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**EUROPEAN SOCIAL CHARTER**  
**GOVERNMENTAL COMMITTEE**

**REPORT CONCERNING CONCLUSIONS XVIII-2**

**European Social Charter**

**(Austria, Czech Republic, Denmark, Germany, Greece,  
Hungary, Iceland, Latvia, Malta, Netherlands (Kingdom in Europe),  
Poland, Slovakia, Spain, Turkey and United Kingdom)**

*Detailed report of the Governmental Committee  
established by Article 27, paragraph 3, of the European Social Charter<sup>1</sup>*

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<sup>1</sup> The detailed report and the abridged report are available on [www.coe.int/socialcharter](http://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 states bound by the European Social Charter or the European Social Charter (revised).<sup>1</sup> 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. BUSINESSEUROPE (former Union of Industrial and Employers' Confederations of Europe, UNICE) is also invited but did not participate.

2. The supervision of the application of the European Social Charter is based on an analysis 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](http://www.coe.int/socialcharter).

3. The first responsibility for the analysis 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, the Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Malta, the Netherlands, Poland, the Slovak Republic, Spain, Turkey and the United Kingdom. Reports were due on 31 March 2006 at the latest; they were received between March 2006 and January 2007. The fourth report relating to the Czech Republic was submitted in June 2005. The Governmental Committee repeats that it attaches a great importance to the respect of the deadline by the States Parties.

5. Conclusions XVIII-2 of the European Committee of Social Rights were adopted in June 2007 (Austria, the Czech Republic, Denmark, Germany, Greece, Hungary, Latvia (2<sup>nd</sup> full report), Malta, the Netherlands (Kingdom in Europe), Poland, the Slovak Republic, Spain, Turkey and the United Kingdom. Due to the late arrival of reports, the conclusions in respect of Iceland and Luxembourg were adopted in October 2007

6. The Governmental Committee held two meetings (13-16 May 2008, 6-9 October 2008), which were chaired by Mrs Alexandra PIMENTA (Portugal), 1<sup>st</sup> Vice-chair, for the May meeting, and by Mr. Gyorgy KONCZEI (Hungary) in October 2008.

7. Following a decision in October 1992 by the Ministers' Deputies, observers from member states of central and eastern Europe having signed the European Social Charter or the European Social Charter (revised) (Montenegro, the Russian Federation, Serbia) were also invited to attend the meetings of the Governmental Committee, for the purpose

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<sup>1</sup> List of the States Parties on 7 October 2008: 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, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

of preparing their ratification of this instrument. 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).

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

- on 29 May 2007, Latvia signed the European Social Charter (revised);
- on 27 June 2007, Turkey ratified the European Social Charter (revised);
- on 29 June 2007, Germany signed the European Social Charter (revised);
- on 7 October 2008, Bosnia and Herzegovina ratified the European Social Charter (revised).

9. The state of signatures and ratifications on 7 October 2008 appears in Appendix I to the present report.

## **II. Examination of national situations on the basis of Conclusions XVIII-2 of the European Committee of Social Rights**

10. The present abridged report, for the Committee of Ministers, only contains discussions concerning national situations for which the Governmental Committee proposed that the Committee of Ministers adopt a recommendation or renew a recommendation. The detailed report is available on [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

11. Moreover, the Governmental Committee continues the improvement of its working methods. It decided to apply some of these measures, in particular to make a distinction between conclusions of non conformity for the first time – for which information on the measures which have been taken or have been planned by states to bring the situation into conformity with the Charter appears *in extenso* in the reports of its meetings – and renewed conclusions of non-conformity. It also underlined deferred conclusions for second lack of information, as well as deferred conclusions because of questions asked for the first time or additional time. Moreover, at its 117<sup>th</sup> meeting (16 May 2008), the Governmental Committee adopted new rules of procedure, including its working methods.

12. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix II to the present report, and used the voting procedure for 8 of them. The detailed report which may be consulted at [www.coe.int/socialcharter](http://www.coe.int/socialcharter) contains more extensive information regarding the cases of non-conformity.

13. The Governmental Committee took note of the cases where the conclusion is deferred for lack of information for the second time and because of questions asked for the first time or additional questions put by the European Committee of Social Rights (see Appendix III to the present report). It asked governments to reply to the questions in their next reports.

14. During its examination, the Committee took note of important positive developments in several States Parties. In particular, it asked governments to take into consideration Recommendations adopted by the Committee of Ministers. It adopted the warnings set out in Appendix IV to this report.

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

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

**Resolution on the implementation of the European Social Charter during the period 2001-2004 (Conclusions XVIII-2, “non-hard core” provisions)**

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

The Committee of Ministers,<sup>1</sup>

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, the Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Malta, the Netherlands (Kingdom in Europe), Poland, the Slovak Republic, Spain, Turkey and the United Kingdom (concerning period of reference 2001-2004)<sup>2</sup>;

Considering Conclusions XVIII-2 of the European Committee of Social Rights appointed under Article 25 of the Charter;

Following the proposal made by the Governmental Committee established under Article 27 of the Charter,

Recommends that governments take account, in an appropriate manner, of all the various observations made in the Conclusions XVIII-2 of the European Committee of Social Rights and in the report of the Governmental Committee.

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<sup>1</sup> 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, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

<sup>2</sup>For Latvia, it is the second full report.

## **EXAMINATION ARTICLE BY ARTICLE<sup>1</sup>**

### **Article 1§4 – Vocational guidance, training and rehabilitation**

#### **ESC <sup>2</sup>1§4 AUSTRIA**

”The Committee concluded that the situation in Austria is not in conformity with Article 1§4 of the Charter.”

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

“Please refer to remarks under Articles 15§1 and 15§2.”

18. 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 1§4 DENMARK**

”The Committee concluded that the situation in Denmark is not in conformity with Article 1§4 of the Charter.”

19. See Article 15§1.

#### **CSE 1§4 GREECE**

”The Committee concluded that the situation in Greece is not in conformity with Article 1§4 of the Charter.”

20. See Article 15§1.

#### **ESC 1§4 ICELAND**

”The Committee concluded that the situation in Iceland is not in conformity with Article 1§4 of the Charter.”

21. See Article 15§1.

#### **ESC 1§4 LUXEMBOURG**

”The Committee concluded that the situation in Luxembourg is not in conformity with Article 1§4 of the Charter.”

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

“First, the Education Act provides that children with disabilities are subject to compulsory full-time schooling.

Second, a law of 28 November 2006 transposed into domestic law Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

This law applies to all public and private legal entities or individuals, including public bodies, in particular with regard to education.”

23. 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 1§4 MALTA**

”The Committee concluded that the situation in Malta is not in conformity with Article 1§4 of the Charter.”

24. See Article 15§1.

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<sup>1</sup> State in English alphabetic order.

<sup>2</sup> European social charter

### **ESC 1§4 POLAND**

“The Committee concludes that the situation in Poland is not in conformity with Article 1§4 of the Charter on the grounds that access to further training for foreign nationals is subjected to an excessive length of residence requirement.”

25. The representative of Poland said that she was unfortunately unable to report any major changes to enable the Committee to change its finding of non-conformity. She confirmed that access to vocational training was still confined to Polish nationals.

26. In answer to the Chair she said that bilateral agreements had been reached with Ukraine for certain nationals – on seasonal workers – and certain other neighbouring countries. The number of persons covered by Polish legislation was limited. Under existing legislation, five years' residence in Poland was necessary to be eligible for a permanent residence permit and thus access to vocational training.

27. The Chair said that this was in breach of a fundamental Charter principle, that of non-discrimination. The ETUC representative supported this view, and said that this was the second consecutive occasion on which no measures had been proposed to remedy the situation.

28. The Committee then voted on whether to issue a warning to Poland. The result was 14 votes for, 5 against and 15 abstentions. The warning was approved..

### **ESC 1§4 SLOVAKIA**

“The Committee concluded that the situation in Slovakia is not in conformity with Article 1§4 of the Charter.”

29. The representative of Slovakia provided the following information in writing :

“In the education sector, professional services in the area of vocational guidance are rendered through educational advisers in particular schools and the professional staff in the Pedagogy and Psychology Advice Centres. By using their services, the right to vocational guidance is being exercised. Their activities cover a system of services and assistance to primary and secondary school pupils focused on optimisation of their career development through guidance to a suitable education pathway selection and subsequent professional self-realisation.

Currently career education (including professional orientation) and career guidance for pupils and students is increasingly becoming a societal priority. In this context, the education adviser is crucial. It is a staff member of the school (primary and secondary) fully aware of the fact that adequate career education and guidance in schools is an efficient tool to prevent potential unemployment in the future, in particular long-term unemployment. The essence of thus oriented activity of education advisers is to match professional wishes, competences of pupils and students (personality-, health-, physical-, qualification-related) with the labour market needs, with the realistic opportunities; to shape their characteristics and skills facilitating their professional assertion. In this sense, the remit of an education adviser includes:

- Information and assistance to pupils, parents and statutory representatives in selecting study, type of vocation and vocational inclusion, in collaboration with class-teachers ensuring the necessary agenda for this area and providing them with methodological assistance in its pursuance;
- On-going monitoring, assessment and evaluation of individual mental/psychological and physical aptitudes of pupils from the aspect of their future professionalisation;
- Collaboration with the other education sector employees contributing to career education and guidance - particularly teachers, educators, vocational trainer masters, management staff, school psychologists, school counselling facilities, health institutions

(considering physical and health requirements of occupations, counselling for pupils with special education/training needs in cooperation with the special pedagogy counselling facilities).

Pedagogy and Psychology Advise Centres (PPAC) provide professional and methodological guidance to education advisers in the area of pupils/students' career development. The qualified experts provide:

- Assistance in life planning, studies selection, vocation and employment assertion, activation of intrinsic capacities, adjusting to selected school or vocation, shaping personality characteristics and social and psychological competences necessary in order to integrate in the world of work,
- Mediation of information on available opportunities, conditions and requirements of the study at secondary schools and higher education institutions, labour market, etc.;
- Individual and group work with pupils experiencing difficulties in their vocational development.

The services of education advisors and PPAC professional staff are part of the services of the education system of the SR and are provided free of charge. The activity of the Pedagogy and Psychology Advice Centres is guaranteed by the State."

30. 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 1§4 SPAIN**

"The Committee concluded that the situation in Spain is not in conformity with Article 1§4 of the Charter."

31. See Article 15§1.

#### **Article 2§1 – Reasonable daily and weekly working hours**

#### **ESC 2§1 GERMANY**

"The Committee concludes that the situation in Germany is not in conformity with Article 2§1 of the Charter on the grounds that certain reference periods for averaging working hours under flexible working arrangements are too long."

32. The representative of Germany explained the situation in regard to working time and flexible working time arrangements. He recalled that Germany had transposed EC Working Time Directive 2003 which, for the flexible working time regimes, fixes the average weekly working hours at 48 hours over a reference period of 12 months. He underlined that the average of 48 hours is respected in all collective agreements, both in those which provide for a reference period of 12 months as well as those in which longer reference periods are agreed (e.g. Volkswagen industry). He was of the opinion that this situation was in conformity with the Charter as long as the average of 48 weekly hours was never exceeded.

33. The Secretariat recalled the ECSR's case law on this provision which states that flexible working time arrangements, as such, are not contrary to the Charter but on condition (among others) that they provide for reasonable reference periods for the calculation of average working time. The reference period must not exceed six months. It may be extended to a maximum of one year only in exceptional circumstances.

34. The representative of France asked for examples of collective agreements where 12 months reference period is exceeded. The representative of Romania mentioned that the problem was with the reference period and not with the maximum weekly working



hours and asked the German representative to provide more examples. The ETUC representative also noted that Germany should provide as many examples as possible even if the exceptional nature of longer reference periods would be difficult to prove.

35. The Committee invited the Government of Germany to provide all the necessary information on this provision while taking into account the ECSR case law.

### **ESC 2§1 HUNGARY**

“The Committee concludes that the situation is not in conformity with 2§1 of the Charter on the ground that a 72 hours working week is allowed by law for employees on stand-by duty.”

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

“1. Although Act No. XXII of 1992 on the Labour Code has known stand-by job for a longer time, the definition has been included into the Labour Code since 1 July 2007 only. According to the definition, the work is qualified as stand-by job if

a) where - due to the nature of the job in question - no work is performed during at least one-third of the employee’s regular working time based on a longer period, and the employee is able to rest during such idle time; or

b) where - in light of the characteristics of the job and of working conditions - the work performed is significantly less strenuous and less demanding than commonly required for a regular job. [Labour Code, section 117 paragraph (1) sub-paragraph k)]

The fact that the definition has been included into the Labour Code means a guarantee for the protection of employees, as there can not be any uncertainty any more about the characteristics which qualify a type of work as a stand-by job.

2. It must be added that further rules ensure the protection of employees, as follows:

If an employer qualifies a certain position as stand-by job, the length of the working time will not be raised automatically. The daily 8 hours and weekly 40 hours full working time can be changed for daily 12 and weekly 60 hours with the agreement of the parties only i.e. with the amendment of the labour contract [Labour Code, section 117/B paragraph (3)]. The working time of the employee in stand-by job can be up to daily 24 or weekly 72 hours according to the work schedule. In this case the working time in the average of the reference period will be still daily 8 and weekly 40 hours, or daily 12 and weekly 60 hours under the agreement of the parties [Labour Code, section 117/B paragraph (1), section 119 sub-paragraph (3)]. It must be therefore taken into account that the weekly 72 hours limit is *a rule of work schedule and does not apply to the quantity of working time*. It means that even if the working time is raised to 72 hours according to the work schedule, the average working time cannot exceed weekly 40 or 60 hours within the reference period, except if the employer orders the employee to do extraordinary work or on-call duty. It must also be noted that the yearly quantity of extraordinary work and on-call duty is strictly limited by the Labour Code.

3. According to the provisions of the Directive 2003/88/EC concerning certain aspects of the organisation of working time the average working time for each seven-day period, including overtime, does not exceeds 48 hours, and at the same time it is possible to take voluntary overtime (so called ‘opt-out’) over this limit. The Hungarian national regulations regarding the upper limit of weekly working time are in conformity with rules provided for in the Directive of the EU. “

37. 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 2§1 ICELAND**

“The Committee concludes that the situation in Iceland is not in conformity with Article 2§1 of the Charter on the ground that the working hours for seamen are allowed to reach 72 hours per week.”

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

“The Ministry of Social Affairs and Social Security has taken notice of the ECSR’s conclusion on the situation in Iceland is not in conformity with the Social Charter on the ground that the working hours for seamen are allowed to reach 72 hours per week. The Ministry will inform the Ministry of Transport, Communication and Municipal Affairs and the Social Partners of the conclusion and give more information on this issue in its next report to the ECSR.”

39. 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 2§1 MALTA**

“The Committee concludes that the situation in Malta is not in conformity with Article 2§1 as it has not been demonstrated that the right to reasonable working hours is guaranteed to workers.”

40. The representative of Malta informed the Committee that Malta complies with EU Working Time Directive (2003/88/EC) which provides that weekly working hours cannot exceed 48 hours on average. However, if an employee consents in writing to working more, daily working hours may be increased to up to 13 hours for 5 days a week, thus making the total weekly working hours more than 60. Nevertheless, the representative stated that there are pressures to reduce working time and that he would provide all relevant information in the next report.

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.

### **ESC2§1 POLAND**

“The Committee concludes that the situation in Poland is not in conformity with Article 2§1 of the Charter on the grounds that under certain working time regimes, working hours of up to 16 hours per day are possible.

42. The representative of Poland informed the Committee about the exact circumstances under which a working day of 16 or 24 hours was permissible, namely for jobs such as surveillance of machines and for guards. She mentioned that such extension of a working day had to be agreed with workers’ representatives and monitored by the labour inspectorate. She provided details concerning the weekly rest periods.

43. The ETUC representative noted that the situation had not changed and even though there was a compensatory rest period to follow and restrictions were imposed on the number of 16 or 24 hours long days that can be worked per month, situation still remained in breach of the Charter.

44. The representative of Poland did not provide any statistical information on the number of such cases.

45. The Committee urged the Government to take measures to bring the situation into conformity with the Charter and asked to provide more detailed information on the workers concerned in the next national report.

### **ESC 2§1 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 2§1 of the Charter on the grounds that the legislation permits daily working time of up to 16 hours.”

46. The representative of Slovakia informed the Committee that the Labour Code had been amended in June 2007 whereby daily working hours have been limited to 9 hours and to 12 hours maximum in a flexible working time arrangements.

47. The ETUC representative noted that despite these amendments, the possibility to reduce a rest period to 8 hours per day in exceptional circumstances and in continuous operations and rotational work, continued to exist. Therefore the situation had not improved enough to comply with the Charter.

48. The Committee took note of the amendments to the Labour Code and noted that these were not satisfactory and urged the Government to bring the situation into conformity with the Charter.

### **ESC 2§1 SPAIN**

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

- ...  
– the law permits weekly working time in excess of 60 hours.”

#### First ground of non conformity

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

“The ECSR states in this connection that reference periods used to calculate the average working week may not exceed six months and may only be extended to a year in exceptional circumstances. Consequently, the situation in Spain is considered not to be in conformity with the Charter on this point given that under Article 34, paragraph 1, of the Workers’ Statute the reference period for maximum actual working hours is one year.

It is difficult to understand the Committee’s objection, as Article 2, paragraph 1, of the Charter does not refer to a reference period, either directly or implicitly. As a result the objection cannot be accounted for. All that can be said for certain is that Article 2, paragraph 1, explicitly requires states to set a reasonable limit on daily and weekly working hours – and, as will be seen subsequently, there can be no doubt that Spanish legislation does so. However, at no point does it refer to a reference period of any sort.”

50. 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.

#### Second ground of non conformity

51. The representative of Spain informed the Committee about the maximum working time of maritime workers and personnel in sanitary and health services. In the former case, a working week of up to 72 hours is permitted in cases of force majeure whereas in the latter case, with worker’s consent, a working week is permitted to exceed 60 hours. The representative stated that further details on number of workers concerned would be provided in the next national report.

52. While considering that there were no substantive changes to the situation, the Committee decided to urge the Government to take measures to bring the situation into conformity with the Charter as regards the maximum weekly working hours for some categories of workers.

## Article 2§3 – Annual holiday with pay

### ESC 2§3 DENMARK

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

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

“The Danish Holiday Act dates back to 1938. Even though amendments have been made continuously - improving the rights of the employees considerably - the basic principles concerning the earning of holidays and the periods within which the holidays can be taken, remain fundamentally the same. For many years the Holiday Act has given employees the right to five weeks paid holiday per year.

The Danish Holiday Act has from the very beginning formed an integral and important part of the so-called “Danish model” based on a bargained balance between the interests of the social partners on the Danish labour market and supported by all Danish governments during the years.

Following from this is also the possibility to deviate from the Holiday Act in collective agreements in order to adjust the rules to have specific relevance to different sectors of industry. Of course, certain minimum standards, which cannot be deviated from by collective or individual agreements, applies, e.g. the right to five weeks paid holiday per year. If the Holiday Act has been made an integral part of a collective agreement, disputes concerning this part of the collective agreement will be dealt with by the parties to the collective agreement within the framework of the industrial relations dispute settlement system.

As the Committee rightly observes, employees who fall ill or are injured during their holiday formally do not have the right to take the days lost at another time according to the Holiday Act.

However, Denmark emphasizes the fact, that the Danish Holiday Act grants five weeks annual paid holiday leave. On top of this, most agreements give a right to one additional holiday week. This leaves room for at least 4 weeks of illness per year during holiday leave - enough to de facto secure the right to minimum two weeks annual holiday with pay in accordance with the demand in Article 2§3.

The Danish Holiday Act should be seen and understood in the light of its historical background and in the context of the special Danish labour market model based on “flexicurity”. The existing rules are widely accepted in the Danish population, they are undisputed and broadly supported by the political parties in the Danish Parliament as well as by the social partners.

The social partners can conclude agreements giving better rights to the employees than those laid down in the Holiday Act. According to at least two major collective agreements holidays can be suspended due to serious or durable illness or injury which occurred during the holiday.

It is generally within the managerial prerogative to give better holiday conditions to an employee than given by the law, and therefore it is possible to make an agreement with the (sick) employee that the remaining part of the planned holiday is cancelled and taken at a later point of time.

Furthermore there is in fact a development in the Danish Holiday Act concerning illness and injuries in connection with holidays. Since 2001 a paid holiday leave is considered to begin at the first working hour of the holiday. Until 2001 the holiday in respect to illness began the last working hour before the holiday. This means that an employee who falls ill in the weekend before the beginning of the holiday now have the right to claim the cancelled holiday at another time.

In addition to this, the Danish Holiday Act has since 2001 opened up the possibility that paid holidays, which cannot be taken during the year because of illness or injury, can be transferred to the next year without reduction of the ordinary paid holidays that year.

It should also be mentioned, that maternity leave beginning during a paid annual holiday gives the right to take the lost holiday at another time.

Finally, Denmark would like to inform the Committee that Denmark has ratified ILO Convention No. 52 (Holidays with Pay), which gives the right to 6 days annual paid leave. Furthermore Denmark has implemented Article 7 in Directive 2003/88/EC of 4 November 2003, which gives the right to 4 weeks annual paid leave.

The Danish Holiday Act gives an employee the right to five weeks annual paid holidays. In addition to this, most collective agreements give a right to one additional holiday week. In reality that leaves sufficient room to secure the right of an employee, who falls ill during a holiday leave, to minimum two weeks annual holiday with pay in accordance with the demands of the Charter.

In addition to this, there is a development in the legislation, in the number of collective agreements granting better rights in certain situations of illness during holidays, and in the possibilities under special conditions to transfer lost holidays from one year to another. At the same time an employer can always give an employee better holiday rights than according to the law.

It is therefore the Danish position, that the situation in Denmark is in conformity with Article 2§3 of the Charter, since the Danish Holiday Act supported by provisions in collective agreements provides a minimum of two weeks annual holiday with pay – also in the case of an employee falling ill or being injured during a holiday, since most employees have a right to six weeks (and in any case a minimum of five weeks) of paid annual holiday, leaving sufficient room to still fulfil the demands of the Charter.”

54. 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 2§3 SPAIN**

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

55. The representative of Spain stated that Spanish legislation provides for 30 days paid holiday per year, which is often increased through collective agreement. This is significantly higher than that laid down by the Charter which only requires two paid holidays to be guaranteed. Therefore the minimum holiday entitlement in Spain will mean in practice even if a worker falls sick during a part of his/her holiday that the great majority of workers will benefit from at least two weeks holidays. He further highlighted that whilst on sick leave a worker continues to accumulate holidays.

56. Finally the representative of Spain stated that certain collective agreements provide that workers who fall ill or have an accident during their holidays are entitled to take them at another time.

57. The representative of Portugal asked whether in fact the vast majority of workers were covered by a collective agreement which provided that workers who fall ill or have an accident during their holidays are entitled to take them at another time.

58. The ETUC representative stated that in his opinion there was some new information, he also asked whether the Spanish Government intended to change the situation.

59. The Committee invited the Government to take all the necessary measures to ensure that all workers who fall sick or have an accident during their holidays are able to take their holidays at another time. Meanwhile it decided to await the next assessment of the ECSR.

### **ESC 2§3 UNITED KINGDOM**

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

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

“The United Kingdom’s Working Time Regulations 1998 (as amended) implementing the Working Time Directive (2003/88/EC) ensures that workers are entitled, at this time, to a minimum of 4.8 weeks paid annual leave. This includes seasonal workers, temporary workers and workers on fixed-term contracts who are entitled to the same statutory annual leave entitlement as permanent employees.

What happens where a worker falls ill or suffers an accident during his holiday is a contractual matter between employer and worker.”

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.

### **Article 2§4 – Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations**

#### **ESC 2§4 GREECE**

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

62. The representative of Greece stated that in Greece the issues concerning the working time, the provision of additional rest periods or paid holidays to workers in mines are regulated by Collective Labor Agreements which are concluded after free collective negotiations between the most representative organizations of workers and employers.

63. However, irrespective of the regulations of the collective labor agreements, those who work in mines come under the category of arduous and unhealthy occupations. In this context, on the basis of the social security legislation (Act 1846/51), they enjoy a preferential pension treatment, which is the reduction of the retirement age limit by five years i.e. the time period during which they are exposed to dangers is shorter. This is a provision of the social security legislation and no collective working agreement special provision is needed for its implementation, contrary to what was stated by the ECSR.

64. Moreover, as regards the workers working in the lignite mines of the Public Power Corporation (DEH) the status of whom is laid down in the Collective Complaint No. 30/2005, we would like to clarify that on the basis of the Corporations Administration decision No273/85 the granting of five more working days in a year as special paid leave has been established for the employees who work in rotating shifts. This decision is applied and implemented in practice, without the need of any collective labour agreement special provision, contrary to what is mentioned in the European Committee of Social Rights report and accordingly in our working paper.

65. The priority of the Greek government for all workers and especially for workers in mines to continue to prevent and eliminate risks related to work. To this end and in order

to safeguard the health and safety of workers in mining and quarrying undertakings, in addition to the Regulation of Mining the most specialized and recent legislation is implemented for all workers (for example, the Presidential Decree 149/2006 – Minimum health and safety standards concerning the exposure of workers to risks deriving from natural factors (noise), the Presidential Decree 162/2007 - “Protection of the health of workers that are exposed to certain chemical agents in the duration of their work” which consists of special measures in order to reduce the workers exposure to risks.

66. The representative of Greece further stated that her Government intended to reexamine, in consultation with the social partners, the case of the workers in mines who do not have additional leave, (because as we have mentioned those in the Public power corporation DEH lignite mines do have such a leave). More particularly, the Government will examine the possibility of granting additional holidays to certain special categories of workers, in particular to those working in underground activities for whom according to the negative conclusion it is not yet possible to eliminate all risks, in order to bring the situation in conformity with the interpretation of the ECSR.

67. The representative of Belgium proposed that the Committee take note of this information and await the next assessment of the Committee.

68. 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 2§4 LUXEMBOURG**

“The Committee concludes that the situation is not in conformity with Article 2§4 of the Charter on the grounds that reduced working hours or additional paid holidays are not provided for workers engaged in dangerous or unhealthy occupations.”

69. The representative of Luxembourg stated that the approach of his government to health and safety at work was to eliminate and reduce risk rather than to compensate for risk, this approach was that of the Revised Charter as opposed to the 1961 Charter. The Government intended to ratify the Revised Charter.

70. The Chair noted that the approach of the ECSR under the 1961 Charter had changed in this respect.

71. The Committee urged Luxembourg to take all necessary steps to bring the situation into conformity with the Charter. Meanwhile it decided to await the next assessment of the ECSR.

#### **ESC 2§4 UNITED KINGDOM**

“The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§4 of the Charter on the grounds that there is no provision in legislation for reduced working hours or additional holidays for workers exposed to occupational health risks coupled with the fact that no evidence is given demonstrating that such measures or other measures reducing exposure to risks are provided by collective agreement or by other means.”

72. The representative of the United Kingdom stated that the policy of the United Kingdom Government was to eliminate and reduce exposure to risks rather than compensate for them through additional holidays. In this respect, legislation requires the prior identification of all known hazards, and specific measures to be taken in response to any hazards for example reduced working time,

73. 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 2§5 – Weekly rest period**

### **ESC 2§5 CZECH REPUBLIC**

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

74. The representative of the Czech Republic stated that in fact only 3,5% of all workers worked in the agricultural sector. The provisions of weekly rest period were such due to seasonal nature of the work. She also stated that a supplementary amendment was made to Labour Code including the provisions of weekly rest period. This amendment came into effect on January 1, 2008. New information will be provided in the next report.

75. 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 2§5 GREECE**

“The Committee concludes that the situation in Greece is not in conformity with Article 2§5 of the Charter on the grounds that certain categories of workers are not covered by the legislation guaranteeing a weekly rest period (workers in agriculture, livestock, hunting and fishing, and domestic staff).”

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

“On submission of the 17<sup>th</sup> Greek Report (2001-2004) and following its reference period, new legislation has been adopted, which regulates issues relating to the organization of working time. More specifically:

Presidential Decree No.76/2005 (Official Gazette 117/A/19-05-2005) on “Amendment of Presidential Decree No.88/99 respecting minimum specifications for the organization of working time, in compliance with the Directive 93/104/EC” has been adopted to comply with the Directive 2000/34/EC.

Article 3 of Presidential Decree No.76/2005, which replaced article 5 of the amended decree No.88/99, stipulates that:

‘A minimum continuous rest period of twenty four (24) hours a week is ensured for workers; in the said period Sundays are mainly included, according to the provisions of the labour legislation and to practices applying to each category of workers, to which twelve (12) continuous hours of daily rest are added.’

Moreover, the provisions of Presidential Decree No.88/99, as amended by the regulations of Presidential Decree No.76/2005, apply to all enterprises, establishments, business undertakings and works in both the private and the public sectors.”

77. 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 2§5 UNITED KINGDOM**

“The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§5 of the Charter on the grounds that workers in a wide range of sectors may work for more than twelve consecutive days without a rest period and no safeguards.”

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



“The United Kingdom Government believes that few workers are required to work more than 12 consecutive days under the terms of their contract. However, in such cases the worker is entitled to compensatory rest to make up for the rest he or she has missed. As we stated before, in exceptional circumstances where it is not possible to grant such a period of compensatory rest, adequate protection should be granted.

The list of exemptions from the rest breaks requirements are taken from the Working Time Directive rather than a list developed by the United Kingdom..”

79. 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§1 – Health and safety and the work environment**

### **ESC 3§1 AUSTRIA**

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

80. The representative of Austria indicated that although self-employed workers did not fall under the Worker Protection Act, they were subject to many health and safety regulations, for example, in the construction sector, and could also avail themselves of training possibilities. The authorities and social partners deemed that current regulations for the protection of self-employed workers were sufficient and, therefore, did not consider that an expansion of the latter was necessary.

81. The Committee invited the Austrian Government to provide all the relevant information in its next report -namely on the range of existing sectoral regulations on health and safety for self-employed workers- 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 because certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations”.

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

“As there is no European Directive that puts self-employed persons on an equal footing with employees compulsorily insured in the social insurance schemes, so-called micro-enterprises

are not covered by German occupational safety and health provisions. However, when referring to persons formally designated as self-employed persons, but who are by labour law standards

in effect employees (so-called bogus self-employed persons) all OSH regulations apply.

In the framework of various initiatives the Federal Government fights for an improved compliance with OSH rules by persons who performing self-employed activities. In particular in the framework of INQA, the "New Quality of Work" Initiative, conferences, workshops, internet portals and brochures inform comprehensively about the importance of occupational safety and health for all economically active persons. Thus, small and medium-sized enterprises are beneficiaries of these projects, too. Further information on INQA can be found on the website [www.inqa.de](http://www.inqa.de). In the framework of the project "self-employed and healthy" information has been made accessible, examples of good practice have been collected and tested and will be further developed with the help of all network partners (see also at: <http://www.selbststaendig-undgesund.de>). Regarding business start-ups

comprehensive information and guidance services has been made available to entrepreneurs in the framework of the projects GUSS ("Gesund und sicher eine Existenz gründen" – "Starting up your business, think safe and healthy") and Pro Gründer ("Pro Business Start-Up") (<http://www.inqa.de/Inqa/Navigation/Themen/selbstaendige.did=38478.html>). If more information is required on the situation of so-called "high risk sectors" (see conclusions, page 16), it should be specified which economic sectors and/or activities the Committee is referring to in order to give more detailed information on the legal situation in Germany, if necessary."

83. 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 GREECE**

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

84. The representative of Greece indicated that there had been a number of developments after the submission of the last report, both at the legislative level as well as in awareness-raising. Regulations had been adopted addressing the health and safety needs of self-employed workers in, for example, the transport, asbestos and music sectors. Training for self-employed workers had also been made available and leaflets distributed to occupational health and safety committees.

85. The Committee took note of the improvements in legislation and practical measures related to health and safety of self-employed workers. Although it was too soon to assess the impact of these measures, as they were very recent, the Committee welcomed the positive developments and decided to await the next assessment of the ECSR.

### **ESC 3§1 POLAND**

"The Committee concludes that the situation in Poland is not in conformity with Article 3§1 of the Charter on the grounds that self-employed workers are not sufficiently protected by legislation or other measures as regards health and safety at work".

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

"Under Article 208 § 1 of the Labour Code, self-employed persons who work in the same place as persons employed by other employers are obliged to co-operate with these employers to ensure that working conditions are compatible with current health and safety requirements. They must comply with the instructions of the co-ordinator who supervises health and safety conditions in the relevant undertaking. They must also apply procedures linked to health and safety risks and co-operate with other persons operating in the workplace.

The National Labour Inspection Act of 13 April 2007 came into force on 1 July 2007. The act amended articles 304 and 3041 of the Labour Code to extend the health and safety at work requirements applicable to self-employed persons. Employers who assign work to self-employed persons that has to be performed in an undertaking or any other specified location must ensure that the working conditions are healthy and safe, in accordance with Article 207 § 2 of the Labour Code. This article requires employers to protect the life and health of persons working there by supplying machinery, equipment and products that reflect scientific and technical progress. Employers are required, inter alia, to:

- organise the work in a way that ensures healthy and safe working conditions;

- apply the relevant principles and legislation concerning health and safety at work, give instructions to remedy any shortcomings in the application of these principles and legal provisions and monitor their enforcement.

In addition, under Article 304 § 3 of the Code, the requirements in Article 207 § 2 are applicable to contractors who are not employers but who organise the work of self-employed persons.

Under 3041 of the Labour Code, employees' health and safety obligations as specified in Article 211 are applicable to self-employed persons who are working in an undertaking or a location specified by the employer or the body organising the work. These obligations are applicable as defined by the relevant employer or body.

Article 211 makes it a fundamental obligation for workers to apply the principles and legislation on health and safety at work. In particular, they must:

- have a good knowledge of the principles and legislation on health and safety at work, take part in relevant training and sit prescribed examinations;
- carry out their work in accordance with the principles and legislation on health and safety at work and comply with their supervisors' instructions;
- take care of machines, tools and other equipment to ensure that they function properly and maintain order and cleanliness in the workplace;
- use individual and collective protective materials allocated to them in accordance with relevant instructions;
- undergo preliminary, regular and any other recommended medical examinations and comply with the doctor's instructions;
- inform their supervisors immediately of any accidents or health and safety risks in the undertaking and warn persons exposed to such risks;
- co-operate with their employers and supervisors in meeting their health and safety obligations.

Under Section 10§2 of the National Labour Inspection Act, the labour inspectorate's duties include the supervision and monitoring of the application of health and safety at work obligations by self-employed persons working in a location specified by an employer or a contractor who is not the employer but on whose behalf the work is being carried out.

Self-employed persons must carry out their work in accordance with the rules specified in the Ministry of Labour and Social Affairs regulation of 29 November 2002 on maximum concentrations of factors that adversely affect health in the workplace. They must also use machinery and other technical equipment and tools in accordance with safety rules. The current regulations grant self-employed persons the right to acquire machinery, other equipment and tools, and material for personal protection, in accordance with safety rules.

This is based on the following legislation:

- the General Product Safety Rules Act of 12 December 2003,
- the Assessment Compliance System Act of 30 August 2002.

The Chemical Substances and Products Act of 11 January 2001 lays down conditions, prohibitions and restrictions concerning the sale and use of chemical substances and products to protect against harm to human health or the environment. Self-employed persons therefore have guaranteed protection against exposure to substances and products that pose a threat to health. Where such substances are used, they are required to comply with their legal obligations, including that of reading the detailed description of the substance.

Under the Occupational Medicine Act of 27 June 1997 self-employed persons are entitled to the preventive health services provided by occupational physicians.”

87. 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 SPAIN**

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

- repeated lack of information on whether 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;
- ...”

### First and second grounds of non conformity

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

“I. Protection of workers from risks connected with exposure to dangerous agents and substances at work (the ECSR refers specifically to exposure to asbestos and benzene);

(A) Protection of workers from exposure to asbestos:

The ECSR wishes to know whether the following directives have been transposed into Spanish law:

- Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, as amended by Directive 91/382/EEC of 25 June 1991 and Directive 2003/18/EC.

- Commission Directive 1999/77/EC of 26 July 1999 adapting to technical progress for the sixth time Annex I to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (asbestos)

We can confirm that both of these directives have been transposed into Spanish domestic law, the former by Royal Decree No. 396/2006 of 31 March 2006, establishing the minimum health and safety measures for jobs involving the risk of exposure to asbestos, and the former by the Order of 7 December 2001 amending Appendix 1 to Royal Decree No. 1406/1989 of 10 November 1989, imposing limits on the marketing and use of certain dangerous substances and preparations.

(B) Protection of workers from exposure to benzene:

The ECSR wishes to know whether the benzene exposure limits set by Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work are the same as those laid down in Spanish legislation.

Under Appendix 3 of Royal Decree No. 665/1997 of 12 May 1997 on protection of workers from risks connected with exposure to carcinogens (as amended by Royal Decree No. 343/2003), the benzene exposure limit is set at 1 ppm, which is the same limit as in Directive 2004/37/EC.

The ECSR also asks whether Spanish law contains measures prohibiting the use of benzene in compliance with ILO Convention No. 136 on benzene. Reference should be made in this regard to Royal Decree No. 665/1997 of 12 May 1997, as cited above, on protection of workers from risks connected with exposure to carcinogens.

II. Protection of temporary workers

Bearing in mind the high proportion of temporary workers in Spain and the growing incidence of work accidents involving temporary workers over recent years, the ECSR considers the Spanish health and safety regulations that apply to this category of workers to be ineffective. The following comments should be made in this connection:

The incidence of work accidents involving temporary workers is determined by comparing the situation of temporary workers with that of workers on permanent contracts and no comparison is made between occupational categories.

However, the key question is whether this high incidence of work accidents is related to the temporary nature of the contracts concerned or to the type of work to be carried out. Accordingly, a survey of work accidents should be carried out comparing the situation of temporary and permanent workers belonging to the same occupational category or doing the same job.

The ECSR also states 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.

On this issue, Spain considers that it meets the ECSR's requirements as Spanish legislation contains sufficient measures to protect this category of workers from risks to which they are likely to be exposed. For example, Act No. 31/1995 of 8 November 1995 on the prevention of occupational hazards contains a section, namely section 28 on employment relationships under temporary, fixed-term and temporary-agency contracts, according to which workers concerned by such employment relationships must enjoy the same level of health and safety protection as the other workers in the company to which they are providing their services. With this goal in mind, the same section lays down employers' duties and obligations in the area of prevention as well as the duties and obligations of any temporary work agency involved.

Likewise, Royal Decree No. 216/1999 of 5 February 1999 on minimum occupational health and safety measures for employees of temporary work agencies, which transposes Council Directive 91/383/EEC of 25 June 1991 into domestic law, sets out the measures to be applied by temporary work agencies and user companies 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 user company and to establish a list of activities and occupations which must be excluded from temporary work contracts because they are particularly dangerous.

Furthermore, in recent years, Spain has adopted a series of measures designed to prevent the abuse of temporary work contracts. For instance, Act No. 32/2006 on subcontracting in the building sector limits the length of the subcontracting chain, stipulating that third subcontractors may not further subcontract work assigned to them by another subcontractor or a self-employed person.

Similarly, point 4° of the Interconfederal Agreement for Stability in Employment, which was signed by Spain's trade unions and its most representative employers' organisations in April 1997, established a new contract to stimulate employment on permanent contracts and took up the government's proposal to promote active employment policies. This agreement was accepted by the government, which transposed its content into the first additional provision to Royal Legislative Decree No. 9/1997 of 16 May 1997. This legislative decree gave rise to a bill, which led in turn to the adoption of Act No. 64/97. Other legislation was adopted as a result of this, containing various programmes to promote stable employment and systematically providing for the reduction of employers' social security contributions for ordinary risks in order to stimulate employment on permanent contracts.

Currently, under Royal Legislative Decree No. 5/2006 of 9 June 2006 for the promotion of growth and employment, the agreement between the social partners is being revised and restructured. Chapter 1 of this decree, on measures to encourage employment on permanent contracts, includes, in particular, a new employment promotion programme and measures to stimulate the conversion of temporary contracts into permanent contracts and to reduce employers' contributions.

In view of all the foregoing, it can be concluded that Spanish legislation effectively guarantees the protection of the occupational health and safety of temporary workers and temporary agency employees and that there is no discrimination of any sort against this category of workers in the area of health and safety at work."

89. 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.

### Third ground of non conformity

90. The representative of Spain indicated that in addition to the legislation already described in the report, Act No. 20/2007 concerning the Statute of Self-Employed Workers had been adopted on 11 July 2007. The Statute sets out rights and obligations for this category of workers, as well as rules for the prevention of accidents at work. It also foresees training and information programmes on occupational health and safety. He also

mentioned that the Strategy on Health and Safety at Work (2007-2012) took into account the protection of this category of workers.

91. The Committee took note of this positive development and decided to await the next assessment of the ECSR.

## Article 3§2 – Issue of safety and health regulations

### ESC 3§2 AUSTRIA

“The Committee concludes that the situation in Austria is not in conformity with Article 3§2 of the Charter on the ground of excessively high and increasing rates in respect of fatal accidents at work”.

92. The representative of Austrian provided the following information in writing :

“Excessively high and increasing rates of fatal accidents at work:

According to EUROSTAT the numbers of work accidents and rates of work accidents in the period 2003 to 2005 were as follows:

	1995	2000	2003	2004	2005
Accidents Austria	174.044	100.089	88.792	88.398	85.501
EU (15 countries)	4.820.451	4.815.629	4.176.286	3.976.093	3.983.881
Accident rate (Austria) standardised incidence rate (accidents/gainfully employed persons x 100,000) for nine branches of activities	5,451	3,056	2,629	2,731	2,564
EU (15 countries)	4,266	4,016	3,329	3,176	3,098
Fatal work accidents Austria excluding road traffic accidents and accidents on board of any means of transport in the course of work	182	146	145	152	138
EU (15 countries)	3.092	2.631	2.410	2.285	2.226
Fatal work accident rate Austria	6,7	5,1	4,8	5,4	4,8
EU (15 countries)	3,7	2,8	2,5	2,4	2,3

In the period 2003 to 2005 the overall number of work accidents decreased from 88,792 to 85,501 (-3.7%), the work accident rate decreased from 2,629 to 2,564 (-2.5%).

In 2005 the Austrian work accident rate therefore was 17.2% lower than the EU-rate (3,098) and Austria thereby ranked fifth among the EU-15. Among those 10 EU member states, which report data of the work accident insurance to EUROSTAT Austria was even second only to Greece.

The successful efforts of the Austrian Labour Inspectorate to enforce health and safety regulations by monitoring and counselling for the purpose of reducing the number of work accidents are also reflected in the significantly stronger decrease in both the numbers of work accidents and the work accident rate since 1995 in Austria (-50.9 % or -53.0%) compared to the overall EU statistics (-17.4% or -27.4%).

With respect to fatal work accidents, the number decreased by 4.8 % from 2003 (145) to 2005 (138), whereas the fatal accident rate remained virtually unchanged (4.8). This is the second highest figure in the EU, where the average rate is 2.3.

There are mainly two statistical reasons for these high numbers and rates:

Firstly, the EUROSTAT questionnaire 2004 (table 1e) had not been filled in correctly by the Austrian social insurance institution for farmers, because this institution did not exclude road traffic accidents. The correction of the data will be carried out soon.

Secondly, according to the ESAW method all fatal accidents which lead to death within one year are supposed to be recorded. In Austria, however, no restrictions concerning the time span between accident and death apply. As in Belgium, Greece, Italy, Luxemburg and Sweden all fatal accidents, irrespective of the point of time of the occurrence of death, are reported. In contrast, the Netherlands only reports accidents which lead to death on the same day, Germany only reports fatalities within 30 days, Spain only reports fatalities within 18 months and France excludes fatalities occurring after the status of permanent invalidity has been acknowledged by the competent authority.

Austria has therefore definitely achieved success in fighting against fatal accidents. Since 1995 the number of fatal accidents has decreased by 24.2% (EU: -28.0%) and the rate has decreased by 28.4%.

Within the framework of implementing the new EU Community Strategy on Health and Safety at Work 2007-2012 as well as in the course of implementing the national focal points in this context Austria will continue and strengthen its efforts to reduce the number of work - in particular fatal - accidents."

93. 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§2 CZECH REPUBLIC**

"The Committee concludes that the situation in the Czech Republic is not in conformity with Article 3§2 of the Charter on the grounds that:

- it has not been established that inspectors' powers of investigation are sufficient;
- it has no information on the number of enterprises and the proportion of workers covered by the labour inspectorate's supervision visits".

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

"First ground of non conformity

Compliance with labour law regulations and legal rules concerning remuneration and occupational safety regulations are controlled by the State Labour Inspection Office and its subordinate Regional Labour Inspectorates (labour inspection bodies). This inspection system covers all sectors of the economy, with the exception of occupational safety and working conditions in mining-related industries, which fall under the scope of authority of the Czech Mining Authority. The Regional Hygiene Stations monitor compliance with occupational health regulations (public health protection bodies). The Labour Offices supervise compliance with employment legislation, including illegal employment and legal regulations protecting employees in the event of the employer's insolvency.

On 1<sup>st</sup> July 2005, the State Labour Inspection Office (SLIO), which is based in Opava and which replaced the former Czech Occupational Safety Office in the Czech Republic, was established pursuant to Act no. 251/2005 Coll. on Labour Inspection, as amended. 8 Regional Labour Inspectorates and another 6 remote offices report directly to the SLIO. Their regional competence covers (with two exceptions) two higher autonomous regional units. Advisory offices have also been established. The SLIO is run by the Ministry of Labour and Social Affairs.

At 1<sup>st</sup> January 2007, the Labour Inspection bodies employed a total of 582 staff, of whom 379 were inspectors. The SLIO is headed by a General Inspector and each of the eight Regional Inspectorates is run by a Head Inspector.

In accordance with the Act on Labour Inspection, the Labour Inspection bodies monitor compliance with obligations arising from the legislation with regard to:

- labour law rights and duties falling within the competence of the Labour Inspectorates, including regulations concerning employee remuneration, compensation for wages or salaries,

- working hours and rest periods,
- employment of female workers, young workers, workers caring for children and workers caring long-term for predominantly or fully dependent persons,
- the performance of artistic, cultural, advertising and sporting activities by children,
- abidance by the parts of the collective agreement that regulate the individual labour law claims of the employees and internal rules in accordance with Section 305 of the Labour Code,
- ensuring occupational safety,
- ensuring the safe operation of technical equipment and restricted technical equipment,
- making comments on selected construction project documentation during the approval process and before operations are launched in these buildings.

In accordance with the Act on Labour Inspection, the supervisory body for inspections is authorized to impose measures on persons inspected, requiring them to address the deficiencies discovered during the inspection, to assign reasonable deadlines for their removal and to require the submission of a written report on the measures adopted. It is also authorized to carry out an inspection to monitor the application of measures to remove the deficiencies discovered.

Employers can be fined up to 2,000,000 CZK, and repeatedly, for breach of labour law regulations as violations and offences by a legal entity.

When the inspection body discovers during its inspection that an employer has breached legal regulations other than those covered by labour law, it is obliged, pursuant to Act no. 552/1991 Coll., on State Control, as amended, to report certain facts to the appropriate body, in accordance with special regulations, such as bodies involved in criminal proceedings.

#### Second ground of non conformity

The SLIO and the individual Regional Labour Inspectorates received 5,485 complaints in 2006, covering a number of areas. This represented a 16.8% increase in the number of complaints received compared to 2005. Of the total number of complaints received, 411 concerned fire protection. A total of 5,074 submissions (i.e. 92.5%) related to the area of labour relations and working conditions, generally addressing problems relating to salaries and compensation for travel. During inspections, the inspectors frequently failed to obtain adequate and documented proof that the subject being monitored was actually in breach of the regulations, as was alleged by some of the complainants.

In 2006, the Labour Inspection offices performed a total of 15,971 inspections and investigated 12,568 subjects. The number of in-house inspections rose by 18.76% compared to 2005. During these inspections, a total of 54,050 breaches of the legislation were discovered. 810 fines were administered in 2006 for deficiencies and breaches of legal regulations, amounting to 17,692,500 CZK.

From inspections of companies performed between 2003 and 2006, we can see that the numbers of employees in companies monitored by the Labour Inspectorates as a percentage of the total number of recorded employees is as follows:

2003 28%  
2004 28%  
2005 23%  
2006 24%.”

95. 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.

#### **CSE 3§2 GREECE**

“The Committee concludes that the situation in Greece is not in conformity with Article 3§2 of the Charter on the grounds of the lack of effective supervision of health and safety regulations”.

96. The representative of Greece indicated that this conclusion of non-conformity stemmed from collective complaint No. 30/2005 Marangopoulos Foundation for Human Rights (MFHR) v. Greece. She indicated that the ECSR report on the complaint had been



transmitted to all the competent bodies, so that they could consider what needed to be done. The Mining inspectors of the Ministry of Development had stated that the necessary steps had been planned with the aim of reinforcing Inspectorates with a larger number of engineers-inspectors.

97. Several representatives considered that given the distinct nature of the reporting and collective complaints procedures, this type of situation should be treated as an “A” case. Moreover, given that the ECSR’s report in this complaint, as well as the Committee of Ministers’ Resolution, were both quite recent, the defending Government should be given the necessary time to remedy the situation.

98. The Committee took note of the decision of the ECSR of 6 December 2006 in collective complaint No. 30/2005, Marangopoulos Foundation for Human Rights (MFHR) v. Greece, and decided to wait for information on follow-up action by the Greek authorities, which would be provided in the next report.

### **ESC 3§2 HUNGARY**

“The Committee concludes that the situation in Hungary is not in conformity with Article 3§2 of the Charter on the grounds of the lack of effective enforcement of health and safety regulations”.

99. The representative of Hungary provided the following information in writing :

“The amendment to Act No. XCIII of 1993 on Labour Protection in force as of 1 January 2007 has created the organisational framework of the Integrated Labour Protection Authority. Furthermore, it has established a legal basis for the issuing of fines imposed as labour protection sanctions, updated some of the definitions in the law, and clarified certain tasks and procedures taking into account the experience gained from labour protection control measures.

The system of the labour protection authorities has been reorganised to a great extent: the labour safety competences have been taken over by the Hungarian Labour Inspectorate from the National Public Health and Medical Officer’s Service. Thus, the amendment has created the legal framework for the organisational integration of the two branches of labour protection i.e. labour safety and health at work, branches which are closely connected from a technical point of view. The amendment has defined the rights and obligations of the Labour Protection Authority. It has eliminated the division between organisational and technical activities of control for safe and healthy working conditions, division which was not in line with European practices.

This integration of the labour protection organisation promotes the effectiveness of the administrative activities of labour protection, and streamlines the human and technical resources of these activities. As a result, the organisation becomes simpler, and requirements of employers as well as the administrative procedures will be more integrated.

Regarding the data considered by the European Committee of Social Rights, we would like to make some corrections to the 4th Hungarian National Report (submitted in 2006). Unfortunately, due to the organisational division between labour safety and health at work mentioned above, there were some mistakes in the data collection, and certain important data were missing from the Report. The correct data are the following:

Measures taken by the Hungarian Labour Inspectorate in 2004:

Type of measure	Number of measures	Number or amount of measures
Decision to eliminate deficiency	20 177	107 889 [measures]
Decision to prohibit employment	3 071	9 230 [persons]
Decision to prohibit use of equipment	9 057	19 534 [equipment]

Labour protection fine	2 669	612 055 000 [HUF]
Fine for offence	673	20 378 000 [HUF]
On-the-spot fine	4 636	35 819 000 [HUF]

As it can be concluded from the above table, the total number of the immediate measures was 12 128, and the total number of fines was 7 978 with a total sum of HUF 668 252 000. These figures are significantly higher than those provided in the National Report. Updated figures will be included in the next National Report.”

100. 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§2 LUXEMBOURG

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

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

“The number of occupational accidents is high because the Luxembourg statistics also take account of accidents which have occurred on the way to or from work, which in Luxembourg are considered as occupational accidents.”

102. 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§2 POLAND

“The Committee concludes that the situation in Poland is not in conformity with Article 3§2 of the Charter on the grounds that the number of accidents in the agricultural sector is manifestly too high”.

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

“The number of work accidents in the agricultural sector is manifestly too high  
Work accidents in the agricultural sector (giving entitlement to a one-off disability payment)

	2003	2004	2005	2006	2007
Total	31 666	28 033	20 869	20 651	18 723
Including fatal accidents	211	173	128	123	94

Number of cases of occupational diseases giving the right to payment of compensation

1999	2003	2004	2005	2006
142	104	122	136	107

The safety and health conditions on agricultural farms are considerably affected by the low profitability of agricultural production and the poor condition of agricultural farms, due to which possibilities of improving the technical equipment on farms are limited. Another important factor with negative consequences is the low level of knowledge on the safe manners of performing agricultural works. Many owners of farms manifest low level of technical culture and to a greater extent appreciate high usability values of agricultural equipment than its ergonomic or safety values. The reasons for the high number of accidents include also disregarding threats and measures preventing dangers, which often result from the low level of education.

Pursuant to Article 63 of the Act of 20 December 1990 on Social Insurance of Farmers, the KRUS is obliged to undertake activities regarding the propagation of knowledge on accident threats and agricultural occupational diseases and knowledge on the principles of life and health protection on farms, by, inter alia, organization of free, voluntary training courses and instruction for farmers and undertaking efforts regarding proper production and distribution of

safe production means used in agriculture and protective equipment and clothes for farmers. Activities of KRUS are addressed not only to farmers, but also to children and young people from rural areas.

The basic form of the preventive actions undertaken by the KRUS is organization of training and instructions regarding health and safety on agricultural farms. The Fund organizes shows of practical operation of machinery and equipment, which are regarded as one of the more effective prevention activities. The most frequently organized shows concerned: exchanging jointed and telescopic shaft casings, safe acquisition of wood for household purposes, including the use of sawing machines (particularly chain sawing machines), personal protection equipment and working clothes and shows of pre-medical first aid. Contests, competitions and quizzes are another tried and tested form of improving safety and health knowledge.

Life and health protection principles and presenting threats occurring on agricultural farms are propagated in press articles, radio and TV programmes and on the Internet. KRUS information stands and points with brochures, leaflets, posters and films, displayed during harvest festivals, fairs, exhibitions, fêtes and picnics also serve the purpose.

The Fund participates in the development of pre-medical aid system in rural areas and equips units of voluntary fire brigades in pre-medical aid kits. By 2006, 4 530 such kits were distributed.

According to Article 56 of the Act on Social Insurance of Farmers, the KRUS President demands the reimbursement of benefits paid to persons injured in accidents at work and members of their households from the vendors of products and services for agriculture whose defectiveness was the sole or main reason for accidents at agricultural work, and questions the quality of such products. In the years 1993 – 2006 the Fund questioned the quality of over 470 types of machinery and equipment and other products.

In 2006 common and voluntary trainings on occupational safety and health prevailed among other forms of preventive actions. As many as 3 559 trainings and mini-lectures were organized and attended by 118.225 farmers, district governors, students of secondary agricultural schools, rural primary schools and junior secondary schools. Teaching and information materials devoted to the safety of children's work in the country were developed for the purposes of the training courses and other activities.

The Fund closely cooperates with headmasters and teachers of the schools in which the educational programme "Principles of children's participation in the works of family agricultural farms" is included in the curriculum.

Type of KRUS activity	2005	2006
Number of training courses for farmers	2 015	2 199
Number of participants	46 290	51 310
Number of training courses for students of agricultural schools	215	236
Number of participants	8 458	8 955
Number of training courses for students of junior secondary and primary schools	1 165	1 124
Number of participants	63 660	57 960
Number of contests for farmers	451	489
Number of contests and competitions for children and young people from rural areas	760	726
Number of information points at agricultural events	279	316
Number of practical presentations	327	509

#### Funds of the Prevention and Rehabilitation Fund of the Agricultural Social Insurance Fund allocated to prevention activities

Year	Amount in PLN '000
2004	934
2005	1 443
2006	1 416

For the last years the Ministry of Agriculture and Rural Development in cooperation with KRUS, Agricultural Property Agency and PIP has organized the National "Safe Farm" Contest, involving the participation of 1 500 individual farms. The purpose of the Contest is to promote the principles of life and health protection and improving safety and health on agricultural farms. Its effects include eliminating accident threats on the farms of contest

participants and other farmers, copying good practices and applying the principles of safe work on agricultural farms and using modern production technologies.

PIP inspectors conduct broad actions aimed at propagating among farmers the awareness of the impact of occupational safety on their lives and the lives of their families and perspectives of their farms. These actions primarily consist in:

- propagating knowledge on threats involved in agricultural work and manners of counteracting them, particularly by showing examples of appropriate behaviors during agricultural and farm works,
- general education regarding the right attitude to the agricultural safety issue,
- developing the right habits and behaviors among the young generation, regarding their safety and the safety of their families.

PIP encourages farmers to improve the technical condition of the agricultural equipment, covering some of the costs of purchasing new casings for power take-off shafts for tractors and casings for other machines, by organizing shows of safe operation of tractors and aggregated machines, sawing machines and other equipment. Thanks to labor inspectors' visits many farmers improved their working conditions and the conditions of their farmyards. The number of farms on which works are highly mechanized is growing, the technical condition of agricultural equipment is improving, and personal protection measures are used (particularly for works involving the use of chemicals), and the general sanitary condition and hygiene in stock buildings.

Similarly as in the previous years, in 2005 labor inspectors conducted preventive actions aimed at limiting the number of accidents at agricultural work and occupational diseases of farmers. The basic form of this activity was propagation among farmers and their families the knowledge on occupational threats and encouragement to apply safety principles concerning work on a farm on a daily basis. Information and counseling activities of inspectors involved 10 258 visits of places where agricultural works were performed, including 6 094 visits during harvest and threshing works, 360 places where other field works were performed and 3 804 visits inspecting works performed within the farms. During the visits inspectors reviewed the technical condition of 6.3 thousand tractors, 5.9 thousand trailers, 3.5 thousand harvest combines and 4.9 thousand of other machines used on farms (straw pressers, reapers, binders, threshers, other). A worrying increase in the percentage of machines and their elements in poor technical condition was noted as compared with 2004. A positive phenomenon observed by the inspectors was the elimination of multi-stage harvesting involving the use of binders and reapers, replaced by combine harvesting. This means lower amounts of human labor, which in turn should limit the risk of accidents.

In 2005 PIP inspectors inspected 3 804 of individual farms, i.e. over 10% more than in the previous years. This form of activity is particularly effective with regard to eliminating (limiting) specific accident or disease-related threats. At the same time, it is a particularly difficult task to perform, as it involves interfering with agricultural activities of individuals on the area of a private farm. It requires both high professional qualifications and a responsible psychological approach. As the opinions of labor inspectors indicate, the condition of the inspected farms varied considerably. Apart from farms in which various threats to life and health were found, also farms equipped with safe machines and agricultural equipment were noted, whose owners gladly use preferential credits for this purpose and maintain contacts with agricultural counseling centers. Many farmers improved their working conditions and farmyards following visits of labor inspectors.

The number of copies of the publications propagating the principles of safe work in the country increased almost twice as compared with 2004 (90 000 copies). A new element in this respect is the illustrated guide "Pracuj bezpiecznie" [Work safely] and a guide for young people – "Jak bezpiecznie zachować się na wsi" [How to behave safely in the country] and a new version of a leaflet and poster "Jakich prac nie mogą wykonywać dzieci do lat 15 na wsi" [Works which children under 15 must not perform]. Due to the importance of the issue, the information publication "Uwaga, azbest" [Watch out for asbestos] was released again. It was distributed during labor inspectors' visits to farms, during training sessions and contests, with the assistance of district governors, municipality offices, rural culture centers, health care centers, post offices, parish churches, schools. The publication was also distributed among

institutions operating for the benefit of agriculture, e.g. agricultural counseling centers, regional and industry press. Agricultural events were excellent occasions to reach the readers with the publications and also the specially prepared thematic exhibitions. The events included: fêtes, Open Door Days, shows of agricultural equipment and its operation, exhibitions. In total 332 such events took place in the reported period and PIP information and counseling points were available.

Educational activities involved 479 training courses on safety and hygiene during agricultural and animal production. The subjects covered during the trainings included primarily the prevention of threats during the operation of agricultural machines and equipment, during works involving plant protection agents, during transport works and the issue of the safety of children helping their parents on farms and staying in places where field works are performed.

Thanks to the assistance of primary and junior secondary school teachers, talks and mini-lectures were organized for over 45 thousand students of such schools (by 13% more than in 2004), during which basic safety principles on farms were discussed along with works dangerous for children. Contests and competitions on occupational safety and health and the related arts contests attracted as many as 44 thousand children and young people from rural areas (by 6% more than in 2004). During those events, labor inspectors showed the children the irregularities which may be found in the performance of works on a farm and manners in which their effects may be prevented. Mini-lectures and talks were organized on subjects related to safety in rural areas for almost 5 thousand children (i.e. almost 30% more than in 2004) from such areas, participating in summer play groups and summer camps organized within the Stationary Summer Action in cooperation with the Polish Scouting Association. During the Action inspectors were invited to meetings with children and young people from rural areas, participated in fêtes, evening plays or bonfires, participated in the organization of thematic field games and contests of knowledge regarding the promotion of safety in farms.

An effective way of reaching numerous groups of farmers were the exhibition and counseling points at various agricultural events (fairs, machinery shows, exhibitions, open days), among which the presidential harvest festival in Spała or the International Agricultural Fair "POLAGRA" were of importance.

Cooperation with media (regional radio and TV stations, newspapers and magazines) is of particularly significant importance for the efficiency of preventive actions in agriculture. In 2005 as many as 225 press publications appeared on occupational safety and health in individual farming, 188 radio and 70 TV programmes were broadcasted in which the subject was discussed.

Propagating the idea of safe work is also reflected in the brochures published by PIP, distributed by the inspectors during visits, trainings and meetings, in municipal offices and parish churches. District inspectorates cooperate closely with regional media, i.e. radio stations, papers, regional and national TV stations.

The Ministry of Agriculture and Rural Development initiated cooperation with the Agriculture Section of the Polish TV in order to produce programmes devoted to safe work methods in agriculture.

International seminars on ergonomics, occupational safety and health are also organized. Their subjects include physical and mental burdens connected with agricultural work, agricultural occupational diseases, harmful chemical agents (plant protection agents, mineral fertilizers, petroleum products etc).

The Ministry of Agriculture and the Development of Rural Areas has taken steps to prepare a guide for agricultural consultants, covering matters including health and safety in agricultural work. The guide will be used for the training of consultants, helping them to carry out their tasks more effectively and providing a basis for the establishment of minimum working standards and check-lists drawing on Polish and European Community legislation."

104. 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§2 SPAIN**

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

105. The representative of Spain indicated that measures were being taken to improve the enforcement of regulations on the prevention of accidents at work. Under the Strategy on Health and Safety at Work (2007-2012) the number of staff in the two main institutions involved in the prevention of occupational accidents, the Labour Inspectorate and Social Security, had been increased. Other measures by the authorities were: improving coordination between the Autonomous Communities, carrying out campaigns, assess the results of a study underway and examine whether regulatory changes in the field were needed, and also ensure that fines for breaches of health and safety regulations were rapidly and effectively complied with.

106. The Committee took note of the measures announced and urged the Government to implement the new Health and Safety Strategy in an efficient manner, with a view to reducing the number of accidents at work. It decided to await the next assessment of the ECSR.

### **Article 4§1 – Adequate remuneration**

#### **ESC 4§1 AUSTRIA**

“The Committee concludes that the situation in Austria is not in conformity with Article 4§1 of the Charter as it has not been established that a decent standard of living is guaranteed for a single worker earning minimum wage.”

107. The representative of Austria informed the Committee that the collective bargaining and wage policies in Austria lie within the autonomous competencies of the organisations of employers and employees. Any intervention by the government with the collective bargaining process would therefore constitute an interference with the proven Austrian system of autonomous collective agreements. Within this system the social partners have already concluded a framework agreement in order to reach a minimum wage of €1,000 gross for all sectors of the economy, which corresponds to € 958 net for white-collar workers and € 956 net for blue-collar workers. This framework agreement will be implemented by the end of 2009.

108. The Committee took note of positive developments and decided to await the next assessment of the ESCR.

#### **ESC 4§1 GERMANY**

“The Committee concludes that the situation in Germany is not in conformity with Article 4§1 of the Charter as there is no evidence that a decent standard of living is guaranteed for a single worker earning minimum wage.”

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

“Official statistics - broken down by economic sector - which indicate the actual average wage of the lowest paid workers are not available to the Federal Government. This applies equally to the distinction whether these low wages are covered by collective agreements or not.

A worker's net wage depends on his individual tax rate and the (partly individual) contribution towards health, pension and unemployment insurance. Therefore the net wage can only be calculated on an individual basis. In addition it must be stated that a distinction

between gross and net wages is only informative to a limited extent, i.e. as long as one takes not into account which (public) goods that contribute to defining people's standard of living, are funded from taxes and contributions (e.g. the public health care system, public transport). In the German system means-tested, tax-funded, supplementary social benefits (supplementary unemployment benefit II and/or social benefit (Sozialgeld) for family members) are guaranteed as a minimum social floor where people's monthly wages – for whatever reason – do not suffice to assure their livelihood. By disregarding partly the earnings of economically active persons the sum-total of such remuneration including supplementary social benefits is above the socio-cultural subsistence level.

Moreover a binding minimum income floor is established in some economic areas on the basis of the Posted Workers Act through the introduction of minimum wages. Please find enclosed an overview of the currently binding minimum wages.

At the moment the Federal Government is preparing draft laws in order to establish minimum wages in additional economic areas. It is envisaged that in economic sectors where at least 50% are bound by a collective agreement, a minimum wage may be introduced for all employees of the respective economic sector on the basis of a collective agreement. In economic sectors where less than 50% are bound by a collective agreement special committees with external experts may propose the introduction and amount of sector-related minimum wages, taking into account the wage distribution of the sector. In this way it will become possible to establish minimum wages in areas, where the collective bargaining parties or the responsible expert committees consider them necessary.”

110. 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 4§1 GREECE**

“The Committee concludes that the situation in Greece is not in conformity with Article 4§1 of the Charter as it has not been established that a decent standard of living is guaranteed for a single worker earning minimum wage.”

111. The representative of Greece informed the Committee about the most recent statistics on the minimum and average wages. In 2006 the annual minimum net wage of a single person (including bonuses) amounted to € 7,227 whereas the net average wage stood at € 16,403. The representative confirmed that the minimum wage fell below the threshold adopted by the ECSR. However, she mentioned that there were a number of other benefits for a single person earning minimum wage which could increase the ratio to 52,48%.

112. The Committee took note of the new information and asked the Government to provide more detailed information in their next report and decided to await the next assessment of the ECSR.

#### **ESC 4§1 LUXEMBOURG**

“The Committee concludes that the situation in Luxembourg is not in conformity with Article 4§1 of the Charter as it has not been established that a decent standard of living is guaranteed for a single worker earning minimum wage.”

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

“In addition to the minimum wage laid down by law, workers paid at this rate are also entitled to certain social transfers such as supplementary benefit from the National Solidarity Fund or the heating allowance.

Luxembourg will provide additional information in its next report.”

114. 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 4§1 NETHERLANDS**

“The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Charter as the statutory minimum wage of workers aged between 18 and 21 years falls below the requirements of this provision.”

115. The representative of the Netherlands informed the Committee that the Government had no intention to bring the situation into conformity with the Charter for the reasons already stated in the national report.

116. The representative of France and the ETUC representative underlined that the situation was not acceptable even in the light of arguments presented especially that the youth employment rate had been decreasing since 2001.

117. The Committee proceeded to vote on a warning which was not adopted (12 votes in favour, 14 against and 9 abstentions).

118. The Committee urged the Government to bring the situation into conformity and asked to provide more information about youth employment in the next report.

#### **ESC 4§1 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 4§1 of the Charter as the minimum net wage is manifestly inadequate.”

119. The representative of Slovakia informed the Committee about the progress since the last examination of the national situation by the ECSR. In particular he noted that the minimum wage had been increasing as a result of negotiations between the social partners. However, the average wage kept increasing too in view of economic development so the ratio of minimum and average wages remained almost unchanged. The representative further noted that only 3% of workers received minimum wage and that the situation would considerably improve when Slovakia joins the Euro zone.

120. The representatives of France and Estonia and the ETUC representative underlined that the situation had not improved in reality and since the ratio was less than 50%, information about additional benefits paid to single workers on the minimum wage would not provide enough proof that the situation was in conformity. Moreover, the ETUC representative and the representative of Estonia stressed that the fact that the minimum wage is only paid to 3% of workers is not a substantive argument.

121. The representatives of the Czech Republic and Lithuania mentioned that general socio-economic background should also be taken into account and also the fact that generally average wages increase more easily than minimum wages as the latter requires parliamentary approval.

122. The Committee expressed its concern about the evolution of minimum wage, noted that there was not enough progress and decided to urge the Government to take measures to guarantee the right to a decent standard of living for all workers.



### **ESC 4§1 SPAIN**

“The Committee concludes that the situation in Spain is not in conformity with Article 4§1 of the Charter on the grounds that the minimum wage falls far below the threshold of 60% of the average wage.”

123. The representative of Spain informed the Committee that the minimum wage had been increasing since the last assessment by the ECSR, namely by 5,5% in 2007 and 6,6% in 2008. However, it still represented only 35% of the average wage. He mentioned that only 0,9% of workers received minimum wage. As regards the additional benefits paid to a single worker on minimum wage, the representative of Spain did not provide information.

124. The Committee urged the Government to take measures to guarantee the right to a decent standard of living for all workers.

### **ESC 4§1 UNITED KINGDOM**

“The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§1 of the Charter as the minimum wage falls far below the 60% threshold established by the Committee.”

125. The representative of the United Kingdom informed the Committee that the minimum wage in the United Kingdom was around the OECD average, meaning one the highest in Europe. Moreover, he reiterated the information provided in the report on the tax credit system and the fact that the minimum wage had been increasing since 1999 and the purchasing power had considerably improved.

126. Having regard to the fact that situation is not in conformity since 1987, the Committee proceeded to vote on a recommendation which was not adopted (9 votes in favour, 17 against and 6 abstentions).

127. The Committee then proceeded to vote on a warning which was adopted (20 votes in favour, 7 against and 5 abstentions).

## **Article 4§2 – Increased rate of remuneration for overtime work**

### **ESC 4§2 LUXEMBOURG**

“The Committee concludes that the situation in Luxembourg is not in conformity with Article 4§2 of the Charter on the grounds that the right to increased remuneration for overtime hours is not guaranteed to all workers.”

128. The representative of Luxembourg informed the Committee about the situation with teachers and police officers who were not paid an increased remuneration for overtime hours worked. The Committee noted that the situation had not changed since 1999.

129. The Committee urged the Government to take measures to ensure that the civil servants concerned are paid at an increased rate for overtime hours and to provide more detailed information in the next report.

### **ESC 4§2 POLAND**

“The Committee concludes that the situation is not in conformity with Article 4§2 of the Charter on the ground that an increased compensatory time-off for overtime hours is not guaranteed to workers.”

130. The representative of Poland informed the Committee about the amendments to the Labour code. However, the Committee noted that the situation remained the same as

regards the possibility of granting a rest period of the length that is equal to the overtime hours worked. The representative of Poland explained that this provision applies only if the request for a rest period is made by the worker (if it is an employer's decision, the rest period is given in the proportion of 1.5 rest hours for 1 overtime hour).

131. The Committee took note of the legislative amendments and invited the Government to bring the situation into conformity with the Charter, namely to guarantee the right to an increased compensatory time-off for overtime hours both in public and private sectors.

### **ESC 4§2 SLOVAKIA**

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

- the right of workers to compensatory time-off for the overtime work is not guaranteed.
- the legal guarantees as regards overtime for workers whose salary is fixed by an individual contract, are not sufficient."

132. The representative of Slovakia provided the following information in writing :

"First ground of non conformity

Time off in lieu for overtime work can be taken exclusively in the case, where the employer and the employee have agreed on such a way of solving the entitlements for overtime work. By taking time off in lieu for overtime work the employee's entitlement to wages for the performed work remains preserved, he or she only loses the entitlement to the increased "remuneration" for overtime work, because by drawing time off in lieu, the performed work loses the status of overtime work. This is also documented by the fact that within the meaning of Section 97 paragraph 8 of the Labour Code, in the number of hours of maximum admissible overtime work is not included the overtime work in respect of which the employee received time off in lieu.

To explain the gist of the Labour Code:

- Where an employee will work, for example, 4 hours in a week beyond 40 hours' weekly working time, at the order of the employer, or with his consent, he will have worked a total of 44 hours, and the 4 hours beyond the prescribed weekly working time will be overtime work, for which the employee is entitled to a wage advantage at minimum 25% of his/her average earnings in addition to receiving wage, with the exception of the case in which he or she takes time off in lieu for overtime work.
- In case an employee, upon agreement with the employer, will take 4 hours of time off in lieu for 4 hours of overtime work, e.g. in the same week, the number of hours of overtime work will "annul"(eliminate) by reason of drawing time off in lieu, thus the employee will only have 40 hours reported as hours worked, which corresponds to the prescribed weekly working time for which he will receive the wage for work,
- If the procedure required by the Committee was to apply and the employee could take 5 hours of time off in lieu for 4 hours of overtime work, he would have worked only 39 hours in a week; since wages belong to the employee for the work performed, the employee would be damaged by the non-payment of wage for the missing 1 hour of time off in lieu, exceeding the original number of hours of overtime work.

Second ground of non conformity

On 1 September 2007 the Act No. 348/2007 Coll. went into effect, amending the act No. 311/2001 Coll the Labour Code, as later amended. With the Labour Code amendment also the preceding comments of the Committee were taken into account regarding the scope of employees with whom wage can be agreed already with regard had for potential overtime work, and the elimination of collective bargaining from the possibility to define concrete scope of functions of such employees.

In accordance with the aforementioned information and with the text of Article 4 paragraph 2 of the Charter, under which workers have the right to an increased rate of remuneration for

overtime work, with the exceptions in particular cases, the amendment also has changed the text of Section 121 paragraph 2 of the Labour Code as follows:

‘The employer may agree in a collective agreement the scope of employees, with whom it is possible to agree that the amount of wage shall take into account potential overtime work not exceeding, however, the total of 150 hours in a year. The employer who in the collective agreement has not agreed the scope of employees, subject to the first sentence, can agree in writing with an executive employee, an employee carrying out conceptual, systemic, creative, methodological or business activities, managing, organising or coordinating complex processes or extensive systems of very complex facilities that the amount of wage shall take into account potential overtime work, not exceeding however the total of 150 hours per year’.

With the effect of the Labour Code amendment, it is possible to define in the collective agreement the scope of functions of employees with whom it will be possible to agree the amount of wage so as to take into account potential overtime work, as suggested by the Committee. This scope of functions is only restricted to functions of the executive staff and the employees carrying out demanding intellectual works, in whom a freer working time arrangement is assumed and the emanating possibility for the rise of unexpected need for overtime work.”

133. 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 4§2 SPAIN**

“The Committee concludes that the situation in Spain is not in conformity with Article 4§2 of the Charter on the ground that the right of workers to increased remuneration for overtime is not guaranteed by law.”

134. The representative of Spain informed the Committee that in 2007 54,83% of all collective agreements, representing 49,35% of workers, provided for an increased remuneration for overtime hours.

135. The Committee noted that there were no positive developments since the last assessment by the ECSR and the grounds for non-conformity still existed, namely the fact that the Workers’ Statute only guaranteed the remuneration for overtime hours at the ordinary rate and that not all collective agreements provided for an increased remuneration.

136. The Committee proceeded to vote on a warning which was adopted (15 votes in favour, 5 votes against and 7 abstentions). The Committee recalled that this was the second warning and urged the Government to bring the situation into conformity.

#### **ESC 4§2 UNITED KINGDOM**

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

137. The representative of the United Kingdom informed the Committee about the Guidelines established by the Department of Trade and Industry which contain certain recommendations for defining the overtime pay during negotiations of a contract of employment between the employers and their staff. However, the determination of rates of payment for overtime work is left to these negotiations in the context of individual contracts which is the key feature of labour relations in the United Kingdom. The representative of the United Kingdom said that this aspect of the English Law of Contracts would not change.

138. The representatives of France and Belgium mentioned that since in the absence of relevant statistics, the Government was not in a position to provide enough evidence that all workers receive increased remuneration for the overtime worked, the situation continued to be in breach of the Charter as it had been since 1999. The ETUC representative also confirmed that there was no evidence that all workers were protected and that there was manifestly no application of this provision.

139. The Committee proceeded to vote on a warning which was not adopted (17 votes in favour, 10 against and 5 abstentions).

140. The representative of the United Kingdom suggested that a meeting could be organised between the representatives of the United Kingdom and the ECSR.

141. The Committee decided to urge the Government to bring the situation into conformity with the Charter and asked for more detailed information on those workers who are not paid at an increased rate for overtime hours.

### **Article 4§3 – Non-discrimination between men and women workers with respect to remuneration**

#### **CSE 4§3 AUSTRIA**

“The Committee concludes that the situation in Austria is not in conformity with Article 4§3 of the Charter on the grounds that it is not possible to make wage comparisons outside individual enterprises.”

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

“Reference is made to the Austrian position on this question in the 24th Austrian report as well as to the dissenting opinion by Mr. EVJU and Mrs. SCHLACHTER.

The concept of wage comparisons between employees who have the same employer appears to be very reasonable, because only in this case do the same prerequisites and the same framework requirements apply, thus making this comparability feasible. Comparisons with employees of other employers would have to consider the different practices in work places, which make comparison of labour relationships very difficult.

The proposition that employers who are neither linked economically nor subject to the same uniform wage regulation scheme should have to arrange wages with one another does not seem to be appropriate. Furthermore, this would raise unsurmountable practical difficulties, because no employer is obligated to disclose the detailed and concrete wage structure of his business to another employer. Such information would not be published for reasons of competition either. However, if other employers were used for comparison, this very information would be necessary in order for an employer to comply with the principle of equal pay for work of equal value.

In this context attention is also drawn to the judicature of the European Court of Justice: ‘Where, however, the differences identified in the pay conditions of workers of different sex performing the same work or work of equal value cannot be attributed to a single source, there is no body which is responsible for the inequality and which could restore equal treatment. Such a situation does not come within the scope of Article 141(1) EC’ (Judgment of the Court of 17 September 2002 – Lawrence, Case C-320/00; Judgment of the Court of 13 January 2004 - Allonby, Case C-256/01).”

143. 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.

### **CSE 4§3 CZECH REPUBLIC**

“Since the right to equality under Article 1 of the 1988 Additional Protocol covers remuneration, the Committee will no longer examine the national situation under Article 4§3 (right to equal pay) in respect of States which have accepted both provisions. Consequently, the States concerned are no longer required to submit a report on the application of Article 4§3.

Therefore, the Committee decides to adopt the same conclusion under both provisions in respect of equal pay. Consequently, as it did under Article 1 of the Additional Protocol (Conclusions XVII-2, pp. 153-158), it concludes that the situation in the Czech Republic is not in conformity with Article 4§3 of the Charter. The information provided in the present Czech report on Article 4§3 will be taken into account by the Committee during its next examination of Article 1 of the Additional Protocol.”

144. The Committee noted the decision of the ECSR that it would no longer assess the national equal pay situation under Article 4§3 but solely under Article 1 of the 1988 Additional Protocol. It therefore decided to consider the follow up to Article 4§3 when it considered the follow up to Article 1 of the Additional Protocol.

### **ESC 4§3 GERMANY**

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

- ...;
- due to its ceiling, the compensation paid to the employee in case of retaliatory dismissal and where the contract has been terminated by a court at the request of the employee is neither sufficiently dissuasive nor compensatory.”

#### First ground of non-conformity

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

“The right to equal pay for work of equal value has been anchored in German legislation for many years.

The compensation for violations of the equal pay requirement is not limited to the payment of the wage difference due – thus complying with the Committee’s demand. Besides compensation for material damages (payment of the wage difference due) the person whose rights have been infringed is also entitled to an adequate compensation with regard to his/her immaterial damages (compensation on account of violations of the right of personality) against the employer. This entitlement to receiving a compensation complies with the requirement of the European Non-Discrimination Directives as well as with the requirements of the European Court of Justice and equally of the European Committee for Social Rights of the European Social Charter which all call for effective and deterring sanctions which are proportionate to the damages incurred. Criminal or administrative law sanctions are not prescribed. Instead it is up to the Member States which option they choose for their sanctions as long as the deterrent effect is achieved.

The German legal situation is as follows:

Legal situation until August 2006 – section 611a of the Civil Code Job applicants who have suffered from discriminatory behaviour of the employer are entitled to

1. Restitution of the immaterial damage (compensation) according to section 611a para. 2 of the Civil Code.
2. Restitution of the immaterial damage (damages) according to section 611a para. 2 of the Civil Code in conjunction with section 611a para 1 of the Civil Code.

The person who sustained the damage is not entitled to demand the conclusion of a contract of employment (section 611a para. 2 of the Civil Code)

Reprisal dismissals are invalid according to sections 612a, 134 of the Civil Code.

New legal situation as of August 2006 – sections 15, 16 General Equal Treatment Act (AGG)  
Job applicants who have suffered from discriminatory behaviour of the employer are entitled to

1. Compensation for the immaterial damage (restitution) according to section 15 para. 2 of the General Equal Treatment Act.

2. Compensation for the material damage (damages) according to section 15 para. 1 of the General Equal Treatment Act

The person who sustained the damage is not entitled to demand the conclusion of a contract of employment (section 15 para. 6 of the General Equal Treatment Act). Reprisal dismissals are invalid according to sections 612a, 134 of the Civil Code. Section 16, para. 1 of the General Equal Treatment Act makes it also clear that an employee cannot be discriminated against by his employer on the grounds of asserting his rights.

In addition we would like to refer you to the 25th German Report on the national implementation submitted pursuant to the new reporting system; Group 1: Employment, training and equal opportunities, which explains the new AGG provisions.”

146. 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.

### Second ground of non-conformity

147. The representative of Germany wished to clarify the information given in the report. Reprisal dismissals were null and void, in accordance with the combined effects of articles 612a and 134 of the Civil Code (BGB). The employees affected by them were therefore entitled to receive any wages they would otherwise have earned and be reinstated to the same or a similar post. He had been able to identify only one court decision in which the court had terminated the employment relationship at the employee's or employer's request, because the employer had opposed reinstatement, and in this case compensation had been paid.

148. In reply to a question from the representative of Belgium as to whether the upper limit on compensation (18 months' salary) was fixed by legislation, or courts could order payment of an amount exceeding it, the representative of Germany said that the legislation laid down guidelines but it was for the courts to assess the relevant amounts, taking account, among other things, of employees' length of service, salary, age or family responsibilities, up to a maximum of 12 months' salary, or 18 months for employees aged 50 or over with at least 15 years' service. However there were no statistics on the amounts actually awarded by the courts.

149. The ETUC representative asked the representative of Germany to describe the judicial decision to which he had referred in more detail and state exactly what had been decided in the case in question. In reply, the representative of Germany said that he did not have this information to hand but he would pass it on as soon as possible. He added that the 18 month maximum was only one criterion by which compensation was measured, that the German system was fair and appropriate and that the reinstatement requirement was sufficiently dissuasive.

150. The representatives of Romania, the Czech Republic, Norway and the ETUC representative asked for further clarification on the maximum amount of compensation which could be paid and whether the courts could exceed this amount.

151. The Committee invited the Government of Germany to supply all relevant information in the next report and decided to await the ECSR's next assessment.

## **ESC 4§3 ICELAND**

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

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

### First ground of non-conformity

152. The representative of Iceland said that new legislation had been passed by Parliament in February 2008 replacing the Gender Equality Act of 2000. This law strengthened equality between women and men. It authorised pay comparisons with regard to the same employer but not between employers. She also said that wages were dependent on firms' financial results. In practice, though, when the social partners negotiated wages and adopted collective agreements by sector they took account of the situation in other firms.

153. The ETUC representative did not think that the new legislation resolved the underlying reason for non-compliance.

154. However, the representative of Iceland said that in market economies, the most successful employers paid higher wages than the others.

155. The representatives of France and Lithuania thought that the Icelandic authorities should provide information, particularly in statistical form, on the application of the new legislation.

156. The representatives of Belgium and Estonia thought that it was the ECSR's responsibility to assess the new legislation.

157. The Committee noted the positive aspects of the new gender equality legislation and invited the Government of Iceland to provide all relevant information in its next report. It decided to await the ECSR's next assessment.

### Second ground of non-conformity

158. The representative of Iceland said that the law prohibited employers from dismissing workers who had filed complaints or instituted court proceedings under the Act. The case-law of the Icelandic courts had not changed and therefore the courts could still not order the reinstatement of employees who had been unfairly dismissed.

159. The representatives of the Czech Republic, Romania, Lithuania and the ETUC representative noted that the situation was unchanged. They thought that additional information should be supplied, particularly regarding the number of such cases coming before the courts.

160. The Committee urged the Government of Iceland to bring the situation into line with Article 4§4 of the Charter to make it possible to declare dismissals null and void and/or reinstate employees in response to retaliatory dismissals connected with claims for equal pay.

### **CSE 4§3 NETHERLANDS**

“Since the right to equality under Article 1 of the 1988 Additional Protocol covers remuneration, the Committee will no longer examine the national situation under Article 4§3 (right to equal pay) in respect of States which have accepted both provisions. Consequently, the States concerned are no longer required to submit a report on the application of Article 4§3.

Therefore, the Committee decides to adopt the same conclusion under both provisions in respect of equal pay. Consequently, as it did under Article 1 of the Additional Protocol (Conclusions XVII-2, pp. 618-622), it concludes that the situation in the Netherlands is not in conformity with Article 4§3 of the Charter. The information provided in the present Dutch report on Article 4§3 will be taken into account by the Committee during its next examination of Article 20 of the Revised Charter.”

161. The Committee noted the decision of the ECSR that it would no longer assess the national equal pay situation under Article 4§3 but solely under Article 1 of the 1988 Additional Protocol. As the Netherlands had since ratified the revised Charter it therefore decided to consider the follow up to Article 4§3 when it considered the follow up to Article 20 of the revised Charter

### **CSE 4§3 TURKEY**

“The Committee concludes that the situation in Turkey is not in conformity with Article 4§3 of the Charter for the following reasons:

- in several sectors of the economy, the principle of equal pay does not apply;
- family benefits and child allowances are paid to the husband where both spouses are public servants, or to the wife with the husband’s consent, and not according to other criteria unconnected with the sex of the spouse.”

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

“First Ground of non-conformity

In several sectors of the economy, the principle of equal pay does not apply;

Scope of the Labour Law No. 4857:

With the exception of those cited in Article 4, The Law covers all workplaces irrespective of the sector they operate in and their employers, employers’ representatives and employees.

Exceptions: Works or workplaces which fall outside of the scope of the law:

- Maritime and air transportation,
- Agriculture and forestry workplaces employing less than 50 workers,
- All agriculture related construction works which can be considered as in the family economy,
- Handicrafts and jobs made by family members using their home as workplace.
- Domestic servants,
- Apprentices,
- Sports people,
- People under rehabilitation,
- Small work places where only 3 persons are employed.

Following works are also covered by the Law:

- Loading and unloading works, from ships to land and from land to ships
- All ground works of aviation,
- Factories and workshops producing parts of agricultural equipments and articles.
- Construction works in agricultural enterprises,
- Park and garden works which are for society or part of a workplace,
- Water products producing works which are not covered by agricultural works definition and by the Maritime Labour Law.

In the scope of this Law, worker means a natural person working on the basis of an employment contract.



Labour Law does not cover civil servants, police forces and civil defense workers. Civil Servant Law covers these civil servants and also contractual and temporary personnel which work under the conditions of Civil Servant Law Art.4.

As it was mentioned in the previous national reports that not all categories of workers are covered by the Labour Law but if we look into the Turkish legislation in general, there is no occupational category falling outside the scope of the Labour Code, special legislation or the Code on Obligations. Agriculture and forestry workplaces employing less than 50 workers can arrange a collective labour contract, by this arrangement, they can be also under the coverage of the labour legislation.

Legal Base :

- Constitution

Article 10 provides that all individuals are equal without any discrimination before the law. In addition, no privilege may be granted to any individual, family, group or class. State organs and administrative authorities must act in compliance with the principle of equality before the law in all their proceedings.

A new clause on gender equality was introduced into Article 10 of the Constitution in May 2004 that reads “women and men have equal rights” and “the state is responsible for taking all necessary measures to realize equality between women and men.”

- Turkish Penal Code

The new Turkish Penal Code, which eliminates almost all discriminatory provisions and promotes women’s human rights was enacted on September 26, 2004.

As it was mentioned in the previous report, practices that contravene international agreements can easily be taken to court.

- Labor Act

According to the Article 5, no discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons is permissible in the employment relationship. Unless there are essential reasons for different treatment, the employer must not make any discrimination between a full-time and apart-time employee or an employee working under a contract made for an indefinite period. Except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the conclusion, conditions, execution and termination of his employment contract due to the employee’s sex maternity. Different remuneration for similar jobs or for work of equal value is not permissible. Application of special protective provisions due to the employee’s sex shall not justify paying him a lower wage.

Article 18 provides that race, color, sex, marital status, family responsibilities, pregnancy, birth, religion, political opinion and similar reasons shall not constitute a valid reason for termination.

- Other Legislation

Government Decree No. 25540 of 2004 on the Minimum Wage, published in the Official Gazette on August 1, 2004 also indicates that a lower wage cannot be decided for a job of the same or equal value on the basis of gender.

Act No. 2822 of May 5, 1983 on Collective Labor Agreements, Strikes and Lockouts clearly stated that no provision could be against the principle of equal pay for work of equal value.

There are no provisions concerning equal pay for work of equal value in the Maritime Labor Code No. 854, the Press Labor Code No. 5953 and the Code of Obligations.

Discrimination based on gender is strictly prohibited in Article 10 of the Constitution and ILO Convention No. 111 of 1958 on Discrimination (Employment and Occupation).

While Article 3 of the Act No. 657 of July 14, 1965 on Civil Servants regulates general conditions of the law, Article 4 describes types of employment in public sector. In this framework, the salary scale for jobs does not depend on gender.

Wages and salaries in general and equal pay for the work of equal value in particular are decided and regulated by the Ministry of Labor and Social Security, the Minimum Wage

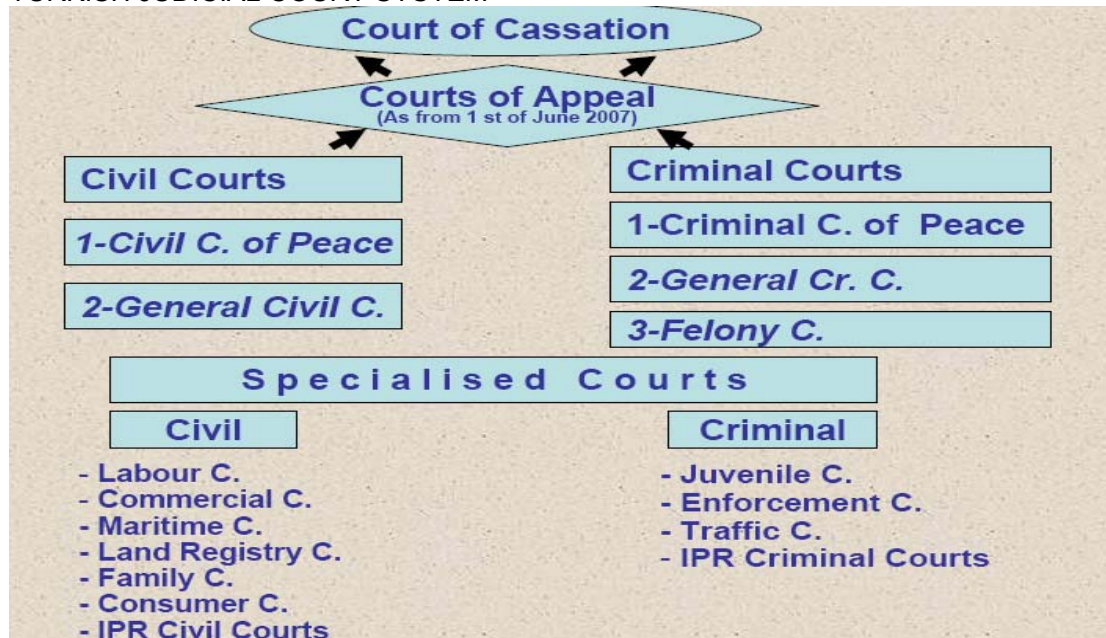
Fixing Board of the Ministry of Labor and Social Security, the different labor and trade unions, the Ministry of Finance, and the Council of Ministers. No discrimination based on sex may be made in the determination of minimum wages. The minimum wage is determined by the Minimum Wage Fixing Board and is regulated by Article 6 of the Government Decree No. 25540 on the Minimum Wage. The Committee determines the minimum wage, which is applicable to all occupations, and the amount is determined as per day.

The criteria for remuneration for civil servants are regulated by the General Budget Law prepared by the Ministry of Finance. For employees dependent on the Act on Civil Servants, the calculation of salaries is based on the basic indicator of employees' salary. Additional indicators and seniority also affect the calculation.

The Act on Collective Labor Agreements, Strikes and Lockouts regulates the right of collective bargaining and wage determination. It is known that collective bargaining agreements do not have any discriminatory provision or clause.

For everybody who considers himself/herself discriminated has the right to complain and initiate court proceedings; there is a possibility for everybody to complain and lodge an appeal in court on account of their private and institutional matters, against unjustified management and procedures by their supervisors and institutions in Turkish Judicial Court System, regardless of whether they are covered by the Labour Act or not.

#### TURKISH JUDICIAL COURT SYSTEM



#### PENAL CODE No. 5237

Article 122(1) - A person who by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect and other reasons;

a) who makes the employment of a person contingent on one of the circumstances listed above,

[...]

c) who prevents a person from carrying out an ordinary economic activity, shall be sentenced to imprisonment for a term of six months to one year or imposed fine.

#### LAW ON CIVIL SERVANTS No. 657 (ARTICLE 7)

Civil servants; cannot discriminate anyone on the basis of language, race, sex, political thought, philosophical belief, religion or sect when performing their duties.

#### ACT NO: 3071 ON PETITION RIGHTS

Article 7- With respect to the results of applications made to competent authorities by Turkish citizens and the foreigners living in Turkey concerning either their personal wishes and complaints or those related to public affairs and with respect to current stage of affairs concerning the ongoing procedures, an answer with a reason is given to the applicants in a period not later than 30 days. In case the ongoing procedure is completed, the result is also communicated.

Due to reason of being wronged by failure in the application of the principle of equal treatment, persons can pursue their rights by administrative procedures of Labour Inspection Board and also by judicial process as mentioned in article 5 of Act No: 4857 and articles 1 and 10 of Act no 5521 on Labour Courts. Besides, all citizens have petition rights based on Article 7 of Act no 3071.

#### ACT NO. 5521 ON LABOUR COURTS

Article 1- The labour courts are established in places considered as essential for the purposes of providing solutions to conflicts between workers and employers arising from the labour act or claims on the basis of Labour Law .

Article 10- Administrational authorities responsible for the implementation of the Labour Act shall forward to the labour courts any correspondence or documents relation to applications submitted to themselves in cases where they fail to finalize the requirement of such applications within 15 days or where they consider the matter falls within the jurisdiction of the labour courts. The court, after fixing a date on its own discretion, summoning the parties, determining that the applicant wishes to file a suit and getting him sign the minutes, examines the case and gives its judgments in accordance with rules and procedures laid by this Act. Forwarding an application in this way by the administrational authority does not restrict the decision of the court as to whether or not the case falls within its jurisdiction.

#### INTERNATIONAL RATIFICATIONS:

Turkish Constitution Article 90 - In case of contradiction between international agreements regarding basic rights and freedoms approved through proper procedure and domestic laws, due to different provisions on the same issue, the provisions of international agreements shall be considered.

Article 90 of the Constitution provides that all international instruments which Turkey has ratified and approved carry the force of law. As a result, multilateral and bilateral agreements are directly applicable in the execution of request relating to equal remuneration regardless of whether that job is covered by Labour Law or not.

Thus, agreements adopted by the Turkish Parliament by a law of ratification directly become a part of domestic legislation and their provisions have priority over other domestic laws, since the same article of the Constitution stipulates that, contrary to domestic laws, no appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional. Thus, in accordance with article 90 of the Constitution, the provisions of international treaties ratified by Turkey may be directly invoked before Turkish courts.

- ILO Convention No. 111 - Discrimination (Employment and Occupation) Convention, 1958 – ratified in 1967
- ILO Convention No. 100 Equal Remuneration Convention, 1951 – ratified in 1967
- UN Convention On The Elimination Of All Forms Of Discrimination Against Women

Article 11-1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

In the light of the above mentioned legislation in Turkey and international conventions ratified by Turkey, it can be said that all other sectors left out of the Labor Law are protected by other labour laws and/or special laws, international laws and regulations.

Sea and air transportation have not been covered by Labor Law 4857 because of their characteristics, but have been covered by two respective laws.

The Sea Labor Law, dated 20.04.1967 and numbered 854 is effective for the sea transportation jobs, and the air transportation jobs are covered under the Civil Aviation Regulation which has been prepared in line with the International Civil Aviation Regulation in great detail.

Aviation regulation consists of 30 Aviation Directions that have been prepared in line with the Turkish Civil Aviation Law no. 2920, and 15 guides and the developments in the international arena. Dual Air Transportation Agreements have been signed with 81 countries to encourage and develop the civil air transportation, and a draft law is currently being discussed at the Grand Assembly which has no other example in any EU country.

Other than that, for the exceptions that have not been protected are being covered by the Code of Obligations No.818. It should also be noted that a new draft Code of Obligations that has advanced clauses prepared by the Ministry of Justice to be discussed by the Grand National Assembly.

From this angle, it could clearly be seen that the arrangement of the Labor Law on its scope is not against the international fundamentals. Under the ILO contacts, it is allowed that the limited employment and work categories that especially the Government, employee and employer have agreed could be exempted.

There are several new legislation amendments and bills on the agenda of the Grand National Assembly:

1. Aviation Labour Law

Regulating the work conditions of employees working in the aviation businesses by a special law.

2. Trade Unions Law

Delivering union rights by removing the restrictions in front of union rights, and resolving the issues critically expressed many times in the Progress Reports.

3. Law Amending Certain Articles of the Law on Collective Labour Agreements, Strikes and Lock-outs

Delivering union rights by removing the restrictions in front of union rights, and resolving the issues critically raised many times in Progress Reports.

4. Occupational Health and Safety Law

The legal gap due to the annulment of Occupational Health and Safety Regulation has been later on fulfilled by a law

5. Law Amending the Law No. 4688 on Civil Servants' Trade Unions Aims at improving the union rights of public officials.

6. Law Amending the Labour Law No. 4857

According to article 71 of the Law, it is illegal to employ children younger than 15 years old. However, the Labour Law does not cover all the fields in which children are employed. Necessary amendments in our legislation shall be done concerning the employment of children younger than eighteen years old in jobs within the field of fine arts such as cinema, theater, music, ballet, dance and activities in the field of arts such as circus, television, movie making, advertising and modeling.

7. "Law Amending Certain Laws"

It is a social harmonization package including legislative measures to be made within the framework of the action plan to be drawn up as regards issues on which harmonization in the field of Social Policy and Employment. It is necessary to revise the laws making arrangements in the field of social policy and employment according to changing conditions.

Second ground of non conformity:

'The situation with regard to the payment of family benefit and children's allowances (which are regarded as components of pay) because under Section 203 of Civil Service Act No. 657, such allowances are paid to the husband where both spouses are public servants, or to the wife with the husband's consent.'

With the adoption of new Turkish Civil Code in 2001, the former provision which read as "the husband is the head of the household" was abolished. After this amendment, family allowances can also be given to wives where even both spouses are public servants. But the consent of husband or wives should be taken for preventing double payment of allowances.

Then, it is clear that payment of family benefit and children allowances (which are regarded as components of pay) are paid to either husband or wife where both spouses are public servants. But written application is required for preventing duplication. If both spouses have the right for family and children benefits, then spouses can freely decide who is going to take children allowances. Family benefits for un-worked husbands can also be paid to wives."

163. 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 4§4 – Reasonable notice of termination of employment**

##### **ESC 4§4 CZECH REPUBLIC**

"The Committee concludes that the situation in the Czech Republic is not in conformity with Article 4§4 of the Charter on the grounds that the two months' period of notice granted to workers with more than fifteen years' service is not reasonable."

164. The representative of the Czech Republic said that a new Labour Code had come into force on 1 January 2007 but the notice period had not changed. However, discussions were under way that might lead to a change. She also said that the notice period of two months was the minimum for all employees because it only came into force on the first day of the month after notice of dismissal was issued.

165. The representative of Portugal and the ETUC representative thought that the new Labour Code had been an opportunity to increase the notice period. They also said that the fact that the notice period only came into effect on the first day of the following month had no real significance since in practice if the notice was issued on the final day of the month this only added one extra day. Other representatives (Bulgaria, Lithuania) noted that discussions on amending the Labour Code were still under way and that this could take time.

166. The Committee asked the secretariat to prepare a report for the next meeting summarising the ECSR's case-law on periods of notice. This could provide guidelines for the Committee's monitoring and for countries wishing to bring their legislation into line with the Charter.

167. The Committee voted on a warning, which was rejected, with 10 votes for, 12 against and 9 abstentions.

168. The Committee invited the Czech Republic to bring the situation into conformity with Article 4§4 of the Charter.

#### **ESC 4§4 GREECE**

“It concludes that the situation in Greece is not in conformity with Article 4§4 of the Charter because manual workers with fewer than ten years service are not entitled to an adequate payment corresponding to the duration of the notice of dismissal.”

169. The representative of Greece said that the level of payment received was determined by collective agreements but that at the most recent negotiations the situation of manual workers with fewer than ten years' length of service had remained unaltered. Her authorities had undertaken to resume discussions on this subject with the social partners.

170. The Committee noted that the situation had hardly changed but that the government had made some efforts.

171. It invited Greece to bring the situation into conformity with Article 4§4 of the Charter.

#### **ESC 4§4 ICELAND**

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

172. The representative of Iceland provided the following information in writing:  
“The Ministry of Social Affairs and Social Security has taken notice of the ECSR's conclusion on the situation in Iceland is not in conformity with the Social Charter on the ground that the two weeks' notice period in the collective agreement between the Confederation of Icelandic Employers and Skilled Construction and Industrial workers, for employees with more than six months' services is not reasonable. The Ministry will inform the Social Partners of the conclusion and start a consultation with them on this matter.”

173. 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 4§4 MALTA**

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

- one week's notice is insufficient for workers with fewer than six months' service;
- notice of less than a month is insufficient for certain workers with more than one year's service;
- ...”

#### **First and second grounds of non-conformity**

174. The representative of Malta said that agreement had been reached between the government and the social partners when the 2002 legislation on notice periods was drawn up.

175. The representative of the Netherlands thought that the period of notice should depend on the employment rate.

176. The representative of Cyprus asked whether representatives of employers and trade unions had been informed of the ECSR's requirements concerning notice periods. The representative of Malta did not know.

177. The representative of Bulgaria said that the Maltese labour market was very small and the ECSR should take account of economic and social factors when assessing situations.

178. In answer to the representative of France, the representative of Malta said that dismissed employees received allowances from the time of their termination of contract, irrespective of how long they had previously been employed.

179. The ETUC representative said that the ECSR had identified two non-compliance situations, which Malta had to rectify.

180. The Committee urged the Government of Malta to bring the situation into line with Article 4§4 of the Charter and to advise the social partners of the ECSR's concerns.

#### Third and fourth grounds of non conformity

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

“Given Malta’s smallness and the serious affect industrial unrest could have on such a small labour market, it has always been seen as important to ensure that all industrial matters are dealt with and agreed to, through discussions between the Social Partners.

As in all matters relating to employment and industrial relations, the question regarding notice periods was a matter dealt with following the issue of a White Paper and discussed in detail between the Social Partners before the implementation of the Employment and Industrial Relations Act.

The question regarding notice periods was basically considered as as a package and all parties have agreed to this package.

Further it is felt that, given the ever-increasing flexibility which is being shown in the younger generation in Malta, shorter periods of notice gives more flexibility to those employees who wish to move from one employment to the other. With respect to the concern regarding early dismissal from an employer, it is pertinent to point out that in such an eventuality, where an employee considers that he/she has been unfairly dismissed, he/she can request that his/her case is heard before the industrial tribunal and the decision of such a Tribunal on such a question is binding.

In practice in fact, it is to be noted that following the introduction of the Employment and Industrial Relations Act, and specifically the notice periods in question, there has to date been no request, from either the Employers nor the Employees (on their own or through their representatives) for changes in such periods.

With respect to the matter of the corresponding payment on notice of dismissal, Malta feels that the current system whereby the employer is bound to pay a sum which represents the salary due for 50% of the remaining term of contract is quite sufficient. For example in the case of a fixed term contract of 3 years where the employee is dismissed after the first year of contract, the employer is bound to compensate such employee with 50% of the remaining 2 years salary, which in essence results in the employee receiving a sum of money equivalent to one year’s salary. Again this system is part of a package agreement between the social partners which again has an element of bargaining.”

182. 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 4§4 NETHERLANDS**

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

- its legislation does not require any period of notice during probationary periods;
- one month's notice is insufficient for workers with a service of five years or more.”

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

“The Dutch government disagrees with the Committee on both accounts. The Charter only stipulates that there should be a reasonable period of notice for the termination of employment. The Charter does not contain a fixed rule, that the length of the period of notice should be related to the employees' length of service. Under the Dutch legislation reductions in notice periods to at least one month (which is in general considered to be a reasonable period of notice and in accordance with the Charter) under collective agreements are authorised, as the Committee already rightly suspects.

As far as the probation period is concerned the Dutch government is of the opinion that during this short period a notice period is not in order. The probation period is a short period not exceeding 2 months during which each of the parties concerned can end the agreement without having to comply with the rules which normally have to be taken in account before giving notice. The obligation to take into account a period of notice even when notice is given during the probation period would not be in accordance with the character and duration of the probation period. According to the Dutch government article 4 paragraph 4 should be interpreted accordingly.”

184. 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 4§4 POLAND**

“The Committee concludes therefore that the situation in Poland is not in conformity with Article 4§4 of the Charter because two weeks' notice is not sufficient for workers on fixed-term contracts with more than six months' service.”

185. The representative of Poland said that there had been no changes to the notice period for employees on fixed-term contracts. Her authorities thought that employees on fixed-term and on permanent contracts could not be treated in the same way, and that such differences of treatment were authorised by Council Directive 1999/70. Parties to contracts could provide for longer notice periods than the two weeks specified in the legislation. She thought that the absence of case-law on the matter showed that this was not an issue for Polish employees. The law offered protection to employees on fixed-term contracts. In particular the number of such contracts was limited, with the third such contract becoming permanent. The courts could also decide to transform fixed-term into permanent contracts if they thought that the former had been concluded with the intention of circumventing the law on indefinite contracts.

186. The ETUC representative said that Polish legislation authorised discrimination with regard to notice periods between employees on fixed-term and those on permanent contracts, which was incompatible with the framework agreement appended to Directive 1999/70.

187. The representatives of France, Iceland, Belgium, of the Czech Republic and the ETUC representative said that the situation was incompatible with Article 4§4 and proposed that they vote on a warning or that a strong message should be sent to the Polish government.

188. The Committee voted on a warning to Poland, which was rejected (13 votes for, 16 against and 8 abstentions).

189. The Committee urged the Government of Poland to bring the situation into conformity with Article 4§4 of the Charter.



### **ESC 4§4 SLOVAKIA**

“The Committee therefore concludes that the situation in Slovakia is not in conformity with the Charter on the grounds that the length of service of employees working fewer than twenty hours a week is not taken into consideration in order to establish the period of notice.”

190. The representative of Slovakia provided the following information in writing :

“Pursuant to Section 49 of the Labour Code, the employer may agree with the employee in the contract of employment shorter working hours than the established weekly working time. The shorter working time does not have to be distributed over all working days. The employee is entitled to the wage corresponding to the shorter hours of work agreed. Provision on shorter working time provides for the prohibition of breach of the principle of equal treatment of employees working shorter working time (part-time), compared to full-time employees working weekly working time prescribed. The legal consequence of the application of this principle was also the same protection of employees against notice on the part of employer, as applicable to full-time employees (working the established weekly working time). In practice this legal provision did not permit flexible employment of part-time employees, particularly where shorter working time was minimal.

The current employment provision of the employment relationship with shorter working time deems the reduced legal protection of the employee with weekly working hours of less than 15 hours, in the termination of employment by notice, to be an exception from the principle of equal treatment. Such different treatment is justified, where this is objectively so by a legitimate goal and the means for reaching the goal are reasonable and necessary.

A legal obligation is imposed on the employer to inform employees and employee representatives, in a comprehensible way, of the job opportunities available for shorter working time and those for the prescribed working time.”

191. 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 4§4 SPAIN**

“It therefore concludes that the situation in Spain is not in conformity with Article 4§4 of the Charter on the grounds that:

- ...;
- workers with fixed-term contracts of more than one year whose contract is broken before the end were only granted a 15-day period of notice.”

#### First ground of non conformity

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

“It is true that in the case of fixed-term contracts of less than a year, Spanish legislation does not specify any period of notice. This reflects the temporary and short-term nature of these contracts.

Since the purpose of periods of notice is to enable those concerned to take any necessary steps and anticipate any damage or difficulties that the termination of the contract might entail, it seems clear that such notice periods are more appropriate in the case of permanent contracts. In the case of temporary contracts which specify clearly their date of expiry, the parties serve the entire period initially provided for and it is clearly pointless to give notice since the parties are aware in advance of when the contract will end when they sign it.”

193. The Committee urged the Government to take measures to guarantee the right to a decent standard of living for all workers.

### Second ground of non-conformity

194. The representative of Spain said that the 15 days' notice for employees on fixed-term contracts of more than one year whose contract was broken before the end was a minimum figure and that the law authorised longer periods, either in collective agreements or in individual contracts. His authorities did not understand why this 15 day period was deemed to be unreasonable and in the absence of any explanation from the ECSR it did not intend to respond to the Committee's assessment. Moreover, ILO Convention 158 on the termination of employment on the employer's initiative, which Spain had ratified, authorised the exclusion of employees on fixed-term contracts from its scope.

195. The representative of the Czech Republic and the ETUC representative said that even if it was a minimum, 15 days' notice was not sufficient.

196. The representatives of the Czech Republic and France said that the situation remained unchanged and, supported by the ETUC representative and the representative of Iceland, proposed that they vote on a new warning to Spain.

197. The Committee voted on a second warning to Spain, which was approved (16 votes for, 8 against and 12 abstentions).

### **ESC 4§4 UNITED KINGDOM**

"The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§4 of the Charter because notice of termination of employment for workers with less than three years' service is too short."

198. The representative of the United Kingdom said that the minimum notice periods in the legislation were fair and that it was preferable to allow employers and employees to negotiate extensions to them. The United Kingdom thought that individuals were entitled to negotiate the terms and conditions of their own employment relationship with their employers.

199. The representative of France, supported by the ETUC representative and the representatives of Belgium and of the Czech Republic, said that the minimum periods should be sufficient to compensate for any imbalance between employers and employees. She proposed that they vote on a warning to the United Kingdom

200. The Committee voted on a new warning to the United Kingdom, which was approved (18 votes for, 7 against and 8 abstentions).

### **Article 4§5 – Limitation of deduction from wages**

#### **ESC 4§5 CZECH REPUBLIC**

"The Committee concludes that the situation in the Czech Republic is not in conformity with Article 4§5 of the Charter, on the ground that, after deductions from wages, a worker without dependants and without alimony obligations may be left with less than the statutory minimum subsistence amount."

201. The representative of the Czech Republic said that, as a result of new legislation, the amount of income remaining after deductions from wages had changed, and was now in conformity with the Charter. The new system, which had been operating since 1 January 2007, would be described in detail in the next report. It specified a minimum subsistence

amount and a minimum allowance for housing, with the result that after deductions everyone received an amount that was no less than the subsistence minimum.

202. The Committee took note of the positive developments in the Czech Republic. It asked the Government to provide all the data and information needed to assess the effects of these changes in its next report and decided to await the ECSR's next assessment

### **ESC 4§5 MALTA**

"The Committee concludes that the situation in Malta is not in conformity with Article 4§5 of the Charter on the ground that it has not been established that the workers can ensure their subsistence and that of their dependents once deductions are made from wages."

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

"In reply to the points raised by the Committee of Social Rights, Malta would like to clarify: -

- (i) No other orders by the Minister of Justice have been issued and therefore the minimum portion of the wage that is exempt from attachment is Lm300 (MLT; € 721).
- (ii) In reply to the request for information by the Committee, Malta wishes to clarify that in the case of Collective Agreements the amount of deductions is decided through the collective bargaining process. On the other hand however, where no collective agreement exists, the amount of deductions to be made from wages has to be approved by the Director of Industrial and Employment Relations. Such decisions are carried out in practice on a case-by-case basis. However, in practice any permission (which is only valid for one year) by the Director is only given in a way that any such deductions do not exceed 10% of the wage or €23.29 (Lm10) per week whichever is the lowest."

204. 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 4§5 POLAND**

"The Committee concludes that the situation in Poland is not in conformity with Article 4§5 of the Charter on the grounds that:

- employees may waive limitations to wage deductions;
- after deductions, the salaries of workers with the lowest wages do not enable them to provide for themselves or their dependants."

#### First ground of non-conformity

205. The representative of Poland said that the ECSR had not fully understood the new legislation. She pointed out that deductions accepted in writing by employees could not be unlimited and employees had to receive a sum equivalent to 80% at least of the national minimum wage. She undertook to explain the situation in detail in the next report under Article 4§5.

206. The Committee invited Poland to supply all relevant information in the next report and decided to await the ECSR's next assessment under Article 4§5 of the Charter.

#### Second ground of non conformity

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

"The Act of 14 November 2003 amending the Labour Code and other legislation has altered the provisions on deductions from wages. This includes the following new article:

"Article 871, paragraph 1. No deduction may be made from the part of remuneration equivalent to:

- 1) the minimum wage as laid down in other provisions and applicable to employees on full-time contracts, after deduction of social security contributions and personal income tax, in the case of deductions made under orders for the recovery of sums due, other than maintenance payments;
- 2) up to 75% of the wage specified in paragraph 1 in the case of advances;
- 3) up to 90 % of the wage specified in paragraph 1 in the case of fines, as specified in Article 108.

Paragraph 2. In the case of employees with part-time contracts, the sums specified in paragraph 1 are reduced in proportion to the hours actually worked."

The government has undertaken to bring the Polish legislation into line with the Charter. Thus the Act of 14 November 2003 amended Article 91 of the Labour Code concerning deductions administered with employees' written consent, whereas previously there were no restrictions on them. A sentence was added to this article, which stated that in such cases, no deductions can be made from the portion of employees' pay specified in Article 871, paragraph 1.1.

There was considerable opposition to this amendment so the Act of 20 April 2004 on employment promotion and labour market institutions added the following to Article 91 of the Labour Code:

'Article 91, paragraph 1. Sums owed other than those specified in Article 87, paragraphs 1 and 7 may only be deducted from employees' wages with their prior written consent.

§ 2. In the cases specified in paragraph 1, no deductions may be made from the part of remuneration equivalent to:

- 1) the amount specified in Article 871, paragraph 1.1, in the case of deductions made by employers for their own benefit;
- 2) up to 80% of the minimum wage specified in Article 871, paragraph 1.1, in the case of deductions other than those specified in the previous sub-paragraph."

The regulations that set the non-deductible portion of pay below the minimum wage only apply to deductions made by employers for the benefit of other parties, and with the employees' written consent. This had the full support of the social partners.

Regarding the conclusion that after deductions, the salaries of workers with the lowest wages do not enable them to provide for themselves or their dependants, it needs to be borne in mind that such deductions can only be used to recover cash advances paid to employees and monetary fines. Deductions can also be made where employees have given their written consent. The size of fines is limited.

Cash advances to employees, under Article 871 § 1.1 of the Labour Code, are intended to cover expenses connected with carrying out a job that are the employer's responsibility, such as the purchase of materials or fuel, or official travel expenses. Such advances must be settled or repaid. They represent money belonging to the employer that is only temporarily entrusted to the employee. In such cases, deductions from the employee's wages are only authorised if the date for settlement has passed, and then within the limits laid down by law.

The application of monetary fines under Article 871 § 1.3 of the Labour Code is strictly governed by law and the amounts involved are fairly small. Income from such fines does not go to the employer and they can only be used to improve health and safety conditions in the firm.

Deductions made with employees' freely given written consent under Article 91§1 of the Labour Code, which the independent experts questioned, have the full support of the social partners. These provisions are only applicable to deductions that are not for the employer's benefit and employees' consent is always required."

208. 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 4§5 SLOVAKIA

“The Committee therefore concludes that the situation in Slovakia is not in conformity with Article 4§5 of the Charter on the grounds that:

- workers may waive their right to limitations on deductions from wages;
- ...”

209. The representative of Slovakia provided the following information in writing :

“The maximum extent of deductions from wages of an employee that an employer may make without the employee’s consent, based on the provisions of Section 131 paragraphs 1 and 2 of the Labour Code is restricted by a special regulation - the Regulation of the Government of the Slovak Republic No. 268/2006 Coll. on the extent of deductions from wages in the execution of an order. The diction of this part of the Labour Code is fully consistent with the obligation to allow deductions from wages only under conditions and to the extent prescribed by national laws, or other regulations and provisions, or if consistent with collective agreements or arbitration awards.

The adopted text of the provisions of the Labour Code is the result of a labour law reform in Slovakia aimed to ensure in particular optimal functioning of the market economy also through contractual freedom as one of the principal prerequisites for reaching prosperity. In accordance with the principle of contractual freedom of employers and employees, the Labour Code contains only a minimum extent of necessary coercive provisions directed against the employer and guaranteeing the employee’s entitlements.

For these reasons, also the possibility of making additional deductions from wages of the employee (beyond the scope of the reductions under Section 131 paragraphs 1 and 2 of the Labour Code), the extent and scope of which is not enumeratively defined by legal regulations, is a subject to be agreed by the contracting parties. A general restriction of making these kind of deductions could be regarded as an intervention to the principle of free choice of the Contracting Parties, of which particularly the employee has the possibility to decide whether he or she will agree to the execution of deductions agreed, where the reduction of the net wages could constitute a reduction of overall income of the employee and his/her family under a threshold of the necessary minimum amount of disposable financial means.

The Ministry of Labour, Social Affairs and Family of the Slovak Republic has no knowledge suggesting that the absence of restriction of contractual freedom in negotiating the extent of deductions by agreement to deductions from wages between the employer and the employee would be abused by employers. Despite this, based on the advise from the Committee on the inconsistency of provisions of Section 131 paragraph 3 of the Labour Code with Article 4 paragraph 5 of the Charter, the Ministry will propose, on the occasion of the next amendment of the Labour Code, a special regulation to apply to the extent of deductions made on the basis of the written agreement of the employer and the employee to satisfy the employer’s claim, which would provide the extent of deductions in the execution of an order. The proposal will be a subject of consultations with representatives of social partners who have contributed with their comments to the preparation of the Labour Code, including amendments of its provisions that have been made to date.”

210. 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.

### Second ground of non-conformity

211. The representative of Slovakia said that the Labour Code set limits on deductions from wages but that the social partners could opt not to apply them. The Government would propose amendments to the Labour Code next time it was revised after consultation with the social partners.

212. The representative of the ETUC emphasised that it was the Government's responsibility to protect labour law even if there was negotiation between the social partners.

213. The Committee voted on issuing a warning to Slovakia, which was approved (17 votes for, 4 against and 14 abstentions).

### **ESC 4§5 TURKEY**

"The Committee concludes that the situation in Turkey is not in conformity with Article 4§5 of the Charter on the ground that not all workers are protected against deductions from wages that could deprive them of the minimum subsistence level."

#### Ground of non conformity

214. The representative of Turkey said that all workers were protected by the Labour Code or other types of legislation against deduction from wages and were entitled to take their case to the courts in the event of a dispute. Case-law on wage deductions was available but only in Turkish. The representative of Turkey undertook to provide the information requested in the next report.

215. The Committee invited the Government of Turkey to supply all relevant information in the next report, particularly court decisions in English or in French, and decided to await the ECSR's next assessment under Article 4§5 of the Charter

### **ESC 4§5 UNITED KINGDOM**

"The Committee concludes therefore that the situation in the United Kingdom is not in conformity with Article 4§5 of the Charter on the grounds that deductions from wages is left to the negotiation between the parties to an employment contract."

#### Ground of non conformity

216. The representative of the United Kingdom said that wage deductions had to be mentioned in employment contracts and were negotiable. Since the introduction of the minimum wage in 1999, it had been illegal for employers to make deductions which would deprive employees of the minimum wage, even in the case of a written agreement between the employee and his or her employer.

217. The Committee invited the Government of the United Kingdom to supply all relevant information in the next report and decided to await the ECSR's next assessment under Article 4§5 of the Charter.

## **Article 5 – Right to organise**

### **ESC 5 LATVIA**

"The Committee concludes that the situation in Latvia is not in conformity with Article 5 of the Charter on the following grounds:

- a minimum of 50 members or at least one quarter of the employees of an undertaking are required to form a trade union, which is an excessive restriction on the right to organise;
- ...;
- during the reference period, associations formed by police personnel were denied fundamental trade union prerogatives."

### First ground of non conformity

218. The representative of Latvia said that under Section 3 of the Trade Union Act, a minimum of fifty members or at least a quarter of the workforce of an undertaking, association, occupation or sector of activity was required to form a trade union. Statistics showed that 96% of the businesses in Latvia employed fewer than 50 persons and could be considered to be small-scale. The rule applicable to these was therefore that trade unions had to comprise a quarter of the workforce. The requirement for a minimum of 50 members applied to trade unions representing sectors of activity. He thought that the ECSR had misunderstood the situation.

219. The ETUC representative thought that there was nothing new and that this information had already been supplied the last time.

220. The representatives of Lithuania and France thought that there were two options and that it was the employees who decided which was the most appropriate criterion, which did not create any problems.

221. The representative of Latvia said that in large firms, the 50 person rule posed no difficulties.

222. The representative of Sweden said that according to ILO case-law, the figure of 50 members was too high.

223. The representative of Estonia wondered whether the problem was the quarter of the workforce or the 50 persons. Latvia should supply information on why 50 members were required.

224. The Secretariat said that the problem was the request for a minimum of 50 members to form trade unions. According to the ECSR, 50 were too many.

225. The Committee invited the Government of Latvia to supply all relevant information in the next report and decided to await the ECSR's next assessment.

### Second ground of non conformity

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

“Retired persons and the unemployed persons do have rights to organize. The rights are stipulated in the Law on Associations and Foundations. The instruments how to organize and how to protect is the very similar to those stipulated in the Law on Trade Unions. The decision to separate these categories was made because of different aims and different approaches. As an example, Latvia can mention Latvian Pensioners Foundation. “

227. 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.

### Third ground of non conformity

228. The representative of Latvia said that new police legislation authorising police officers to form trade unions and to affiliate to them had taken effect from 1 January 2006. The situation was therefore compatible with the Charter.

229. The Committee invited the Government of Latvia to supply all relevant information in the next report and decided to await the ECSR's next assessment.

### **Article 6§4 – Collective action**

#### **ESC 6§4 LATVIA**

“The Committee concludes that the situation in Latvia during the reference period is not in conformity with Article 6§4 of the Charter on the ground that the statutory majority required to call a strike was such that the exercise of the right to strike was excessively limited.”

230. The representative of Latvia indicated that amendments to the Strike Act had been adopted in 2005 whereby the declaration of a strike could be taken by a majority vote of trade union members or employees. The amendments, which would in principle bring the situation into conformity, had however taken place outside the reference period. The representative of Latvia stated that detailed information on these amendments would be provided in the next national report.

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

### **Article 7§4 – Length of working time between 15 and 18**

#### **ESC 7§4 LUXEMBOURG**

“The Committee concludes that the situation in Luxembourg is not in conformity with Article 7§4 of the Charter on the ground that working hours for children under the age of 16 are excessive.”

232. The representative of Luxembourg said that the situation was unchanged. There were nine years of compulsory schooling in the country. As the school year ended on 15 July, only children born between 15 July and 1 September were concerned. Luxembourg was not currently opposed to changes in its legislation. The education minister also intended to extend compulsory schooling from nine to ten years, which would resolve the problem since a one year extension to compulsory schooling would mean that children were not allowed to work before the age of 16. There were no collective agreements authorising a working week of more than forty hours. It was possible in theory but collective agreements did not as a rule or systematically authorise longer hours.

233. The ETUC representative thought that the problem seemed to be more serious and that the representative of Luxembourg was rather minimising it.

234. The Secretariat said that the ECSR was aware that Luxembourg considered this to be a theoretical problem, but had maintained its assessment.

235. The ETUC representative said the situation had existed since 1997 and that there was nothing to show that the situation was improving.



236. The representative of Luxembourg said that there was only one case every three years and that this was a theoretical problem.

237. The representative of Bulgaria recognised Luxembourg's argument that there was no problem in practice, but also understood the ECSR's logic since there was a problem in theory. He asked why a law that had not been applied for ten years should be maintained.

238. The representative of Romania asked when the education reform would take place.

239. The representative of Luxembourg could offer no precise date. The education minister had recently announced that she intended to extend compulsory schooling, but without knowing how the social partners would react.

240. The representative of France said that the situation was admittedly theoretical, but could become a practical one and pose problems. The situation was continuing and the legislation had to be amended and improved.

241. The Chair called for a vote on a warning to Luxembourg, which was rejected (8 votes for, 19 against and 5 abstentions).

242. The Committee invited the Government of Luxembourg to bring the situation into line with Article 7§4 of the Charter.

### **Article 7§5 – Fair pay**

#### **ESC 7§5 LUXEMBOURG**

“The Committee concludes that the situation in Luxembourg is not in conformity with Article 7§5 of the Charter on the ground that the wages paid to apprentices in their third year are less than two thirds of the minimum wage of an adult.”

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

“Detailed information will be provided in the next report.”

244. 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 8§1 – Maternity Leave**

#### **ESC 8§1 LATVIA**

“The Committee concludes that the situation in Latvia is not in conformity with Article 8§1 of the Charter on the grounds that at least six weeks post natal leave is not compulsory.”

245. The representative of Latvia informed that no legislative change occurred. The total length of parental/maternity leave corresponds to the 14 weeks required by the Social Charter; whilst the compulsory post natal weeks of leave remain two. He underlined that the latter compulsory requirement was in compliance with Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are

breastfeeding.<sup>1</sup> He however also pointed out that according to statistics of the State social insurance agency, the average duration of post natal maternity leave was in practice longer than two weeks (about 60 days).

246. The ETUC representative noted that the same information had been provided at the previous meeting. He underlined that according to the case law of the ECSR all women were entitled to 6 weeks post natal compulsory leave, not just an average of them.

247. The representatives of the Netherlands and of the United Kingdom questioned why the ECSR required a longer post natal compulsory leave compared to the above mentioned Council Directive.

248. The Secretariat recalled that Article 8§1 of the Charter was designed both to grant working women increased personal protection in the case of maternity and to reflect a more general interest in the health of the mother and child. The ECSR considers these two requirements reconcilable insofar as national legislation, on the one hand, allows women the right to use all or part of their recognised entitlement to stop work for a period of at least 14 weeks, allowing them freedom of choice by means of a scheme of benefits set at an adequate level, and, on the other hand, obliges the woman concerned and the employer to observe within this total period, a minimum period of cessation of work, which has to be taken after the birth and which the ECSR considered "it was reasonable to fix at 6 weeks" (Statement of Interpretation, Conclusions VIII).

249. The representative of Latvia was of the view that in the 21<sup>st</sup> century post natal leave is primarily needed to take care of the child and only rarely to protect the health of the mother. He therefore argued that there are other ways than keeping a mother at home to achieve the objective of taking care of the new born (e.g. paternity leave; nursery schools, etc.). It is often possible to work part time or with flexible working time. Also the nature of work has changed and because of that many women can work at home. Women should not be obliged not to work during the 6 weeks following child delivery: the women's choice should be respected and they should be entitled to return to work earlier if they so wish. Several other representatives (Denmark, Estonia, Finland, Iceland, Lithuania, the Netherlands, Sweden, Slovakia, the United Kingdom) were of similar views and hoped that the ECSR would take these remarks into consideration.

250. A number of other representatives (Belgium, Bulgaria, France, Greece, the Czech Republic, Cyprus, Romania and ETUC) maintained that the time granted after child delivery is still primarily for the mother to recover and take care of the baby. Moreover, in some countries it is also a guarantee against employers' potential pressure on mothers to resume work as soon as possible. In this context the issue of possible alternative paternity/parental leave was viewed as misleading. Furthermore, the representatives of Romania and of the Czech Republic underlined that if the ECSR had wanted to change its interpretation of Article 8§1 as regards the required post natal leave, it would have.

251. Some representatives (Belgium, Estonia, Iceland, Lithuania) recalled similar cases of non conformity with Article 8§1 for Sweden and Denmark (where post natal leave is very

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<sup>1</sup> Council Directive 92/85/EEC, Article 8 - Maternity leave

"1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of a least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

2. The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice."

long but might be less than 6 weeks). It was decided to pay particular attention to the next assessment of these situations by the ECSR (in 2010).

252. Meanwhile, the representatives of Bulgaria, of the Czech Republic, Greece and the Chair highlighted that since this was the second time that Latvia was held not to be in conformity with Article 8§1 on the same ground and no new information was provided, Latvia should be requested to bring the situation in conformity with the Charter.

253. The Committee urged the Government of Latvia to bring the situation into conformity with Article 8§1 of the Charter.

## **Article 8§2 – Illegality of dismissal during maternity leave**

### **ESC 8§2 LATVIA**

“The Committee concludes that the situation in Latvia is not in conformity with Article 8§2 the Charter on the grounds that women unlawfully dismissed while pregnant or on maternity leave are only entitled to compensation for past loss of earnings.”

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

“In accordance with Article 1635 of the Civil Law, every delict, that is, every wrongful act per se, as a result of which harm has been caused, shall give the person who suffered the harm therefrom the right to claim satisfaction from the infringer, insofar as he or she may be held at fault for such act. It means that women who were unlawfully dismissed while being pregnant or on maternity leave were entitled (also in period 2004-2005) not only to compensation for past loss of earning, but also to compensation for the injury, for instance, moral injury.

Article 124 (1), (2) of the Labour Law stipulates if a notice of termination by an employer has no legal basis or the procedures prescribed for termination of an employment contract have been violated, such notice in accordance with court judgment shall be declared invalid. An employee, who has been dismissed from work on the basis of a notice of termination by an employer which notice has been declared invalid or also as otherwise violating the rights of the employee to continue employment legal relationship, shall, in accordance with a court judgment, be reinstated in his or her previous work. Taking into account that the above mentioned legal norms was implemented in Labour Law on 20 June 2001 when Law was adopted, Latvia would like to note that during the reference period all women who were unlawfully dismissed (including those who was unlawfully dismissed while pregnant or on maternity leave) from work, were reinstated in their previous work, in accordance with the aforementioned Law.

Latvia concludes that the situation is in conformity with Article 8 (2).”

255. 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 10§1 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education**

### **ESC 10§1 AUSTRIA**

“The Committee concludes that the situation in Austria is not in conformity with Article 10§1 of the Charter because non-European Economic Area nationals are granted access to university education subject to the availability of places.”

256. The representative of Austria said that the University Studies Act authorised the academic senate to restrict the admission of non-European Economic Area nationals to university education to take account of the availability of places, but this was a discretionary provision that had never been used. There were bilateral higher education agreements with various countries, such as the Balkan states, Turkey, Georgia, Ukraine and Azerbaijan. Moreover, the minister responsible for science and research was preparing amendments to the University Studies Act and would take account of the ECSR's position. The amended legislation should take effect in the first quarter of 2009.

257. The Committee noted these positive developments and decided to await the ECSR's next assessment.

### **ESC 10§1 MALTA**

"The Committee concludes that the situation in Malta is not in conformity with Article 10§1 of the Charter on the grounds that it has not been established whether nationals of other States party to the Charter and the Revised Charter are guaranteed equal treatment as regards access to education and training."

258. The representative of Malta said that nationals of other states party were guaranteed equal treatment in access to education and training. Malta had signed and ratified the Lisbon Convention<sup>1</sup>, which had come into force on 1 January 2006 and whose provisions had been transposed into Maltese domestic law in the 2006 Mutual Recognition of Qualifications Act. The aim was to strengthen equality of treatment, particularly by establishing specific criteria with regard to disability. This positive trend applied equally to the university and vocational spheres. There were 10 000 students in Malta and all the foreign students had free access to education and training with no length of residence condition. The August 2006 legislation would be supplemented by two new policies, involving the establishment of a directorate for the quality of education.

259. The Committee noted that the last Maltese report had provided very little information. The representative of Malta said that this information had been supplied in May 2008 for the Committee's 117<sup>th</sup> meeting and would be duly forwarded to the ECSR to be taken into account in its conclusions on Malta at its October 2008 meeting.

260. The Committee noted these positive developments and decided to await the ECSR's next assessment.

### **ESC 10§1 SLOVAKIA**

"The Committee concludes that the situation in Slovakia is not in conformity with Article 10§1 of the Charter on the grounds that it has not been established that the right vocational training is sufficiently guaranteed."

261. The representative of Slovakia provided the following information in writing :

"In accordance with the Plan of Legislative Tasks of the Government of the Slovak Republic for 2008, the Ministry of Education of the Slovak Republic prepares a comprehensive legislative norm providing, for the area of vocational education and training, whose objective is:

- to create a system of coordination of vocational training and the labour market;
- to create conditions for the entry of employers and employers' organisations in vocational education;
- to develop a two-level model of vocational education at state and school level;

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<sup>1</sup> Council of Europe Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon, 1997).

- to modify the current methodology of financing vocational education and training based on the principle of financial equality so as to accommodate the economic demands involved in the education and training process in vocational education;
- to create a functional system of multi-source financing of vocational education that will address raising and redistributing of financial resources for the needs of vocational education with the involvement of the employers sphere.”

262. 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 10§2 –Apprenticeship**

### **ESC 10§2 MALTA**

“The Committee concludes that the situation in Malta is not in conformity with Article 10§2 of the Charter because it cannot assess whether nationals of other states party to the Charter and the revised Charter are guaranteed equal treatment as regards access to apprenticeship.”

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

“Malta would like to confirm that it is true, given the size of its labour market, that foreigners residing lawfully in Malta must have a valid work permit to be able to enrol for apprenticeship schemes. In order for a work permit to be issued a labour market test is required. Basically in the labour market test evaluates whether the position concerned could be filled in by available Maltese jobseekers and whether the applicant possesses sufficient skills, and more than available Maltese to perform the job for which they have applied.

However it is to be clarified that in the case of EU/EEA nationals, a work permit is issued without a labour market test whilst third country nationals are subject to the test. It is further to

be clarified that a labour market test is also not required in the case of third country nationals who have become long-term residents in whose case the permit is issued automatically.

Any foreign national holding a work permit has the right to enrol in any one of the two apprenticeship schemes available in Malta i.e the Technician Apprenticeship Scheme and the Extended Skills Training Scheme.

The format of the apprenticeship schemes has been described in detail in the Malta report. A person must first apply to be selected for a course run at the Malta College of Art, Science and Technology or the Institute of Tourism Studies, which institutions provide the theoretical knowledge part of the apprenticeship. If s/he is chosen for the course by the institution, then that person can apply for an apprenticeship but will only be considered to have attained this status on him/her finding an employer that can provide him/her with suitable vocational training at the place of work.”

264. 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 10§2 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 10§2 of the Charter on the grounds that it has not been established that the right to an apprenticeship is sufficiently guaranteed.”

265. The representative of Slovakia provided the following information in writing :

“Practical training of pupils of secondary schools of the Slovak Republic takes place in schools, school facilities, bodies, and organisations, in other facilities and in the practical training workplaces. If the practical training of pupils takes place at the bodies, organisations or citizens the director of the school concludes an agreement with them. The issues of the

relationship of the pupil and the prospective employer is provided under Section 53 of the Labour Code, under which:

- Upon the successful final examination or matriculation examination, or upon the completion of studies (vocational preparation) the employer for whom the pupil was trained to carry out a vocation shall be obliged to conclude an employment contract with the pupil of secondary vocational apprentice school, vocational apprentice school, or apprentice school and enable his or her future vocational development;

- The employer can conclude the contract with the pupil also prior the completion of studies (vocational preparation), but not before the date on which the pupil has reached 15 years of age;

- The employer for whom the pupil is trained to carry out a vocation can conclude a contract with the pupil, in which the pupil undertakes to remain in the employment relationship with the employer for a certain period, not exceeding three years.

Vocational education and training at secondary level takes place in the following types of secondary schools: secondary technical school, secondary vocational apprentice school, vocational apprentice school, apprentice school.

Within the meaning of the Constitution of the Slovak Republic, members of minorities living in the territory of the Slovak Republic enjoy the rights of national minorities and ethnic groups of free access to education, without restriction and discrimination, which is also pursued in practice.

The Council for Vocational Education and Training is an advisory body to the Minister of Education of the Slovak Republic and is currently actively contributing to the expert cooperation in drafting the text of a new bill on education and training. “. ”

266. 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 10§3 - Vocational training and retraining of adult workers**

#### **ESC 10§3 MALTA**

"The Committee concludes that the situation in Malta is not in conformity with Article 10§3 of the Charter on the grounds that it has not been established whether nationals of other states party to the Charter and the revised Charter are guaranteed equal treatment as regards access to continuing training."

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

"It is important to point out that as for access to training of nationals of other states party to the ESC, Malta ratified the Lisbon Recognition Convention on the 16th November 2005, which came into force on the 1st January 2006. The Notification of Ratification was deposited with the Secretary General of the Council of Europe in accordance with Article XI.9 of the Convention. The dispositions of the Convention were transposed to our national legislation by means of legal notice 280 of 2006. So we have legally bound ourselves to recognize such nationals' qualifications for admission to post-secondary courses, unless there is substantial difference between the expatriate credential and the Maltese admission requirement. This law grants nationals of other states party to the Charter, the right to access to training and continuing training.

Of course the provisions of LN 280 of 2006 – Mutual Recognition of Qualifications Act, 2006 (Act No XVIII of 2002) apply also to courses run by the recently established Malta College of Arts, Science and Technology. They also apply to all the other tertiary institutions operating in Malta.

Further to the above it is important to highlight Legal Notice 161 of 2004 which deals specifically with Equal Treatment in Employment as amended by LN 53, 338 and 427 of 2007. Worthy of note are subsections (3) and (4) (b) of Section 1 mentioning disability and racial or ethnic origin and access to vocational guidance and training:

(3) The purpose of these regulations is to put into effect the principle of equal treatment in relation to employment laying down minimum requirements for combating discriminatory treatment on the grounds of religion or religious belief, disability, age, sex, sexual orientation, and racial or ethnic origin.

(4) 'These regulations shall be applicable to all persons in relation to (...)

(b) access to all types and levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience.'

Above outlines how the situation in Malta has improved in this aspect.

With respect to the comments of the Committee of Social Rights, Malta would like to confirm that it is true, given the size of its labour market, that foreigners residing lawfully in Malta must have a valid work permit to be able to enrol on ETC courses. In order for a work permit to be issued a labour market test is required. Basically in the labour market test evaluates whether the position concerned could be filled in by available Maltese jobseekers and whether the applicant possesses sufficient skills, and more than available Maltese to perform the job for which they have applied.

However it is to be clarified that in the case of EU/EEA nationals, a work permit is issued without a labour market test whilst third country nationals are subject to the test. It is further to be clarified that a labour market test is also not required in the case of third country nationals who have become long-term residents in whose case the permit is issued automatically. In essence therefore all nationals of member states, residing legally in Malta have equal access to vocational training and retraining for adult workers.

Attached is an excel file giving a breakdown of the number of work permits issued. The current total number of active work permits is 6390 of whom 47.5% are EU nationals, 44% are third country nationals, and 8.5% are refugees/temporary humanitarian protection/asylum seekers. The size of the Maltese labour market according to the Employment and Training Corporation's administrative records as at December 2007 is 142,836 full-time employees and 26,070."

268. 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 10§4 – Long term unemployed persons**

### **ESC 10§4 AUSTRIA**

"The Committee concludes that the situation in Austria is not in conformity with Article 10§4 of the Charter on the grounds that equal treatment of nationals of other states party residing or working lawfully in Austria is not guaranteed – and reciprocal agreements are required – with regard to fees and to financial assistance for training."

269. The representative of Austria said that under the legislation on scholarships for secondary pupils, non-EEA nationals of states party to the Charter were entitled to financial assistance if at least one of the parents had paid taxes in Austria for at least five years and has the centre of his vital interests in Austria. The reason for this regulation is to ensure that only those pupils who have established a minimum relationship with Austria will enjoy the benefit.

270. In the case of university grants, member states of the EEA and third-country nationals living in Austria for more than five years had the same legal status as Austrian nationals. Being a national of an EEA state gave no entitlement to financial assistance per se.

With regard to eligibility for scholarships, the following EEA citizens enjoy the same legal position as Austrian citizens:

- firstly, migrant workers, provided they were gainfully employed prior to commencing their studies and did not come to Austria for study purposes (a contextual link is necessary between work and the object of their education);
- secondly, children of migrant workers;
- thirdly, persons integrated in the state education system (e.g. several years of school attendance and graduation with a university entrance qualification in Austria);
- fourthly, persons who have lived in Austria for at least five years.

This was the situation following the implementation of EU Directives 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and 2003/109/EC concerning the status of third-country nationals who are long-term residents. The Austria legislation implementing the two directives had come into effect on 16 February 2006 and no amendments were currently under consideration.

271. The representative of Austria said that on 28 September 2008, the country's parliament had decided to reduce registration fees for nationals of non-EU member states from € 726 to € 363 per semester, which represented a reduction of 50% for third-country nationals.

272. The Committee invited the Government of Austria to supply all relevant information in the next report and decided to await the ECSR's next assessment.

#### **ESC 10§4 DENMARK**

“The Committee concludes that the situation in Denmark is not in conformity with Article 10§4 of the Charter because nationals of other states party to the Charter and the Revised Charter residing or working lawfully in Denmark are not treated on an equal basis with Danish nationals with regard to financial assistance for education and training.”

273. The representative of Denmark regretted that the situation was still considered to be incompatible with the Charter since she thought that it was now satisfactory. The ECSR had criticised the Danish financial assistance system of scholarships and loans because non-Danish citizens had to be resident for two years or satisfy certain marriage or employment conditions before they were eligible for a scholarship.

274. In her view, Article 10§4b did not provide for scholarships in every case. They must be subject to conditions, which had to be appropriate to different circumstances. Because Denmark was a small country, certain restrictions had to be imposed to ensure that students had a certain relationship with the country, either through employment or marriage.

275. Denmark was not the only country to interpret Article 10§4 in this way.

276. The representative of Iceland asked whether foreign nationals were refused financial assistance if they had worked for two years.

277. The Secretariat said that all foreign nationals were entitled to equal treatment with nationals if they were lawfully resident in a country. Financial assistance therefore had to be granted to students who were already resident. There had to be complete equality with nationals living in the country.

278. The representative of France asked whether there was a qualifying period to become a Danish resident.



279. The representative of Denmark said that five years' residence was required, after which no conditions were set.

280. The representatives of Iceland and Norway thought that two years was a fairly short period and that this was not a particularly serious matter. They were supported by the representatives of Ireland and Slovakia.

281. The representative of Bulgaria agreed with the Danish arguments but thought that the ECSR's case-law, as currently interpreted, could not be changed. The Danish conditions included not only the two year residence period but also the requirement to have been in employment or a traineeship.

282. The ETUC representative said that according to his notes from the previous occasion the Committee was having the same discussion without attempting to rectify the violation. The Committee was forgetting its role. Only a few states were concerned by this case-law, so did other others not have this problem? If that was the case he agreed with the Bulgarian proposal.

283. The Secretariat said that the situation was examined in the same way in every country. It was a question not of admitting any foreign national who wished to study but of ensuring that those who were present in the country concerned received equal treatment. In this case the restriction had not been introduced in response to the economic crisis, and the ECSR's position was much longer established. The conditions governing entry into Denmark were restrictive as were those governing the granting of financial assistance. The debate had to be given a fresh focus.

284. The representative of the Czech Republic thought that the Committee had to bear economic and social considerations in mind. Education in Denmark was free but students had to meet their own living expenses. Danish and foreign students who satisfied the conditions were eligible for financial assistance. She thought it was a reasonable requirement since otherwise any student could come to Denmark and study free of charge, entirely at the government's expense. If the Danish authorities wished to change the situation to comply with the Charter they would have to abolish financial assistance.

285. The representative of Ireland thought that the question was simple, namely whether persons were entitled to arrive in Denmark and ask for costly financial assistance. Surely the government had the right to lay down conditions to limit the cost of expensive studies. Governments were entitled to establish priorities as a sovereign right. Denmark had a generous system yet it was criticised because it set conditions for granting financial assistance. These arguments had be taken into account, particularly in a period of recession. The government was entitled to restrict the right to financial assistance in connection with what were costly studies.

286. The representatives of Ireland, Norway and Iceland supported these points. If persons came to a country to study, they had to be given the means to live. But this was not possible since funds were not unlimited and had to be financed by the taxpayer. It was quite reasonable for governments to impose restrictions.

287. The representative of the Czech Republic said that without a residence condition more foreign nationals would have come there to study. She was not sure how useful this was for the host country.

288. The Secretariat said that these arguments merely confused the issue. Persons who came to a country to study were not covered. They were only concerned with people already in a country who wanted to study. It was not a question of allowing any foreign national who so wished to come to Denmark to study but of ensuring that foreign students already in the country were treated on the same basis as national students.

289. The Chair set the issue in its historical context. Non-compliance conclusions had to lead to certain adjustments. In this case, the situation had started in 2003. The ECSR had asked the government for more information. It had received this and had then confirmed its non-conformity finding. The Committee had then held a discussion at which all concerned could present their arguments. The Committee could ask the government to reconsider its position and await the next Danish report, followed by the next ECSR conclusion. He considered that there was no wish to send the Danish government a strong message.

290. The ETUC representative thought that the Committee should not invoke social and economic problems or encourage Denmark to continue on the same path.

291. The representative of France agreed with these arguments.

292. The Committee invited the Government of Denmark to supply all relevant information in the next report and decided to await the ECSR's next assessment.

#### **ESC 10§4 LUXEMBOURG**

“The Committee concludes that the situation in Luxembourg is not in conformity with Article 10§4 of the Charter because nationals of non-EU states party to the Charter or the revised Charter residing or working lawfully in the country are not guaranteed equal treatment with regard to financial assistance for training.”

293. The representative of Luxembourg said that at the time of the conclusions there had been no university in the country. Following the ECSR's criticisms, the government had launched an investigation into the legislation of 22 June 2000 imposing a five-year residence requirement on nationals of non-EU member states wishing to claim financial assistance, but this had been abandoned because of the establishment of a public university in Luxembourg under legislation dated 2003. The university had legal personality and administrative and financial autonomy. It received funding from the state for students from non-EU member states, whether or not they had ratified the Charter. This was allocated in the first year on the basis of the level of studies in school and in subsequent years according to criteria such as student motivation.

294. This information dated from 6 October 2008 and had not been published in the official journal.

295. The Committee invited the Government of Luxembourg to supply all relevant information in the next report and decided to await the ECSR's next assessment.

#### **ESC 10§4 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 10§4 of the Charter on the grounds that equal treatment for nationals of the other Contracting Parties to the Charter and Revised

Charter who are not permanently resident in Slovakia with respect to financial assistance for education and training is not guaranteed.”

296. The representative of Slovakia said that the situation had completely changed. First, there was public financial assistance for those entering educational establishments and any student could request such assistance, which was awarded in a spirit of non-discrimination. However, there remained the problem of Slovakian citizens, such as Roma, with no fixed residence or papers. Second, two new ministries had established an integration of migrants service to deal with such matters as residence permits, nationality and co-operation.

297. He asked the ECSR to bear in mind that the present Government had only been in office for two years and that enormous efforts were being made to deal with the problems of migration and integration. Moreover, two years ago the government had not realised that it would face the problem of Slovakian manpower leaving the country for the countries of the west. This problem was still linked to financial assistance.

298. The Committee invited the Government of Slovakia to supply all relevant information in the next report and decided to await the ECSR's next assessment.

#### **ESC 10§4 UNITED KINGDOM**

“The Committee concludes that the situation in the United Kingdom is not in conformity with Article 10§4 of the Charter because nationals of other states party residing or working lawfully in the United Kingdom are not treated on an equal footing with UK nationals with respect to fees and financial assistance for training.”

299. The representative of the United Kingdom made the following two points: 1. there was a fundamental error in the conclusions because any difference of treatment was based on persons' residence rather than nationality; 2. higher education establishments were autonomous and self-governing, and could decide themselves to abolish or reduce the subsidies awarded to students. The maximum subsidy corresponded to the real cost of the studies. A response was needed to these points, which had so far not been clearly made. Universities' main concern was to attract the best students.

300. The representative of Bulgaria agreed with the representative of the Czech Republic that universities operated within a general national legal framework. He thought that the arguments advanced were rather weak and that the last conclusion should stand.

301. The Committee urged the Government of the United Kingdom to bring the situation into conformity with Article 10§4 of the Charter and decided to await the ECSR's next assessment.

#### **Article 11§3 – Prevention of diseases**

##### **ESC 11§3 LUXEMBOURG**

“The Committee concludes that the situation in Luxembourg is not in conformity with Article 11§3 of the Charter on the grounds that no particular regulation governing the supply of tobacco and alcohol has been adopted.”

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

“An anti-smoking law was passed on 11 August 2006. The relevant information will be provided in the next report.”

303. 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 13§1-Social and medical assistance**

### **ESC 13§1 LATVIA**

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

- the level of social assistance benefits is manifestly inadequate;
- ...;
- ...”

#### First ground of non conformity

305. The representative of Latvia said that municipalities paid the guaranteed minimum income, as well as other allowances such as housing assistance, which had been uprated. He also noted that the poverty threshold fixed by Eurostat with reference to the income of households or single persons differed from the method used by his government.

306. The representative of Sweden asked whether the current minimum income was sufficient to cover the cost of living in Latvia, given that it was the equivalent of one-third of the poverty threshold.

307. The representative of Latvia replied that there were no statistics on the subsistence level in Latvia and that this depended on each individual or family situation.

308. At the request of the representatives of Romania and Lithuania, the Committee noted the positive changes in Latvia and decided to await the ECSR's next assessment under Article 13§1.

#### Second and third grounds of non conformity

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

“GMI benefit is granted for a period no longer than 9 months per year. In case the income of a person from a work gainful activity has increased, GMI benefit duration can exceed 9 months period, but in reduced amount.

For other types of municipal benefits mentioned there are no period restrictions.

Latvian citizens, non-citizens and non-nationals have the right to social assistance, except for non-nationals who have received a temporary residence permit.

According to Immigration Law (last amendment on December 20, 2007), a non-national 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.

As a spouse of a citizen, a non-citizen of the Republic of Latvia or a person who has received a permanent residence permit:

- receives, at the first submission of documents, a temporary residence permit for one year;
- receives, at the second submission of documents, a temporary residence permit for four years;
- receives, at the third submission of documents, a permanent residence permit.

It means that, at the third submission of documents, a person can receive a permanent residence permit and be entitled to social assistance benefits.

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

Latvia concludes that the measures were taken to enhance conformity with Article 13§1."

310. 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 13§3 – Prevention, abolition or alleviation of need**

#### **ESC 13§3 LATVIA**

"The Committee concludes that the situation in Latvia is not in conformity with Article 13§3 as the granting of social services to non nationals is subject to an excessive length of residence requirement."

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

"As it was mentioned in Latvia's Report, Latvian citizens, non-citizens and non-nationals have the right to social services (social care and social rehabilitation services, social work), except for aliens who have received a temporary residence permit.

According to the Law on Social Services and Social Assistance, social care service is a set of measures aimed to ensure that the quality of life can be deteriorated for a person who, due to his/her age or functional disorders, cannot live alone anymore. Social rehabilitation service is a set of measures aimed at the renewal or improvement of the social functioning abilities. Purpose of the provision of social rehabilitation services is to prevent or to reduce the negative social consequences in the life of a person caused by a disability, an incapacity for employment, the serving of a sentence of deprivation of liberty, addiction or violence and other factors.

According to Immigration Law, non-nationals have 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. Children who are not

accompanied by parents and who received alternative status according to the Asylum Law have right to all social care and social rehabilitation services since 2007.

Latvia concludes that the measures were taken to enhance conformity with Article 13§3.”

312. 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 13§4— Specific emergency assistance for non-residents**

##### **ESC 13§4 LATVIA**

“The Committee concludes that the situation in Latvia is not in conformity with Article 13§4 as emergency social assistance is not guaranteed to all persons lawfully within the territory.”

313. The representative of Latvia said that anyone residing in the country was eligible for emergency assistance. Persons with a temporary residence permit were entitled to such assistance so long as they could supply a specific certificate.

314. He told the ETUC representative that this was new information.

315. The Secretariat said that the problem went beyond the distinction between the holders of temporary and permanent residence permits.

316. The Committee invited the Government of Latvia to supply all relevant information in the next report and decided to await the ECSR's next assessment.

#### **Article 14§1 – Provision or promotion of social welfare services**

##### **ESC 14§1 LATVIA**

“The Committee concludes that the situation in Latvia is not in conformity with Article 14§1 of the Social Charter on the ground that equal treatment for nationals or other states parties to the Charter or to the Revised Charter is not guaranteed with respect to access to social services because of the length of the residence requirement”.

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

“Latvian citizens, non-citizens and non-nationals have the right to social assistance, except for non-nationals who have received a temporary residence permit.

According to Immigration Law (last amendment on December 20, 2007, a non-national 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.

As a spouse of a citizen, a non-citizen of the Republic of Latvia or a person who has received a permanent residence permit:

- receives, at the first submission of documents, a temporary residence permit for one year;
- receives, at the second submission of documents, a temporary residence permit for four years;
- receives, at the third submission of documents, a permanent residence permit.

It means that, at the third submission, a person can receive a permanent residence permit and be entitled to the social assistance benefits.

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

Latvia concludes that the measures were taken to enhance conformity with Article 14§1."

318. 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 15§1 – Vocational training arrangements for the disabled**

### **ESC 15§1 AUSTRIA**

"The Committee concludes that the situation in Austria is not in conformity with Article 15§1 of the Charter on the ground that during the reference period the right of persons with disabilities to protection against discrimination in education was not guaranteed".

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

"During the reference period the right of persons with disabilities to protection against discrimination was not guaranteed:

The situation has been brought in line with the Charter outside the reference period.

The compendium of laws for ensuring equal opportunities for people with disabilities, effective as of 1 January 2006, has made for substantial improvements in the situation of people with disabilities in Austria. Its ban on disability-based discrimination constitutes another major step in advancing Austria's policy for the disabled. Discrimination protection covers people with physical, mental, psychological or sensory disabilities and their family members.

In addition to the Federal Equal Opportunities for People with Disabilities Act (Bundes-Behindertengleichstellungsgesetz; BGStG), which regulates the ban on discrimination in a day-to-day context, and a thoroughly revised amendment of the Disabled Persons Employment Act (Behinderteneinstellungsgesetz; BEinstG), which covers discrimination in a

working environment, an amendment of the Federal Disabled Persons Act (Bundesbehindertengesetz) has established the position of an Ombud for equal opportunities for disabled persons.

The Ombud advises and supports individuals who feel discriminated within the meaning of the BGStG or Sections 7a to 7q of the BEinstG, and is also authorised to carry out investigations regarding the discrimination of disabled persons, publish reports and develop recommendations on all issues that concern disabled people.

Reference is made to the detailed reporting on Article 15 in the 25th Austrian report.”

320. 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 15§1 DENMARK**

“The Committee concludes that the situation in Denmark is not in conformity with Article 15§1 of the Charter on the grounds that there is no anti-discrimination legislation in the field of education”.

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

“In Denmark the non discrimination legislation in general is part of laws according to the different educational fields. Thus laws, departemental orders and rules in the danish educational system dertermines, that special education and other special educational assistance shall be given to children whose development requires special consideration or support. The aim of the special educational assistance is to place persons with disabilities on an equal footing as persons without disabilities.

The basic school - the ‘Folkeskole’ - is an undivided (comprehensive) school under the responsibility of the municipalities, where the formation of classes takes its point of departure in the age of the pupil - and not in the subject-specific proficiency of the pupil. In order to give all pupils in the Folkeskole the best possibilities to have an all-round development and learn as much as possible, the Folkeskole builds on the principle of differentiated teaching. The teaching is organised in such a way that it both strengthens and develops the individual pupil's interests, qualifications and needs and so that it contains common experiences and situations providing them with experience which prepare them for cooperation on the performance of tasks. The Act on the Folkeskole provides a further possibility to sustain the principle that all pupils should be given adequate challenges, as the teaching can take place in a team for part of the time in order to make it possible to take the point of departure in the individual pupil's prerequisites and current level of development. In the resent changes in the legislation (2003) possibilities for organising the learning in teams of different sizes and according to learning abilities and styles has been strengthen.

If the pupil's educational needs can not be fulfilled within differentiated teaching and teams the pupil shall be given special education or special educational support. Special education can be organised in different ways. In most cases, the pupil remains in a mainstream school class and receives special education in one or more subjects as a supplement to the general teaching. A pupil may receive special education that substitutes the pupil's participation in the normal education in one or more subjects. A pupil may alternatively be taught in a special class either within a mainstream school or within a special school. And finally a combination is possible in which the pupil is a member of either a mainstream school class or a special class, but receives education in both types of classes. Special classes exist for pupils with intellectual disabilities, dyslexia, visual handicap, hearing problems, and for pupils with a physical handicap.

Following primary education, young persons with disabilities follow the same path as other young persons, i.e. they may undertake a youth education course leading to an upper secondary school leaving examination or a higher preparatory examination or undertake vocational education/or training courses. In most cases it is the individual school/educational institution which is responsible for offering disabled pupils the necessary compensation.

Free private independent schools – Frie grundskoler - are obliged to offer special education and special educational services to the pupils corresponding to the basic school's (The



Folkeskolen) offer. The government offers grants towards the free private independent schools. On the annual budget there are special grants which are connected to education of pupils with a disability and pupils who are bilingual.

The Danish Educational Support Agency administrates the aid scheme on special conditions for applications, deadlines, documentation etc. The schools apply for support, and the decision of the Agency will be sent to the school which must inform the pupil and the parents. The contribution must be used to compensate the specific educational consequences of a disability (or bilingual background). The compensation will take place as special education, support education in Danish of bilingual pupils and to cover extra expenses for special education, practical support, aids and transportation of pupils with severe disabilities.

Free boarding schools – Frie kostskoler (the last two years of primary education) In this field the government offers support to pupils with special needs such as special education or other educational services for students with disabilities. The grant is a rate per year per pupil. The figure is stated in the annual budget. Further, the government grants special support to the schools special expenses for aids, special education and practical help to pupils with severe disabilities. The size of the grant is settled in the annual budget. The Danish Educational Support Agency administrates the aid scheme on special conditions as to applications, deadlines, documentations etc.

The grant may be special education organized within the mainstream subjects of the school, education or training in order to limit the consequence of the disability or the pupil may alternatively be taught in a special class.

Upper secondary school and vocational education. According to the law, young people cannot be excluded from the vocational education system on the grounds of their handicap. Along these lines, the main principle in the vocational education system is that people with disabilities must be included in the ordinary education so they, on equal terms, can obtain the vocational skills necessary for participation in the labour market. In practice, this principle implies that any special support, as far as possible, must be planned in such a way that it does not exclude pupils from daily lessons.

The school determines, in collaboration with the pupil and a possible training enterprise, the need for special support as well as the shape of the support given. The support can be given in different ways, for instance, as special planned education, special terms under examination, personal assistance or special remedies to be used in the school or in the training enterprise. With regard to financing, the school can apply for a special state subsidy to cover expenses connected with the above-mentioned support.

The Agency will inform the pupil and the parents, if the pupil has not reached the age of 18. On receipt of documentation for the expenses the Agency will pay.

The support must be necessary, professionally well-founded, and practically possible to get, and further compensate for the specific educational consequences of the disability. The support may consist of specialist study-related software (computers with synthetic speech, proof-reading programs), sign language interpreting, books in braille, one-to-one support with a dyslexia adviser etc.

The Danish Educational Support Agency administrates the aid scheme on special conditions for applications, deadlines, documentation etc. In case such a subsidy is denied, the school has the right to complain to the Appeals Tribunal for Educational Support (Ankenævnet for Statens Uddannelsesstøtte). In addition, the pupil has the right to complain about the schools decision regarding special support to the Ministry of Education.

Finally, it must be mentioned, that a working group with representatives from the Ministry of Education and the Danish Handicap Organisations (DH) has recently been established. The objective of the group is to spell out the existing guidelines and responsibilities to schools and supervisors with regard to support to young people with disabilities in upper secondary education.

Further and higher education (Universities, colleges etc.) The purpose of legislation regarding educational services for students with disabilities at further and higher education is to place persons with disabilities on an equal footing as persons without disabilities when it comes to participating in mainstream education. The legislation secures free choice of education for students with disabilities and gathers the education support at one authority.

The Danish Educational Support Agency administrates the aid scheme on special conditions as to applications, deadlines, documentations etc.

On basis of the application the educational institutions must apply for support from the Agency. The Agency will decide on support. The Agency will inform the student and the institution of the support and grant level. The expenses of the institution will be refunded by the Agency.

The support must be necessary, professionally well-founded, and practically possible to get, and further compensate for the specific educational consequences of the disability. The support may consist of specialist study-related software (computers with synthetic speech, proof-reading programs), sign language interpreting, books in braille, one-to-one support with a dyslexia adviser etc.

In 2004 disablement allowance – handicaptillæg - was introduced. With the introduction of disablement allowance it became possible for students with a disability entitled to State Education Grant (SU) – in further and higher education - to apply the Danish Educational Support Agency for a special allowance if because of considerable limitations in working capacity they are not able to work during education.

The supplementary allowance of 1 August 2004 was implemented because certain disabled students have a limited ability to work during education. They are not as other students able to supplement their study grant (SU). Previously students with disabilities had to apply for financial support from the municipality's social welfare services and job creation programmes. The Disabled Peoples Organisation – Denmark (DPOD) claimed the students did not have a free choice of education because the job creation programme demanded a choice of education that would lead to jobs in certain sectors.

The size of the allowance corresponds to the so-called "free amount" which other students can receive or earn without deduction in SU. ("free amount": The support is means-based. It will normally be reduced, if the student's income exceeds DKK 76.440 per year (in 2008).

The act of adult vocational training (Consolidation act 190 of 18 March 2008) does not include any specific paragraph on special need education and training. The adult vocational training programmes are short training courses mainly for skilled and low skilled workers on the labour market. Only admission requirement is being resident or holding a job in Denmark. Participants may acquire new and updated skills and competences to better their opportunities to managing new and wider job functions and to becoming more flexible on the labour market. All the programmes are developed for this target group, i.e. also for participants with low skills and competences in reading, writing and arithmetic. Current research have documented that relatively many participants in the adult vocational training programmes do have relatively low basic skills.

The average duration of the programmes are 3.5 days for which reason it may be difficult to make any special support for adults with special education needs. However, the Danish Educational Support Agency, an agency that operates under the auspices of the Ministry of Education, may give financial support to participants in vocationally-oriented adult education with special education needs. Since 1998 a note on the Budget states that the agency may finance special support at the adult vocational training programme e.g. for participants with dyslexia or severe reading and writing problems or deaf. The support may include aids and appliances for handicapped persons, special teaching materials or other kind of support which are necessary for completing the programmes. The support is managed by the schools providing the adult vocational training programmes.

The numbers of participants in adult vocational training programmes receiving such special support are relatively low, however increasing over the last few years. It is mainly participants with dyslexia or severe reading and writing problems who receives the special support financed by the Danish Educational Support Agency as special teaching and special developed material. Also an increasing number of deaf do receive some aid, e.g. as a deaf-interpreter or private lessons.

In addition to this, the Ministry of Education run a pilot project offering special support in reading and writing for participants participating in adult vocational training courses where they may join special workshops in reading and writing at the vocational schools. The

objective is that more participants complete the vocational training programmes with a better result. This pilot project runs from 2005 to 2008.

Finally, the Ministry of Education have developed a test tool to screen the participants reading and writing skills and competences before starting the adult vocational programme to identify participants with dyslexia or severe reading and writing problems and e.g. provide guidance to special education programmes for adults with dyslexia.

The act of education for young people with special needs

In June 2007 the act of education for young people with special needs was passed. The act addresses primarily young persons, who are mentally handicapped or persons with special needs, who are not able to complete the mainstream education program for young people. The main purpose for the young person is to attain personal, social and vocational competence in order to be an active and independent citizen in adulthood.

The education is a legal claim and is offered after 9 years of compulsory primary and lower secondary education (Folkeskolen). It is 3 years of training and can be attended until the 25th. year. The young person has to finish the training after five years. The specific training is planned in cooperation with the young person herself, the parents and the Youth Guidance Centres. ("Ungdommens Uddannelsesvejledning")

Since this youth education program is fairly new the full extend is not known at this time. It is expected to take in approximately 2.3 percent of a youth year group amounting to almost 4.100 young people. The authority, responsibility and financing of Youth Education for Young People with Special Needs are assigned to the municipalities. The municipalities also are responsible for social welfare services and job creation programmes and as such will be able to coordinate the effort to increasing the participation in public life of young people with special needs.

Educational and vocational guidance for pupils and students

Provision of educational and vocational guidance for pupils and students in the education system and for young people outside education and employment is given high priority in Denmark.

In 2003, the Danish parliament adopted a new act on guidance ([eng.uvm.dk/guidance/guidance.doc](http://eng.uvm.dk/guidance/guidance.doc)), as a result of which a comprehensive restructuring of guidance services in the educational system was initiated.

The new guidance system became operational August 1st 2004. The Ministry of Education has been responsible for the implementation of the Danish guidance reform, and it has a controlling and coordinating role in relation to the new guidance system.

Two new types of guidance centres, which are independent from sectoral and institutional interests, have been established:

- 46 Youth Guidance Centres ("Ungdommens Uddannelsesvejledning", UU) provide guidance in relation to the transition from compulsory to youth education.
- 7 Regional Guidance Centres ("Studievalg") are responsible for guidance in relation to the transition from youth education to higher education.

The youth guidance centres are funded by the municipalities, and the municipal councils in a particular area define the framework for their centre's activities – within the scope of the new act on guidance.

The act defines the 7 main aims of the reform. According to these aims, guidance related to choice of education, training and career shall:

- help to ensure that choice of education and career will be of greatest possible benefit to the individual and to society;
- be targeted particularly at young people with special needs for guidance in relation to choice of education, training and career;
- take into account the individual's interests and personal qualifications and skills, including informal competencies and previous education and work experience, as well as the expected need for skilled labour and self-employed businessmen;
- contribute to limiting, as much as possible, the number of dropouts and students changing from one education and training programme to another;

- contribute to improving the individual's ability to seek and use information, including IT-based information and guidance, about choice of education, educational institution and career;
- be independent of sectoral and institutional interests.

The last objective is to raise the quality level of Danish guidance, including an improvement of guidance counsellors' qualifications and competencies.

Cooperation across sectors is a key issue in the new act on guidance. The aim is to ensure a coherent guidance system and a regular exchange of experiences, knowledge and best practice. The youth guidance centres are thus obliged to cooperate closely with primary and lower secondary schools and youth education institutions in the area, as well as local business life and the public employment services."

322. 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 15§1 GREECE**

"The Committee concludes that the situation in Greece is not in conformity with Article 15§1 of the Charter on the grounds that there is no legislation protecting persons with disabilities from discrimination in education".

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

"The Constitution of Greece, after the revision of April 6th 2001, in article 21 para6 recognizes a special right for people with disabilities and states the following: "Persons with disabilities have the right to enjoy measures that ensure their autonomy, vocational integration and participation in the social, economic and political life of the country".

In Greece, according to article 1 of Act 2817/2000, the special needs' education is part of the general education and its courses are offered in all educational levels, to persons with special educational needs, from the age of 4 up to the age of 22. The aim is to offer the appropriate education and vocational training to the pupils who are in need of special education. Within the context of the primary and secondary education, the pupils with special educational needs can attend: Firstly, the common school class, receiving, at the same time, the support offered by a special education teacher and secondly, specially organized and properly staffed classes of integration that are offered within the schools of general and technical vocational education.

In case the attendance at common schools or at integration courses is impossible, then the education of pupils with special educational needs is offered as follows: Firstly, in independent special education schools and secondly, in schools or classes that are either independent or operate as departments of other schools in hospitals, institutions, etc, and thirdly, at home, in exceptional cases, i.e. "home schooling".

The Special Education School Units (article 1, para13 of Act 2817/2000) are equivalent to the relative schools of primary and secondary education. New Act on Special Education

*The new Bill on the education of persons with special needs that will soon be passed, institutes the compulsory schooling of persons with disabilities, as is the case concerning the education of other children.*

Thus, especially vulnerable categories of persons with disabilities (i.e. persons with severe and multiple disabilities, with autism etc), who might still remain out of the educational system, will be integrated in it.

The aim of the new bill is the modernization of the institutional frame and the codification of the existing regulations, as the existing legal frame presents a lot of problems in its implementation. Emphasis is given to the creation of mechanisms for the timely identification of the educational needs of each pupil as well as for the information and support of pupils' parents. The basic aim is the establishment of horizontal connection between special and common schools, as well as the integration of persons with special educational needs into the common schools."

324. 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 15§1 ICELAND**

“The Committee concludes that the situation in Iceland is not in conformity with Article 15§1 of the Charter on the grounds that there is no anti-discrimination legislation in the field of education and training”.

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

“A certain revision process is now under way in Iceland regarding disabled persons in collaboration with the social partners and NGOs involved in work with the disabled where greater emphasis is being placed on people’s abilities rather than their disabilities. In order to do this, emphasis is placed on the importance of occupational rehabilitation and contacting those who have dropped out of the labour market as soon as possible so as to identify the reason why this has happened. Therefore, the review of the system has been directed at simplifying the system so as to make occupational rehabilitation more effective in order to make it possible for as many people as possible to return to the open labour market as active participants. The transfer of responsibility for disabled persons’ employment to the Directorate of Labour under the Labour Market Measures Act, No. 55/2006, was part of this policy. This transfer is expected to be complete by the end of 2008. It is also planned to simplify the social security system as regards pensions and disability insurance. The outcome of this review will be described in the Government of Iceland’s report on this issues when finished.

The principal aim of the Labour Market Measures Act, No. 55/2006, is to ensure that as many people as possible are able to participate actively on the labour market, both for their own advantage and for that of society as a whole. It is also to put unemployed persons in a more secure position and to give individuals assistance, as appropriate, to enable them to become active participants in the labour market.

The term “labour market measures” covers labour-exchange services, assessments of job-seekers’ aptitudes and abilities and the organisation of remedial measures designed to improve their suitability for employment. The Act provides for the measures to take into account the abilities and strengths of job-seekers who need assistance in order to enter the labour market and continue to participate actively on it.

The Administration Procedure Act, No. 37/1993, applies to the decisions making on the base of the Labour Market Measures Act and there is a principle of equality (art. 11) every authority shall respect where says “In deciding cases a public authority shall make every effort to ensure that, legally, it is consistent and observes the rule of equal treatment. The parties to a case may not be discriminated against on the grounds of their ethnic origin, sex, colour, nationality, religion, political conviction, family, or other comparable considerations.”

In summer 2006 the Minister of Social Affairs appointed a committee to propose methods of shadowing the contents of Council Directives 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and 2000/78/EC, establishing a general framework for equal treatment in employment and occupation to the rules applying on the domestic labour market. The committee includes representatives of the social partners and it is preparing their report. It is supposed that the Minister of Social Affairs and Social Security will submit a bill in according to the report to the Parliament in the spring 2009.”

326. 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 15§1 LUXEMBOURG**

“The Committee concludes the situation in Luxembourg was not in conformity with Article 15§1 of the Charter during the reference period on the grounds that there was no specific legislation prohibiting discrimination on grounds of disability covering education and training”.

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

“A law of 28 November 2006 transposed into domestic law Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

This law applies to all public and private legal entities or individuals, including public bodies, in particular with regard to education.”

328. 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 15§1 MALTA**

“The Committee concludes that the situation in Malta is not in conformity with Article 15§1 of the Charter on the ground that persons with disabilities are not sufficiently integrated into mainstream educational institutions and no new information has been provided to indicate that the situation has improved or that measures have been taken to address the issue”.

329. The representative of Malta indicated that in the period under examination, in kindergartens, primary and secondary education classes, out of a total of 69 055 students, 1 499 students with individual education needs were in mainstream schools whilst only 286 such students were in special schools. He also drew attention on numerous measures taken and others planned to further strengthen inclusive education policy. Moreover he pointed out that the Minister of Education appointed a working group to review the strengths and weaknesses of Maltese inclusive and special education. He informed that the above information as well as he results of this review would be submitted it to the European Committee of Social Rights for consideration during its assessment of Article 15§1 (Conclusions 2008).

330. The Committee welcomed the developments in Malta and decided to await the ECSR’s next assessment on Article 15§1 of the Charter.

### **ESC 15§1 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 15§1 of the Charter on the grounds that it has not been established that the right of persons with disabilities to education is sufficiently guaranteed”.

331. The representative of Slovakia provided the following information in writing :

“Special secondary schools provide vocational training for pupils with physical disability or sensory impairment, using the methods and forms appropriate to the disability/impairment, and they are differentiated according to the pupils’ disabilities concerned. Secondary technical/vocational schools for pupils with disabilities draw on the apprenticeship and study fields for the mainstream school pupils, with modified curricula and syllabuses according to the needs of pupils with particular disability (such as extension of the total period of schooling, use of specific forms and methods in theoretical education and practical training). Vocational apprentice schools in different apprenticeship fields provide vocational training for mentally disabled pupils. Vocational apprentice schools can provide preparation for the performance of simple tasks by pupils capable of working independently, whose vocational and social assertion however must be guided by other persons. There are currently approximately 60 apprenticeship fields for apprentice schools included in the network of schools and school facilities.

Practical schools provide education and training in simple work tasks to pupils with severe or multiple mental disabilities.

Vocational training of pupils with disabilities can also be implemented through school integration in the secondary school classes, pursuant to provisions of Sections 32a through 32c of the Act No. 29/1984 Coll. on the system of primary and secondary schools (the School Act), as amended, which lays down the rights and obligations for school integration participants.”

332. 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 15§1 SPAIN**

“The Committee concludes that the situation in Spain is not in conformity with Article 15§1 of the Charter on the grounds that the Government has failed to demonstrate that persons with disabilities are guaranteed an effective right to mainstream education and training”.

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

“Act 51/2003 of 2 December on equal opportunities, non-discrimination and universal access for persons with disabilities states clearly that disabled persons constitute a heterogeneous section of the population but they all have in common the fact that to varying extents they need additional safeguards to enable them to enjoy all their rights and to take part in the country’s economic, cultural and social life on the same basis as other citizens.

Article 14 of the Spanish Constitution establishes the principle of equality before the law with no discrimination.

Moreover, Article 9.2 of the Constitution charges the public authorities with establishing conditions to enable everyone to benefit from genuine freedom and equality by removing obstacles that prevent or impede their full enjoyment of them and by facilitating participation in economic, cultural and social life. Article 10, on fundamental rights and duties, states that human dignity is a foundation of political order and social peace.

In accordance with these other articles, Article 49, which refers specifically to disabled persons, requires the authorities to offer the specialist care and assistance that these persons may require and special protection to enable them to enjoy their rights.

The Education Act of 6 May 2006 grants persons with disabilities full entitlement to education and vocational training.

It requires public authorities to provide the necessary facilities and resources for pupils with special educational needs. Similarly, there have to be reserved places for all disabled pupils to receive vocational training.”

334. 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 15§2 – Employment for persons with disabilities**

#### **ESC 15§2 AUSTRIA**

“The Committee concludes that the situation in Austria is not in conformity with Article 15§2 of the Charter on the ground that during the reference period the right of persons with disabilities to protection against discrimination in employment was not effectively guaranteed”.

335. See Article 15§1.

#### **ESC 15§2 CZECH REPUBLIC**

“The Committee concludes that the situation in the Czech Republic is not in conformity with Article 15§2 of the Charter on the ground that there is no anti-discrimination legislation in relation to disability in employment”.

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

“Article 15 paragraph 2 was one of the articles included in the Fifth Report on the Application of the European Social Charter, submitted by the Czech Republic by the deadline of 31st October 2007. In this Report, the Czech Republic responded to conclusions expressed by the ECSR that the situation in the Czech Republic was not in compliance with the Charter. The Czech Republic do not agree with this assessment, primarily with reference to the provisions of the Labour Code and, most importantly, the Employment Act, which explicitly prohibits discrimination.

Act no. 262/2006 Coll., the Labour Code, sets forth in Section 13 paragraph 2 sub-para. b) the obligation of the employer to ensure equal treatment for all employees and to comply with the prohibition of discrimination in relation to employees as well as job seekers.

Act no. 435/2004 Coll., on Employment, sets forth the obligations of participants in legal relations. In Section 4 it prohibits direct or indirect discrimination of persons exercising their right to employment on the basis of their health state, among other factors. Health state is not further defined in the Act, but this expression is interpreted to mean any physical, sensory, mental, psychological or other handicap that might prevent these persons exercising their right to equal treatment. Refusing or neglecting to adopt measures which are essential in a specific case for a disabled person to have access to employment is also understood to constitute indirect discrimination on the ground of health state.

In accordance with the provisions of Section 67 of the Employment Act, natural persons with disabilities are provided with increased protection in the labour market. These persons requiring increased care include full invalids, partial invalids and persons with diminished capacities. However, the fact that a disabled person is not recognized as a full or partial invalid or a person with diminished capacities does not mean that he/she may not enforce his/her right to equal treatment on the basis of his/her state of health, provided this health state is of long duration and is a handicap that prevents or may prevent him or her from exercising their right to equal treatment.

The Parliament of the Czech Republic have currently finished debating a draft anti-discrimination law, which also contains a definition of “disabled” in the sense of the present interpretation of the concept of health state. The draft bill sets forth that a disability shall be understood to be a physical, sensory, mental, psychological or other disability that prevents, or may prevent, persons from exercising their right to equal treatment in the areas defined by this Act (including, amongst others, the area of labour rights and the brokering of employment); at the same time, this must be a long-term disability, which lasts, or according to medical science, is expected to last for at least one year. The Employment Act will also be amended to reflect the wording of this draft bill.

The Anti-discrimination Act has already been adopted by the Parliament and sent to the President for the signature. After the signature, the Act will be published in the Collection of Laws and shall come into effect.

The ECSR emphasizes that the anti-discrimination legislation must also include the requirement of adjustment of working conditions (reasonable accommodation), in order to ensure a genuine equality of opportunities in the open labour market. This requirement already exists in the legislation of the Czech Republic and is also present in the form of an obligation for employers to adopt a proactive approach to employment of persons who became disabled as a result of an accident at work or an occupational disease, thereby retaining them in work. Section 103 paragraph 5 of the Labour Code stipulates that the employer shall take the necessary technical and organizational measures, at his/her own expense, to enable work performance by a disabled employee, in particular by the necessary adjustment of the working conditions and workplace, the establishment of sheltered jobs and/or sheltered workshops, initial or induction training (on-the-job training) of these employees and by improving their skills/qualifications during the performance of their regular employment. According to Section 75 of the Employment Act, an employer who decides to employ a disabled person may, in agreement with the Labour Office, create a sheltered job for this person.



As concerns the requirement to confer an effective remedy on those who have suffered from illegal discrimination, we claim that the legislation of the Czech Republic satisfies this requirement. If there is a breach of the rights and duties ensuring from the concept of equal treatment or discrimination, the natural person has the right to demand that such a breach be discontinued, the consequences of the breach be removed and they be provided with reasonable satisfaction. If the dignity or self-respect of the natural person was considerably reduced, he/she has the right to compensation for the detriment in money. The amount of compensation shall be decided by court at the request of the natural person who has suffered discrimination.

In addition, the person who has been discriminated against has the option of applying to the Labour Office which can, if discrimination has been proved, impose a fine of up to 1,000,000 CZK on the employer. If an employee has been the victim of discrimination during his/her employment, he/she can apply to the State Labour Inspection Office to request that an inspection be performed. In the event discrimination is proved, the Office may impose a fine of up to 400,000 CZK on the employer.”

337. 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 15§2 GREECE**

“The Committee concludes that the situation in Greece is not in conformity with Article 15§2 on the grounds that during the reference period, the right to protection against discrimination in employment was not effectively guaranteed”.

338. The representative of Greece referred to Act 3304/2005, which incorporates the two EU Equal Treatment Directives (2000/43/EC and 2000/78/EC). Information on the scope of applicability of the law with regard to persons with disabilities was transmitted to the ECSR for assessment in its 2008 Conclusions on Article 15§2.

339. The Committee welcomed the adoption of the new anti-discrimination legislation in Greece and decided to await the ECSR’s next assessment on Article 15§2 of the Charter.

### **ESC 15§2 ICELAND**

“The Committee concludes that the situation in Iceland is not in conformity with Article 15§2 on the ground that there is no anti-discrimination legislation for persons with disabilities in employment”.

340. See Article 15§1.

### **ESC 15§2 LUXEMBOURG**

“The Committee concludes the situation in Luxembourg was not in conformity with Article 15§2 of the Charter during the reference period on the grounds that there was no specific legislation prohibiting discrimination on grounds of disability in employment”.

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

“A law of 28 November 2006 transposed into domestic law Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.”

342. 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 15§2 POLAND**

“The Committee concludes that the situation in Poland is not in conformity with Article 15§2 on the grounds that legislation on non discrimination in employment makes no provision for reasonable accommodation”.

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

“The legislation on the occupational and social integration and employment of persons with disabilities has for a long time included measures to enable employers to adapt work stations with loans from the PFRON. Employers who employ for at least 36 months disabled persons registered in an employment office as unemployed or as jobseekers may obtain reimbursement of the costs:

- of adapting newly created or existing work stations for disabled persons to meet any special needs arising from their disability;
- adapting the firm's premises to the particular needs of disabled persons;
- adapting or acquiring tools that make it easier for disabled persons to function in the firm;
- assessing needs in this area, to be carried out by the occupational health service.

Employers may also obtain reimbursement for the cost of adapting work stations if employees become disabled during their period of employment with them.

Such reimbursement requires the approval of the national labour inspectorate, which determines whether the adaptation meets the special needs arising from the disability.

The amount reimbursed is 20 times the average wage.

The regulation of the Ministry of Social Policy of 15 September 2004 on the reimbursement of the costs of adapting work stations and premises and of other provisions to assist the disabled, and of the costs of employing persons to assist disabled employees, has been superseded by the regulation of the Ministry of Labour and Social Policy of 17 October 2007 on the same subject.

The draft legislation on equal treatment includes provisions on the rational adaptation of work stations to meet the specific needs of persons with disabilities. Section 8 requires employers to make the adaptations necessary to enable disabled persons to start or continue working in a particular job, even if this entails extra costs. In assessing the costs of such adaptations, account is taken of the possibility of public assistance to pay for expenditure incurred. Where there is no possibility of public assistance, employers' specific financial situation will be taken into account.

Section 28 of the draft legislation introduces a new section 14a to the legislation on the occupational and social integration and employment of persons with disabilities. This will require employers to make, as far as is reasonable, adaptations required by persons with disabilities who reply to job advertisements and take part in recruitment procedures, as well as those taking part in preparation for work courses or training or practical placements. If the adaptations required are considered to be reasonable, employers will be able to seek public assistance to cover the cost.

Timetable for the draft legislation: laying before parliament – May 2008; parliamentary approval, October or November 2008.”

344. 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 15§2 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that the right of persons with disabilities to employment is sufficiently guaranteed”.

345. The representative of Slovakia provided the following information in writing :

“Within the meaning of Section 55, paragraph 1 of the Act No. 5/2004 Coll. on employment services and on amending of certain acts, as amended, (hereinafter referred to as the “act on employment service”), a sheltered workshop and a sheltered workplace are workplaces set up by a legal or natural person in which at least 50 % of workers are citizens with disabilities who are not able to find employment in the open labour market, or the workplaces in which

citizens with disabilities are trained and in which the working conditions, including the demands on work performance are adjusted to the health state of citizens with disabilities. For the purposes of meeting this requirement, the procedure under Section 63 paragraph 2 of the mentioned act is followed. Under this procedure, an employer who employs a citizen with disability and whose capacity to involve in earning activities is reduced by more than 70 percent owing to a long-term unfavourable health state, shall, for the purposes of compliance with mandatory employment of employees with disabilities, count in as if the employer employed three such citizens”

346. 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 16 – Right of the family to social, legal and economic protection**

### **ESC 16 LATVIA**

“The Committee concludes that the situation is not in conformity with Article 16 of the Charter for the following reasons:

- family benefits are inadequate;
- nationals of other states party are not guaranteed equal treatment in the payment of family benefits because of a length of residence requirement.”

#### First ground of non conformity

347. The representative of Latvia said that a number of amendments to the legislation on state social assistance benefits had come into effect in 2006. These had not increased the benefit level but rises were now planned that would bring the amount payable up from 56 Latvian lats (LVL - about € 81) to LVL 63 (nearly € 91).

348. The representative of the Czech Republic said that the positive developments announced on the last occasion had now come into effect. They should await the results and invite the Latvian government to continue in this direction.

349. The Committee noted these positive developments and invited the Government of Latvia to bring the situation into conformity with Article 16 of the Charter.

#### Second ground of non conformity

350. The representative of Latvia said that the ten year residence condition for obtaining a permanent residence permit and entitlement to family benefits had been reduced to five years. However, there were no plans at the moment to reduce this period further.

351. The representative of the Czech Republic thought that this was a positive development.

352. In reply to the representative of Estonia, the representative of Latvia said that families might be eligible for other forms of financial protection, such as tax reductions, in addition to their income.

353. The representative of the United Kingdom said that if entitlement to family benefits was subject to a five-year residence condition and the situation was not compatible with the Charter, the Committee could not take note of any positive developments. There should be no required period of residence, so while the Committee should note that the

residence period for eligibility for family benefits had been reduced it should also invite the Government of Latvia to bring the situation into line with the Charter.

354. The Secretariat said that, under the Charter, anyone lawfully in the country should be eligible for family benefits, this was unrelated to the period of residence required to obtain a permanent residence permit. The Committee makes a distinction between contributory and non-contributory benefits: it admits no length of residence requirements under Article 16 as far as contributory benefits are concerned, but as regards non-contributory benefits States may apply a length of residence requirement on condition that it is not excessive. The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit. The Committee has held periods of 6-12 months to be reasonable and in conformity with Article 16. A five-year residence condition therefore had to be considered unreasonable.

355. The Committee noted the positive progress that had been made in Latvia and invited the Government to bring the situation into conformity with Article 16 of the Charter.

## **ESC Article 2 of the 1988 Additional Protocol, and**

### **ESC 2PA CZECH REPUBLIC**

“The Committee concludes that the situation in the Czech Republic is not in conformity with Article 2 of the 1988 Additional Protocol to the Charter on the ground that it has not been established that during the reference period the great majority of workers was granted an effective right to information and consultation within the undertaking.”

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

“The right of employees to information and consultation is regulated by the Labour Code (Part XII). The employer is obliged to inform employees and consult with them directly, unless there is a trade union organization, a works council or a representative for occupational safety and health protection, at work at the undertaking. If these employee representatives are present at the undertaking, the information flow and consultation shall take place through them. By law, these bodies are representatives of all the employees as concerns information and consultation, whether or not they are part of a trade union.

The right to form trades unions is a constitutional right. Employees are free to establish trades unions and to associate in them, and in the same way, their right not to associate is also guaranteed. The establishment of trades unions is regulated by Act no. 83/1990 Coll., on citizens' associations, and is extremely simple. It is based on an evidence principle, which means that if all the conditions stipulated by law are complied with, the trade union shall become a legal entity and be listed by the Ministry of the Interior as a trade union.

A trade union shall become a legal entity on the day following the day on which the application for its registration is received by the Ministry. An application for registration must be submitted by at least 3 persons (referred to as the preparatory committee), of whom at least one must have reached the age of 18. The application shall be signed by the members of the preparatory committee showing their names and surnames, dates of birth and places of residence. In addition, it shall state which of them, being older than eighteen (18) years, has the authority to act on their behalf. The applicants shall join two copies of the by-laws to their application, which shall contain the details stipulated in the law (in particular the name, seat and goals of the association, its bodies and the principles of its economic management). It is clear from the above that it is easy to establish a trade union. If the employees decide to set up a trade union and meet the simple and mandatory requirements, no state body or employer can restrict their rights. The establishment and termination of the organizational

trade union bodies, the recruitment and release of its members, the institution and competence of the bodies that act for the trade union are all defined by the trade union by-laws, following the wishes of its membership.

The level or representation of trades unions for purpose to inform, discuss and negotiate working conditions is not regulated – therefore any trade union established at an undertaking, regardless of the size of the membership or the size of the undertaking has this right. It acts to represent all the employees, whether they are trades unionists or not.

The establishment of a works council and a representative for occupational safety and health protection is regulated by the Labour Code. The right to choose these employee representatives is not restricted by the size of the undertaking or the number of employees.

A works council shall have a minimum of three members and a maximum of 15 members. The number of members must always be odd. The total number of representatives for occupational safety and health protection at work shall depend on the number of employees at the undertaking and a risk factor of the types of work performed. However a maximum of one representative may be elected for 10 employees. The number of works council representatives and representatives for occupational safety and health protection at work shall be determined by the undertaking after consulting the election committee. The term of office of the works council and representatives for occupational safety and health protection shall be 3 years. The works council shall elect a chairman from among its members at the first meeting and shall inform both the undertaking and employees of his/her name.

The election shall be announced by the undertaking on the basis of a written proposal signed by at least one-third of the employees who are in an employment relationship with the undertaking, within three months of delivery of the proposal. The election shall be organized by an election committee, composed of no less than three and no more than nine of the undertaking's employees. The number of members of the election committee shall be determined by the undertaking, taking into account the number of employees and the internal organizational structure. The members of the election committee shall be employees in the order in which they signed the written proposal for the election of a works council. The undertaking shall inform the employees of the composition of the election committee. The undertaking shall provide the election committee with the necessary information and documents for the purpose of holding the election, in particular a list of all employees in an employment relationship.

The election shall be by equal and direct secret ballot. Voting may only be done in person. The election shall be valid if at least one half of the employees, out of those who could participate in the voting, take part in the election (disregarding those employees who could not participate in the voting due to some obstacle at work or due to a business trip). Each voter may vote at the most for as many candidates as there are seats on the works council; each voter may cast only one vote for one candidate. If a voter does not comply with these rules, his voting shall be null and void. All the employees employed by the undertaking shall be eligible to vote and be elected. Every employee employed by the undertaking may nominate candidates. Such nominations must be presented to the election committee in writing, accompanied by the nominee's written consent to the nomination, at the latest by the date determined by the election committee. Those candidates who obtain the highest number of valid votes are elected as members of the works council or as representatives for occupational safety and health protection, the number of such members or the said representatives having been determined beforehand. The candidates with fewer votes shall become substitutes for these functions; they shall become members of the works council or representatives for occupational safety and health protection when there is a vacancy succeeding to such office in the order of the number of votes obtained in the election. If two or more candidates have obtained an equal number of votes, the election committee shall determine the successful substitute by drawing lots.

Every employee employed by the undertaking and the undertaking may file a petition with the court for the nullification of the election results, seeking the court's protection if there is reason to believe that the law was breached and such breach might have substantially affected the election results. This written petition must be filed within eight days of the announcement of the election results. Where the court rules that the election results are null

and void, there shall be a repeat election within three months of the day when the court's ruling takes legal force.

In its finding of March 12th 2008, the Constitutional Court held that employee representatives for occupational safety and health protection, works councils and trades unions may operate alongside each other in an undertaking. This means it no longer applies that, if a trade union begins operations in an undertaking on the basis of a collective agreement during the term of office of a works council or representatives for occupational safety and health protection that the works council or functions of the representatives for occupational safety and health protection will terminate.

In view of the fact that the undertaking is obliged to inform its employees and to consult with them directly if no trade union, works council or representative for occupational safety and health protection, it therefore follows that all employees have the right to receive information and to consultation and this right will be enforced either directly or through the established employee representatives who represent all the employees.

If the undertaking fails to observe its obligations, the employees can appeal to the Labour Inspection bodies, which monitor compliance with labour law regulations and may apply severe sanctions, including fines, on the undertaking for breach of its obligations. Employees can also apply to the courts to force the undertaking to fulfil its obligations.

As regards the proportion of undertakings that have a union presence and those in which other employee representatives operate, this data is not monitored by the Ministry..”

357. 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 2PA GREECE**

“The Committee concludes that the situation in Greece is not in conformity with Article 2 of the 1988 Additional Protocol to the Charter on the ground that it has not been established that the great majority of workers is granted an effective right to information and consultation within the undertaking.”

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

“On submission of the 3rd Greek Report (2003-2004) regarding art. 3 of the Additional Protocol to the European Social Charter and following its reference period, new legislation has been adopted, which regulates issues relating to the information and consultation of the employees. More specifically:

The Presidential Decree 240/2006 (Official Gazette 252/A/16-11-2006) “On establishing a general framework for informing and consulting employees, according to the Directive 14/2002/EC (11.3.2002) of the European Parliament and of the Council (E.E.L. 80/23.3.2002)” has been adopted, incorporating in our national law Directive 2002//14/EC “on establishing a general framework for informing and consulting employees in the European Community”.

The provisions of the said Decree are not being implemented on the crew of seafaring vessels because the Ministry of Mercantile Marine is drafting special provisions on this matter. More specifically, concerning seamen and the employment on ships the following apply:

The commonly acknowledged particularities of the occupation of seafarers in relation to the other sections of economic activities require the dealing of all matters concerning seamen and the employment on ships with special provisions. In this context, the question of “information and consultation” should be dealt given the fact that:

- Seamen, as workers, end their working life being employed only for short time periods by the same shipping company and
- The issues of work organization and ship staffing standards are not related to decisions made by the ship owner, but to the implementation of requirements and relevant provisions imposed by the national and international legislation.

Merchant seafaring vessels constitute undertakings that, in overwhelming majority, do not employ more than 20 seamen, a fact that offers the possibility of exclusion according to paragraph 2 of Article 2 of the Additional Protocol to the European Social Charter.

Regardless of the above, we inform you that procedures are already in progress for the adoption of a Presidential Decree “on establishing a general framework for information and consultation of sea vessels’ crews” which is the result of consultation with the social partners, in order to ensure realistic, substantial and effective information – consultation of sea vessels’ crews, with full acknowledgement of the statutory role of the Pan-Hellenic Seamen’s Federation, as secondary seafarers organization in the Greek Seamen’s representation. The said Presidential Decree Draft is already at the State Legal Council and the relevant opinion is anticipated..”

359. 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 Article 3 of the 1988 Additional Protocol, and**

#### **ESC 3PA CZECH REPUBLIC**

“The Committee concludes that the situation in the Czech Republic is not in conformity with Article 3 of the 1988 Additional Protocol to the Charter on the ground that it has not been established that during the reference period the great majority of workers was granted an effective right to take part in the determination and improvement of the working conditions and working environment within the undertaking.”

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

“The right of employees to take part in resolving questions relating to occupational safety and health protection is regulated by the Labour Code (Part V). This states that employees have the right to take part in the solution of occupational safety and health issues through their trade union organization or their representative for occupational safety and health protection.

The employee is obliged to enable the trade union organization or the representative for occupational safety and health protection or directly his employees

(a) to take part in consultation on occupational safety and health or shall provide them with the information about these consultations,

(b) to listen to their information, comment and make proposals for taking measures concerning occupational safety and health, in particular proposals for the elimination of risks or restriction of their effects if such risks cannot be eliminated and

(c) to consult

1. substantial measures concerning occupational safety and health,

2. the evaluation of risks, adoption and implementation of measures to reduce their effects, work performance in risk-monitored areas and allocation of jobs into categories in accordance with other statutory provisions,

3. the organizing of training courses on statutory provisions and other regulations aimed at safeguarding occupational safety and health,

4. the determination of a qualified person to deal with risk prevention in accordance with other statutory provisions concerning occupational safety and health.

The employer shall arrange training for the trade union organization and the employees’ representative for occupational safety and health to enable them the proper exercise of their function, and he/she shall also make available to them the statutory provisions and other regulations on occupational safety and health.

The establishment and operation of trade union organizations and employee representatives is described in detail in the information provided in relation to Article 2 of the Additional Protocol to the European Social Charter.

It follows from the above that the right of employees to take part in the determination and improvement of the working conditions and working environment in their undertaking through information and consultation is not solely dependent on their trade union membership. Other employee representatives can also be elected. The right of employees to participate in the determination and improvement of the working conditions is also secured even if there are no employee representatives in the undertaking.

If the undertaking fails to observe its obligations, the employees can appeal to the Labour Inspection bodies, which monitor compliance with labour law regulations and may apply severe sanctions, including fines, on the undertaking for breach of its obligations. Employees can also apply to the courts to force the undertaking to fulfil its obligations.”

361. 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 3PA GREECE**

“The Committee concludes that the situation in Greece is not in conformity with Article 3 of the 1988 Additional Protocol to the Charter on the ground that it has not been established that the great majority of workers is granted an effective right to take part in the determination and improvement of the working conditions and working environment within the undertaking.”

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

“Following the submission of the 3rd Greek Report (2003-2004) regarding article 3 of the Additional Protocol to the European Social Charter, we would like to inform you of the following:

The right of all workers to take part in the determination and improvement of working conditions in the undertaking is safeguarded in the best manner through the national legislation on health and safety at work, since its relevant provisions do not set the existence of workers’ representatives (committees, councils, etc) as a precondition for participation, but the workers themselves can directly take part in the determination and improvement of working conditions; in fact, it is not simply their right, but the employer’s obligation.

All the above are also mentioned in the first Greek report. More specifically:

Article 10 entitled “Consultations and workers’ participation” of Presidential Decree 17/1996 “Measures on the improvement of workers’ health and safety during work” provides that, in addition to the provisions regarding the competencies of workers’ representatives and of Health and Safety at Work Committees (EYAE) set forth by Act1568/85 and of Works Councils set forth by Act1767/88, the following also apply inter alia:

1. The employers request the workers opinion and facilitate their participation regarding all issues respecting health and safety at work. This entails consultation with the workers and the right of the workers and their representatives to submit proposals.

2. The workers participate in a balanced manner and in accordance with the legislation or/and practice in force or their opinion is requested by the employer in advance and in time regarding:

(a) Any activity that might have a substantial impact on health and safety.

(b) The determination of the workers of the undertaking or/and the persons outside the undertaking or/and the persons of the External Protection and Prevention Service that undertake the duties of the safety technician or/and the work doctor, as well as their activities and the determination of the workers responsible for the implementation of measures respecting first aid, fire safety and the evacuation of the (working) areas from the workers.

(c) The information relating to the written estimation of risks and the determination of protection measures, as well as the information concerning the special book and the list of accidents, and also the information regarding the legislation on health and safety and on protection and prevention measures.

(e) The planning and organization of workers’ training in issues of health and safety.

(f) The drawing up of the health and safety at work regulation.



(g) The handling of problems relating to the interaction between the working and the broader environment.

3. The workers should not suffer unfavourable consequences because of their abovementioned activities.

4. The workers have the right to address the competent labour inspectorate, if they consider that the measures taken and the means made available by the employer are not sufficient to ensure health and safety at work.

It is pointed out once again that the election of workers' committees or representatives for issues of health and safety at work or the appointment of representatives through works councils constitutes merely a workers' right, which, even if not exercised, does not exclude workers from the procedures provided for by legislation concerning their participation in the determination and improvement of working conditions in the undertaking.

In addition to and irrespective of the above regulations, which provide for the participation of workers in the improvement of the working environment, the national legislation provides for the workers' right to be able themselves to take measures in the case of severe and imminent danger to their own safety or to the safety of other persons, when there is no way to communicate with the competent by hierarchy head of section (Presidential Decree 17/96, article 9, para5). Furthermore, all workers have the right to stop working and abandon the workplace in the case of severe, imminent and unavoidable danger without any unfavourable consequences (P.D. 17/96, article 9, paras 3 and 4)."

363. 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.

**APPENDIX I / ANNEXE I**

**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS**

- (1) 117<sup>e</sup> réunion : 13-16 mai 2008  
(2) 118<sup>e</sup> réunion : 6-9 octobre 2008

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**INTERNATIONAL ORGANISATION OF EMPLOYERS /  
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## Appendix II Chart of Signatures and Ratifications

Situation at 7 October 2008

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure	
<i>Albania</i>	21/09/98	14/11/02		
<i>Andorra</i>	04/11/00	12/11/04		
<b>Armenia</b>	18/10/01	21/01/04		
<b>Austria</b>	07/05/99	<b>29/10/69</b>		
<b>Azerbaijan</b>	18/10/01	02/09/04		
<b>Belgium</b>	03/05/96	02/03/04	23/06/03	
<b>Bosnia and Herzegovina</b>	11/05/04	07/10/08		
<b>Bulgaria</b>	21/09/98	07/06/00	07/06/00	
<b>Croatia</b>	<b>08/03/99</b>	<b>26/02/03</b>	26/02/03	
<b>Cyprus</b>	03/05/96	27/09/00	06/08/96	
<b>Czech Republic</b>	04/11/00	<b>03/11/99</b>		
<b>Denmark</b> *	03/05/96	<b>03/03/65</b>		
<b>Estonia</b>	04/05/98	11/09/00		
<b>Finland</b>	03/05/96	21/06/02	17/07/98 X	
<b>France</b>	03/05/96	07/05/99	07/05/99	
<b>Georgia</b>	30/06/00	22/08/05		
<b>Germany</b> *	29/06/07	<b>27/01/65</b>		
<b>Greece</b>	03/05/96	<b>06/06/84</b>	18/06/98	
<b>Hungary</b>	07/10/04	<b>08/07/99</b>		
<b>Iceland</b>	04/11/98	<b>15/01/76</b>		
<b>Ireland</b>	04/11/00	04/11/00	04/11/00	
<b>Italy</b>	03/05/96	05/07/99	03/11/97	
<b>Latvia</b>	29/05/07	<b>31/01/02</b>		
<b>Liechtenstein</b>	<b>09/10/91</b>			
<b>Lithuania</b>	08/09/97	29/06/01		
<b>Luxembourg</b> *	11/02/98	<b>10/10/91</b>		
<b>Malta</b>	27/07/05	27/07/05		
<b>Moldova</b>	03/11/98	08/11/01		
<b>Monaco</b>	05/10/04			
<b>Montenegro</b>	22/03/05			
<b>Netherlands</b>	23/01/04	03/05/06	03/05/06	
<b>Norway</b>	07/05/01	07/05/01	20/03/97	
<b>Poland</b>	25/10/05	<b>25/06/97</b>		
<b>Portugal</b>	03/05/96	30/05/02	20/03/98	
<b>Romania</b>	14/05/97	07/05/99		
<b>Russian Federation</b>	14/09/00			
<b>San Marino</b>	18/10/01			
<b>Serbia</b>	22/03/05			
<b>Slovak Republic</b>	18/11/99	<b>22/06/98</b>		
<b>Slovenia</b>	11/10/97	07/05/99	07/05/99	
<b>Spain</b>	23/10/00	<b>06/05/80</b>		
<b>Sweden</b>	03/05/96	29/05/98	29/05/98	
<b>Switzerland</b>	<b>06/05/76</b>			
<b>«the former Yugoslav Republic of Macedonia»</b>	<b>05/05/98</b>	<b>31/03/05</b>		
<b>Turkey</b>	06/10/04	27/06/07		
<b>Ukraine</b>	07/05/99	21/12/06		
<i>United Kingdom</i> *	07/11/97	<b>11/07/62</b>		
Number of States	47	<b>4</b> + 43 = 47	<b>15</b> + 25 = 40	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 cases of non-compliance**

**A. Conclusions of non-conformity for the first time**

CSE 1§4 AUSTRIA  
CSE 3§2 AUSTRIA  
CSE 4§3 AUSTRIA  
CSE 15§1 AUSTRIA  
CSE 15§2 AUSTRIA

CSE 3§2 CZECH REPUBLIC  
CSE 15§2 CZECH REPUBLIC  
CSE 2PA CZECH REPUBLIC  
CSE 3PA CZECH REPUBLIC

CSE 1§4 DENMARK  
CSE 2§3 DENMARK  
CSE 15§1 DENMARK

CSE 3§1 GERMANY  
CSE 4§1 GERMANY  
CSE 4§3 GERMANY

CSE 1§4 GREECE  
CSE 2§5 GREECE  
CSE 15§1 GREECE  
CSE 2PA GREECE  
CSE 3PA GREECE

CSE 2§1 HUNGARY  
CSE 3§2 HUNGARY

CSE 1§4 ICELAND  
CSE 2§1 ICELAND  
CSE 4§4 ICELAND  
CSE 15§1 ICELAND  
CSE 15§2 ICELAND

CSE 5 LATVIA  
CSE 8§2 LATVIA  
CSE 13§1 LATVIA  
CSE 13§3 LATVIA  
CSE 14§1 LATVIA

CSE 1§4 LUXEMBOURG  
CSE 3§2 LUXEMBOURG  
CSE 4§1 LUXEMBOURG  
CSE 7§5 LUXEMBOURG  
CSE 15§1 LUXEMBOURG  
CSE 15§2 LUXEMBOURG  
CSE 11§3 LUXEMBOURG

CSE 4§4 MALTA  
CSE 4§5 MALTA  
CSE 10§2 MALTA  
CSE 10§3 MALTA

CSE 4§4 NETHERLANDS

CSE 3§1 POLAND  
CSE 3§2 POLAND  
CSE 4§5 POLAND  
CSE 15§2 POLAND

CSE 1§4 SLOVAQUIA  
CSE 4§2 SLOVAQUIA  
CSE 4§4 SLOVAQUIA  
CSE 4§5 SLOVAQUIA  
CSE 10§1 SLOVAQUIA  
CSE 10§2 SLOVAQUIA  
CSE 15§2 SLOVAQUIA  
CSE 15§1 SLOVAQUIA

CSE 1§4 SPAIN  
CSE 2§1 SPAIN  
CSE 3§1 SPAIN  
CSE 4§4 SPAIN  
CSE 15§1 SPAIN

CSE 2§3 UNITED KINGDOM  
CSE 2§5 UNITED KINGDOM

CSE 4§3 TURKEY

**B. Renewed conclusions of non conformity**

CSE 3§1 AUSTRIA  
CSE 4§1 AUSTRIA  
CSE 10§1 AUSTRIA  
CSE 10§4 AUSTRIA

CSE 2§5 CZECH REPUBLIC  
CSE 4§3 CZECH REPUBLIC  
CSE 4§4 CZECH REPUBLIC  
CSE 4§5 CZECH REPUBLIC

CSE 10§4 DENMARK

CSE 2§1 GERMANY  
CSE 4§3 GERMANY

CSE 2§4 GREECE  
CSE 3§1 GREECE  
CSE 3§2 GREECE  
CSE 4§1 GREECE  
CSE 4§4 GREECE  
CSE 15§2 GREECE

CSE 4§3 ICELAND

CSE 5 LATVIA  
CSE 13§1 LATVIA  
CSE 6§4 LATVIA  
CSE 8§1 LATVIA  
CSE 8§2 LATVIA  
CSE 13§4 LATVIA  
CSE 16 LATVIA

CSE 2§4 LUXEMBOURG  
CSE 4§2 LUXEMBOURG  
CSE 7§4 LUXEMBOURG  
CSE 10§4 LUXEMBOURG

CSE 1§4 MALTA  
CSE 2§1 MALTA  
CSE 4§4 MALTA  
CSE 10§1 MALTA  
CSE 15§1 MALTA

CSE 4§3 NETHERLANDS

CSE 1§4 POLAND  
CSE 2§1 POLAND  
CSE 4§2 POLAND  
CSE 4§4 POLAND  
CSE 4§5 POLAND

CSE 2§1 SPAIN  
CSE 2§3 SPAIN  
CSE 3§1 SPAIN  
CSE 3§2 SPAIN  
CSE 4§1 SPAIN  
CSE 4§2 SPAIN  
CSE 4§4 SPAIN

CSE 2§1 SLOVAQUIA  
CSE 4§1 SLOVAQUIA  
CSE 4§5 SLOVAQUIA  
CSE 10§4 SLOVAQUIA

CSE 4§5 TURKEY

CSE 2§4 UNITED KINGDOM  
CSE 4§1 UNITED KINGDOM  
CSE 4§4 UNITED KINGDOM  
CSE 4§5 UNITED KINGDOM  
CSE 10§4 UNITED KINGDOM

**Appendix IV**  
**Deferred conclusions**

**C. Conclusions deferred for lack of information for the second time**

CZECH REPUBLIC	CSE 2§1
DENMARK	CSE 4§2, 4§3
GREECE	CSE 4§3
HONGARY	CSE 3§1
LETTONIA	CSE 1§4, 11§1, 11§2, 11§3 14§2
LUXEMBOURG	CSE 11§1, 14§2
MALTA	CSE 3§3, 9, 10§4, 15§1, 15§2
POLAND	CSE 4§3,
SLOVAKIA	CSE 4§3
SPAIN	CSE 4§3, 9, 10§4, 15§2
TURKEY	CSE 9
UNITED KINGDOM	CSE 3§1

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

AUSTRIA	CSE 2§4
DENMARK	CSE 10§1, 15§2, 3PA
GERMANY	CSE 2§3
GREECE	CSE 2§2, 9 (new questions)
HONGARY	CSE 1§4 (new questions, third deferral), 10§1, 10§2, 10§3, 10§4, 15§1 (first report), 15§2 (first report)
LATVIAE	CSE 1§2, 6§2, 17
LUXEMBOURG	CSE 4§3, 4§5, 7§1, 7§2, 7§10, 8§2, 14§1
MALTA	CSE 3§2, 4§1 (first time), 4§3
NETHERLANDS	CSE 1§4 (new questions), 2§3, 2§4, 15§1
POLAND	CSE 15§1
SLOVAKIA	CSE 2§2, 9 (new questions) 2PA
SPAIN	CSE 10§1, 2§5
TURKEY	CSE 1§4 (new questions), 10§4
UNITED KINGDOM	CSE 2§2

**Appendix V**  
**Warning(s) and Recommendation(s)**

**Warning(s)**<sup>1</sup>

**Article 1, paragraph 4**

**– Poland**

(Access to further training for foreign nationals is subjected to an excessive length of residence requirement.)

**Article 4, paragraph 1**

**– United Kingdom**

(The minimum wage falls far below the 60% threshold established by the Committee.)

**Article 4, paragraph 2**

**– Spain**

(The right of workers to increased remuneration for overtime is not guaranteed by law.)

**Article 4, paragraph 4**

**– Spain**

(Workers with fixed-term contracts of more than one year whose contract is broken before the end were only granted a 15-day period of notice.)

**– United Kingdom**

(The notice of termination of employment for workers with less than three years' service is too short.)

**Article 4, paragraph 5**

**– Slovak Republic**

(Deductions from wages may deprive workers of a minimum level of income to ensure the means of subsistence for themselves and their families.)

**Recommendation(s)**

–

**Renewed recommendation(s)**

–

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<sup>1</sup> 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.