must accept job offers if they are considered appropriate. Unjustified refusal of such offers is a serious offence that may be punished by:

First offence: loss of 3 months' benefit.

Second offence: loss of 6 months' benefit.

Third offence: total loss of entitlement. "

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

Second ground of non-conformity

85. The representative of Spain made the following statement:

"The following information is submitted with regard to this conclusion:

– The Committee's conclusion seems to refer to the minimum contributory unemployment benefit for unemployed people without dependants referred to in section 211.3 of the General Social Security Act (LGSS), which Spain sets at 80% of the public income indicator (IPREM), increased by one-sixth. The social security managing bodies also make an additional payment equivalent to the employer's social security contributions and a part of the employee's contributions.

– In 2009 the gross minimum benefit was 482€ per month and the social security contributions paid by the managing body amounted to 184€ per month, making a total of 666€ per month. In 2010 the gross minimum was 497€ per month and the social security contributions amounted to 187€ per month, totalling 684€ per month. The amounts therefore exceed the poverty threshold of €400.20 per month.

It should be noted, however, that unemployed people without dependants receiving the minimum contributory unemployment benefit accounted for only one percent of the total in January 2010, whereas the other 99% received contributory unemployment benefits well above the minimum.

For this reason, the conclusion is that in Spain, all recipients of contributory unemployment benefits are sufficiently protected, receiving a sum that exceeds the poverty threshold, and that unemployed people without dependants account for only 1% of the total recipients of these benefits."

86. The representative of Spain also provided further information to reply to other questions raised by the ECSR in its conclusion.

87. The Committee invited the government of Spain to provide the relevant information and figures enabling the ECSR to assess the situation properly in its next report. Meanwhile, it decided to await the next assessment of the ECSR on Article 12§1 of the Charter.

ESC 12§1 "The former Yugoslav Republic of Macedonia"

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 12§1 of the Charter on the ground that the minimum duration of payment of unemployment benefit is too short.

88. This is a conclusion of non-conformity for the first time. The representative of "the former Yugoslav Republic of Macedonia" informed that the written information was still

under preparation and the Committee decided to hear the oral information that the representative of “the former Yugoslav Republic of Macedonia” provided as below:

89. The payment of the unemployment benefit, as one of the rights of the unemployed persons in “the former Yugoslav Republic of Macedonia”, depended on the period for which the unemployed person had paid contributions to the social security system, i.e. the period the person was employed.

90. Having regard to the unfavourable situation in the country concerning the unemployment, during the past period, in cooperation with several international institutions and organizations, including the World Bank, analyses and assessments had been made and certain recommendations had been obtained for undertaking measures that would improve the situation and at the same time would discourage the unemployed persons to remain for a longer period registered with the employment services. Besides clearly establishing the need for substantial transfer of the focus from passive towards active labour market measures, following which the preparation and implementation of the Annual Operational plans on active labour market policies had commenced, subject to analysis and discussion has been also, the redesign of the existing system of granting the unemployment benefit.

91. With the amendments of April 2006, changes had been made concerning the time period for receiving the financial benefit in case of unemployment, whereby the minimum period for receiving the unemployment benefit was set out to be one month (for persons that were employed 9 consecutive months or 12 months with interruptions during the last 18 months). When defining the period for receiving this benefit, the establishing of a proportional ratio between the minimum and maximum period, i.e. duration for receiving the unemployment benefit, was also taken into account.

92. It was considered that such a measure would be stimulating and together with the other existing active labour market measures, it would contribute for the unemployed persons to seek work more intensively and actively and to find employment.

93. Pursuant to the data obtained from the Employment Service Agency of “the former Yugoslav Republic of Macedonia”, the number of persons receiving the unemployment benefit with a minimal prescribed duration of one month, was relatively small, in relation to the total number of beneficiaries of this right. According to the data for 2009, the number of these persons receiving the unemployment benefit in duration of 1 month, varied from 0.3% up to 1.9% of the total number of beneficiaries in the course of the month (in average: 0.7%), i.e. in absolute figures, the average number of these beneficiaries amounted to 172.

94. Concerning the ground of a too short period of one month, in the following period additional researches and analyses would be made in relation to the impact of this measure over the unemployment situation, as well as the corresponding financial effects, after which appropriate solutions and measures would be proposed and undertaken.

95. To the question of the representative of Portugal, the representative of “the former Yugoslav Republic of Macedonia” answered that the unemployment rate in the country at present is at the level of 32%.

96. The Committee took note of the information provided by the representative of “the former Yugoslav Republic of Macedonia” and decided to await the next assessment of the ECSR.

ESC 12§1 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 12§1 of the Charter on the ground that the minimum levels of Statutory Sick Pay, Short Term Incapacity Benefit and contributory Jobseeker's Allowance for single persons are manifestly inadequate.

97. After having supported the common concerns referred to above, the representative of the United Kingdom highlighted that in April benefits were increased by 5%.

98. The Committee invited the government of the United Kingdom to provide the relevant information and figures enabling the ECSR to assess the situation properly in its next report. Meanwhile, it decided to await the next assessment of the ECSR on Article 12§1 of the Charter.

Article 12§2 – Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of the international labour convention no. 102

ESC 12§2 SLOVAK REPUBLIC

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 12§2 on the ground that it has not been established that Slovak Republic maintains a social security system that meets the requirements of the ILO Convention No 102.

99. The representative of the Slovak Republic provided the following written information:

“In reference to the Paragraph which refers to the establishment and maintenance of the social security system as required by ILO Convention No. 102, we state the following:

The conditions for entitlement to the disability pension are governed by Act No. 461/2003 Coll. on social insurance, as amended. The insured person is entitled to the disability pension, if he/she became disabled, reached the necessary number of years of pension insurance and as of the date of disability he/she did not qualify for the old-age pension or has not been granted the early old-age pension. Also entitled to the disability pension is a natural person who became disabled when a dependent child and who is permanently resident in the Slovak Republic under the conditions laid down by the law, as well as a natural person who became disabled during full-time doctoral study, who has not reached 26 years of age and is permanently resident in the Slovak Republic.

An update of the provisions of §72 of Act No. 461/2003 Coll., as amended by Act No. 449/2008 Coll. came into effect on 1 January 2010, establishing new conditions for obtaining the number of years of pension insurance required for the entitlement to the disability pension to arise to the insured.

The number of years of pension insurance for the purpose of the disability pension is determined from the period before the occurrence of disability, where the required number of years of pension insurance for entitlement to the disability pension to arise to the insured at an age of up to 20 years is less than one year of pension insurance, at an age from 20 up to 24 years at least one year of pension insurance, at an age from 24 up to 28 at least two years of pension insurance, at an age from 28 up to 34 at least five years of pension insurance, at an age from 34 up to 40 years at least eight years of pension insurance, at an age from 40 up to 45 years at least ten years of pension insurance and at an age of more than 45 years at least 15 years of pension insurance.

The condition of the number of years of pension insurance is deemed to have been met in the case of an insured person who became disabled due to occupational accident or occupational disease and in the case of a natural person who became disabled when a dependent child or in full-time doctoral study and who has not reached 26 years of age. The number of years of pension insurance for the purpose of the disability pension is determined from the whole period before the occurrence of disability.

Act No. 461/2003 Coll. on social insurance, as amended, legislatively regulates survivor benefits which are granted and paid from the social insurance system. Survivor pensions (orphan's pension, widow's

pension and widower's pension) are paid from the pension insurance subsystem; survivor annuity and one-off compensation is paid from the accident insurance subsystem.

Entitlement to the orphan's pension appertains to a dependent child whose parent or adopter has died and if such parent or adopter was as of the date of death a beneficiary of pension benefit (old-age pension, early old-age pension or disability pension) or had reached the number of years of pension insurance required for the entitlement to the disability pension to arise or who met the conditions for entitlement to the old-age pension or who died due to an occupational accident or an occupational disease. Entitlement to the orphan's pension appertains to such child until reaching 26 years of age.

Entitlement to the widow's pension appertains to a widow whose deceased husband was as of the date of death a beneficiary of the old-age pension, the early old-age pension or the disability pension, or whose deceased husband met as of the date of death the conditions for obtaining the number of years of pension insurance required for entitlement to the disability pension to arise or died due to an occupational accident or an occupational disease. This pension benefit is paid during a period of one year from the death of the widow's husband. After this period, a widow is entitled to the payment of the widow's pension, if caring for a dependent child, if disabled, if having brought up at least three children, if having reached the age of 52 years and having brought up two children or if having reached retirement age. The same applies to the entitlement of a widower to the widower's pension.

Survivor accident annuity appertains to any natural person towards whom a natural person insured against accident who died due to an occupational accident or an occupational disease had a maintenance obligation determined by a court at the time of death and had not reached retirement age or had not been granted with the early old-age pension at the time of death. This benefit is paid to the entitled person until the period when the deceased would have reached retirement age.

One-off compensation. The valid legal regulations of Act No. 461/2003 Coll. on social insurance confers the entitlement to one-off compensation to a husband, wife and dependent child of a natural person insured against an accident who died due to an occupational accident or an occupational disease.

Average monthly amount of survivor benefits (as of 31 December):

Year	2008	2009
Widow's pension	SKK 5,852 (EUR 194.25)	EUR 209.75
Widower's pension	SKK 4,309 (EUR 143.03)	EUR 157.86
Orphan's pension	SKK 3,461 (114.88 EUR)	EUR 122.58"

100. 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 12§3 – Development of the social security system

ESC 12§3 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 12§3 of the Charter on the ground that it has not been established that the developments in the sickness insurance and in the old age pensions schemes have maintained a basic compulsory social security system which is sufficiently comprehensive.

101. The representative of the Czech Republic provided the following written information:

“In respect of the sickness insurance scheme we would like to make clear that no significant reform has not been undertaken during the reference period either during the previous reference period. Some partial changes were introduced which were also described in the last report as well as in the previous report.

We would like to reiterate that relevant period for the calculation of the daily assessment base was changed in the period from 2003 to 2004. Further, a percentage rate for the calculation of the benefit was reduced in the case of sickness benefits for the first 3 calendar days of incapacity to work from 50% to 25% and in the case of quarantine from 69% to 25% of the daily assessment base, from the 4th day onwards the rate remained at 69%.

The third report also explained the reasons which were behind these legislative changes which did not created any significant reform. The report stated: ‘With a view to limiting the abuse of the sickness insurance system and also contributing to the reduction of the government budget deficit in the reference period changes were made to the legal regulation that reduce the amount of the sickness benefits and other sickness insurance benefits.’

After these changes were introduced, the Ministry of Labour and Social Affairs noticed a substantial fall of number of insured events – sickness cases.

In the sixth report, the Czech Republic provided: 'During the period under review, the reduction levels used to establish the average daily assessment base, which is used to calculate sickness insurance benefits, were raised. The first reduction level was raised from 480 CZK to 510 CZK and then to 550 CZK. The second reduction level was raised from 690 CZK to 730 CZK, and then to 790 CZK.' As a consequence of this change, the sickness benefit raised.

As regards the old pension scheme, we would like to point out that no significant reform has been carried out in the respective reference period. The changes which were introduced were solely of parametric character and their aim was to secure maintainability of the pension scheme and deepen pensioners' credit of their pension.

In the sixth report, the Czech Republic provided: 'The retirement age is raised every year by 2 months for men and by 4 months for women until it reaches 63 years for men and 59-63 years for women, depending on the number of children they have raised.' The reason for this gradual increase of retirement age is ageing of the society, better access to and higher quality of medical care and lower birth rate which face most of the European countries. Retirement age in the Czech Republic does not go over the standard set by the European Code of Social Security.

Further, the sixth report stated: 'During the period under review, restrictions were placed on the options for taking up the first type of early old-age retirement. This type of retirement may only be taken if the conditions stipulated in the Act were fulfilled by December 31st, 2006.' A reason for this restriction which does not affect many people is the same one as in the previous case.

Another change which was mentioned in the sixth report introduced a maximum annual employee assessment base for the payment of insurance premiums. As a result of this maximum level, the payment of insurance premiums in the case of employees with high incomes has decreased. At the same time, types of incomes included in the assessment base for the purposes of calculating social security insurance were expanded.

In the sixth report, the Czech Republic provided information on adjustment of the amounts for setting the calculation base (the reduction levels for the personal assessment base). These reduction levels were increased. Thus, the Czech Republic registered an increase in the level old-age pensions - in 2005 of an average of 416 CZK, in 2006 by 385 CZK, in 2007 by 508 CZK and in 2008 by 350 CZK.

All these changes provided in the sixth report did not create any significant change or reform which would affect the pension system as a whole and could cast doubt on maintenance of a basic compulsory social security system which is sufficiently comprehensive.

We think we have provided enough information on the changes which occurred in the reference period from 2003 to 2004 and in the reference period from 2005 to 2007. Unfortunately, the ECSR does not specify what information it would like to obtain exactly. For better understanding of our Social Insurance pillar we would like to provide an Actuarial Report on Social Insurance 2008 (it was handed over to a member of the Secretariat during 121st meeting of the Governmental Committee) which includes not only statistical data for the last 5 years but also analyses and projections of possible impact currently discussed or proposed adjustments to the system.

Finally, we would like to inform the Committee that a new Act on Sickness insurance was introduced, and on 1st January 2009 it came into force. Since 1st January 2010 new important amendment of the old-age pension scheme was passed. We will provide more details in the next report."

102. 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 12§3 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 12§3 of the Charter on the ground that it has not been established that sufficient steps have been taken to raise progressively the system of social security to a higher level.

103. The representative of Luxembourg provided the following written information:

"Improving the Social Security system

1. Act of 22 December 2006: a special agreement has been reached between the sickness insurance scheme and service providers in which the former will meet the cost of certain specified medical acts provided to patients in convalescent centres. The cost of non-hospital-based psychiatric therapeutic procedures is now covered.
2. Act of 22 December 2006: clarification of the law governing parental leave to resolve certain practical difficulties in its interpretation and application.

3. Act of 30 November 2007: establishes rules governing parental assistance, namely the regular and paid care of young children. This activity is now subject to authorisation issued by the ministry of the family, and is conditional, *inter alia*, on the applicant being personally affiliated to the social security system and taking out professional indemnity insurance.
4. Convention of 30 November 2007: introduces a pilot programme to support cessation of tobacco use.
5. Act of 21 December 2007: introduction of a children's tax bonus to replace the child tax relief from which parents of one of more children benefited, so long as they were liable to income tax. The change helps families with dependent children on low or modest incomes who did not formerly benefit from child tax relief. The child bonus was also intended to compensate for the freezing of family allowances as a result of the decision to no longer index link them to the cost of living. It supplements other highly family-oriented measures such as the very significant rise in places available in nurseries and childcare centres.
6. Act of 13 May 2008: introduction of a single status that ends the outdated distinction, or even discrimination, between manual and non-manual private sector employees so that the Labour Code can be applied uniformly to all employees. There are no longer any distinctions in labour law between "blue collar" and "white collar" workers and all persons working for Luxembourg employers now have "employee" status. The main features of this act are:
 - uniform system of remuneration of all employees by the general application of employers' obligation to continue to pay employees during incapacity for work, resulting in:
 - single contribution rate to finance sickness benefit for all employees;
 - competitive advantage following the reduction in the general level of social contribution rates;
 - net salaries the same for all employees with equal gross salaries;
 - elimination of differences of treatment for manual employees with regard to severance pay, payments to the survivor(s) of deceased employees, collective agreements, supplementary pensions and compensation for overtime worked;
 - administrative simplification for employers;
 - modernisation and simplification of administrative arrangements, and therefore:
 - greater government efficiency with a better service to clients and more guaranteed access for insured persons to their social security entitlements.
7. Act of 16 March 2009: introduction of a right to palliative care for all persons in an advanced or terminal stage of a serious and incurable condition, irrespective of cause. Such care may be provided in hospital, in an establishment that has been approved under the sickness and dependency insurance legislation or at home. In the case of persons being cared for at home or in an assistance and care institution there is close collaboration with the hospital service. The state organises appropriate training for medical and care staff.

The act also introduced special leave to assist a terminally ill person, which can be requested by any employee with a close relative in the terminal phase of a serious illness. Such leave is treated in the same way as incapacity for work and the same legal provisions and employment protection arrangements apply.
8. Act of 16 March 2009: establishing rules governing euthanasia, defined as a medical act in which a doctor intentionally ends a person's life or intentionally assists another person to commit suicide or provides that person with the means to do so, at that person's express and deliberate request.
9. Act of 11 November 2009: temporary measures to reduce the effects of the economic crisis on youth employment and to help qualified and non-qualified young people to find stable employment. Even before this legislation, there were employment measures aimed essentially at non-qualified young people but these have been extended to young people with qualifications to give them work experience to supplement those qualifications.
10. Regulation of 25 June 2009: the basis for calculating the compensation allowance is no longer the last month's salary but the highest of the last three months' salaries. This was in the interests of employees, who under the old system were sometimes adversely affected when only the last month's salary, which was often much lower because of the poor economic situation, was taken into account. It also encourages employee participation in training during periods of inactivity by increasing the state subsidy. The aim is to make employees more employable.
11. Act of 18 December 2009: financing of sickness insurance. To avoid increased contributions, and thus an extra burden on employees, employers and the state during the current difficult economic and financial climate, the budget act reduced the level of the reserve by 5.5%, as a one-off measure. To improve the sickness insurance scheme's financial situation the government is preparing a strategy with the social partners and care providers that will lead to a series of laws, regulations and agreements, to be implemented before the end of 2010. Draft legislation to reform the health care system was tabled in the Chamber of Deputies on 6 October 2010.

12. Act of 12 May 2010: reform of the accident insurance system, the structure of which, despite numerous detailed changes, dates back to 1925. The most important innovations concern accident insurance cash benefits. The flat-rate payment based only on the accident pension has been replaced by a more comprehensive system of reparation of the different forms of injury suffered, as it exists in ordinary law.

The accident insurance compensation system has been brought into line with the overall compensation system, though it has not been aligned completely. However insured persons continue to benefit from more advantageous conditions than those of the ordinary law, since the system takes no account of the notion of fault, on either the employer's or the employee's part. The accident insurance system now pays distinct benefits for loss of income and for non-pecuniary damage that may result from physical injuries suffered. The latter are paid when, following an occupational accident or disease, an individual has permanent total or partial incapacity.

The injury suffered is assessed on the basis of official scales, irrespective of the individual's income. Unlike the partial, complete or interim pension, these benefits are intended to compensate for non-pecuniary damage suffered rather than to act as a replacement income so they are not liable to any taxes or social charges.

- The compensation for physiological damage and loss of amenity is based on a final incapacity score derived from an official medical scale. The payments increase disproportionately as the level of incapacity rises.
- The compensation for pain and suffering is intended to cover the period until the injuries heal. The classification of injury suffered on a numerical scale is the responsibility of the social security medical control service.
- The aesthetic damage is also assessed by the control service to take account of the after-effects of the injuries suffered and the victim's age. It takes the form of a flat-rate payment based on a numerical scale.

13. Act of 26 July 2010: The traditional family allowances paid to students have been replaced by study allowances, in the form of non-repayable grants and repayable loans, whose level has been increased. The level of assistance is not now based on the parents' income but on that of the student and his or her expenses, such as the cost of university enrolment. The amount may be increased according to students' financial and social situation. These changes also concern young persons undertaking voluntary service, who are now eligible for monthly financial assistance.”

104. 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 12§4 – Social security of persons moving between states

105. Situations are divided into three groups of grounds for non-conformity as follows, with the exception of situations concerning the **Republic of Slovakia** and **Spain**, which are presented *in fine* of Article 12§4:

- **Group 1:** Right to retain accrued benefits of persons moving to a State Party not covered by Community regulations or bound by a bilateral agreement: Denmark, Iceland, Belgium, Cyprus, Estonia, Finland, Lithuania, Netherlands, Romania;
- **Group 2:** Nationals of States Parties not covered by Community regulations or bound by a bilateral agreement who cannot accumulate insurance or employment periods completed in other States: Denmark, Germany, Greece, Iceland, Poland, Belgium, Cyprus, Estonia, Finland, France, Ireland, Norway, Romania, Czech Republic;
- **Group 3:** Equal treatment not ensured during the period of residence: Denmark, Belgium, Cyprus, Lithuania, Moldova and Slovenia.

Group 1: Right to retain accrued benefits

106. States concerned: **Denmark, Iceland.**

ESC 12§4 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 12§4 of the Charter on the following grounds:

- ...;
- ...;
- the retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Denmark is not guaranteed; **[Group 1, third ground of non-conformity]**
- ...

ESC 12§4 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 12§4 of the Charter on the following grounds:

- the retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Iceland is not guaranteed; **[Group 1, first ground of non-conformity]**
- ...

107. The representative of the Netherlands said that Article 12§4 entailed the use of complex co-ordination arrangements for social security, but he expressed doubts about the value of these arrangements, since the EU provided for the free movement of workers. The legal situation differed according to whether or not the countries concerned were EU member states.

108. The Secretariat explained that the EU regulations met the conditions of Article 12§4. The problem was for countries that were not EU members.

109. The representative of Lithuania said that in the previous supervision cycle the Committee had invited the government of Lithuania to provide information on migration levels. The figures showed that very few persons were concerned. She asked why there had been a conclusion of non-compliance for Lithuania when, for instance only twenty-ix (the largest immigration from Moldova in 2005) of so individuals were involved.

110. The Secretariat said that the ECSR understood that certain countries had difficulty negotiating bilateral agreements when the figures showed that only a limited number of persons were affected. However, it had to abide by the wording of Article 12§4 and states must find other means of satisfying these persons' rights, such as unilateral rules.

111. The representative of Germany did not consider it possible to comply with Article 12§4 in the case of Turkey until common measures had been adopted. No unilateral solution was possible.

112. The representative of France thought that bilateral agreements could be the answer, but only if the countries concerned asked for them. At all events there were always problems since there were EU member states on the one hand and non-EU Council of Europe member states on the other.

113. The representative of Estonia agreed with the representatives of Germany and the Netherlands. Freedom of movement meant that countries could export benefits and must provide information on how these benefits were used. The transmission of this information could not be based on unilateral measures. Unilateral measures would course administrative and budgetary problems as there would not be appropriate oversight of the

situation. The ECSR said that states should ratify the European Convention on Social Security. Yet the Netherlands had ratified this Convention and was still deemed not to be in conformity.

114. The representative of Norway emphasised the importance of reciprocity. Article 12§4 called for the conclusion of bilateral or unilateral agreements but the latter option was a difficult one to follow. Reciprocity was the fundamental principle. There were also problems with bilateral agreements, but Norway had never refused to conclude such an agreement if another country requested it.

115. The representative of Belgium said that the problem was that the ECSR obliged states to take unilateral measures in the absence of an agreement.

116. The representative of the Czech Republic agreed. The unilateral approach was not possible. There had to be bilateral or even multilateral agreements.

117. The Chair proposed that a joint statement be issued on this specific ground of non-conformity.

118. The Committee agreed on the following joint statement for the nine States that were not in conformity because it could not be guaranteed that persons moving to another state party would retain their accrued rights:

"The Committee considers that ratification of the European Convention on Social Security and the conclusion of bilateral agreements is a means of securing compliance with Article 12§4 of the Charter.

The retention of social security benefits, irrespective of the beneficiaries' movements between States Parties, calls for co-ordination of the administrative procedures of the states concerned. States should therefore consider the need for further bilateral agreements with non-member countries of the EU if they have a mutual interest in concluding such agreements and there is a significant movement of population between the two countries concerned."

Group 2: Accumulation of insurance or employment periods

119. States not covered by EU agreements, which cannot accumulate insurance or employment periods: **Czech Republic, Denmark, Germany, Greece, Iceland, Poland.**

ESC 12§4 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 12§4 of the Charter on the ground that the retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Czech Republic is not guaranteed. [Group 2]

ESC 12§4 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 12§4 of the Charter on the following grounds:

- ...;
- ...;
- ...;

- nationals of States Parties not covered by Community regulations or bound by agreements with the Denmark are not provided with the possibility of accumulating periods of insurance or employment completed in other countries. **[Group 2, fourth ground of non-conformity]**

ESC 12§4 GERMANY

The Committee concludes that the situation of Germany is not in conformity with Article 12§4 on the ground that nationals of States Parties not covered by Community regulations or bound by agreements with Germany are not provided with the possibility of accumulating periods of insurance or employment completed in other countries. **[Group 2]**

ESC 12§4 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 12§4 of the Charter on the ground that accumulation of insurance periods acquired under the legislation of a State Party which is not covered by Community regulations or not bound by an agreement with Greece is not guaranteed. **[Group 2]**

ESC 12§4 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 12§4 of the Charter on the following grounds:

- ...:
- nationals of States Parties not covered by Community regulations or not bound by an agreement concluded with Iceland have no possibility of accumulating insurance or employment periods completed in other countries. **[Group 2, second ground of non-conformity]**

ESC 12§4 POLAND

The Committee concludes that the situation of Poland is not in conformity with Article 12§4 on the ground that nationals of States Parties not covered by Community regulations or bound by agreements with Poland are not provided with the possibility of accumulating periods of insurance or employment completed in other countries. **[Group 2]**

120. The Committee agreed on the following joint statement for the fourteen countries that were not in conformity because nationals of States Parties not covered by Community regulations and not bound by an agreement were not automatically entitled to the accumulation of insurance or employment periods:

"The Committee considers that ratification of the European Convention on Social Security and the conclusion of bilateral agreements is a means of securing compliance with Article 12§4 of the Charter.

The retention of social security benefits, irrespective of the beneficiaries' movements between States Parties, calls for co-ordination of the administrative procedures of the countries concerned. Countries should therefore consider the need for further bilateral agreements with non-member countries of the EU if they have a mutual interest in concluding such agreements and there is a significant movement of population between the two States concerned."

Group 3: Equal treatment not ensured during the period of residence:

121. State concerned: **Denmark.**

ESC 12§4 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 12§4 of the Charter on the following grounds:

- the principle of equal treatment for nationals of other States Parties is not guaranteed in matters of social security; **[Group 3, first ground of non-conformity]**

- the residence requirement imposed on nationals of states not covered by Community regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pensions is excessive; **[Group 3, second ground of non-conformity]**
- ...;
- ...

First ground of non-conformity

122. The representative of Denmark provided the following written information:

“The basic principle of equal treatment of nationals of another contracting party with nationals of a Member State in relation to social security may be complied with by entering into bilateral and multilateral agreements hereon.

Within the scope of EU regulations on the coordination of social security all EU nationals and the members of their family moving across the Danish border, are comprised by such coordination rules on social security in relation to Denmark. This means that nationals from other EU Member States and their family members, irrespective of nationality, are given equal treatment with Danish nationals as far as entitlement to social security is concerned.

Regulation 859/03 extending Regulation 1408/71 to also applying to third country nationals, does not apply to Denmark as Denmark has laid down legal reservation in relation to the statutory basis of the Treaty applying to Regulation 859/03 as far as Denmark is concerned. It is therefore not possible (neither legally nor politically) to apply Regulation 859/03 in respect of Denmark. The Danish side has for a number of years tried to enter into parallel agreements with other EU Member States in this area, but it has not been possible to realize such agreements at EU level.

The only and last possibility to secure the principle of equal treatment in relation to social security, as laid down in Art. 12 § 4 of the Social Charter, is to enter into bilateral agreements with individual countries. As far as Council of Europe Member States are concerned Denmark has so far entered into a bilateral agreement in this area with Croatia. The entering into bilateral agreements presupposes fundamental mutuality on both sides. It is therefore important that both countries have an interest in such agreements and that both countries are prepared to comply with the principles on which the agreement is founded.

In recent years Denmark has only received application from one single Council of Europe Member State (Moldova) to enter into a bilateral agreement. Denmark replied to this request with a reference to the fact that Moldova is included in the number of countries that has applied for an Association Agreement with the EU, of which social security is expected to be an element. It is therefore the opinion of Denmark that a bilateral agreement with Moldova cannot be entered into for the time being.”

123. 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

124. The representative of Denmark said that the situation was unchanged, and there was still a ten year residence requirement. The law remained the same. The Government believed that there should be a link between Denmark and the beneficiary before the latter was eligible for a Danish pension. A minimum 10 years' residence was required. There was a single system, financed entirely from taxes. Exceptions to the ten-year residence requirement were only possible if there were agreements between countries. The rule applied nationals of state parties not bound by Community regulations or bilateral agreements.

125. The representative of the ETUC said that the ten-year rule also applied to disabled persons. He asked whether persons who became disabled only became eligible for a pension after the ten years had elapsed.

126. The representative of Denmark said that 10 years' residence was, in principle, required to be eligible for the invalidity pension but that it could be paid in other cases depending on individual circumstances.

127. The Committee considered that the length of residence required in Danish law was excessive and asked the Government for detailed information in the next report on possible exceptions to this rule.

Other situations

ESC 12§4 SLOVAK REPUBLIC

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 12§4 of the Charter on the ground that it has not been established that:

- equal treatment of nationals of other States Parties which are not members of the EU or Parties to EEA is guaranteed;
- the retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Slovak Republic is guaranteed;
- the accumulation of insurance or employment periods completed in other States Parties not covered by Community regulations and not bound by a bilateral agreement with Slovak Republic is guaranteed.

First, second and third grounds of non-conformity

128. The representative of the Slovak Republic provided the following written information:

“Disbursement of “Parental Allowances.”

The provision on state social child benefits is legislatively regulated by Act No. 600/2003 Coll. on Child Benefits and on changes and supplements to Act No. 461/2003 Coll. on Social Insurance as amended. Child benefits are family benefits which are subject to the coordination of social security systems within the EU countries, EEA countries and Switzerland pursuant to the relevant regulation of the Community.

However even a foreigner residing on the territory of the SR, who is not a citizen of the EU, EEA and Switzerland, can claim child benefits for his/her dependent child, if he/she has a temporary or permanent residence permit (Act No. 48/2002 Coll. on the Stay of Aliens and on changes and supplements to certain Acts as amended) and his/her dependent child also has a temporary or permanent residence permit on the territory of the SR. If the dependant child of this foreigner residing on the territory of the SR remains in a state which is not a member state of the EU, EEA or Switzerland, the payment of the child benefit is managed in accordance with bilateral agreements on social security concluded between the SR and the relevant state.”

129. 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 12§4 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 12§4 of the Charter on the ground that the length of residence requirement for entitlement to non-contributory old-age pensions is excessive.

130. The representative of Spain provided the following written information:

“The ECSR concluded that the situation in Spain was not in conformity with Article 12§4 of the Charter on the ground that the length of residence requirement for entitlement to non-contributory old-age pensions was excessive.

It is quite true that under the current social security system, irrespective of the nationality of the individuals concerned – Spanish or foreign – a period of legal residence is required to be eligible for non-contributory benefits. In the case of invalidity, a period of five years is required, including two immediately preceding the application for a pension. In the case of old age, the period is ten years between the age of 16 and pensionable age, two of which must be consecutive and immediately precede the pension application.

These conditions have applied from the outset, once it was decided in Act 26/1990 of 20 December to establish a non-contributory benefits scheme within the social security system. When the legislation was drafted, these conditions were precisely those enumerated in the European Convention on Social Security of 14 December 1972, ratified by Spain on 10 January 1986, Article 8.2 of which reads:

"... non-contributory benefits, the amount of which does not depend on the length of the periods of residence completed, may be made conditional on the beneficiary having resided in the territory of the Contracting Party concerned for a period which may not be set:

b. at more than five consecutive years immediately preceding the lodging of the claim, for invalidity benefits ...

c. at more than ten years between the age of sixteen and the pensionable age, of which it may be required that five years shall immediately precede the lodging of the claim, for old-age benefits."

In this specific case, Spanish social security legislation has once more complied scrupulously with another of the Council of Europe's social security co-ordinating instruments, indeed less rigidly in the case of the required period of residence immediately preceding retirement."

131. 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 13§1 – Adequate assistance for every person in need

ESC 13§1 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 13§1 of the Charter on the ground that:

- the level of social assistance is manifestly inadequate
- foreign nationals in Croatia are subject to an excessive length of residence requirement to be eligible for social assistance.

First ground of non-conformity

132. The representative of Croatia provided the following information:

"Social welfare services are considered to be activities of special interest for the Republic of Croatia, as part of which assistance is available and provided to the socially deprived, or other persons unable to meet their basic needs of life.

Social welfare rights, as defined by the Social Welfare Act, are available to every Croatian national and stateless person with permanent residence in the Republic of Croatia. Foreign nationals with permanent residence in the Republic of Croatia may receive those social welfare rights to which they are entitled under the Social Welfare Act and international agreements. Persons who are not among those mentioned above may exercise social welfare rights, on a temporary basis, if their circumstances so require.

Social welfare rights are, as a rule, exercised as rights of "last resort", i.e. after the rights deriving from other systems have been exhausted.

The base rate used to calculate welfare benefits is determined by the Government of the Republic of Croatia (pursuant to the Social Welfare Act), which renders an autonomous decision on this. The base rate is currently HRK 500.00 (EUR 69).

The amount of permanent allowance payable to a family is determined taking into account the particular structure of the family. It depends on special characteristics of each family, such as: the number of family members, their age, inability to work, pregnancy, single parenting, and it is determined as a percentage of the base rate for social welfare benefits. The purpose of this benefit is to enable beneficiaries to satisfy their basic needs (usually considered to include food and other basic, personal needs). It is assumed that everyone should work towards meeting their basic needs and the needs of persons they are obliged to support under the law or

on other legal grounds, and that everyone should make efforts to prevent their own social deprivation as well as that of their family, especially children and other family members unable to support themselves, either by finding a job or by using their income or property.

For instance, a 4-member family consisting of two adults (parents fit to work) and two children (aged 15-18) would be entitled to a monthly allowance of HRK 1,800.00. This family would also be entitled to assistance to cover housing costs in the amount of HRK 900.00 per month.

In addition, the Centre for Social Welfare may also grant other forms of assistance, for example, one-time allowance, which is payable to a single person or a family who, due to current material difficulties, are not able to satisfy some specific needs, including unpaid electricity bills or other housing-relating costs.”

133. Several representatives raised the question of appropriateness of the Eurostat at-risk-of-poverty indicator as in the case of Article 12§1. The representative of France mentioned that no indicator would ever be perfect and all of them had a distorting effect and that this Committee did not have sound arguments against the indicator decided by the ECSR. The representative of the ETUC agreed with France that a subjective assessment was impossible and that this tool produced a meaningful comparison. The representative of Ireland suggested that this matter be raised at the joint bureau meeting with the ECSR.

134. The Committee took note of the information provided and invited the government of Croatia 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

135. The representative of Croatia provided the following written information:

“In relation to provision of social assistance only to foreigners with permanent residence status in the Republic of Croatia, please note that this status may be granted to a foreigner who had been living in Croatia as a temporary resident for 5 years without interruption before the date of filing a request to this effect, pursuant to Article 78, paragraph 1 of the Foreigners Act (OG 79/07 and 36/09).

By way of exception, permanent residence status may be granted even if the requirement of 5-year temporary residence has not been met (Article 80) to:

- a foreigner who had been living in Croatia as a temporary resident for 3 years without interruption before the date of filing the request, provided that he or she had enjoyed the status of a refugee in the Republic of Croatia for at least 10 years;
- a foreigner who is to return to the Republic of Croatia pursuant to the Programme of Return, Reconstruction and Provision of Housing, regardless of the length of temporary residence.”

136. 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.

ESC13§1 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 13§1 of the Charter on the following ground:

- it has not been established that the level of social assistance is adequate;
- the granting of social assistance to foreign nationals is subjected to an excessive length of residence condition.

First ground of non-conformity

137. The representative of the Czech Republic provided the following written information:

“Example of adequacy:

An unemployed individual no longer eligible for unemployment benefit living in a town of 55,000 inhabitants in a standard apartment with living costs of 4,597 CZK.

Housing allowance (State Social support): 3,660 CZK

Supplement for housing (Assistance in Material Need): 937 CZK

Allowance for living allowance (Assistance in Material Need): 3,126 CZK

The given example shows that the housing costs are covered by benefits (housing allowance and supplement for housing), because the actual cost of living for the person stated above correspond with normative costs. Normative costs are stipulated by law and represent the average cost of living of a family or an individual for housing, according to the size of the town and the number of people living in apartment. They include the cost of rent (rented flats) or a similar cost (cooperative flats and owned flats) as well as the price of energy, services, etc. The total assistance through benefits is 7,723 CZK.

The assistance provided in the Czech Republic fully complies with European standards; it is designed not to discourage people from seeking employment and not to cause dependency on social assistance system. The level of assistance is also to be judged with regard to the level of the minimum wage and wages genuinely achieved by a high number of people.

For completeness, we shall add that the statutory minimum monthly wage is 8,000 CZK, while an employee receiving the minimum wage is obliged to pay social and health insurance contributions and taxes.”

138. 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

139. The representative of the Czech Republic provided the following information:

“We believe that the conclusions of ECSR on the discrimination of foreign citizens legally residing in the Czech Republic in terms of the provision of social assistance are entirely wrong. It has been repeatedly emphasized, so far without response, that permanent residency granted to a foreign citizen is not the only condition that allows entry into the system of Assistance in Material Need.

The benefits, including allowance for living, supplement for housing and extraordinary immediate assistance are provided also to foreign citizens who do not have permanent residency in the Czech Republic but who have these rights guaranteed by an international treaty. This includes the European Social Charter to which the legislation of the Czech Republic directly refers to. A person who is legally residing/working in the Czech Republic and is a citizen of a state party to the European Social Charter is entitled to social assistance from the beginning of their stay in the territory of the Czech Republic, i.e. the waiting period is not defined and the required assistance is provided as soon as the situation arises.

Assistance in Material Need, i.e. extraordinary immediate assistance (“emergency benefit”), is provided to an even broader range of people. The benefit is also provided to persons who are legally staying in the Czech Republic. Under certain circumstances (if there health is threatened) extraordinary immediate assistance is provided to people staying in the Czech Republic illegally. Through this provision, effective aid is provided for example to victims of the human slave trade, to persons forced into prostitution or to kidnapping victims, etc.

Several methodological materials are devoted to the topic of a "group of people with entitlement". Special attention is given to this subject during training and the authorities dealing with Assistance in Material Need turn to MoLSA (Ministry of Labour and Social Affairs of the Czech Republic) with requests for individual

consultation if they have any doubts about the correct application of the legislation. MoLSA provides them with such consultations upon request.”

140. The representative of Lithuania asked whether the European Social Charter was directly applicable without a need of a special act. The Czech representative replied that as a monist state, it was directly applicable in the Czech Republic. The representative of Lithuania further asked whether it was explicitly mentioned in the Assistance in Material Need that the nationals of states Parties to the Charter were entitled to social assistance benefits. She said that if there was a provision in the law explicitly stating so, then it would not only be based ‘on interpretation of relevant authorities’ but it would be guaranteed in practice.

141. The Committee asked the government of the Czech Republic to provide detailed information in the next report which would clearly explain the situation of the nationals of States Parties to the European Social Charter and the application of the Charter.

ESC 13§1 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 13§1 of the Charter on the following ground:

- the level of the basic social assistance allowance (*kontanthjælp*) paid to persons under 25 years of age is not adequate;
- the level of starting allowance (*starthjælp*) paid to persons both under and over 25 years of age is not adequate;
- nationals of other States Parties not bound by the European Economic Area agreement or not covered by agreements concluded by Denmark may be repatriated on the sole ground of being in receipt of social assistance for more than six months, unless they have resided in Denmark for more than seven years.

First and second grounds of non-conformity

142. The representative of Denmark provided the following written information:

“The ECSR concludes that the level of the basic social assistance (social assistance allowance) - *kontanthjælp* - paid to single persons under 25 years of age, living separately from parents, as well as the level of starting allowance - *starthjælp* - paid to persons both under and over 25 years is not adequate because the minimum level of assistance that may be obtained is not compatible with the poverty threshold.

People falling within the level of the abovementioned allowances will, as a minimum be guaranteed benefits corresponding to the level of the benefits granted to students in Denmark for their maintenance. It is not desirable that social benefits for young people at the usual training/education age exceed the level for young people receiving education allowance. Using the “risk of poverty threshold” would mean a rise in allowance of 50 per cent if a person gives up education and thus receives social assistance in stead.

The Danish Government has had significant challenges in setting up the support system in a way that both work and education pay compared to receiving allowances. This is the reason for introducing the starting allowance, which is a part of “A new policy for foreigners”. And it has worked. Today labour market participation of the target group is much higher than it used to be, and this was the main policy behind introducing starting allowance.

The Danish Government therefore considers the levels of the above mentioned allowances to be politically appropriate, because higher allowances would twist the education incentive structure for young people, and the education and employment incentive structure for people receiving starting allowance.

First of all the Committee interprets the wording “adequate resources” in Article 13§1 to the effect that the level of assistance should not fall under the poverty threshold. In this context it is very important to stress that the EU has no poverty threshold but an “at risk of poverty threshold”.

Furthermore it should be noted, that OECD has three poverty thresholds – 40, 50 and 60 per cent of the median equivalised income (*OECD – Growing unequal – income distribution and poverty in OECD*

countries, p 126 ff). The Danish Government does not find that 50 per cent is a more objective or justifiable measure of low income than other percentage rates.

The Committee defines the poverty threshold as 50 per cent of the median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: estimated at € 972 per month in 2007. The Danish Government is utmost critical towards the use of a poverty threshold of 50 percent of the median equivalised income.

As mentioned above the allowances correspond to the level of benefits granted to students in Denmark for their maintenance.

The consequence is that Danish students – probably the world's most well-off students - are considered as being poor.

There are very significant difficulties in using a poverty threshold of 50 percent of the median equivalised income: By using a relative concept such as this, situations will occur where people have a significant consumer power and high standard of living but are considered poor because other categories of people have an even higher standard of living and more consumer power. Thus the poverty threshold which the Committee prescribes is not a poverty threshold.

In Denmark's opinion the poverty threshold used by the ECSR is a measure of income distribution. And Denmark has the most equal income distribution among all Social Charter member states (as for all OECD-countries: *OECD – Growing unequal – income distribution and poverty in OECD countries*, p 126 ff).

Furthermore the level of one kind of support cannot stand alone. Starting allowance receivers may qualify for additional support in the form of special assistance to cover high housing expenses, housing subsidies, and parents may be entitled to reduced payment for child care institutions etc.

Thirdly the point of measuring poverty as a person earning less than for instance 50 per cent of the equivalised median income can be problematised with another example:

If we put this down over the Korean peninsula, we would reach the conclusion that there is less poverty in North Korea than in South Korea.”

143. 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.

Third ground of non-conformity

144. The representative of Denmark said that the ground of non-conformity relating to the fact that a third country national could be repatriated from Denmark on the sole ground of being in receipt of social assistance, was based on a misconception and did not correspond to reality.

145. According to him, residence permits in Denmark were issued on the condition that the applicant was self supportive and once this condition was no longer met, the Danish Immigration Service could revoke or refuse to extend the residence permit in accordance with the Aliens Act. Therefore, decisions to revoke permits were not based on the Act on Social Assistance but on Danish immigration laws. According to the representative of Denmark, around 100 repatriation cases were examined annually. However, since September 2007 only 10 persons had actually been repatriated. He also emphasised that all countries had a right to protect themselves against unintentional use of their social assistance systems.

146. The representative of Ireland mentioned that this case showed difficulties with implementing this provision. The Danish representative agreed that countries needed to protect themselves against social tourism.

147. The representative of Denmark also mentioned that in general the Danish social assistance system was very generous and therefore could not accommodate everyone wishing to stay in Denmark to receive social assistance. The representative made a reference to the Paris Declaration signed in 1953 which authorises repatriations and asked why it did not apply to Article 13§1.

148. The representatives of Lithuania and Turkey asked for clarifications regarding the Paris Declaration and wondered whether this issue could be discussed between the two bureaux.

149. The representative of the ETUC asked what happens in cases where Danish individuals can not meet their needs ; request which was not answered.

150. The Secretariat said this issue could indeed be raised with the ECSR at the joint bureau meeting, but the possibility of repatriation provided for by the Paris Declaration (the European Convention on Social and Medial Assistance) applied to Article 13§4 and not to Article 13§1 according to the case-law of the ECSR. Reference was made to the General Introduction to Conclusions XIII-4 in this respect. Moreover, revoking a residence permit on the sole ground that a person is in need of social assistance is not in conformity with the Charter.

151. At the proposal of the representative of France, the Committee voted in a warning which was not carried (6 votes in favour, 16 against and 15 abstentions).

152. The Committee took note of the information provided by the representative of Denmark and asked the Government to give detailed information concerning the grounds used to assess the situation of a foreigner whose case is examined for repatriation.

ESC 13§1 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 13§1 on the ground that there is no legally established general assistance scheme that would ensure that everyone in need has an enforceable right to social assistance.

153. The representative of Greece provided the following information:

“Although Greece does not have a general social assistance scheme, efforts are being made towards ensuring the right to social assistance for all of those in need.

1. The legal framework concerning the right to social assistance has not changed radically, since the reference period. The main legislation is the Legislative Decree 57/73, under which all people in need are entitled to a financial allowance for which the sole criterion is that the person receiving the allowance is unable to cover his/her basic living costs from any other source of income. There is no unfavourable discretion on part of the authorities on the granting of social assistance, since it is allocated through detailed, comprehensive and well-documented reports of professional Social Workers based on the existing institutional framework.

Nevertheless, since the last Greek report important changes have taken place, which improve the situation to a great extent. In particular:

Firstly, in March 2009, a Ministerial Decision was issued and the abovementioned one-off financial allowance was increased from € 234.78, to € 600 euros, increase of 255%.

2. Extraordinary financial aid of social solidarity (Law 3808/2009)

Secondly, in December 2009, under the law 3808/2009 a special financial support was introduced targeted at salaried workers, pensioners and farmers with low income, as well as at vulnerable social groups (unemployed, disabled, uninsured persons, unprotected children and political refugees). The amount of the financial aid ranges from € 300 to € 1300, paid in two equal instalments. More specifically, the

first instalment was paid in December 2009 and the second will be paid by June 2010. This aid is tax-free, is not subject to any withholding, it is not included in income limits for the payment of the Pensioner's Social Solidarity Benefit (EKAS benefit) or any other social or welfare allowance.

3. For granting of the allowance very certain financial criteria have been set. In particular:

Concerning salaried workers the total family income is the sole criterion, for the calculation of which other social or welfare benefits are not included. I refer to the example of a beneficiary with one child, who is eligible when his/her income does not exceed € 15.000.

For the long-term unemployed there are no income limitations, which means that all long-term unemployed are eligible to receive the benefit. For persons receiving unemployment benefit the latter must not be over € 367.25.

For the rest beneficiaries, (pensioners, the disabled, holders of a non-insured person card and uninsured foreigners and political refugees) there is an income threshold of a total annual family income below € 14.633.

The above mentioned benefit offers economic relief to a large number of beneficiaries of low income (it is anticipated that there will be over 2,5 million beneficiaries)

Moreover, the fiscal cost stemming from the implementation of this measure (calculated at € 1 billion 68 million (1.068.000.000) shall not burden the public deficit and the average tax payers, as the money for funding the solidarity benefit originates from the extraordinary tax contribution imposed on profits of major enterprises and on large real estate property.

Finally, the abovementioned provisions cover a large part of Greece's population who are in need. It is clear that the core institutional framework under judgement was not altered radically, however many improvements were introduced, and the recent law of 2009 provided for a certain common core of criteria for granting the benefit. Moreover, given the current financial situation, when Greece has requested the activation of the EU (European Union), the ECB (European Central Bank) and the IMF (International Monetary Fund) financial support mechanism, we deem that those measures are the best that can be provided for."

154. Several representatives mentioned that the information provided was new and showed that a progress had been made. It seemed that there was now a clear legal framework, which set a legal threshold against which the need for assistance was assessed and many improvements were introduced for providing a common core of criteria for such an assessment.

155. In reply to the question asked by the representative of Poland whether the decision to grant assistance taken by administrative authorities was possible to appeal against, the representative of Greece replied that the right to social assistance, according to the new legislation, was guaranteed as a subjective right and therefore decisions to refuse assistance could be appealed against in courts.

156. The Committee took note of positive developments in Greece and decided to await the next assessment of the ECSR.

ESC 13§1 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with the article 13§1 of the Charter on the following grounds:

- the level of social assistance benefits is manifestly inadequate;

- the duration of social assistance benefits is restricted to 9 months per year;
- the granting of social assistance benefits to non-nationals is subject to an excessive length of residence requirement;
- it has not been established that the right of appeal is effectively guaranteed.

First ground of non-conformity

157. The representative of Latvia explained that the level of GMI was revised each year depending on financial resources of municipalities. As regards supplementary benefits, the information on the average amount paid was not available. The representative of the Czech Republic said that in reality the situation could even be in conformity but because of non-availability of information regarding additional benefits, there was no proof that a person without resources receives assistance that is equal to at least the level of the poverty line. The representative of Latvia said that in absolute numbers, the amount of GMI plus additional benefits could be above the poverty line. She said the next report would provide this information.

158. The Committee took note of the information provided and asked the government of Latvia to provide detailed information on supplementary benefits paid to a person in receipt of social assistance.

Second ground of non-conformity

159. As regards the duration of the GMI benefit, the representative of Latvia informed the Committee that the law of 1 October 2009 removed the restrictions on the duration of this benefit.

160. The Committee took note of this positive development and asked the government of Latvia to provide relevant information in the next report and decided to await the next assessment of the ECSR.

Third ground of non-conformity

161. The representative of Latvia mentioned that there were no changes since 2006. Aliens still needed permanent residence permit to become eligible for social assistance. Temporary residence permits were granted only if certain conditions were met.

162. The Committee urged the government of Latvia to bring the situation into conformity with the Charter.

Fourth ground of non-conformity

163. The representative of Latvia provided the following written information:

“The level of GMI is determined and revised each year in connection with the draft annual State budget law by Cabinet of Ministers. GMI level is determined, taking into account financial resources of local municipalities, from which budget GMI benefit is provided.

As to other municipal social assistance benefits, they have not restrictions of amount. Amount of these benefits depend only on financial resources of respective municipality.

In addition, poverty threshold, noted by Committee, Eurostat defines as 60% of median equivalised income. In calculating of poverty threshold the scale of equivalences is used.

As mentioned in Latvia's Report, amount of GMI benefit is calculate, taking into account only person's monetary income not taking into account transfers from other households and the scale of equivalences is not used. Also for calculating of amount of other municipal social assistance benefits the scale of equivalences is not used.

Latvia is not sure that comparison of these two indicators calculate by different methods (one – with using of the scale of equivalences other – without using of the scale of equivalences) can be conclusive evidence.

As Latvia noted in Report, GMI benefit is granted for the period no longer than 9 months per year. In cases the income of a person from work gainful activity has increased (unemployed person starts to work), GMI benefit duration can exceed 9 month period, but in reduced amount.

Period of GMI benefit granting is restricted to prevent person's dependence on municipal social assistance benefits and to motivate able bodied persons seek a job.

For another types of municipal benefits mentioned in Latvia's Report duration period is not restricted.

In addition we inform that since 1st of October 2009 duration of GMI benefit period has no restrictions.

According to **Immigration Law** an alien has the right to request a temporary residence permit in following cases:

- 1) if he or she is a relative of a Latvian citizen or of a non-citizen of Latvia or of an alien who has received a permanent residence permit,
- 2) if he or she is an individual merchant or the sole founder of a commercial company, or a representative of a representation of a foreign merchant,
- 3) if he or she is registered in the commercial register as a member of a partnership who has the right to represent the partnership, a member of the board of directors, a member of the council, proctor; administrator, liquidator or a person who is authorized to represent the activities of a merchant (foreign merchant), which are associated with a branch,
- 4) if he or she is a employed or self-employed person in Republic of Latvia,
- 5) for a period of time provided for by the plan of scientific co-operation,
- 6) for the time period of studies of pupils of educational establishments accredited in the Republic of Latvia or full-time students,
- 7) for a period of time indicated in the contract of medical treatment,
- 8) in accordance with procedures prescribed by the Asylum Law he or she is granted alternative status,
- 9) for a period of time which is necessary for the implementation of such international agreements or projects in which the Republic of Latvia is participating or for the provision of assistance to State or local government authorities of the Republic of Latvia,
- 10) for a period of time which is necessary for the performance of religious activities,
- 11) for a period of time for which guardianship or trusteeship is established over him or her,
- 12) if the alien has joined a cloister registered in accordance with procedures prescribed by regulatory enactments;
- 13) if residence in the Republic of Latvia is related to pupil or student exchange, practice or apprenticeship in one of the educational establishments of the Republic of Latvia or in a commercial company registered in the commercial register or performance of another task;
- 14) for a period of time up to the coming into effect of a court judgment regarding divorce and the specification of the children's place of domicile, if the marriage is dissolved and the in the marriage are children who are Latvian citizens or Latvian non-citizens;
- 15) if it is necessary for pre-trial investigation institutions or a court that the alien reside in the Republic of Latvia until a criminal matter investigation has been finished or adjudicated in a court.

There are determined another financial sources in these cases for providing of persons basic needs in Latvia. These sources must provide financing in level, witch is no requested additional financing through Municipal social assistance.

Persons received alternative status according to the Asylum Law since 2007 have right to GMI benefit and shelter services since 2007.

In addition to description, given in Latvia's forth Report we inform that procedure of appeal is set by Administrative Procedure Law. According this procedure each decision of municipal social office on granting social assistance benefit or social service may be disputed by a claimant of respective type of social assistance benefit or social service, to local government. Claimant may dispute social office's decision in period of 1 month after receiving of decision. The decision of local government may be appealed to a court."

164. 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 13§1 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 13§1 of the Charter on the following grounds:

- eligibility to the RMG benefit is linked to dismissal for serious misconduct;
- persons who do not accept the job offered or fail to accept employment measures lose their entitlement to the RMG benefit and the Emergency Residence Act does not provide enough income replacement guarantees;
- persons who have been dismissed for serious misconduct and therefore lose entitlement to the RMG benefit are not provided adequate income replacement guarantees under the Emergency Residence Act;
- persons aged under 25 and in need are not entitled to the RMG benefit and the Emergency Residence Act does not provide enough income replacement guarantees;
- foreign nationals, lawfully resident in Luxembourg are not entitled to social benefits.

First, fourth and fifth grounds of non-conformity

165. The representative of Luxembourg made the following statement:

“Since the adoption of the Social Assistance Act of 18 December 2009¹, repealing the Act of 28 May 1897 on emergency accommodation and the amended Grand Ducal Regulation of 11 December 1846 on reorganisation and control of charitable agencies, whose provisions will come into force as from 1 January 2011, a right to social assistance has been instituted in order to enable persons and families in want to lead a life in keeping with human dignity.

This assistance admits of a subsidiary character, hence a recipient of assistance is required to have exhausted the welfare measures and the financial benefits prescribed by other laws and regulations.

The assistance is to be delivered by the welfare offices which must serve at least 6 000 residents if they are to be equipped in all circumstances for professional management of situations of social distress. This approach is intended to provide each person in want with assistance suited to his or her personal situation.

It also sets out to encompass the recipient as a whole person and to include him in his own process of rehabilitation. Likewise, assistance may be palliative, remedial and above all preventive, with emphasis on guidance of the person until self-reliance in society is achieved.

From 1 January 2011 onwards, this assistance will be applicable to everyone staying in the territory of Luxembourg.

As the Act of 18 December 2009 institutes a right to social assistance, decisions taken in the matter by the administrative board of the municipal welfare office can be challenged at two levels of jurisdiction, before the Arbitration Board and before the Higher Council for Social Insurance at appeal.

Thus young people without means of support under 25 years of age can benefit from the Social Assistance Act. The same applies to persons who refuse to participate in the activities offered under the Act on guaranteed minimum income (revenu minimum garanti – RMG) or who terminate without good cause their participation in a measure prescribed by the RMG Act. Also, persons who have been dismissed for serious misconduct and consequently are ineligible under the RMG Act will henceforth benefit from the Social Assistance Act.

As regards the situation of the foreign nationals from third countries of the European Union, legally resident in Luxembourg, they will also benefit from the Social Assistance Act of 18 December 2009 on the same footing as nationals provided that they have exhausted the welfare measures and are in a situation of want.”

¹ *Mémorial* no. 260 dated 20 December 2009, page 5473.

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

Second and third grounds of non-conformity

167. The representative of Luxembourg provided the following written information:

“The Social Assistance Act of 18 December 2009¹, which repealed the Emergency Residence Act of 28 May 1897 and the amended Grand-Ducal Decree of 11 December 1846 concerning the reorganisation and regulation of charity offices and is scheduled to come into force on 1 January 2011, establishes a right to social assistance designed to enable persons and families in need to live a life consistent with human dignity.

This assistance is subsidiary in nature, meaning that claimants are required to begin by exhausting all social measures and financial benefits provided for by other laws and regulations.

Assistance is provided by social welfare offices, which must each serve at least 6 000 inhabitants so that there are means of managing situations of social distress in all events. The aim of this approach is to provide all people in need with support geared to their particular circumstances.

It is also intended to support individuals holistically and involve them in their own recovery process. Assistance may be palliative or curative but is most frequently preventive and focuses on supporting people until they become self-sufficient members of society.

From 1 January 2011 onwards this assistance will be available in particular to all people residing in Luxembourg.

As the Act of 18 December 2009 establishes a right to social assistance, decisions taken in this respect by the managing board of municipal social welfare offices may be challenged at two levels, firstly before an arbitration board and then, in the event of an appeal, before the national social insurance council.

Persons under the age of 25 who have no means of support are entitled to help under the Social Assistance Act. The same applies to persons refusing to take part in the activities proposed in connection with the RMG Act or ending their participation in a scheme under the RMG Act for no valid reason. Similarly, persons who have been dismissed for serious misconduct, and hence are not covered by the RMG Act, will now be covered by the Social Assistance Act.

Foreign residents from countries outside the European Union residing legally in Luxembourg will also be covered by the Social Assistance Act of 18 December 2009 on the same footing as Luxembourg nationals, provided, that is, they have exhausted other social welfare measures and are in a state of need.”

168. 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 13§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 13§1 of the Charter on the ground that it has not been established that:

- social assistance is provided for everyone in need;
- as it has not been established that the equality of treatment of foreign nationals legally resident in the Slovak Republic is guaranteed in the matters of social assistance.

First ground of non-conformity

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

“In connection with the statements of the Committee, which states that the situation in the Slovak Republic is not in compliance with the Charter, since it has not been proved that social assistance is provided to every person in material need, we would like to emphasize the fact that pursuant to Article 39 of the Constitution of the

¹ Official Gazette No. 260 of 20 December 2009, page 5473.

Slovak Republic, the fundamental law of the state, every person in material need has the right to ensure his/her basic living conditions. Assistance in material need and the ensuring of the basic living conditions was guaranteed to every person through Act No. 195/1998 Coll. on Social Assistance as amended, even before the reform of the system of assistance in material need, as it is also guaranteed by the new Act No. 599/2003 Coll. on Assistance in Material Need and on changes and supplements to certain Acts, which has been in validity and effect as of January 1, 2004.

Regarding the statement of the Committee on the discrepancy between the Charter in connection with a certain group of persons, who were refused assistance based on subjective reasons, we state as the justification, that the Slovak legal system of assistance in material need provides assistance to every citizen in his/her unfavourable social situation. Until December 2003, material need was handled by Act No. 195/1998 Coll. on Social Assistance as amended. As the Committee states, the social assistance system at that time classified the citizens in the state of material need according to citizens who found themselves in such situation due to subjective reasons and citizens who found themselves in such state due to objective reasons. Based on the subjective and objective reasons of assessment of the material need of the citizen, a differentiation of the amount of the material need assistance benefit occurred. There was a substantial reason in the assessment process, for which a citizen was in a state of material need, if the state of material need occurred through no fault of his/her own or he/she found him/herself in the state of material need through his/her fault. The aim of the above mentioned was to eliminate the occurrence of material need of citizens because of their own fault, due to lack of cooperation, irresponsibility and to give a positive advantage to the citizens who found themselves in the state of material need through no fault of their own (for example they lost work due to mass dismissal, etc.). In spite of the subject matter differentiation, even citizens assessed from subjective reasons were dealt with on the level of ensuring the basic living conditions.

Subsequently, as of January 1, 2004 through the new Act No. 599/2003 Coll. on Assistance in Material Need and on changes and supplements to certain Acts, the comprehensive regulation of the system of assistance to citizens in material need occurred. In connection with the income of the citizens assessed in the wider context of the entire family, the state provides the applicant and his/her entire family assistance for ensuring basic living conditions. The new system switched to a joint base system and does not take into consideration the causes of the occurrence of material need (subjective – objective), the amount of benefit depends on whether it pertains to an individual or a family with children. The system provides the family not only with the basic assistance in material need, but also specific allowances for healthcare, housing, protective allowance (for those who can not work) and an allowance supporting the mobilizing of citizens in material need. The new benefit system is built on the principle of motivating the individual to become active – a motivation mechanism of remuneration of individuals who become active has been introduced.”

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

Second ground of non-conformity

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

“Pursuant to the law, the pre-reform and current systems of assistance in material need based on legal stays guarantee equal treatment also for foreigners without permanent residency in the SR.

Up to December 31, 2003, equality in treatment was guaranteed pursuant to § 2 section 2 of Act No. 195/1998 Coll. on Social Assistance as amended. The above mentioned Act also guaranteed the right for ensuring basic living conditions for foreigners, nationals, persons without citizenship, refugees, migrants and Slovak nationals living abroad with residency on the territory of the SR based on a permit from the pertinent organ, if this assistance is not provided to them pursuant to special regulations or international agreements which are binding for the Slovak Republic.

Similarly, § 3 of Act No. 599/2003 Coll. on Assistance in Material Need and on changes and supplements to certain Acts, which is effective as of January 1, 2004, also establishes equal status to foreigners as well as for nationals, to persons without citizenship, to refugees, to foreigners to whom a special protection was provided, to migrants with residence on the territory of the SR based on a permit from a pertinent organ and to Slovak nationals living abroad with **residency on the territory of the SR**, if the assistance is not provided to them based on special regulations (Act No. 48/2002 Coll. on the Stay of Aliens and on changes and supplements to certain Acts or pursuant to international agreements which are binding for the SR) for the purposes of ensuring basic living conditions and assistance in material need.

In compliance with Act No. **448/2008 Coll. on Social Services** and on changes and supplements to Act No. 455/1991 (Digest) to Regulate Trades (Trade Act) as amended in wording of Act No. 317/2009 Coll., which entered into validity and effect as of **1. 1. 2009**, it is also possible to provide adequate assistance and necessary care to persons without sufficient financial means, who are in unfavourable social situations and in a new way it regulates the terms and conditions for the provision of social services. The Act on Social Services replaced the legislation of that time related to social assistance in the area of social services, established in Act No. 195/1998 Coll. on Social Assistance as amended, which already failed to resolve and sufficiently regulate the provision and financing of social services.

For the purposes of the Act on Social Services, when a client is at risk of social exclusion or when he/she is already directly socially excluded from the society and is not able to solve his/her problems without assistance due to various reasons, it is understood as an unfavourable social situation. Target groups, to which the social services are provided, also include people who are in material need and the homeless. In the event that such clients do not have basic living needs, in terms of social services, they are provided with accommodation, food, necessary clothing, footwear and basic personal hygiene, which are also in that extent guaranteed to such client by the Constitution of the SR (Article 39). Along with ensuring basic living needs for these clients, it is also necessary to provide them with crisis intervention and basic social counselling. Dosshouses, shelters, half-way homes, low-liminal day centres, emergency housing facilities and integration centres are the types of the social services, which are provided to the people whose basic living needs are not ensured. These social services are provided or ensured to clients by municipalities or upper-tier territorial units, to which the social services were de-centralized.”

172. 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 13§1 SPAIN

The Committee concludes that the situation in Spain is not in conformity with the article 13§1 of the Charter on the following grounds:

- eligibility for the minimum income is subject to a length of residence requirement in some regions
- the majority of regions stipulate 25 as the minimum age of eligibility for the minimum income
- the level of social assistance paid to a single person is manifestly inadequate except for the Basque region.
- the minimum income is not paid for as long as the need persists;
- it was not established that foreign nationals, legally resident in Spain are provided with social assistance on an equal footing with nationals.

Preliminary information

173. Before dealing with the situations of non-conformity, the representative of Spain provided preliminary information on the following matters: The powers of autonomous

communities and their responsibilities with regard to social assistance measures and social services; establishment at national level of state social services and the minimum income; the standard legislative framework; an outline of institutional powers and their field of application; integrated local and regional plans and systems of benefits and services (information and guidance, home help and other support for families, alternative housing, prevention and social integration measures, promotion of solidarity and social co-operation); social service centres (persons dealt with, benefits provided); other facilities; co-ordination and agreements between administrative departments creating specific obligations.

First ground of non-conformity

174. the representative of Spain referred to a number of conditions for entitlement to a minimum income in the autonomous communities, such as the following: evidence of actual, permanent residence in the community; establishment of a household in the six months preceding the application for assistance; lack of adequate financial resources (within the meaning of the law); absence of sufficient financial means or assets to meet basic human needs; registration on the province's list of jobseekers; affiliation to a social security scheme; establishment of a stable, independent household made up of people residing in the same municipality (most conditions had to be met one year before the application for assistance was filed).

Second ground of non-conformity

175. The representative of Spain gave examples relating to three autonomous communities. She referred in particular to the minimum age to be entitled to the minimum income in the following communities: Catalonia (25, except in cases of dereliction, social risk or children or other dependants with a disability); Madrid (25, except in cases of children or other dependants with a disability, orphans, serious social exclusion or participation in a formal social integration scheme); Valencia (18, albeit subject to a series of conditions: for example, having been the victim of domestic violence).

Third ground of non-conformity

176. The representative of Spain described the changes in the minimum amounts of minimum income in a number of autonomous communities. She referred in particular to the situation in the following communities: Andalusia (2008: €372; 2010: 75% of the national minimum wage (SMI) = €475); Castilla y León (2008: €388; 2010: 80% of the public income indicator (IPREM) = €426); Castilla La Mancha (2008: €362; 2010: 60% of the SMI = €380); Catalonia: (2008: €400; 2010: €412); Valencia (2008: €374; 2010: minimum €373 / maximum: €603); Madrid (2008: €354; 2010: minimum: €370/ maximum: €527). She then gave examples of the supplementary benefits for single people without incomes in the following autonomous communities: Madrid (benefit fixed at €144.94 per month in 2010); Catalonia (benefit fixed at €13.80 per day in 2010). In Catalonia, Madrid, Valencia, Castilla y León, Castilla La Mancha and Murcia, benefits were paid to destitute people to cover their basic human needs.

Fourth ground of non-conformity

177. The representative of Spain gave examples of the maximum length of entitlement to social assistance (namely minimum income or an equivalent benefit) in the following

autonomous communities: Catalonia (maximum length: 12 months, save in exceptional circumstances); Madrid (length of entitlement established according to state of need); Valencia (maximum length: 36 months, renewable after a gap of 24 months); Castilla y León (maximum length: 36 months); Andalusia (maximum length: 6 months); Castilla La Mancha (maximum length: 6 months, with the possibility of an extension of six months after a three-month pause on each occasion up to a total period of 24 months); Murcia (maximum length: 12 months).

178. The Chair noted that none of this information had figured in Spain's latest report and that the European Committee of Social Rights had not therefore been able to take it into consideration when drafting its conclusions.

179. The representative of Iceland was of the view that the answers relating to the first and second grounds of non-conformity should be examined separately from the answers on the other grounds of non-conformity. In her opinion, the information relating to the first two grounds would have made no difference to the ECSR's conclusions.

180. The representative of the ETUC considered that not much had changed, it was simply that more information had been provided, particularly with regard to the first and second grounds of non-conformity.

181. The representative of Poland said that situations of non-conformity should be assessed in the context of the state's social policy.

182. The representative of Spain returned to the question of the legal framework and the institutional responsibilities of the various public authorities concerned. She pointed out that the Spanish Constitution guaranteed equal treatment throughout the country and compliance with international obligations. The minimum income was higher than the recommended level and provision was made for other forms of social protection. Each autonomous community enacted legislation laying down the specific conditions for entitlement to minimum income, and residence in the community in question was one of these conditions. There were differences between the communities as far as the minimum age was concerned. It was generally set at 18 or 25, but in all cases provision was made for exceptions.

183. The representative of Estonia said that the harmonisation work being done by central Government is positive and has to be taken into account, but the situation was still critical in some communities. She mentioned the possibility of assessing the conformity of the situation in each community in which the law or practice did not appear to comply with the Charter. In some communities there was a problem with the maximum age as well as the minimum age. The information that had been provided should be included in the next report so it would be most appropriate to await the assessment of the ECSR.

184. The representative of the Czech Republic said that young people were among the most vulnerable members of society and central governments should be particularly attentive in this area. There had been no progress on the first two grounds of non-conformity so a further warning should be issued to the government.

185. The representative of Spain felt that the grounds of non-conformity were more of a problem of information than one of substance. Of course, autonomous communities were

not a way of bypassing international obligations. There were national guarantees, which took precedence over the legislation of the autonomous communities.

186. The representative of Latvia said that since a warning had been issued to Spain for failing to provide information and it had now provided information, it would be best now to await the ECSR's assessment. The representative of Greece agreed with the representative of Latvia.

187. The representative of the ETUC said that the information that had been provided showed clearly that the levels of benefit failed to meet the requirements of the Charter and the related case-law. The presence of other means of social protection could not compensate for these inadequacies. In some cases, the waiting period for entitlement to the minimum income to be renewed was excessive.

188. The representative of Norway considered that in some autonomous communities large numbers of people were excluded from benefit because of their age or their residence status.

189. The Chair asked about the relationship between the minimum income and basic benefits.

190. The representative of Spain explained that the minimum income was added to the basic benefits to which everyone was entitled. She pointed out that most waiting periods for minimum income to be renewed were two to three months or under.

191. The representative of Lithuania said that the most important thing was to ensure that young people did not end up without any social assistance. This did not seem to be the case in Spain so she proposed waiting for the ECSR's assessment of the information that had been provided.

192. The representative of Iceland asked if the ECSR was aware of the four basic benefits. Mr Kristensen confirmed that it was and pointed out that, in any case, these benefits did not address the problems described in the first two grounds of non-conformity. The representative of Spain believed that the ECSR was not aware of all the information she had provided.

193. The representative of the Czech Republic considered that Spain had made no progress on the two first grounds of non-conformity. The representative of Poland said that the main issue to be addressed in relation to the minimum age requirement was whether the persons concerned had the means to live a decent life.

194. With regard to the first two grounds of non-conformity, the Chair proposed that the changes described by the representative of Spain should be noted.

195. A vote was held on a proposal for a recommendation to the Committee of Ministers. The proposal was rejected (0 votes for, 31 against, 3 abstentions). The Committee held a second vote on a proposal to issue a warning to the government, which was also rejected (9 votes for, 22 against, 3 abstentions).

196. The Committee took note of the information provided for the assessment of the ECSR. It urged the Government to provide information on the rules on entitlement to minimum income and the level of social assistance in the autonomous communities.

197. With regard to the third and fourth grounds of non-conformity, the Committee asked the Government to send detailed information on the relevant legislation and its implementation.

Fifth ground of non-conformity

198. The representative of Spain provided the following written information:

“Introduction

The development of the public social welfare system and the establishment in Spain of a minimum income, coincided with the devolution of central state powers and the transfer of responsibility for social assistance and social welfare services to the autonomous communities, which now have full authority to determine the income guarantee arrangements in their regions, in accordance with the needs of their citizens.

The public social services system grants the necessary benefits to meet citizens' social needs, by guaranteeing sufficient income to meet basic needs for food, accommodation, residential care and so on that are not covered by other areas of social protection, such as pensions.

One example is families with children, where the aforementioned needs are provided for. In cases where children are abused or abandoned the authorities exercise powers of guardianship, care and supervision.

To ensure equality between all citizens, the central government authorities encourage the harmonisation of policies and undertakings to ensure that the same conditions of eligibility for benefits apply, irrespective of place of residence.

More specifically, the public social welfare system represents all the benefits and services that, together with other elements of social well-being, are concerned with:

- the promotion and full development of all individuals and groups in society, in order to achieve maximum social well-being and a better quality of life, as part of a shared community;
- the prevention and eradication of the causes of social exclusion and marginalisation.

These are provided by the relevant departments of central government, the autonomous communities and local government.

The fundamental objectives of social welfare services are:

the full development and free exercise of the rights of individuals and groups, by guaranteeing them full equality in society;

guaranteed coverage of social needs, adapted where necessary to changes in the social environment; preventing the causes of marginalisation and encouraging individuals' and groups' full integration into the community.

The relevant legislation

The Constitution:

Articles 41, 139.1 and 149.1.1 of the Spanish constitution provide for "a public system of social security for all citizens which will guarantee social assistance and services which are sufficient in cases of need", "the same rights and obligations in any part of the territory of the state" and "the equality of all Spaniards in the exercise of their rights and fulfilment of their constitutional duties".

The social welfare services legislation of the autonomous communities:

Article 148.1.20 of the constitution grants exclusive competence in this area to the autonomous communities, or regions, whose autonomy statutes are the legal foundation for their citizens' rights in the corresponding areas. Regional social welfare legislation lays down the relevant principles, forms of action and benefits and establishes networks of facilities and departments that have led to the development of integrated social welfare services throughout the country.

The legislation governing local provision:

Section 25.2.K. of Act 7/85 of 2 April, the basic local government legislation, makes local authorities fully responsible for social welfare provision and promotion and social integration, in accordance with national and regional legislation. Section 26.1C also requires local authorities of more than 20 000 inhabitants to provide social welfare benefits.

Scope

Following the enactment of social welfare legislation by the autonomous communities, a public social welfare system has been established, which co-ordinates public and social resources and initiatives. Under this legislation, all Spaniards residing in each of the autonomous communities and travellers are eligible for social welfare services in accordance with the relevant legislation and regulations. In the case of foreign nationals and migrants, the relevant international treaties are applicable.

The following groups are particularly concerned:

- families
- children and young persons
- elderly persons
- women
- persons with disabilities
- prisoners and ex-prisoners
- drug addicts
- ethnic minorities
- travellers and persons with no fixed address
- refugees and stateless persons
- others who are marginalised or in need

Levels of assistance

The levels of assistance in the social services system are organised on an integrated and complementary basis.

First level:

This comprises social services offering primary assistance through individual or sectoral action, but within the boundaries of the local authority concerned. Subject to certain exceptions responsibility for such provision lies with individual local authorities.

Second level:

This comprises specific social services and, in general, sectoral and/or specialist ones. They tend to be wider in scope than individual municipalities and are usually a regional or sub-regional responsibility, though they may also be the responsibility of large local authorities. Responsibility for this level of assistance lies with regional and local authorities.

Because they are concerned with exceptionally complex situations, the services concerned require a greater concentration of specialised resources. This specialisation means that they are often organised on a sectoral basis, taking into account the special and shared characteristics and needs of specific groups of the population. They also give rise to integrated assistance plans, which are rooted in the first level of social welfare assistance.

Integrated projects

Certain autonomous communities have recently passed legislation, accompanied by decentralisation measures, to encourage integrated urban and rural plans, which are a logical consequence of the development of primary assistance and are concerned with avoiding actual or potential exclusion. These plans set out to co-ordinate and harmonise all the different aspects of social protection, economic and social, in both the public and private sectors.

Their implementation extends beyond the social welfare system to include other aspects of social protection, both social and economic. The leadership of this public system is nevertheless critical.

Benefits and services

There are four basic types of provision, which respond to fairly widespread social needs and together make up the primary level of assistance. They exist in all the autonomous communities, and are covered by almost all the social welfare acts, albeit in some cases with variations of terminology.

Information and guidance

The aim here is to meet people's need for information to enable them to gain access to and use available social resources and to prevent inequalities. These services offer individuals, groups and institutions specialist advice on their rights and existing social resources and, where necessary, direct or refer them to other services and resources.

The following phases and types of action are involved:

1. Registering and recording data about individuals and groups with a view to assisting them, and for use in analysing demand and planning the response.
2. Information – all the professional activities to inform citizens of their rights, existing resources and available procedures and alternatives in response to specific social needs.
3. Evaluation – assessing particular forms of social need with a view to diagnosing it and developing ways of responding to it. This includes the production of social reports.

4. Social guidance and assistance – this follows on from the previous activity. The aim is to identify the right resources or measures for persons in need to enable them to deal with their problems.
5. Treatment – working with individual families to enable them to gain access to resources or request particular benefits or services. This may include accessing the individual resources of the social welfare system, such as non-contributory pensions and the minimum income, or taking the necessary steps to obtain other, external resources.
6. Redirection – guiding or redirecting users of primary welfare services, where necessary, to other resources and/or services within or outside the system.
7. Public information and education – action to promote integration and combat exclusion, marginalisation and discrimination by promoting plans and campaigns against racism, xenophobia and so on.

Home help and other forms of community-based care

These services respond to people's need for a satisfactory life in the community. The aim is to offer assistance in the home to individuals and families who are no longer able to carry out their normal activities or where families have members with particular psychological or social problems, such as elderly or disabled persons, children and women.

Alternative housing

This service reflects the universal need for suitable accommodation in which those concerned can secure the most basic aspects of social co-existence.

It responds to the same need as the previous service, but involves alternative housing because of the lack or inadequacy of an existing dwelling. It offers an alternative, and usually temporary, option for persons lacking an appropriate family environment.

From the standpoint of first level primary social welfare services, the aim is to provide the necessary resources and/or assistance to deal with temporary or permanent housing problems that might affect any individual as a result of family conflicts, marginalisation, emergencies and other specific problems falling within the scope of the social services.

The aim of this service is to assist the process of normalisation and social integration.

Prevention and social integration

These services are concerned with individuals' need to feel part of their social environment by ensuring that they are accepted by and integrated into the latter. This involves work by professional teams with individuals and groups that are at risk or socially marginalised, to prevent their exclusion or, where necessary, secure their reintegration into the family or the community.

In nearly every case, this type of service goes hand in hand with the minimum income.

Promoting social solidarity and co-operation

Apart from the other activities described, reference should be made to efforts to promote and encourage social solidarity and co-operation, which are key elements of the success of those other services.

It refers to action aimed at the everyday population to encourage them to accept and coexist with individuals and groups with different and special characteristics.

It involves activities aimed at strengthening the sense of social responsibility in the community in response to different type of need, which is why it is a necessary adjunct to the previously mentioned services. The aim is to foster a voluntary social sector.

Fundamental facilities

Social services centres

There are regional facilities with the necessary technical equipment, social work teams and other resources to deal with social problems, at both the individual and family levels and in terms of community development. The programmes and services offered by these centres are aimed at all the population, and include first level or primary assistance.

Population served

The programmes and services provided by the social services centres serve the entire population of the autonomous community concerned, including individuals, groups and the community at large.

Services provided

These have already been described in the section on "benefits and services", which refer to the primary assistance system.

In particular, those concerned are referred to other service and resources provided by the social welfare system and other parts of the social protection network. The aim is to foster collaboration with other services, so the centres play an important role in integrated programmes, in all or part of the geographical areas they serve. They may call on a number of additional resources:

Social restaurants

Information offices or services

Social day centres

Mini-residences

Other facilities

Reception centres: these are residential facilities providing emergency, short-term accommodation for individuals, families or groups in difficulty. They offer guidance and assessment services to give those concerned the necessary means of reintegrating into normal society.

Emergency centres: these provide meals and accommodation for a fixed period for homeless persons and travellers in need, as well as information and assistance to prepare their social reintegration.

Co-ordination between departments

The joint plan: an instrument for the development of basic social services

Joint plans for the development of basic social services in local authorities, based on administrative agreements between central government and autonomous communities, were designed to strengthen the role of local government in the provision of social welfare services, in accordance with the basic local government legislation.

Commitments

Joint plan agreements provide for:

Joint financing

The central authorities set aside a specific item in the state budget for the development of joint plans. The Council of Ministers approves the criteria for allocating these funds, after these have been agreed with the autonomous communities at a sectoral social affairs conference. The autonomous communities undertake to allocate an amount at least equal to that provided by the labour and social affairs ministry for the financing of projects. The contribution of the local authorities that are responsible for projects will be decided by the relevant autonomous community, in the light of the circumstances of each individual case.

Management undertakings

Joint plans are based on local authorities' duty to provide social welfare services. Ownership of the relevant facilities and equipment will devolve on the local authorities concerned.

Autonomous communities have certain specific responsibilities for social services, particularly in relation to legislation, establishing standards and planning. This requires the central authorities to co-operate with the autonomous communities in areas for which they have responsibility and in establishing priorities.

In response to recent developments in basic social services and the need to respond to new conflicts, on 31 May 1994 the joint plan monitoring committee decided to make basic social welfare services more flexible by extending their coverage. Henceforth they could include not only general regional or basic social services but also all those included in the first level of intervention, so long as the level of assistance provided could be deemed to be basic and any technical/professional activities concerned were operated from a social services centre.

This new definition of basic services extended the types of projects and facilities provided for in the third clause of joint plan agreements.

Plans will continue to be modified in line with the results of assessments and evaluations carried out to ensure that they continue to respond to the needs of the moment.

Information

Agreements include undertakings to provide information on the results of co-operation, in particular how effective it has been in meeting the objective of establishing municipal public social welfare services networks.

Appropriately processed data on the development of facilities supplied to the co-operating authorities also make it possible to exchange information on joint activities. They also provide statistics on coverage and results that are of great institutional value.

Such data are also make a major contribution to the evaluation and effective planning of services and to the introduction of measures to respond to new and emerging needs.

Technical assistance

Joint plans provide an opportunity to exchange experiences as a means of achieving agreement on basic services and their implementation.

The goal is to foster collaboration between the various authorities concerned to secure the harmonious development of their practices and adapting them to the range of situations and circumstances faced.

Steps have been taken to ensure that plans and programmes take a standard form to permit common assessments of the management, results and impact.

Reference should be made to two particular forms of technical collaboration:

The training of professionals associated with plans;

The use of standard data sources such as the social welfare services users information system (SIUSS), which offers the three tiers of government concerned a better understanding of the social services provided to citizens and a means of evaluating them.

Participation, monitoring and evaluation

The eighth clause of the programme agreement on the development of basic social services signed by the labour and social affairs ministry and the autonomous communities provides for the establishment of a monitoring committee, whose purpose is to settle general issues that might arise in the course of its implementation and would affect all the regional signatories. The committee comprises the relevant regional directors general and the director general for social action, children and young persons and the family of the ministry.

Monitoring and evaluation committee

To facilitate technical co-operation, the monitoring committee has established a programming and evaluation working group to undertake various technical tasks.

There are also a number of other *ad hoc* groups for specific tasks.

It is essential for all these groups to be constantly seeking ways of improving the assessment and evaluation arrangements, with a view to introducing new means of securing the agreed objectives.

To this should be added existing information and research derived from or based on the social welfare services users information system (SIUSS), which is used to analyse demand and adapt provision to meet needs.

More significant data

We now present certain statistics to illustrate the scale of the progress achieved by the primary social welfare services under the joint plan agreement.

After 12 years, the plan has extended to 6 600 local authorities and 36 million inhabitants. 1 154 facilities have been financed, including 1 118 social service centres, which are the apex of the system, and 194 additional facilities related to the latter. Of the remaining 36, 15 are emergency and 21 reception centres.

In late 1999, total financial support from the three tiers of government amounted to 64 billion pesetas.

More than 20 000 staff were directly or indirectly employed.

Collaboration programmes in the autonomous communities

The ministry sponsors a series of programmes and projects relating to families and children in collaboration with autonomous communities:

- Reconciling family life and work. To extend and improve services for young children aged 0 to 3 and ensure that existing regulations are applied, funding will be made available for new services and ones that are already provided, including measures to bring existing services into line with current requirements.
- Aid to families in difficult circumstances. To assist families in difficulties and ensure that this does not lead to social exclusion or family break-up, financing is available for family education programmes, assistance to disadvantaged and one-parent families, family guidance and/or mediation services, family meeting centres and assistance to families that have experienced family violence. These services and activities are in addition to those already provided by the social services.
- Non-custodial measures and vocational training for young offenders. The ministry finances programmes to enable the autonomous communities to implement such measures ordered by the juvenile courts.
- Protection against child abuse. To improve the basic services for children who are maltreated and ensure these services are available throughout the country, the ministry finances programmes in the autonomous communities concerned with the early identification of abuse. These involve notification of potential abuse by the police, health, education and social services authorities, the registering of actual cases of child abuse and the treatment of the children and young persons affected by it.

After assessing the situation in Spain, the Committee concluded that Spanish legislation was not compatible with the requirements of this article because "it has not been established that foreign nationals legally resident in Spain are provided with social assistance on an equal footing with nationals".

In connection with this, the following points should be made:

The main legislation on the status of foreign nationals and immigrants is Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreign nationals in Spain and their social integration, recently reformed by Organic Law 2/2009 of 11 December, and its accompanying regulations, approved by royal decree 2393/2004 of 30 December. These grant foreign nationals a wide range of rights and freedoms, some of which are not dependent on the legal or administrative situation of those concerned.

Turning more specifically to entitlement to social security and social welfare services, section 14 of the Organic Law provides that:

1. Resident foreign nationals are entitled to social security benefits and services under the same conditions as Spanish nationals.

2. Foreign residents are entitled to general, basic and special social benefits under the same conditions as Spanish nationals. In all circumstances, foreign nationals who suffer from invalidity or are under 18 and are normally resident in Spain are entitled to the special treatment, services and care necessitated by their physical and psychological state.

3. Irrespective of their administrative status, all foreign nationals are entitled to basic social services and benefits.

Section 12 of Organic Law 4/2000 is concerned with the right to medical assistance, which in certain previous reports the Committee has included in social benefits:

1. Foreign nationals who are included on the relevant municipal register or normally resident in Spain are entitled to medical assistance under the same conditions as Spanish nationals.

2. Foreign nationals in Spain are entitled to public emergency medical assistance for serious illnesses or accidents, whatever the cause, and continuing care until it is no longer medically necessary.

3. Foreign nationals aged under 18 in Spanish territory are entitled to medical assistance under the same conditions as Spanish nationals.

4. Female foreign nationals who are pregnant are entitled to medical assistance during pregnancy, delivery and the post-natal period.

Having regard to the foregoing, it can be concluded that Spanish legislation is compatible with Article 13.1 of the Charter because it grants foreign nationals who are lawfully resident in Spain entitlement to social security benefits and services under the same conditions as Spanish nationals.

Spanish legislation is also more generous than the Charter because it entitles all foreign nationals, whether or not they are in Spain lawfully, to basic social welfare services and benefits.”

199. 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 13§1 “The former Yugoslav Republic of Macedonia”

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 13.1 of the Charter on the following grounds:

- the level of social assistance is inadequate.
- that the right of appeal against the refusal of social assistance is not effectively guaranteed.

First ground of non-conformity

200. The representative of “the former Yugoslav Republic of Macedonia” said that in recent years the social protection system had been improved in his country and that other positive changes had been announced.

201. Since 2007, social welfare benefits had been increased. Levels depended on the number of people making up the household concerned. Resources were currently allocated to the most vulnerable categories of people. Assistance was provided in the form, for instance, of contributions to energy costs, support for children at school, food coupons and hot meal distribution for the poorest people.

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

Second ground of non-conformity

203. The representative of “the former Yugoslav Republic of Macedonia” said that there had clearly been a misunderstanding on this point, for which he took full responsibility.

In this connection, he said that if an application for social assistance was rejected, the person concerned could refer the case to a special administrative committee, which gave a second-tier ruling. There was also a right to appeal against the special committee’s decision and cases could be taken to an ombudsman.

The representative of “the former Yugoslav Republic of Macedonia” confirmed that this information would be included in the next report.

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

Article 13§2 – Non-discrimination in the exercise of social and political rights

ESC 13§2 CROATIA

The Committee concludes that the situation in Croatia is not in conformity on the ground that it has not been established that persons receiving social and medical assistance do not suffer from a diminution of their political or social rights.

205. The representative of Croatia provided the following written information:

“When it comes to the existence of any other legal instruments that include positive guarantees of the right of persons receiving assistance not to suffer from any diminution of their political or social rights, such as, the right to vote and stand for election, it is important to mention the ANTI-DISCRIMINATION ACT (OG 85/2008), which provides for the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia, creates prerequisites for the realisation of equal opportunities and regulates protection against discrimination on the grounds of race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation. For the purposes of this Act, discrimination is deemed to include the placing of any person, or a person related to that person by kinship or other relationship, in a less favourable position. Placing of a person in a less favourable position based on a misconception of the existence of the grounds for discrimination is also deemed to be discrimination.

This Act applies to the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority, and to the conduct of all legal and natural persons, especially in the following areas:

1. work and working conditions; access to self-employment and occupation, including selection criteria, recruiting and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining;
2. education, science and sports;
3. social security, including social welfare, pension and health insurance, and unemployment insurance;
4. health protection;
5. judiciary and administration;
6. housing;
7. public informing and the media;
8. access to goods and services and their providing;
9. membership and activities in trade unions, civil society organisations, political parties or any other organisations;
10. access to participation in the cultural and artistic creation.

Activities of the central body responsible for the suppression of discrimination are carried out by the Ombudsman.”

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

Article 13§3 – Prevention, abolition or alleviation of need

ESC 13§3 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 13§3 of the Charter on the ground that it has not been established that foreign nationals legally resident or regularly working in the Czech Republic are provided with equal access to advice and personal assistance services, without being subjected to an excessive residence requirement.

207. The representative of the Czech Republic provided the following written information:

“As in the previous case, we believe that the conclusions of ESCR are entirely wrong. The circle of beneficiaries of social assistance is provided on the 126th page of the sixth report. Among these it is stated under letter c) foreign nationals without permanent residency in the territory of the Czech Republic who are guaranteed this right under international agreement. This international agreement is the European Social Charter to which the legislation of the Czech Republic directly refers to.

An advice and personal assistance service are provided under the social services Act No. 108/2006 Coll., as amended. The provision of social services is based on the principle that every person is entitled to the free provision of basic social counselling leading to the solution or prevention of an unfavourable social situation.

The basic social counselling provides individuals with the necessary information contributing towards the solution to their unfavourable social situation. Social counselling is a fundamental activity among the provision of all types of social services. Social service providers are always required to ensure such activity.

Counselling and individual assistance are part of the social prevention services provided free of charge to all persons regardless of their residential status in the territory of the Czech Republic.

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Social services and benefits for care are awarded to the following people:

- *a person who is registered as a permanent resident on the territory of the Czech Republic, in accordance with special legislation,*
- *a person who has been awarded asylum, in accordance with a special legal registration,*
- ***foreign nationals without permanent residence on the territory of the Czech Republic, who are guaranteed this right under an international agreement,***
- *a citizen of a European Union Member State, provided he is registered as resident on the territory of the Czech Republic for a period of longer than 3 months, in accordance with a special regulation, unless he is entitled to social benefits under the terms of a directly applicable regulation from the European Community,*
- *a family member of a citizen of the European Union Member State, provided he is registered to reside for a period of over 3 months on the territory of the Czech Republic, in accordance with a special legal regulation, unless he is entitled to social benefits under the terms of a directly applicable regulation from the European Union,*
- *a foreign national who holds a permanent residence permit with the approved legal status of a long-term resident of the European Community on the territory of another European Member State, provided he is registered for long-term residence on the territory of the Czech Republic for a period longer than 3 months, in accordance with a special legal regulation.”*

208. 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 13§3 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 13§3 of the Charter on the ground that it has not been established that foreign nationals legally resident or regularly working in Germany enjoy equality of treatment with German nationals regarding the eligibility to assistance to overcome particular difficulties.

209. The representative of Germany made the following statement:

“The Committee bases its finding of non-conformity on the reservation formulated by Germany on ratification of the Convention on Social and Medical Assistance in 1953. The European Committee of Social Rights evidently presumes that the reservation is meaningless for the application of the ESC. This view fails to recognise that the reservation has changed the content of the Convention for Germany in terms of international law in such a manner as is provided for by the reservation. Since Germany has furthermore not ratified

the Protocol of 21 October 1991 amending the European Social Charter (Turin Protocol), which provides that the European Committee of Social Rights has the sole right to interpret the ESC, the conclusion of the Committee in its effect for Germany would equate to an amendment of the content of the Convention.

All foreigners with habitual lawful residence in Germany receive the same social assistance benefits which are necessary to maintain a livelihood (basic social assistance benefits) as Germans. Excluded from this are only benefits in accordance with sections 67 and 68 of Book XII of the Social Code (*SGB XII*) (assistance for overcoming special social difficulties). The very slight restriction when it comes to treating foreigners with the nationality of a State Party of the ESC on an equal footing with own nationals is based on the reservation submitted by Germany when ratifying the European Convention on Social and Medical Assistance, which Art. 13§4 of the ESC explicitly declares to be applicable.

The following additional argument, which emerges from the law applicable in Germany, speaks against the Committee's understanding (which the latter has only been putting forward for a few years) of the provisions contained in §§1 - 3 and § 4 which would lead to Germany being obliged on the basis of Art. 13 §§ 1 and 3 to grant to nationals of the other States Party with habitual lawful residence on its territory all the same social assistance benefits as it grants to Germans:

The reservation formulated by Germany in the European Convention on Social and Medical Assistance (that Germany "does not undertake to grant to the nationals of the other Contracting Parties, equally and under the same conditions as to its own nationals, assistance designed to enable the beneficiary to make a living, or assistance to overcome particular social difficulties. Notwithstanding the above, such assistance may be granted in appropriate cases.") would be null and void were one to comply with the Convention, including the above reservation formulated by Germany, solely in the context of Art. 13§4 of the ESC, in other words – in accordance with the Committee's "new" understanding of the provision as regards Art. 13 of the ESC - only with regard to ESC foreigners who have temporary residence. The group of foreigners who, on the basis of their residence status, are probably only resident on a temporary basis does not fall under the Federal Social Assistance Act (*BSHG*), and therefore does not receive assistance in accordance with Book XII of the Social Code, but exclusively receives benefits in accordance with the Asylum-Seekers Benefits Act (*AsylbLG*), which does not contain any benefits identical to or comparable with sections 67 and 68 of Book XII of the Social Code. (ESC) foreigners with only temporary residence in Germany hence in any case do not enjoy benefits in accordance with sections 67 and 68 of Book XII of the Social Code - with or without a reservation on the European Convention on Social and Medical Assistance. Only (ESC) foreigners with permanent residence in Germany can benefit from assistance at all on the basis of their residence status - only with regard to this group of individuals does Germany's reservation to the Convention make any sense at all.

Such a result (Germany's reservation with regard to the Convention being null and void for nationals of States Party to the ESC) is not desirable.

A sensible outcome that is the application of the reservation with regard to the Convention to ESC foreigners with permanent residence (those with established residence status who fall solely under the Federal Social Assistance Act) is brought about solely by an understanding of the provision contained in Art. 13 of the ESC, in accordance with which §4 applies to all nationals of the other States Party who have lawful residence - i.e. regardless of the duration of their stay, and therefore to ESC foreigners both with permanent and those with only temporary residence.

A change to the content or a different interpretation of international agreements requires in principle the consent of the State Party in question. Changes to the extent of the obligation of an international agreement by an external body - whatever its nature - can only act as a

recommendation for the States Party, and would have to be accepted by them. In particular, such ex-post changes to the content of the Convention may not lead to obligations incumbent on the States Party which they have not explicitly taken on and which might entail considerable additional financial burdens.

The European Committee of Social Rights has been sufficiently frequently notified in the past that Germany will uphold the reservation and of what the law applicable in Germany consequently is. The conclusion reached by the Committee is hence incorrect.”

210. The representative of the Czech Republic asked whether this argument had been presented in the report and what was the response of the ECSR. The representative of Germany expressed his belief that his country was in compliance with the provision and that the information had been known to the ECSR. He reiterated that his intention was to clarify the legal situation.

211. The representative of Poland pointed out that if Germany was not bound by the provision, as it stemmed from the Government’s explanation, the ECSR should not have taken any ruling. He expressed his satisfaction with the information submitted today.

212. The Secretariat asked the representative of Germany what was the exact nature of the benefits provided by articles 67 and 68 of the Social Code and what category of foreigners were excluded from their application. The representative of Germany undertook to submit a translation of the provisions in question and confirmed that only some foreigners lawfully present in Germany were excluded.

213. The Secretariat observed that the ECSR was put before a difficult legal question – some lawfully present foreigners being excluded from certain services because of the reservation to the Convention on Social and Medical Assistance.

214. The Secretariat also mentioned that the relevant information provided by Germany in its report was very brief. Having compared it to the detailed explanation provided at the meeting it seemed clear that the ECSR had not had sufficient information. In particular, the report did not mention the nature of the services provided under articles 67 and 68 of the Code. This was a question of legal interpretation, since depending on the character of the services, they may fall under the scope of other paragraphs of Article 13 of the Charter; a problem could arise under art. 13§4 which provides foreigners legally present but without resident status with the right to assistance. For the situation to be assessed correctly, the content of sections 67 and 68 must be known.

215. The representative of the ETUC pointed out that during the last session Germany had already promised to submit more detailed information. In his view, a strong message should be addressed to the government of Germany.

216. The Chair remarked that the number of foreigners concerned might not be significant, but considered that Germany should provide detailed information to the ECSR.

217. The representative of the Czech Republic wondered why Germany had ratified Article 13§3 if they had not felt obliged to implement this provision due to a reservation to another convention. She suggested Germany should explain their position during a meeting with the ECSR.

218. The representative of France observed that the question of temporary residence did not fall under the scope of this paragraph. She expressed her lack of understanding why the legal conflict

on this issue continued to exist since 1998 despite numerous possibilities to clarify the problem and the fact that it had been agreed during the last session to remedy the situation. She proposed that a warning be issued.

219. The representative of Portugal and the representative of Estonia emphasised the importance of the government of Germany providing precise information concerning the nature of the services in question and the category of persons eligible for the assistance. They did not find it necessary to issue a warning.

220. The representative of France insisted that a warning be issued. She reminded that this was a long-standing issue and States must not be encouraged to continue the practice of not providing sufficient information.

221. The representative of Germany reiterated that it was a complex legal question and assured that the Government would submit the information requested.

222. Several representatives were in favour of sending a strong message to Germany.

223. The Committee urged the Government to provide all the relevant information in its next report and expressed its concern about the situation. Meanwhile, it decided to await the next assessment of the ECSR.

ESC 13§3 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 13§3 as the granting of help and personal advice services to non nationals is subject to an excessive length of residence requirement.

224. The representative of Latvia provided the following written information:

According to *Immigration Law* (see explanation on **CSE 13§1 LATVIA**) alien has the right to request a temporary residence permit in cases, which often excludes necessity for social care or social rehabilitation services for aliens received temporary residence permit.”

225. 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 13§3 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 13§3 of the Charter on the ground that access to social services by foreign nationals is subject to an excessive length of residence requirement.

226. The representative of Poland asked for the situation in her country concerning articles 13§3 and 14§1 to be considered together, as the ground for non-conformity was the same for both of them.

227. The situation was unchanged since the last examination. There were no plans for the moment to amend the 2005 Social Assistance Act. The length of residence condition for eligibility to social and welfare services was five rather than three years, as stated by the European Committee of Social Rights in its conclusions XIX-2 (2009). Temporary residence permits could be granted for political refugees, asylum seekers and other exceptional cases, but the number of such permits was generally limited each year.

228. In answer to the Chair, the representative of Poland said that the number of persons affected each year by this restriction was limited, as was immigration into Poland. Those concerned were mainly non-EU nationals.

229. Under the social assistance legislation, the decision on whether to grant medical assistance was taken by the administrative authorities. However no such administrative decision was needed in the case of a medical emergency.

230. The Committee noted the information supplied by the representative of Poland. It asked the Government to provide all relevant information in its next report and to take whatever steps were necessary to bring the situation into compliance with the Charter.

Article 13§4 – Specific emergency assistance for non-residents

ESC 13§4 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 13§4 of the Charter, as it has not been established that all legally and unlawfully present foreigners in need are entitled to emergency medical and social assistance.

231. The representative of Croatia provided the following written information:

“When it comes to specific emergency assistance for non-residents, we would like to point out that, in police procedures involving foreigners, be they legally residing foreigners or illegal immigrants, medical assistance will be immediately sought always when it is needed, and the foreigner may also be transported to a medical facility, if necessary.

It should also be noted that a clinic staffed by a full-time medical team consisting of a general practitioner and a nurse has been established at the Ježevo Reception Centre for Foreigners. The clinic is open every working day from 8.00 to 16.00. During 2009, medical assistance was provided to 1,189 persons. A total of 1,142 medical examinations were carried out in the Reception Centre and 42 in other medical facilities (specialist examinations, hospitalisation, dental services).

Therefore, due to what has been stated above, we consider that foreigners in illegal status are not left without appropriate medical assistance.

Furthermore, the Asylum Act (Article 42) lays down the right to accommodation and specifies that the activities relating to this right are within the competence of the Ministry of Health and Social Welfare. Article 21 of the Ordinance on providing accommodation to asylum seekers, asylees, foreigners under subsidiary protection and foreigners under temporary protection (Official Gazette 36/08) prescribes that an asylee who is unable to find lodging is to be accommodated in accommodation facilities which the Republic of Croatia has at its disposal for this purpose. Furthermore, accommodation may also be provided to an asylee in accommodation facilities placed at the disposal of a religious community, humanitarian organisation, company, association or other domestic or foreign legal or natural person with which the ministry responsible for social welfare has entered into a contract on the provision of accommodation to asylees. In this connection, it should not be forgotten that the service of provision of accommodation to asylees includes provision of accommodation in an appropriate housing facility in which basic hygienic needs can be met and which allows for independent preparation of food.”

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 13§4 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 13§4 of the Charter as it has not been established that all persons, without resources, unlawfully present in Germany may be granted emergency medical and social assistance

233. The representative of Germany provided the following written information:

“All persons, without resources, unlawfully present in Germany may be granted emergency medical and social assistance on the following grounds:

An illegal resident who discloses his illegal status to an authority, or whose status comes to the knowledge of the authorities in any other way, may provisionally be granted social benefits to cover necessary subsistence in accordance with the Asylum-Seekers Benefits Act (AsylbIG). Section 1, paragraph 1 No. 5 of the Asylum-Seekers Benefits Act stipulates that persons who are enforceably required to leave the country and do not have toleration status under legislation concerning foreigners shall be eligible for benefits.

A foreigner who has no residence permit and no residence right based on European Community law receives benefits covering necessary subsistence and emergency medical care (basic medical care) in accordance with §4 of the Asylum-Seekers Benefits Act. It is not relevant for claiming benefits or enforcing a claim for benefits covering necessary subsistence or medical care whether or not the foreigner's illegal residence status has already been known to the authorities.”

234. 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 13§4 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 13§4 of the Charter as it has not been established that all unlawfully present persons in need receive emergency social assistance.

235. The representative of Greece provided the following written information:

“Regarding the first negative conclusion of the European Committee of Social Rights on the provision of emergency social assistance to those who are in need of it and to those who are illegally staying in the country, we would like to note the following:

The **emergency social assistance** (for example, food, shelter, clothing) in cases of need, both for persons who are lawfully present in Greece (students, tourists) as well as for those who are unlawfully present, including those whose applications for refugee or stateless person status have been rejected as well as others, is examined case by case. For example, assistance is offered to all persons without exception in cases of natural disaster as well as to all unattended – under aged children irrespective of their nationality.

Furthermore, **medical services** are offered in emergency cases until the condition of the affected persons becomes stable. These services are also offered to under aged children whether in emergency cases or not, while in cases of massive arrivals of illegal immigrants, patients are transferred to proper medical units for hospitalization.

For the year 2008 the **total expenditure on medical care to the financially weak – uninsured** Greek citizens and foreigners amounted to €136.718.172,54, while for the year 2009 **expenditure on hospital care – medicines – medical examinations for immigrants from states that are Recipients of the Development Aid (ODA) from the up to now data was 6.651.836,43€** (data which are under elaboration process have not been included).

Lastly, other social aid expenditure is **within the framework of the European Refugee Fund for the financial year 2008 – Emergency Measures**, (a) the scheme “Actions in the region of Thrace and the islands of Eastern Aegean within the framework of Emergency Measures” was implemented (Areas of implementation: Filakio of Evros, Venna of Rodopi, Leros, Mitilini, Samos), with period of implementation from 1/4/2009 – 31/5/2009 and a total budget of € 85.000, and (b) the program “Creation of a network for medical monitoring, drug coverage and prevention against infectious diseases for asylum seekers among foreign refugees” by the KELPNO (Center for Monitoring and Prevention of Diseases) (Areas of implementation: Samos, Chios, Mitilini, Athens Airport), with period of implementation from 15/9/2009 – 15/12/2009 and a total budget of € 150.000.

Within the framework of the European Refugee Fund for the financial year 2009 – Emergency Measures the scheme “Actions to cover the medical and pharmaceutical needs of asylum seekers and unattended under aged persons in the areas of Samos, Chios, Lesbos, Athens Airport “El. Venizelos”, Rodopi and Evros” was implemented with period of implementation from 16/12/2009 – 14/4/2010 and a total budget of € 267.700.

In the next Greek report concerning article 13 there will be a further in depth and detailed presentation of the Greek legislation and policies on this issue.”

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.

ESC 13§4 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 13§4 of the Charter on the ground that legislation and practice do not guarantee that all unlawfully present foreigners receive emergency social assistance for as long as they might require it.

237. The representative of Luxembourg said that on 18 December 2009 a new Social Assistance Act had been adopted by parliament. Once it had come into force (in January 2011), it would provide a positive response to the conclusions of non-conformity drawn by the European Committee of Social Rights.

238. The Committee took note of these changes and decided to forward the information provided by the representative to the ECSR for its assessment.

239. With regard to the matter of the submission of information by Luxembourg, Mr Kristensen said that Luxembourg's reports were sent to the Secretariat very late. For example, the 2009 report had arrived on 30 June 2009 whereas it should have arrived by the end of October 2008 at the latest. Mr Kristensen pointed out that because of these delays, Luxembourg had already been issued two warnings by the Committee (in 2004 and 2005).

240. In this connection, the Chair considered it necessary to issue a further warning to Luxembourg.

241. The representative of Luxembourg said that there had recently been a change of government in Luxembourg and this had caused an excessive workload at the internal administrative level. As a result the work of collecting the relevant information for the report had been delayed.

242. The representative of the Czech Republic considered that, as had been suggested for Ireland, it was appropriate to vote on a proposal for a recommendation with regard to Luxembourg for failure to submit reports on time.

243. The Committee voted on a proposal for a recommendation, which was rejected (3 votes for, 18 against and 13 abstentions). The Committee then voted on a warning, which was approved (25 votes for, 1 against, 8 abstentions).

Article 14§1 – Promotion or provision of social services

ESC 14§1 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 14§1 of the Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

244. The representative of the Czech Republic provided the following written information:

“As in the previous two instances, we believe that the conclusions of ESCR are entirely wrong. The group of people who are provided with social service assistance and with care allowance is defined by Act No. 108/2006 Coll. on Social Services, as amended.

Social services and care benefits are awarded to the following people:

- a person who is registered as a permanent resident on the territory of the Czech Republic, in accordance with special legislation,

- a person who has been awarded asylum, in accordance with a special legal registration,
- **foreign nationals without permanent residence in the territory of the Czech Republic, who are guaranteed this right under an international agreement,**
- a citizen of a European Union Member State, provided he is registered as resident on the territory of the Czech Republic for a period of longer than 3 months, in accordance with a special regulation, unless he is entitled to social benefits under the terms of a directly applicable regulation from the European Community,
- a family member of a citizen of the European Union Member State, provided he is registered to reside for a period of over 3 months on the territory of the Czech Republic, in accordance with a special legal regulation, unless he is entitled to social benefits under the terms of a directly applicable regulation from the European Union,
- a foreign national who holds a permanent residence permit with the approved legal status of a long-term resident of the European Community on the territory of another European Member State, provided he is registered for long-term residence on the territory of the Czech Republic for a period longer than 3 months, in accordance with a special legal regulation.

Regarding people entitled to social services and a care allowance based on the international treaty, the law expressly refers to the European Social Charter. This means that citizens of the States Parties to the European Social Charter are entitled to social services and care allowance benefits even without meeting the condition of permanent residence.

Social prevention services are also provided free of charge to all persons legally residing in the territory of the Czech Republic.”

245. Le Comité invite le Gouvernement à fournir toutes les informations pertinentes dans son prochain rapport et décide d’attendre la prochaine appréciation du CEDS.

ESC 14§1 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 14§1 of the Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

246. The representative of Latvia stated that the situation had improved in that originally there had been a ten year residence requirement in order to obtain permanent permit and so to access social services, but this had been reduced to five years. Further she pointed out unaccompanied minors were entitled to social services without condition and emergency social services were also available. In addition she added that the Government may consider further shortening the period.

247. Several representatives (Poland, France ETUC) pointed out that this was not new information, and while the length of residence requirement had been reduced from 10 to 5 years the ECSR was aware of this development.

248. The representative of Portugal stated that this case concerned a violation of the fundamental principle of non discrimination.

249. The Committee, while recognizing that progress had been made in recent years, urged the Government to take all the necessary measures to bring the situation into conformity with the Charter and decided to await the next assessment of the ECSR.

ESC 14§1 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 14§1 as it has not been established that monitoring arrangements for guaranteeing the quality of the social services provided by the various providers do exist.

250. The representative of Luxembourg provided the following written information:

“Position of the Ministry of Family Affairs and Integration

Equal and effective access to social services

Access to social, family and health services is governed by the Act of 8 September 1998¹ governing relations between the state and bodies operating in the social, family and health spheres (the ASFT Act) and by the Child and Family Support Act of 16 December 2008².

The ASFT Act is based on the principle that all activities in the social, socio-educational, medico-social or health field that are carried out regularly as main or auxiliary activities are subject to authorisation from a competent authority. This authorisation is mandatory for both natural persons and public or private legal entities performing such work.

To obtain authorisation applicants must satisfy the following conditions:

- a) fulfil the relevant conditions concerning good character, both in respect of the natural person concerned or the members of managing bodies of the legal entity responsible for managing the activities referred to in section 1 and in respect of the managerial staff;
- b) have buildings, premises and other facilities meeting minimum health and safety standards and users' needs;
- c) have sufficient numbers of qualified staff to deal with or care for users. The level and type of professional qualifications or equivalent training and the minimum number of staff must be set in the light of the services provided, the users' needs and the way the service operates;
- d) submit a financial report and a provisional budget, except for public law applicants which are required to do so by other laws or regulations;
- e) guarantee that the authorised activities will be available to users regardless of any ideological, philosophical or religious consideration and that users' privacy and religious and philosophical beliefs will be respected.

The most relevant of these conditions for our purposes here is condition e), under which service providers are required to guarantee that authorised activities will be accessible to users. This means that service providers operating in the social, family and health spheres have a statutory obligation to provide access to state-authorised services.

Service providers which have been granted state authorisation may request financial support to carry out their activities and if this is provided, they must sign an agreement with the state.

Activities covered by the ASFT Act are those provided in exchange for payment and do not therefore include voluntary or charitable work.

Under the Child and Family Support Act of 16 December 2008, social assistance measures aimed at children and young people are also subject to the authorisation required under the ASFT Act. The state contributes to the funding of these activities through monthly, daily or hourly flat-rate sums. For any further costs, the state may request a financial contribution from the parents, the details of which will be established through a Grand-Ducal Regulation, which is currently being drawn up.

Measures have been taken to reduce the parental contribution to extra-curricular educational services – which are also subject to authorisation and other provisions of the ASFT Act – and make them partly free of charge through a system known as the “child-care service-cheque”, designed to facilitate access to professional education services outside school³.

Quality of services

Article 5 of the Grand-Ducal Regulation of 16 April 1999 on the authorisation to be granted to managers of residential care centres for children and young adults provides as follows:

All care centres are required:

- to draw up a plan of activities, including objectives, the type and numbers of users to be provided for, the methodology to be applied, user access procedures and standard working hours. The plan shall be regularly updated and adjusted to users' needs;
- to provide anyone who so requests with a document summarising the activities carried out. This document shall be automatically sent by the care centre to any authority likely to make use of its services or to refer potential users to it;
- to provide users with care and facilities which show due regard for their physical, psychological and social well-being and respect the provisions of the Convention on the Rights of the Child adopted by the UN General Assembly on 20 November 1989;
- to provide care which takes account of the ties between children or young adults and their parents and wider family circle and is aimed at their social rehabilitation and/or reintegration into their families of origin, as the case may be.

¹ Official Gazette No. 82 of 24 September 1998, page 1599.

² Official Gazette A No. 192 of 22 December 2008, page 2583.

³ Grand-Ducal Regulation of 13 February 2009 establishing the “child-care service-cheque”, Official Gazette A No. 26 of 18 February 2009, page 375.

Managers must show that their individual strategy is compatible with the general guidelines set by this regulation.

Compliance with these rules is reviewed once a year at consultation meetings between centre managers and officials from the Ministry of Family Affairs and Integration. On these occasions, managers are asked to produce certain documents, either on the basis of a random sample or in connection with the reorganisation of the service.

Lastly, it goes without saying that when centres which have negotiated a financial agreement with the state covering all their services submit their annual accounts, there is an automatic review of staffing budgets based on the number of hours for which users are registered and the staff payroll.

From 2011 onwards, the supervisory system will adopt a new approach, giving absolute priority to the child's needs, in accordance with the Child and Family Support Act of 16 December 2008.

This Act places the emphasis both on prevention and on the early, comprehensive treatment of hardship cases which may involve children or young adults and their families. One of the main aims of the Act is a drastic improvement in the quality of support provided for children and families. This will be reflected in more co-ordination, consistency and continuity in terms of support measures and in the direct involvement of young people and families in decisions concerning them. To facilitate the implementation of the Act, a number of more wide-ranging measures have had to be taken.

To achieve the Act's aims, the government is intending to set up a new service in the psychological and social work sphere, namely the assistance project co-ordination service (or CPI service) covering children and their families. Its task will be to draw up an assistance plan for each family with one or more children in distress on the basis of a comprehensive review of the child's and the family's situation, and to co-ordinate, keep track of and fine-tune the implementation of the project in close consultation with the young people concerned, their families and the service providers. The CPI service will support families in all matters relating to the availability, organisation and funding of the assistance required. It will be answerable to the Ministry of Family Affairs and Integration and bound by a co-operation agreement with the National Childhood Office (the ONE). The ONE's job will be to appoint CPI services to deal with specific situations, to analyse, validate and finance assistance projects devised by CPI services and to see to it that assistance projects and support measures are continuously assessed.

This new arrangement, which clearly divides up the tasks of co-ordinating, supervising and implementing support measures between the different bodies and services, should solve the current problems of assistance being spread too thinly or being interrupted.

With the same goal in mind and with a view to facilitating the introduction of an internal quality control system in social services, co-operation has been established with the University of Luxembourg on a research project on quality control which has made it possible to conduct academic research in a way that ties in with and builds on the results of countless pilot projects carried out in Luxembourg and neighbouring countries.

This has set down crucial markers for the future, making it possible to do more efficient, targeted work on a number of situations of distress involving minors, which, as both national and international statistics show, are becoming increasingly numerous and complex with every passing year."

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 14§1 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 14§1 of the Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

252. See Article 13§3.

ESC 14§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 14§1 of the Charter as it has not been established that:

- remedies enabling users to assert their rights do exist;
- monitoring arrangements for guaranteeing the quality of the social services provided by the various providers do exist.

253. The representative of the Slovak Republic provided the following written information:

“Social services are provided in Slovakia in compliance with the Act on Social Services, which entered into effect on January 1, 2009. Pursuant to the basic provisions of this Act, social services are particularly conducted through social work, methods corresponding with the knowledge of social sciences and knowledge of the status and development of the provision of social services.

Social services are aimed at

- a) preventing solving or alleviating unfavourable social situations of natural persons, families or communities;
- b) preserving, renewing or developing the ability of natural persons to lead independent lives and supporting their inclusion in society;
- c) ensuring the necessary conditions for satisfying basic living needs of natural persons,
- d) resolving crisis social situations of natural persons and families; and
- e) preventing the social exclusion of natural persons and families.

Ad questions of the Committee:

Question, whether persons without permanent residence but legally working in the SR are handled equally as citizens of the SR in the area of social services.

Besides citizens of the SR, the following can also be the recipients of social services

- a foreigner, who is national of a member state of the European Union or a state of the European Economic Area, who has a registered permanent residence on the territory of the Slovak Republic
- a family member of the foreigner, who has a permanent residence permit on the territory of the Slovak Republic
- a foreigner, who is family member of a national of the Slovak Republic with permanent residence on the territory of the Slovak Republic, and who has a permanent residence permit on the territory of the Slovak Republic
- a foreigner who is not citizen of a state of the European Economic Area and whose rights arising pursuant to this law are guaranteed by an international agreement binding for the Slovak Republic and which was publicized in the Collection of Laws,
- a foreigner who has been granted asylum
- a foreigner, who is not a citizen of a state of the European Economic Area, and who has a temporary or permanent residence permit on the territory of the Slovak Republic and whose rights pursuant to this law are not regulated by any international agreement,
- a foreigner who was provided with complementary temporary refuge protection,
- a Slovak living abroad, who remains on the territory of the Slovak Republic for at least 180 days continuously in the course of one calendar year.

The following can also be a non-public provider of social service

- a foreigner, who is a national of a state of the European Economic Area and who has registered permanent residence on the territory of the Slovak Republic,
- a natural person, who is foreigner and not a national of a state of the European Economic Area, if he/she is holder of a temporary or permanent residence permit in the territory of the Slovak Republic,
- a legal entity with its registered seat outside the territory of the Slovak Republic, whose organization unit's registered seat is on the territory of the Slovak Republic,

Request for information regarding the fees charged for various services and terms, under which it is possible to achieve freedom of payment

In the event of the provision of **social services provided by public providers**, the method for determining the payment, amount of payment and method of payment for such provided social services and details on the provision of social services are established by municipalities or self-governing regions, since this pertains to the execution of self-governing competence, through generally binding legal regulations for their territorial districts in compliance with their social policy on the territory. The payment for social services is determined through an agreement on the provision of social services and its amount may not exceed the economically eligible costs for the provision of social service.

When providing caretaking services, the payment and cost differs depending on the provider, the number of hours and the acts of caretaking service. When providing the social service in social service facilities, the cost varies from 660 € up to approximately 990 €; it also differs according to the provider, region and type of facility.

The financial availability of the provision of social services, which constitutes a public interest, is also guaranteed by law for recipients in the case of public providers and non-public providers, with whom social services are provided by the municipality or self-governing region through the established legal protection of citizens from payments for social services established in connection with the subsistence level sum, which is subject to annual valorisation. This guaranteed balance from income after payments for social services is determined according to the type and scope of provided social

services. It means that if the income of the client is not sufficient for the entire payment, he/she does not pay for it at all, but only a part, in order to ensure that after the payment for social services he/she will be left with an established percent or multiple of the sum of subsistence level. For field caretaking services, it is a 1.3 multiple of the sum of subsistence level; for outpatient social services in a facility, it is 70 % of the sum of subsistence level, for week-long stays at facilities it is 50 % of the sum of subsistence level and for year-round stays at facilities, it is at least 20% of the sum of subsistence level.

If the social services are provided by a **non-public provider**, they are provided based on the agreement of the citizen with the concrete non-public subject, which must also incorporate the price for social services and the terms for its payment; such amount may not exceed the economically eligible costs for the provision of this social service.

Question related to the quality of social services

The Slovak Republic regulated the quality standards for social services, or the obligation of the social services provider to meet the conditions for the quality of provided social service (i.e., procedural, staffing and operation conditions of the provided social services) through the Act on Social Services, which entered into validity and effect as of January 1, 2009,.

Other obligations of social service providers while providing these services regulated in Act on Social Services can be considered as measures aimed at the improving the quality of provided social services and this particularly pertains to:

- the obligation to plan the course of provision of the social service (the so-called individual development plan) according to the individual needs, abilities and aims of the social service recipient.

The Ministry of Labour, Social Affairs and Family of the SR supervises the fulfilment of the quality standards, but also adherence to the Act on Social Services and other generally binding legal regulation in particular in terms of adherence to the fundamental human rights and freedoms in the provision of social services and the method of their executing through its Supervision over the Provision of Social Services. A separate Paragraph was established for these purposes, which is not incorporated in the subject-matter competence of any Paragraph and is under the direct competence of the minister of labour, social affairs and family.

The control of the level of provided social services is also conducted by municipalities and self-governing regions with public providers founded by them and non-public providers of social services.

In terms of the legal protection of citizens in the provision of social services, we can state that after the de-centralization of social services, the municipalities and self-governing regions decide on the dependence of the client on social services pursuant to established competences in compliance with the Act on Social Services. In the event that a citizen disagrees with a decision, he/she can demand remedy against the decision regarding his/her dependence on social services by filing a remedial measure to the relevant Regional Court (pursuant to the instructions contained in the decision). The supervision over adhering to laws and other generally binding legal regulations by the general government organs is carried out by the prosecutor's office in compliance with Act No. 153/2001 Coll. on the Prosecutor's Office as amended. A move to inspect the rule of law may be also filed by a citizen at the prosecutor's office (pursuant to § 31 and subsequent Act No. 153/2001 Coll. on the Prosecutor's Office as amended) if he/she thinks that the law was violated in the proceedings or the decision-making process.

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

ESC 14§1 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 14§1 of the Charter as conditions to be met by providers of social services are not clearly defined and it has not been established that supervisory arrangements for ensuring that they are complied with have been established in practice.

255. The representative of Spain provided the following written information:

“Bearing in mind what has been said in connection with the previous article, it should be stressed that all the applicable social welfare legislation in the autonomous communities guarantees all citizens equal and fair access to social welfare services, within those communities' geographical and material spheres of competence. Nevertheless, in connection with the report's conclusions we would wish to add the following comments:

- Lack of economic resources is never a factor restricting access to a service and/or benefit. On the contrary, all the relevant legislation makes it clear that persons shall not be excluded from the system

as a result of a lack of economic resources. Some services may be free and where there is a user contribution this is set at a level that takes account of their capacity to pay, in other words their income.

- Foreign nationals who are in the country lawfully are eligible for these services under the same conditions as Spanish nationals and those whose situation is irregular are eligible for basic social welfare services if they have a registration certificate. No one who is in urgent need of assistance is excluded.

- The quality of services is guaranteed in all the autonomous communities by a wide range of standard-setting regulations, systems of accreditation and inspection, monitoring arrangements and penalties for non-compliance.”

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

Article 14§2 – Public participation in the establishment and maintenance of social services

ESC 14§2 CZECH REPUBLIC

The Committee cannot appreciate the situation in the Czech Republic with regard to Article 14§2 of the Charter. It therefore considers that the situation on this point is not in conformity with Article 14§2 the Charter.

257. The representative of the Czech Republic provided the following written information:

“Active public involvement begins during the planning stage of social services at municipal and regional level. It is governed by the below stated key principles that form part of the official methodology for planning social services, developed by the Ministry of Labour and Social Affairs.

1. Partnership among all participants

The needs and objectives of all participants are equal. The views of all parties must be equally considered.

2. Engaging local communities

When engaging local communities, it is necessary to search for different methods and forms of addressing and engaging so that the offer for cooperation is understandable (e.g. according to residency address, lifestyle, interests, social ethnicity etc.). No person shall be excluded or discriminated against.

3. Searching for new human and financial resources

Cooperation with entrepreneurs as well as significant work of volunteers, self assistance groups, home carers, including neighbourhood help must not be forgotten. Community planning of social services is one of the instruments for improving the quality of life in a municipality.

4. Working with information

It is necessary to ensure equal access to information within the management structure and to ensure the transmission of information to the public. If the information is periodically transmitted, it is feasible to expect relevant comments and suggestions. It is necessary to determine how comments can be made and how will they be processed.

5. The community planning process is as important as the final document

Community planning is not carried out by groups of experts. The process of community planning means searching, involving and carrying out discussions with various people. This process facilitates that the proposed system of social services becomes unique and unrepeatable as well as fully consistent with the conditions and resources.

6. Taking into account already established and tested cooperation

Well functioning cooperation can be an inspiration for other participants in community planning. Increased cooperation between all participants creates a better quality of social services.

7. Compromise between wishes and possibilities

The result of community planning is always a compromise between what we want and what we have available. The options, in this instance, are not only material, financial and in terms of human resources, but also an agreement defining how and who will participate in achieving the defined community planning objectives.

Social services planning therefore links the activities and needs of citizens with the decision-making of local authorities. The fundamental objective of communication with the public is to ensure the transparency, clarity and effectiveness of all activities as well as gaining confidence.

Regarding social service providers, these services can only be provided under licence for the provision of social services – this licence entitlement arises by registration according to Act No. 108/2006 Coll., on Social Services, as amended and which defines the obligation to register all social service providers, therefore, not only non-governmental non-profit organizations, as stated in the conclusions of ECSR.

All providers are equal during the planning and provision of social services and their objectives and aims are equally important. The allocation of funds should always be determined by the quality and need of the service, not by the fact that the provider is a municipality, non-governmental non-profitable organisation, individual etc. “

258. 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 14§2 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 14§2 of the Charter because it has not been established that measures are taken to encourage voluntary organisations to participate in the establishment and maintenance of social welfare services.

259. The representative of Luxembourg provided the following written information:

“It should be emphasised from the outset that Luxembourg has a long tradition of social welfare services that are rooted in civil society. Those directly concerned, such as parents' groups, non-profit associations and foundations like Caritas and the Red Cross, have developed activities to deal with social problems and it is these initiatives that formed the basis for the social welfare services. Without the contribution, commitment and support of those directly concerned, be they voluntary associations or what is generally known as civil society, numerous projects would never have got off the ground.

The authors of the Act of 8 September 1998 governing relations between the state and bodies working in the social, family and therapeutic spheres emphasised the critical role played by private initiative. This, they argued, must remain at the heart of social work in the family and therapeutic domains, with the state's role necessarily being limited to general co-ordination of all these activities and offering financial support where such support was essential and was requested by the body itself¹.

The government is well aware of the important contribution of civil society to establishing and developing social services and has taken a number of steps to promote voluntary activity.

In a decree of 27 September 2002, the government established a higher council for voluntary activity with the following remit:

- a. give its opinion on all government measures designed to encourage voluntary activity on the part of citizens and organisations using the services of volunteers;
- b. advise national and local political decision makers on their measures to promote and support the voluntary sector;
- c. promote recognition and support for and co-ordination of voluntary initiatives;
- d. make its own proposals on measures to promote voluntary activity;
- e. encourage initiatives such as the "voluntary sector agency" (*agence du bénévolat*) and monitor their progress;
- f. encourage regional, Community and international projects concerned with exchanges of volunteers of all ages.

In his state of the nation address of 22 February 2008, the prime minister announced the establishment of a joint ministerial working group on the voluntary sector, which is currently composed of representatives of the family and integration, health and social security and transport ministries, the ministerial departments of sport and of culture and the ministry of small firms and traders.

A non-profit Luxembourg voluntary sector association was established on 16 September 2002, with the task of promoting initiatives in this sector by means of a "voluntary sector agency".

The agency acts as the association's executive body. It entered into a formal agreement with the family and integration ministry in 2003 and has the following responsibilities:

- provide information and guidance to volunteers of all ages and nationalities who request its assistance;

¹ Bill 3571 governing relations between the state and bodies working in the social, family and therapeutic spheres.

- provide training for volunteers with managerial responsibilities;
- act as an interface between volunteers and associations working with volunteers;
- support associations using voluntary labour, for example by offering them training and a forum for exchanging information and experience;
- educate and inform the public to establish a favourable environment for voluntary activity within civil society.

The voluntary sector agency has set up an internet site (<http://www.benevolat.public.lu>), which was put on line to the general public on 28 February 2009. The site offers volunteers and associations a platform for exchanging ideas and information.

The agency's spheres of activity include citizenship, integration and social action.

The family and integration ministry's 2010 budget includes:

- € 146 069 as the state contribution to the expenses of private managers offering their services to voluntary initiatives in the social, emergency and rescue, culture, sport, environment, youth, women and senior citizens fields and/or involved in educating and informing the public;
- € 22 500 for promoting voluntary activity, in the form of training, documentation, awareness raising, co-ordination and various projects.

Action to encourage volunteers to become involved in the establishment and operation of social welfare services extends beyond the family and integration ministry's sphere.

In connection with financial and other activities to promote the voluntary sector, reference should also be made to the interior ministry, via its emergency and rescue services department, and the health and social security ministries, which provide accident insurance coverage for accidents incurred by volunteers undertaking a voluntary activity on behalf of a state-approved social welfare service.”

260. 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 Article 4 of the Additional Protocol –Right of the elderly persons to social protection

ESC 4AP CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 4 of the Additional Protocol on the grounds that:

- it has not been established that there is an adequate legal framework to combat age discrimination outside employment;
- the level of the minimum old-age pension is manifestly inadequate.

261. The representative of the Czech Republic provided the following written information:

First ground of non-conformity

“The protection of older persons against discrimination is defined by Act No. 198/2009 Coll., on equal treatment and legal means of protection against discrimination (Anti-Discrimination Act), as amended.

The antidiscrimination law comprehensively incorporates the relevant provisions of the European Communities in response to the Charter of Fundamental Rights and Freedoms and international treaties which form part of the Czech Republic legislation system, further specifying the right to equal treatment and prohibition of discrimination in respect of:

- a) The right to employment and access to employment.
- b) Access to profession, business and other self employment activity.
- c) Work, service and other employment, including remuneration.
- d) Membership and activities in trade unions, employee councils and employer's organisations, including the benefits provided by such organizations to their members.
- e) Membership and activities of professional chambers, including the benefits that these public corporations provide for their members.
- f) Social security.
- g) Granting and providing social benefits.
- h) Access to and provision of health care.
- i) Access to and provision of education.

j) Access to goods and services, including housing, if they are offered to the public or upon their provision.

Discriminatory reasons prevented by law include:

- Racial or ethnic origin
- Nationality
- Sex and also discrimination on the grounds of pregnancy, maternity, paternity or sexual identity
- Sexual orientation
- **Age**
- Disability
- Religion or beliefs

The legislation applies to both direct discrimination and indirect discrimination including harassment, sexual harassment, instruction and instigation to discriminate.

At the same time, the anti-discrimination law introduces for the concerned subjects the means for legal protection against discrimination in cases of breaching the prohibition of discrimination.

Given that this law was adopted outside the reference period of the sixth report, this information was not included in this report. The next report will provide more information in more detail.”

Second ground of non-conformity

See Article 12§1.

262. 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 4AP DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 4 of the Additional Protocol on the grounds that:

- it has not been established that there is an adequate legal framework to combat age discrimination outside employment;
- the level of the starting allowance for single elderly persons is not adequate.

263. The representative of Denmark provided the following written information:

First ground of non-conformity

“Article 4 of the Additional Protocol ensures the right of elderly persons to social protection.

As it appears from the 28th report, the Danish Government takes the obligations entailed in Article 4 very seriously.

In its conclusions, the Committee “recalls that Article 4 of the Additional Protocol requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services” and concludes that “As it has not been established that there exists anti-discrimination legislation on the ground of age outside the field of employment, or an equivalent framework, the Committee considers that the situation in Denmark is not in conformity with Article 4 of the Additional Protocol.”

Article 4 of the Additional Protocol, however, makes no mentioning of anti-discrimination legislation on the ground of age.

In the 28th report, an account has been given on the measures adopted by Denmark to fulfil the obligations under Article 4. As it appears, anti-discrimination legislation on the ground of age does not form part of the measures chosen. This does not, however, seem to be incompatible with the wording of Article 4.

Furthermore, the Danish Government observes that the Committee’s conclusion is not based on a finding by the Committee that elderly people in Denmark are discriminated against on the ground of age, but on the assumption that age discrimination is widespread in Europe and that “an adequate legal framework is fundamental to combat age discrimination”.

The Danish Government therefore respectfully asks the Committee in future deliberations to consider the above mentioned points of view.”

Second ground of non-conformity

“The Committee concludes that the level of the starting allowance for single elderly persons is not adequate.

As far as the way of measuring “not adequate” as less than 50 per cent of the equivalised median income is concerned, the Danish Government refers to the comments made on Article 13§1.

The level of one kind of support cannot stand alone. Starting allowance receivers may qualify for additional support in the form of special assistance to cover high housing expenses, housing subsidies, etc.”

264. 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 4AP SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 4 of the Additional Protocol on the following grounds:

- it has not been established that there is an adequate legal framework to combat age discrimination outside employment;
- the level of the non-contributory old age pension is manifestly inadequate;
- it has not been established that health care programmes sufficiently meet the needs of the elderly.

First, second and third grounds of non-conformity

265. The representative of Spain provided the following written information:

“The legal ban on age-based discrimination is embodied in Act 39/2006 of 14 December 2006 on the promotion of personal autonomy and care for dependent persons, section 1 of which states that its purpose is to establish the basic conditions for ensuring that dependent persons can exercise their subjective right to personal autonomy and care in complete equality. “Dependence” is defined as a permanent state arising from grounds of age, sickness or disability, and linked to the absence or loss of physical, mental, intellectual or sensory autonomy, which requires the assistance of one or more other persons or major aids to carry out basic everyday activities or, in the case of persons with an intellectual deficiency or mental disorder, other help with maintaining their personal autonomy (section 2.2).

Under Spanish legislation, disability may lead to a situation of dependency but this is not necessarily the automatic consequence of all forms of disability. Old age may also generate dependency but not all elderly persons are dependent.

This is one of the main reasons for establishing specific groups of fundamental rights. The law and regulations on the rights of disabled and of elderly persons have developed unequally, though the former have recently succeeded in expressing their demands in the UN convention on disability . In both cases efforts have focussed on the prevention and eradication of maltreatment, as one of the most serious violations of human rights.

Under the so-called “2008 Brasilia rules”, people are considered vulnerable when, because of their age, sex or mental or physical state, or because of social, ethnic and/or cultural circumstances, they face particular difficulties in exercising their full legal rights in the courts. The causes of vulnerability include age and disability. Old age may lead to vulnerability. For example, because of loss of functional capacity, elderly persons have particular difficulties in exercising their judicial rights.

The right not to be subjected to torture or other cruel, inhuman or degrading treatment is sufficiently well established in international human rights law and applies to everyone. Experience shows, however, that certain groups, including the elderly and disabled, require specific legislation and policies to deal with this problem. The UN convention on disability deals with abuse and maltreatment from a number of perspectives and through the comprehensive application of various provisions.

In particular it establishes certain obligations to prevent torture or cruel, inhuman or degrading treatment or punishment (article 15), offer protection against exploitation, violence and abuse (article 16) and protect personal integrity (article 17). However this is not the only protection offered, since these articles are supplemented by other provisions that have direct or indirect implications for maltreatment and abuse. They include equal recognition before the law (article 12), equal access to justice (article 13), the right to live independently and be included in the community (article 19) and respect for home and the family (article 23).

In conclusion, states such as Spain that have ratified the convention are required to review their legislation and policies on the protection of persons with disabilities against maltreatment and abuse.

Social and medical responses to maltreatment

Local authority social services

Local social services departments are closest to the ordinary citizen. They are the most immediate and appropriate focus for preventing, identifying and resolving the maltreatment of elderly persons. Social workers monitor such persons and their social and family environments since they are best equipped to deal with this major problem.

Legal forms of prevention of and protection against maltreatment of elderly persons

One problem for those responsible for applying the law is that it is based on a number of different sources.

1. Criminal law. This includes:

A. The protective measures in sections 61 to 69 of the Gender-Based Violence Act.

Articles 226 to 233 of the Criminal Code, which deal with the offence of the abandonment of minors or disabled persons by their families.

B) The offence of causing bodily harm is covered by articles 147 and 148 of the Criminal Code, and is punishable by stricter penalties (art. 148.5) if the victim is particularly vulnerable. In a large number of cases (29-9-2003, 13-1-2004), the Court of Cassation has identified as being particularly vulnerable any person whose age or physical or psychological state, or whose personal circumstances within his or her family or entourage, places him or her in a position of inferiority or weakness *vis-à-vis* an aggressor. In determining whether victims can justifiably be considered to be vulnerable account is taken of various personal circumstances, such as a. their age, which includes persons of advanced age; b. any illness; c. mental disorders; and d. any situation of inferiority in their particular circumstances.

Aggravated penalties may also be imposed for the offences of maltreatment (art. 153), threats (art. 171) and coercion (art. 172).

Persons who may report such offences

Article 259 of the Code of Criminal Procedure makes it a duty for anyone who witnesses any public offence to report it. Article 262 places a similar obligation on persons who become aware of such offences in the course of their professional duties.

Article 30 of the medical ethics code states more specifically that doctors who are aware that individuals whom they have assisted have suffered maltreatment, particularly if they are minors or disabled, must take the necessary steps to protect them and report the facts to the competent authority.

Similarly, article 55 of the Spanish nursing code of ethics requires nurses to defend the rights of patients who have suffered physical or psychological maltreatment and protect them from undergoing unnecessary treatment or the refusal of assistance.

Article 23 of the social workers' ethical code requires them to report cases of maltreatment, abuse or abandonment of persons who cannot defend themselves or who are disabled, though always with the objective of intervening to rectify such situations with the persons involved.

Financial maltreatment must also be reported since this may be an offence against property, such as theft, fraud, forgery and so on. Complaints should be lodged with the appropriate authorities, normally the police and the guardianship court.

2. Civil law.

When one of the causes of incapacity provided for in Article 200 of the Civil Code occurs, individuals, the authorities, officials and other professionals who, in the course of their duties, become aware of these causes, are required to notify the facts to the public prosecutor. In such cases the rules of the Civil Code and the Code of Criminal Procedure relating to incapacity apply.

Article 762 of the CCP authorises courts that are aware of a possible cause of incapacity to order such measures as they consider necessary to offer adequate protection to persons assumed to have been affected or their assets.

Articles 216 and 158 of the Civil Code and Article 727 of the CCP establish a series of protective measures, including:

- Recording of requests for preventive purposes
- Appointment of interim administrator or guardian
- Appointment of judicial representative
- Completion of inventory
- Freezing of bank accounts
- Suspension of powers
- Supply of food
- Prohibition on leaving the country
- Withdrawal of passport
- Internment.

Compulsory admission to an institution, under article 763 of the CCP, is another means of protecting maltreated adults with mental disorders who are not sufficiently able to make their own decisions.

Once the incapacity procedure has been completed, the law prescribes a series of measures to protect persons under guardianship and their assets. These are the responsibility of the public prosecutor and the courts and include:

- Judicial authorisations under article 271 of the Civil Code.
- The duty of maintenance, and to inform the court once a year of the personal situation of the individual concerned and report on this annually to the relevant authorities.

Persons in need may have the right, under article 142 of the Civil Code, to require members of their family to supply certain items that are essential for a dignified life. This includes a) nourishment; b) accommodation; c) clothing; and d) medical assistance. They may be claimed from the spouse, then the children and grandchildren, then the parents and finally the siblings.

There is a so-called oral procedure for claiming such maintenance, under articles 250 and 437 of the CCP.

To ensure that the obligations inherent in such guardianship are properly fulfilled, article 247 of the CCP provides for its cancellation if the relevant duties are not carried out because of gross dereliction or if there are serious and continuing problems of cohabitation.

In addition, and bearing in mind the vulnerability of certain disabled persons, particularly elderly ones, supervision of the guardianship arrangements may be more intensive, including necessary measures to ensure that the personal care and treatment are fully appropriate. Steps may be taken to identify possible maltreatment and financial abuse by certain guardians by requesting reports from assistance centres, medical professionals or social workers who might become aware of possible problems of this sort in the course of their work.

The inspections of residential or day-care facilities carried out by the relevant authorities or the public prosecutor's office may be an opportunity for elderly persons to report facts that might indicate a need to check for financial and related irregularities, which the public prosecutor would also be responsible for prosecuting.

After various prosecutors' offices had identified such abuses, the public prosecutor of the civil chamber of the Court of Cassation, who has established a system of individual monitoring of each case, has also recommended the general introduction of the system adopted by the Valencia prosecutor for identifying and monitoring possible irregularities in the management of the assets of elderly persons in residential accommodation. This involves the identification of *de facto* guardians, particularly ones with no family connections, who are asked to report on their management, and requiring judicially appointed guardians to submit financial reports.

Since public prosecutors are responsible for protecting individuals and their assets if abuses are identified, the latter will undertake initial inquiries to determine who is the *de facto* guardian. If the latter is not a relation or there is potential evidence of maltreatment, they will then decide whether it is necessary to appoint a guardian. If it is possible to retain the *de facto* guardian, the prosecutor will introduce appropriate checks. However, if an offence may have been committed, the prosecutor will deal with the matter accordingly.

Cases of financial maltreatment are becoming increasingly frequent. Steps must be taken to enable those who are in a position to identify them – relatives, neighbours or professionals of all sorts in the course of their duties – to prevent or put an end to them. As with other types of offences, such as gender violence, a simple written or oral report to the police or the prosecutor's office responsible for guardianships and the disabled can bring such abuses to an immediate end.

In each municipality, the public prosecutor has specialist staff who are empowered to initiate inquiries in response to reports of possible maltreatment. Articles 3 to 5 of the prosecution service statute grants prosecutors powers to protect all disabled persons. In response to any "failure to offer protection", the prosecution service will take urgent and immediate steps to investigate the circumstances of the particular case. The most frequent measures are:

- Assets inquiries: the Treasury is asked to provide the public prosecutor with relevant information on the assets of the individual concerned, such as bank accounts or deposits, property, companies and motor vehicles. It then becomes possible to protect that individual's assets *en bloc*.
- Request to the representative to cede any powers of attorney granted when the individual concerned still had legal capacity, since these become inoperative once that capacity is lost. Many families are still unaware that they may not use a power of attorney previously granted by a relative who has since lost his or her legal capacity. They continue to use it, possibly for their own benefit, without appearing before the court empowered to rule on a change of capacity. One exception is when, in anticipation of a future state of incapacity, the individual concerned has expressly declared that the power would remain operative in such an event.

- The public prosecutor may ask the courts to order other precautionary financial measures, the most common being the freezing of current accounts or all forms of deposits or investment funds, to ensure that they are not used fraudulently by the authorised persons. Naturally, this does not prevent the payment of the necessary amounts for the maintenance of the elderly persons concerned.

- Recording incapacity applications in the public registers, particularly the land register, to publicise the fact that such proceedings are under way. The aim is to prevent the sale of property owned by vulnerable elderly persons in unfavourable circumstances.

- Appointment of a temporary administrator to manage an elderly person's financial interests during the judicial incapacity proceedings. The individual's estate is then administered under judicial supervision, either by a member of his or her entourage or by a public or private body. The disposal of the individual's assets, such as their sale or the creation of a liability, is not allowed during this phase.

It should be noted that under the Spanish legal system notaries authenticate and intervene in numerous transactions, and this can sometimes make a major contribution to preventing the financial or personal maltreatment and abuse of elderly persons.

Notaries must ensure that persons requesting their services are in compliance with the legislation and check their identity, but more importantly they must also confirm their legal capacity and ensure that they are sufficiently aware of the effects and significance of any contracts or legal documents they are supposed to sign, in other words, that they are giving their informed consent.

The fact that someone has reached an advanced age does not mean that their capacity to understand is limited or that their faculties are reduced. However, isolation, dependence on their surrounding family, ignorance of the law or the effects of a disabling condition mean that such persons often require the special attention of a notary. In such cases, as their professional regulations state, notaries have a duty to provide special assistance to persons who require it.

In practice, elderly persons are concerned with all types of legal transaction. Those that require particular attention from the standpoint of preventing abuse are probably ones concerning the disposal of assets. This may occur when parents pass on their assets during their lifetime to enable their heirs to avoid taxes, to be eligible for various forms of public assistance, or to facilitate the transmission of their property or its benefit to their children, with the inherent risk of not receiving assistance or of financial insecurity in the future. In such cases, it is best to consider whether there is adequate justification for this transmission, ensure that the individual concerned still has enough to live on in accordance with his or her circumstances, advise on restrictions on the use or enjoyment of these assets or try to persuade the elderly person to postpone transmission to the time of his or her death in the form of a will.

There is also a risk of abuse when these persons authorise others to dispose of their assets and rights. When such powers are being drawn up, notaries are required to act with caution. Such caution is all the more necessary, for the reasons referred to above, when these powers are formalised. Those in whom the powers are vested use the excuse that it enables them to avoid unnecessary journeys, that they have to concentrate on running a business or that they would have to leave their place of residence to deal with and administer the relevant financial matters, as a result of which elderly persons are often excluded in practice from any decisions concerning them. In such cases notaries are always recommended to refuse to authorise general or excessively flexible powers, to lay down the conditions that must be complied with, to ensure that the powers reflect the free will of the person concerned and to inform the latter of the possibility of and arrangements for revoking them.

Another problem concerns the difficulty of ensuring that these powers are not used once the incapacity of the principal renders them inoperative. It is currently impossible for notaries to make contact directly with those concerned, but they must always inform them of the legal consequences of their improper use.

The frequency with which this occurs and the trend toward deferring the making of wills to an advanced age also increases the risk of abuse or manipulation of elderly family members. Notaries must not only make a careful judgment of elderly persons' state of mind and ensure that they have not been subjected to any pressure, which is sometimes possible via a face-to-face conversation in a suitable setting, but must also inform testators that they have a right to revoke their will and that the fact of having drawn it up in no way restricts their powers to dispose of their assets. Difficult though it may be to believe, it is often the nearest relatives, those who stand to benefit from the will, who persuade their elderly relatives that the opposite is the case.

Reference should also be made to certain institutions that can prevent these abuses, thanks to the intervention of a notary. The individuals concerned may delegate the administration or disposal of their interests to one or more persons in the event of their being declared incapable or of a physical or psychological disability. They may also, via a notary, determine the temporary or permanent guardianship arrangements that will apply, such as the identity of the person or persons who will exercise these functions and any limits to or oversight of their activities that the individual may deem

necessary. Although anyone can use these powers, they are particularly valuable to elderly persons or those who might reasonably expect to be the victims of degenerative or incapacitating conditions. Such measures enable those concerned to know who will be responsible for giving them personal and financial assistance, and they can themselves lay down the nature of and limits to these powers and stipulate any specific controls they consider appropriate. Deciding on the right person is the best way of avoiding future abuses and no one is better suited to take this decision than the person affected. It can only be taken while the individual concerned is in full possession of his or her faculties. Notaries can also ensure that such powers are correctly worded and that they are fully compatible with the legislation.

There are also various national and regional resources, institutions and other bodies in the Spanish system concerned with defending and protecting elderly persons and their rights:

Fiscal de Sala Emérito Delgado for the protection and defence of elderly persons' rights in Spain

Defenders of elderly persons/ombudsmen in Spain: Ombudsman for elderly persons of the city of Valencia, Spanish ombudsman

Regional ombudsmen

- Andalusian ombudsman
- El Justicia de Aragón
- Advocate general of the Principality of Asturias
- Diputado del Común (Canaries)
- Ombudsman (Castile-La Mancha)
- Procurador del Común (Castile and Leon)
- Síndic de Greuges de Catalunya (Catalonian ombudsman)
- Síndic de Greuges of the Valencian Community
- Valedor do Pobo (Galicia)
- La Rioja ombudsman
- Ararteko Nafarroa (Navarra ombudsman)
- Ararteko (Basque ombudsman)
- Murcia regional ombudsman – protection of elderly persons

Guardianship of adults

- Madrid adult guardianship agency (AMTA)
- Elderly persons guardianship programme of Castile and Leon
- Biscaya guardianship institute
- Navarra institute for the adult guardianship
- La Rioja guardianship foundation
- Extremadura adult guardianship commission
- Galician foundation for the promotion of personal autonomy and assistance to dependent persons
- Murcian foundation for the guardianship and judicial protection of adults (ISSORM)
- Guardianship and judicial protection of adults commission of the Aragon autonomous community

A number of preliminary comments need to be made prior to the discussion about non-contributory old-age pensions, which the Committee regards as inadequate:

The elderly are protected partly through contributory and non-contributory pensions, the social security system and other systems and partly through the public social services system, which covers social needs, legal assistance, preventive health and access to leisure and free time activities.

Non-contributory pensions

The non-contributory old-age pension guarantees all retired citizens in need of financial support free medical and pharmaceutical care and additional social services even if they have never paid social security contributions or have not done so for long enough to entitle them to the benefits paid under the contributory system.

Responsibility for the management and recognition of entitlement to non-contributory old-age pensions lies with the competent bodies in each autonomous community and with the Institute of the Elderly and Social Services (IMSERSO) in Ceuta and Melilla.

- Royal legislative decree 1/1994 of 20 June, approving the revised text of the General Social Security Act (Spanish official gazette of 29 June);
- Royal decree 357/1991 of 15 March, clarifying in respect of non-contributory pensions, Act 26/1990, establishing non-contributory social security benefits (incorporated into the aforementioned royal legislative decree) (Spanish official gazette of 21 March);
- Order PRE/3113/2009 of 13 November, setting out the standards for the implementation and clarification of royal decree 357/1991 of 15 March, clarifying, in respect of non-contributory pensions, Act 26/1990, establishing non-contributory social security benefits, with regard to allowances and income to be taken into account (Spanish official gazette of 20 November).

Through the social security system, the state guarantees that people covered by it because they are engaged in an occupational activity through which they make contributions or because they satisfy the conditions to be entitled to non-contributory benefits are sufficiently protected in the situations described in the General Social Security Act.

The non-contributory old-age pension guarantees all retired citizens in need of financial support free medical and pharmaceutical care and additional social services even if they have never paid social security contributions or have not done so for long enough to entitle them to the benefits paid under the contributory system.

The non-contributory old-age pension is available to all Spanish citizens and foreign nationals legally resident in Spain who satisfy the following conditions:

CONDITIONS:

• **Without sufficient resources**

Persons are considered to be without sufficient resources where their disposable income for 2010 is lower than €4 755.80 for the year.

However, if it is lower than €4 755.80 per year and the person concerned lives with relatives, the condition will only be satisfied where the total annual income of all the members of the person's household is lower than the sums set out below:

1. Person living only with a spouse and/or second-degree blood relatives:

2.

Number of household members	€Year
2	8 084.86
3	11 413.92
4	14 742.98

3. If one of the blood relatives with which the person lives includes a parent or a child:

Number of household members	€Year
2	20 212.15
3	28 534.80
4	36 857.45

• **Special conditions for entitlement to non-contributory pensions**

○ Age: Sixty-five or over.

○ Residence: Must have resided on Spanish territory for ten years in total between their sixteenth birthday and their first pension payment, including two consecutive years immediately prior to the date of the claim.

The non-contributory old-age pension is incompatible with the non-contributory invalidity pension, assistance pensions (PAS), guaranteed minimum income payments (SGIM), the attendance allowance (SATP) provided for by the Act for the Social Integration of People with Disabilities (LISMI) and the family allowance for dependant children with disabilities.

In accordance with the sixteenth additional provision of Act 39/2006 of 14 December, on promoting personal autonomy and assistance for dependant persons, since 1 January 2007, private pensioners' income exceeding 25% of the full annual pension (€1 188.95) will be deducted from the full annual pension.

The pensions of persons whose private incomes do not exceed €1 188.95 in 2010 will not be reduced for this reason.

However, for pensioners whose private incomes exceed €1 188.95 in 2010, any income exceeding this amount will be deducted.

Grants for residents of Ceuta and Melilla

These are intended for elderly people living in the cities of Ceuta and Melilla and non-governmental bodies and organisations working exclusively within these cities, running activities and programmes for the elderly community there.

CHANGES IN 2010

Act 26/2009 of 23 December on the General State Budgets for 2010 and Royal Decree No. 2007/2009 of 23 December on the revaluation of pensions under the social security system and other public social benefits for 2010 revalued contributory and non-contributory social security pensions for the year, together with other public social welfare benefits.

Non-contributory old-age pensions were increased by 1% and the full amount was set at €4 755.80 per year, paid in 12 monthly instalments plus two special payments per year. As a result, the income levels, which limit entitlement to and maintenance of pensions were also updated.

The updated individual pension for each pensioner was set on the basis of the aforementioned amount, depending on his or her personal income or that of his or her household, and the sum paid could not be lower than a minimum amount set at 25% of the fixed sum.

Basic amounts for 2010

Amount	Yearly	Monthly
Full	€4 755.80	€339.70
25% minimum	€1 188.95	€84.93

Where more than one recipient of a non-contributory pension live in the same household, the individual amount paid to each household member is as follows:

Number of members	Yearly	Monthly
2	€4 042.43	€288.75
3	€3 804.64	€271.76

With regard to the Committee's comment on the inadequacy of our social protection system where it comes to alleviating elderly people's risk of poverty, EU-approved indicators relating to trends in Spain published by the National Institute of Statistics, show a significant drop in the relative at-risk-of-poverty rate (60% of median household income), which currently lies at 25.7% (according to provisional statistics provided by the 2009 standard of living survey (ECV)), and if the imputed net income of house ownership is added into the equation, the figure falls to 13.7%.

Below are four tables containing relative poverty data, which show the relationship between the falling trend in the relative poverty rate among elderly people in comparison with the trend among different age groups.

According to the data on Spain taken from the annual standard of living surveys (ECVs), the relative poverty rate fell from 19.9% in 2004 to 19.5% in 2009 (provisional figure).

Trends (2004-2009) in the relative at-risk-of-poverty rate		
2004	Total	19.9
	M	19
	F	20.8
2005	Total	19.8
	M	18.6
	F	20.9
2006	Total	19.9
	M	18.5
	F	21.2
2007	Total	19.7
	M	18.6
	F	20.9
2008	Total	19.6
	M	18.3
	F	21
2009 (provisional)	Total	19.5
	M	18.3
	F	20.6

If home ownership is factored into the equation through calculations carried out using the "imputed rent" method, which add this item to the household income, the at-risk-of-poverty rate decreases to 15.5%.

Comparative trends (2007-2009) in the at-risk-of-poverty rate including and not-including imputed rent in household income			
		Total including imputed rent	Total excluding imputed rent
2007	Total	15.2	19.7
	M	14.8	18.6
	F	15.6	20.9
2008	Total	15.5	19.6
	M	15.2	18.3
	F	15.8	21
2009 (provisional)	Total	15.5	19.5
	M	15.1	18.3
	F	15.8	20.6

There was, however, a significant decrease in the poverty rate among persons over 65, which fell from 29.6% in the 2004 survey to 25.7% in 2009; with the imputed rent figure factored in, the rate dropped from 15.6% in 2007 to 13.7% in 2009.

At-risk-of-poverty rate excluding imputed rent									
	2007			2008			2009 (provisional)		
	Total	M	F	Total	M	F	Total	M	F
Total	19.7	18.6	20.9	19.6	18.3	21	19.5	18.3	20.6
Persons under 16	23.4	23.5	23.2	24	23.2	24.9	23.2	22	24.5
16 to 64	16.8	15.9	17.8	16.7	15.8	17.7	17.1	16.4	17.8
65 and over	28.5	26.1	30.2	27.6	25	29.5	25.7	23.4	27.4

At-risk-of-poverty rate including imputed rent									
	2007			2008			2009 (provisional)		
	Total	M	F	Total	M	F	Total	M	F
Total	15.2	14.8	15.6	15.5	15.2	15.8	15.5	15.1	15.8
Persons under 16	19.7	20.4	19	21.5	20.8	22.2	20.7	19.7	21.8
16 to 64	14.1	13.3	14.9	14.4	13.9	15	14.7	14.2	15.2
65 and over	15.6	16	15.4	14.1	15	13.5	13.7	14.3	13.2

In conclusion, it should be said, **in relation to health programmes**, that according to the latest statistics from Spain's National Institute of Statistics, 16.6% of the total population is over 64 years of age. Of the country's 7 633 807 old-age pensioners, 27.8% are over eighty.

The social services on offer to the elderly are as follows:

- Public home-help services: Home help (SAD), helplines and other forms of support in the home.

The public home-help services assisted a total of 753 995 elderly people, amounting to 9.4% of people over the age of 65. Of this total, 358 078 were registered with the home-help service and 395 917 were given help over the helpline.

Home-help services for the elderly include the home-help service itself (SAD), the public helpline and other resources made up mostly of public financial benefits such as home-help allowances, housing conversion allowances, and carer family benefits, as well as home meal services and technical aids.

- Public and private daily support services: Centres and clubs for the elderly and day-care facilities for dependant elderly people.

Daily support services include centres and clubs for the elderly with a total of 3 562 576 members and day-care facilities for dependant elderly people (which some autonomous communities refer to as day residences). There are currently 63 446 day-care places, spread over 2 258 centres, public and private combined.

- Public and private residential services: Residential centres, sheltered or supervised housing, family centres and retirement flats.

In January 2008, there were 339 079 public and private residential places for the elderly, 97% (329 311) of which were provided by 5 091 residential centres and the remainder of which (9 768) were offered by alternative housing structures (mostly sheltered housing, family centres and retirement flats).

Social service funding is based on the principle of shared responsibility meaning that it combines public funds and user contributions, which vary according to the type of service and the division of powers in the area in which it is provided.

For details of health programmes, please consult the IMSERSO Internet site at the following address, where you will find, in particular, under the heading *Salud y Psicología*, a list of the health programmes conducted in the various autonomous communities:

<http://www.imsersomayores.csic.es/general/mapa.html>”

266. 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 / ANNEXE I

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

- (1) 121st meeting, 3-6 May 2010 / 121^e réunion, 3-6 mai 2010
(2) 122nd meeting 11-14 October 2010 / 122^e réunion, 11-14 octobre 2010

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

Mme. Maria GELI, Directrice du Travail, Ministère de la Justice et de l'Intérieur (1)
Mme Magda MATA, Secrétaire d'Etat à l'Egalité et au Bien-être, Ministère de la Santé du Bien-être et du Travail (2)

ARMENIA / ARMENIE

Mrs. Anahit MARTIROSYAN, Head of Division of International Relations, Ministry of Labor and Social Affairs (1)
(Apologised/Excusé) (2)

AUSTRIA / AUTRICHE

Mrs Elisabeth FLORUS, Federal Ministry of Labour, Social Affairs and Consumer Protection (1) (2)

AZERBAIJAN / AZERBAÏDJAN

(Apologised/Excusé) (1)
Mr. Vugar SALMANOV, Senior Consultant of the International Cooperation Department, Ministry of Labour and Social Protection of Population (2)

BELGIUM / BELGIQUE

Mme Marie-Paule URBAIN, Conseillère, Service public fédéral Emploi, Travail et Concertation sociale, Services du Président, Division des Etudes juridiques (1) (2)
Mme Murielle FABROT, Attachée, Service public fédéral Emploi, Travail et Concertation sociale, Division des Etudes juridiques, de la documentation et du contentieux (1) (2)

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Ms Azra HADŽIBEGIĆ, Expert Adviser for Human Rights, Ministry for Human Rights and Refugees (1) (2)

BULGARIA / BULGARIE

Mme Yuliya ILCHEVA, Conseillère, Direction des Affaires européennes et coopération internationale, Ministère du travail et de la politique sociale (1) (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

Mrs 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) (2)

DENMARK / DANEMARK

Mr Kim TAASBY, Special Adviser, Danish Ministry of Employment (1) (2)
Mr Leo TORP, Head of Section, The national Directorate of Labour (1)
Ms Lis WITSO-LUND, Head of Section, Ministry of Employment (1)

ESTONIA / ESTONIE

Mrs Merle MALVET, Head of Social Security Department, Ministry of Social Affairs (1) (2)
Ms Seili SUDER, Chief Specialist of Working Life Development Department (1)
Ms Eha LANNES, Advisor to the Social Welfare Department, Ministry of Social Affairs (2)

FINLAND / FINLANDE

Mrs Riitta-Maija JOUETTIMÄKI, Ministerial Councillor, Ministry of Social Affairs and Health (1)
Mrs Liisa SAASTAMOINEN, Senior Officer Legal Affairs, Ministry of Employment and the Economy (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 George KAKACHIA, Head of Social Protection Programmes Division, Social Protection Department, Ministry of Labour, Health and Social Affairs (1)
(*Apologised/Excusé*) (2)

GERMANY / ALLEMAGNE

Mr Udo PRETSCHKER, Federal Ministry of Labour and Social Affairs (1)
Mr Jürgen THOMAS, Deputy Head of Division VI b 4, "OECD, OSCE", Council of Europe, ESF-Certifying Authority, Federal Ministry of Labour and Social Affairs (2)

GREECE / GRECE

Ms Maria SPANOU, Official, Department of International Relations, Ministry of Labour and Social Security (1)
Ms Evangelia ZERVA, Government Official, Ministry of Employment and Social Protection, International Relations Directorate (1) (2)

HUNGARY / HONGRIE

Dr. Ildikó BODGAL, Chief Councillor, Ministry of Social Affairs and Labour, Department for European Union and International Affairs (1)
(*Apologised/Excusé*) (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) (2)

ITALY / ITALIE

Ms Carmen FERRAILOLO, Ministry of Labour, Health and Social Policies, Directorate General Working Conditions (1) (2)

LATVIA / LETTONIE

Ms Liene RAMANE, Insurance Department, Benefits Policy Unit, Ministry of Welfare Social (1)
Mrs Velga LAZDINA-ZAKA, Ministry of Welfare, Social Insurance Department, Benefits Policy Division (2)

LITHUANIA / LITUANIE

Ms Kristina VYSNIAUSKAITE-RADINSKIENE, Chief Specialist of International Law Division, 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 Franck MICALLEF, Director (Benefits), Social Security Division (1) (2)

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 Health, Labour and Social Welfare (1) (2)

NETHERLANDS / PAYS-BAS

Mr Onno P. BRINKMAN, Policy Advisor, Ministry of Social Affairs and Employment (1) (2)

Mr Kees TERWAN, Ministry of Social Affairs and Employment, International Affairs Directorate (2)

NORWAY / NORVEGE

Ms Mona SANDERSEN, Senior Adviser, Ministry of Labour and Social Inclusion, Working Environment and Safety Department (1) (2)

POLAND / POLOGNE

Mme Joanna MACIEJEWSKA, Conseillère du Ministre, Département des Analyses Economiques et Prévisions, Ministère du Travail et de la Politique Sociale (1)

M. Jerzy CIECHANSKI, Ministère du Travail et de la Politique Sociale (2)

PORTUGAL

Ms Maria Alexandra PIMENTA (**Chair/Présidente**), Directora do Instituto Nacional para a Reabilitação, I.P./MTSS (1) (2)

ROMANIA / ROUMANIE

Ms Cristina ZORLIN, Deputy Director, Directorate for External Relations and International Organisations, Ministry of Labour, Family and Social Protection (1)

Ms Roxana ILIESCU, Main Expert, Directorate for External Relations and International Organizations, Ministry of Labour, Family and Social Protection (2)

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mme Elena VOKACH-BOLDYREVA, Conseillère, Département de la coopération internationale et des relations publiques, Ministère de la Santé et du Développement social (1) (2)

Mme Nadejda SAVOLAYNEN, Directrice du Département de Finance, Ministère de la Santé et du Développement social (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 EU Affairs and International Cooperation, Ministry of Labour, Social Affairs and Family (1) (2)

Mr Juraj DŽUPA, Department of EU Affairs and International Cooperation, Ministry of Labour, Social Affairs and Family (1)

SLOVENIA / SLOVENIE

Mr Peter POGACAR, Director General - Directorate for Labour Relations and Labour Rights, Ministry of Labour, Family and Social Affairs (1)

Ms Janja GODINA, Senior Adviser, International Cooperation and European Affairs Service (1)

Ms. Katja RIHAR-BAJUK, International Cooperation and European Affairs Service, Ministry of Labour, Family and Social Affairs (2)

SPAIN / ESPAGNE

Ms. Adelaida BOSCH, Conseillère technique des Relations Sociales et Internationales, Ministère de Travail et d'Immigration (1) (2)

SWEDEN / SUEDE

Ms Lina FELTWALL, Deputy Director/Kansliråd, Ministry of Employment/Arbetsmarknadsdepartementet International Division/Internationella enheten (1)

Ms Anna-Lena HULTGARD SANCINI, Director, Kansliråd, Ministry of Employment/Arbetsmarknadsdepartementet, International Division/Internationella enheten (1)
(Apologised/Excusé) (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

Mr. Halidun ERCAN, Expert, Ministry of Labour and Social Security (1) (2)

UKRAINE

Mrs Natalia POPOVA, Deputy Head of the International Relations Department, Ministry of Labour and Social Policy (1) (2)

UNITED KINGDOM / ROYAUME-UNI

Mr Stephen RICHARDS, Head of ILO, UN and CoE Team, Joint International Unit, Dept for Work and Pensions (1)

Mr Francis ROODT, Policy Adviser, ILO, UN and CoE (Employment)Team, Joint International Unit for Education, Employment and Social Affairs (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)**

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**INTERNATIONAL ORGANISATION OF EMPLOYERS /
ORGANISATION INTERNATIONALE DES EMPLOYEURS**

Ms. Maud MEGEVAND Legal adviser, International Organisation of Employers (1) (2)

SIGNATORIES STATES / ETATS SIGNATAIRES

LIECHTENSTEIN

(Apologised/Excusé) (1) (2)

MONACO

M. Stéphane PALMARI, Secrétaire, Département des Affaires Sociales et de la Santé, Ministère d'Etat (1) (2)

SAN MARINO / SAINT-MARIN

–

SWITZERLAND / SUISSE

(Apologised/Excusé) (1) (2)

INGO's DELEGATION / DELEGATION DES OING

M. Gabriel NISSIM, Président de la Commission Droits de l'Homme de la Conférence des OING du Conseil de l'Europe (1)

Mme Marie-José SCHMITT, Vice-Présidente de l'Action européenne des handicapés, Membre de la Commission «Droits de l'Homme » de la Conférence des OING du Conseil de l'Europe (1)

COUNCIL OF EUROPE DEVELOPMENT BANK / BANQUE DE DEVELOPPEMENT DU CONSEIL DE L'EUROPE

Mr. György BERGOU, Deputy Head of the Secretariat, Executive Secretary of the Partial Agreement on the Development Bank of the Council of Europe (2)

Appendix II

Chart of Signatures and Ratifications – Situation at 3 March 2010

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	29/10/69	
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	
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	13 + 30 = 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**

CROATIA	ESC 13§1, 13§2, 13§4,
CZECH REPUBLIC	ESC 12§3, 13§1, 13§3, 14§1, 14§2, 4 AP
DENMARK	ESC 12§4, 13§1, 4 AP
GERMANY	ESC 13§4
GREECE	ESC 3§2, 11§3, 12§1, 13§4,
HUNGARY	ESC 3§1, 11§1, 12§15
LATVIA	ESC 11§1, 11§2, 11§3, 13§1, 13§3
LUXEMBOURG	ESC 12§1, 12§3, 13§1, 14§1, 14§2
SLOVAK REPUBLIC	ESC 11§1, 11§2, 12§1, 12§2, 12§4, 13§1, 14§1
SPAIN	ESC 12§1, 12§4, 13§1, 14§1, 4 AP
“the former Yugoslav Republic of Macedonia”	ESC 12§1, 13§1

B. Renewed Conclusions of non-conformity

AUSTRIA	ESC 3§1, 12§1
CROATIA	ESC 13§1
CZECH REPUBLIC	ESC 12§1, 12§4, 13§1
DENMARK	ESC 12§4, 13§1,
GERMANY	ESC 3§1, 12§4, 13§3
GREECE	ESC 3§1, 3§2, 11§3, 12§4, 13§1
ICELAND	ESC 12§4
LATVIA	ESC 13§1, 14§1
LUXEMBOURG	ESC 13§1, 13§4
POLAND	ESC 12§1, 12§4, 13§3, 14§1

SPAIN

ESC 3§1, 3§2, 12§1

UNITED KINGDOM

ESC 12§1

Appendix IV**List of deferred Conclusions****C. Conclusions deferred for lack of information for the second time**

LUXEMBOURG	ESC 12§4,
POLAND	ESC 12§2
UNITED KINGDOM	ESC 13§1

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

AUSTRIA	ESC 12§2
CROATIA	ESC 11§2,
CZECH REPUBLIC	ESC 13§4
DENMARK	ESC 12§1
GERMANY	ESC 12§1, 12§3,
GREECE	ESC 11§1, 11§2, 14§1, 23
HUNGARY	ESC 3§2, 11§2, 13§1, 13§4
ICELAND	ESC 12§2
LATVIA	ESC 13§4
LUXEMBOURG	ESC 3§1, 3§2, 12§4
POLAND	ESC 12§3
SLOVAK REPUBLIC	ESC 13§3, 14§2
SPAIN	ESC 11§1, 12§3, 13§2, 13§3, 14§2
“the former Yugoslav Republic of Macedonia”	ESC 11§3, 12§2, 12§3, 12§4, 13§4
UNITED KINGDOM	ESC 13§3, 13§4

Appendix V

Warning(s) and Recommendation(s)

Warning(s)¹

Article 13, paragraph 4

– Luxembourg

(Legislation and practice do not guarantee that all unlawfully present foreigners receive emergency social assistance for as long as they might require it.)

Non-submission of report(s)

– Luxembourg

(Warning for non-submission of the report for the Conclusions 2010)

Recommendation(s)

–

Renewed Recommendation(s)

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¹ If a warning follows a notification of non-conformity (“negative conclusion”), 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.