COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER

REPORT CONCERNING

CONCLUSIONS XVIII-1

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

[1] The detailed report and the abridged report are available on www.coe.int/T/E/Human_Rights/Esc.

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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 thirty-nine states bound by the European Social Charter or the European Social Charter (revised).[1] Representatives of international organisations of employers and workers (presently the European Trade Union Confederation (ETUC) and the International Organisation of Employers (IOE)) attend, in a consultative capacity, meetings of the Committee. 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 Partie "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/T/E/Human_Rights/Esc.

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, Belgium, Croatia (first complete report), Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Luxembourg, Malta, the Netherlands (Kingdom in Europe, Aruba and Netherlands Antilles), Poland, Slovak Republic, Spain, Turkey and the United Kingdom. Reports were due on 30 June 2005 at the latest; they were received between 28 June 2005 and 14 February 2006. The second complete report from Latvia, which was submitted in March 2006, will be examined with Conclusions XVIII-2. The Governmental Committee repeats that it attaches a great importance to the respect of the deadline by the States Parties.

5. Conclusions XVIII-1 of the European Committee of Social Rights were adopted in February-March 2006 (Austria, Belgium, Czech Republic, Denmark, Germany, Hungary, Iceland, Malta, Poland, Slovak Republic, Spain, Turkey and United Kingdom), and in July 2006 (Croatia, Greece, Luxembourg and the Netherlands (Kingdom in Europe, Aruba and Netherlands Antilles)).

6. The Governmental Committee held four meetings (2-4 May 2006, 12-14 September 2006, 10-12 October 2006 and 16-19 April 2007), which were chaired by Mrs Hanna Sigridur GUNNSTEINSDOTTIR (Iceland), with the exception of the meeting in October 2006 which was chaired by Mr. Georgy KONCZEI (Hungary).

[1] List of the States Parties on 2 May 2007 : Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom.

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) (Bosnia and Herzegovina, the Russian Federation, Serbia) were also invited to attend the meetings of the Governmental Committee, for the purpose 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 3 May 2006, the Netherlands had ratified the European Social Charter (revised);

– on 21 December 2006, Ukraine had ratified the European Social Charter (revised).

9. The state of signatures and ratifications on 2 May 2007 appears in Appendix I to the present report.

II. EXAMINATION OF NATIONAL SITUATIONS ON THE BASIS OF CONCLUSIONS XVIII-1 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. There is no Governmental Committee proposal to the Committee of Ministers for a recommendation in this particular case. The detailed report is available on www.coe.int/T/E/Human_Rights/Esc.

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.

12. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix II to the present report. The detailed report which may be consulted at www.coe.int/T/E/Human_Rights/Esc containing more extensive information regarding the cases of non conformity.

13. During its examination, the Committee took note of important positive developments in several states Parties. It urges governments to continue their efforts with a view to ensure compliance with the European Social Charter. In particular, it asked governments to take into consideration Recommendations adopted by the Committee of Ministers. It adopted the warnings set out in Appendix III to this report.

14. The Committee proposes to the Committee of Ministers to adopt the following Resolution:

Resolution on the implementation of the European Social Charter during the period 2003-2004 (eighteenth supervision cycle – part I, "hard core" provisions of the Charter)

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

The Committee of Ministers,[1]

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

[1] At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those States which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter". The states having ratified the European Social Charter or the European Social Charter (revised) are Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom.

Having regard to Article 29 of the Charter;

Considering the reports on the European Social Charter submitted by the Governments of Austria, Belgium, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Luxembourg, Malta, the Netherlands (Kingdom in Europe, Aruba and Netherlands Antilles), Poland, Slovak Republic, Spain, Turkey and the United Kingdom (concerning period of reference 2003-2004);

Considering Conclusions XVIII-1 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-1 of the European Committee of Social Rights and in the report of the Governmental Committee.

EXAMINATION ARTICLE BY ARTICLE

Article 1§1 – Policy of full employment

1§1 GREECE

"[…]The Committee concludes that the situation in Greece is not in conformity with Article 1§1 of the Charter on the grounds that despite a number of employment programmes launched, the public policy measures in favour of full employment are inadequate."

First ground on non-conformity (for the first time)

15. The Greek delegate provided the following information in writing :

"Further to the publication of a negative conclusion by the European Committee of Social Rights, with regard to the application of article 1 paragraph 1 from Greece, we would like to submit the following information in the context of the works of the 113th session of the Governmental Committee (Strasbourg, 12-14 September 2006).
As it concerns the data set forth by the European Committee of Social Rights in its Conclusions, we would like to observe the following positive developments regarding the situation in connection with employment in Greece, after the completion of the reference period of the last national report, as it concerns the application of the provision of the European Social Charter (1961) in question:
The employment rate in Greece followed an upward trend and reached 60,1% in 2005, against 59,4% in 2004. The employment rate of women was 45,2% in 2004 and in 2005 it was increased to 46,1%. With regard to the youth employment rate, this was 26,88% in 2004 and 25,0% in 2005. The unemployment rate decreased in 2005 to 9,8%, against 10,5% in 2004. The unemployment of women in 2005 was decreased to 15,3%, against 16,2% in 2004. The unemployment rate of young persons in 2004 was 26,9% and decreased to 26% in 2005. Regarding the long-term unemployment in Greece, it showed a decrease in 2005, when it reached 54,2%, against 54,9% in 2004. With regard to the rate of activity, we observe an increase in Greece during 2005, when it reached 66,8%, against 66,5% in 2004 and 65,2% in 2003. Also, the employment

rate of people of older age (55-64 years old) in Greece in 2005 was increased, reaching 41,6%, against 39,4% in 2004. An increase was also noticed in the rate of part-time employment, which reached 5,0% in 2005, against 4,5% in 2004.
In particular:

Current situation in the economy
In 2005 the Greek economy, contrary to the predictions of the international organisations for an important deceleration of the growth rate below 3%, after the Olympic Games of 2004, maintained its dynamism and the Gross National Product (GNP) was increased at a rate of 3.7%, the second highest among the countries of the eurozone.
Presently, the fundamental objective of the economic policy is the restriction of the public spending and, particularly, the consumer spending, in order to achieve a reduction of deficits. The result of this policy is the restriction of domestic demand. However, apart from the restrictive budgetary policy, the economic growth of our country is expected to be negatively affected by a significant rise in oil prices and the relative increase of interest rates (given that, in the past few years, there has been an important decrease of interest rates). Currently, this Government goes ahead with the completion of the structural reforms in the labour market, the public administration, the taxation etc. It is expected that, through the completion of the reforms, the competitiveness of the Greek economy will be improved, the employment will be increased, the unemployment will be decreased and a high and steady rate of economic growth will be achieved.
For the years 2006-2008, a strong growth is anticipated, with the rate of growth of the Gross National Product (GNP) amounting to 3,9% annually, on average.

Current situation in the labour market
The developments in the labour market in 2005 were positive, as the unemployment rate receded to 9,9%, from 10,5% in 2004, while the real wages of employees were increased by 2%, at the time when a decrease was noticed in the European Union, by 0,3%. In 2005, the total employment increased by 56 thousand to 4.369 thousand people, vis-à-vis 2004. It is estimated that the higher rise of employment was noticed in the trade and in other sectors providing services. The percentage of workforce in the entire population aged 15 years and above amounted to 53,2% in the 4th quarter of 2005, which is the highest level of the last years. The impact of the growth to the employment, which was limited in the previous years, is expected to be expanded. Specifically for the three-year period, 2006-2008, the employment is estimated to increase by 1,6% annually on average, while the unemployment rate is expected to be limited to 8,0% in 2008, on a national basis.
Active employment policies contributed considerably to the reduction of unemployment. Indeed, the percentage of registered unemployed persons, individually supervised by labour advisers, was significantly increased. In the end of 2005, 70% of those seeking work passed through the procedure of Individualized Approach (interview, completion of the Form of Individualized Intervention) and for each one an Individual Plan of Action was worked out. The percentage is expected to reach 100% of those seeking work, while the corresponding percentage in April 2004 was roughly 15%.
The Greek economy is characterized by a high participation of the primary sector, which is diachronically decreased considerably, as well as by a big number of very small enterprises, a fact which hinders the structural changes needed to boost the effectiveness of the Greek economy. The policy of the Greek Government is focused in the promotion of structural changes and the enhancement of the adaptability of both the enterprises and the workforce.
The Greek labour market is characterized by relatively low rates of participation in the workforce. The degree of participation in the workforce is influenced by a series of

factors, individual, socio-economic and cultural, which impact the availability and wish of persons and groups to work and seek employment.
Diachronically, an increase in the rate of participation of women is noticed, with a parallel small reduction of the participation rate of men. The total rate of participation shows a small rise over the years.
Among young persons, the participation in the workforce is small, because of the attendance in the educational system, as well as the reluctant attitude and the possibility to combine studies and work.
In the last years, a gradual increase of the employment rate and a steady reduction of the unemployment rate are observed.

Employment rates by sex in Greece (15-64 year old persons)

	Total	Men	Women
2002	57,5%	72,2%	42,9%
2003	58,7%	73,4%	44,3%
2004	59,4%	73,7%	45,2%
2005	60,1%	74,2%	46,1%

Source: EUROSTAT

Rates of unemployment by sex in Greece (15+ year old persons)

	Total	Men	Women
2001	10,8%	7,3%	16,2%
2002	10,3%	6,8%	15,6%
2003	9,7%	6,2%	15,0%
2004	10,5%	6,6%	16,2%
2005	9,8%	6,1%	15,3%

Source: EUROSTAT

Unemployment rate per age-related group

Age	Unemployment rate
15-19 years	33,7
20-24 years	24,5
25-29 years	15,9
30-34 years	10,6
35-39 years	9,4
40-44 years	7,6
45-49 years	6,3
50-54 years	6,5
55-59 years	5,1
60-64 years	3,6
65-69 years	1,7
70 years and more	1,8
Total	10,4

Source: Greek National Statistical Organization, Research of Workforce, first quarter 2005, data processing by the Employment Monitor – Research Informatics S.A.

A significant improvement in the total employment rate, as well as the employment rate of women, is observed over the years.
The part-time employment in the second quarter of 2004 amounted to 200.562 persons (4,63% of the total employment), while in the second quarter 2005 it amounted to 210.986 persons (4,81%). In 2005, out of the total part-time employed persons, 152.855 were women (72,44%), while in 2004 the part-time employed women were 142.516 (71,06%). The voluntary part-time employment constituted 50,0% of part-time employment in 2004, while in 2005 it constituted 51,7%.

From the 216.985 jobs that were created in 2005, the young persons, 20-24 years old, held the biggest share. In particular, 15.179 jobs (7%) concerned persons 15-19 years old, 69.316 (31,9%) were occupied by persons 20-24 years old and 56.777 (26,2%) by persons 25-29 years old.

The challenge to reduce unemployment is addressed at four levels:
- efforts to reduce unemployment due to insufficient demand (mainly through developmental, tax and structural measures),
- efforts to reduce structural unemployment through the improvement of the characteristics of the offer (education-training relative with the needs of market),
- efforts to reduce unemployment due to friction, through the improvement of the operation of organisations dealing with matching the offer and demand,
- efforts to reduce seasonal unemployment (by taking special measures, on a case by case basis).

Rates of participation in the workforce, employment and unemployment of the women

	First quarter 2004	First quarter 2005
Rate of participation in the workforce (15-64 years old)	53,72%	54,04%
Employment rate (15-64 years old)	44,45%	45,28%
Unemployment rate (15 years old and above)	17,10%	16,08%

Source: Greek National Statistical Organization, Research of Workforce

The higher and equal participation of women in the labour market constitutes a significant challenge for the Ministry of Employment as well, which, in co-operation with the General Secretariat of Equality of Sexes, draws and materializes the relative policies.

Projections for the labour market (total population)

	2004	2005	2008*	2010*
Employment	4313,2	4368,9	4573,4	4711,6
% change	0,9	1,3	1,5	1,5
Employment (15-64 years old)	4234,8	4286,7	4490,2	4625,9
Employment rate	59,4%	60,1%	62,5%	64,1%
% change	1,3	1,5	1,5	1,5
Unemployment	505,7	477,5	421,4	373,5
Unemployment rate	10,5%	9.8%	8,4%	7,3%

* projections

The data for 2004 and the projections for the next years are based on data found in the Research of Workforce of the National Statistical Service of Greece and do not correspond to those of the National Accounts.
It is estimated that, according to the data of the above table, the maintenance of high rates of growth, for the current and the subsequent years, in combination with the structural changes planned, will contribute positively to the creation of a satisfactory number of jobs, so that the reduction of unemployment and the increase of employment are continued.

Priorities in the Policy
The enhancement of the competitiveness of the Greek economy and the simultaneous reinforcement of the social cohesion constitute a dual objective which runs through all policies of the Greek Government.

More specifically, the Ministry of Employment, in cooperation with other Ministries, the Social Partners, the local government and other competent bodies, focuses its action in the following areas:

- Creation of conditions for full-time employment: maintenance of the existing jobs and creation of new jobs, so that the employment rate is increased and the unemployment rate is decreased.
- Improvement of the quality of work and the productivity: improvement of the inherent characteristics of the work itself (satisfaction from work, working hours, contents, correlation between the characteristics of work and the dexterities of the employee, opportunities for training and for lifelong learning), as well as improvement of the broader characteristics of the labour market (equality of the sexes, health and safety, access to work, social dialog, combating discriminations etc.). It must be pointed out that the enhancement of the quality of work has also a positive impact on the increase of employment and the increase of productivity and the economic and social growth.
- Enhancement of the adaptability of both the enterprises and the workforce in the changing conditions of international competition and technological and productive developments: enhancement of the flexibility in the labour market, with a parallel protection of the rights of workers, so that an increase of the efficiency of the enterprises and an optimum exploitation of the workforce are achieved, together with an improvement of the dexterities of the workforce, so that they correspond to the changing conditions of the market, an improvement of the processes matching offer and demand, an improvement of the regulatory framework, so that the provision of a variety of contracts (full-time, part-time, seasonal employment, etc.) enhances the participation of all social groups in the labour market and creates motives to transform the undeclared to 'regular' employment.
- Enhancement of the employment of women and promotion of the equal access to it, taking special measures to increase the participation of women in the labour market, with a parallel promotion of the framework for essential equality (reduction of the gap in the wages, removal of the obstacles in professional advancement, ensuring the quality and safety conditions at work) and measures aiming at reconciling the professional and family duties, which will prompt women to integrate themselves and remain in the labour market, contributing to the improvement of the total employment rate of the country.
- Reduction of the social exclusion and improvement of the social cohesion, in order, on the one hand, to exploit as much as possible the faculties and dexterities of the people and, on the other hand, to provide the possibility of access, advancement and progress in the labour market to all population groups; improvement of the conditions of access and advancement in the labour market for the social groups facing particular problems, protection of those who are threatened by poverty and social exclusion, improvement of the social security system, so that it achieves its objective in the best possible way.

Measures and Policies

Persons with special needs

The unemployment rate of persons with a disability (8,9%) is less than the total unemployment rate. A big number of persons with a disability is employed in the rural sector, follow the specialized workers, while a significant percentage of persons with a disability are employed in the services and the trade. Aiming at increasing the employment of the persons with a disability, additional active measures are taken by the Greek government, while efforts are made for the improvement of the existing ones.

In this context, the social exclusion of the persons with special needs is combated by improving access to the public services, the new technologies (Internet and technologies of telecommunications), the education and the employment. At the same time, by virtue of article 13, Law 3454/2006 the National Observatory of Persons with

Special Needs was created among the competences of which is the registration of the Persons with Special Needs. Detailed programs of training and enhancement are created and applied for the faculties and dexterities of the persons with special needs, while suitable instructive tools and suitable teaching methods, as well as suitable training material in printed and electronic form are drawn, produced and exploited. The supply and installation of Computer and Special Equipment in the Special Education Units in the entire country is materialized, to serve the instructive and learning needs of persons with sight, mental retardation and hearing problems, as well as persons with kinetic problems.

Within the frame of the promotion of the employment of vulnerable social groups, on the basis of Decision of the Minister of Employment and Social Protection bearing no. 200295/20-04-05, Programs Subsidizing New Jobs and New Free-Lancers are materialized, to integrate in the labour market persons with disabilities, as well as other persons that are in social danger. Their total budget for the years 2003-2004 was 85 million of euros and the target for the persons to benefited 5.490 persons, while 4.151 persons were placed in actions. In 2005, programs for vulnerable groups of a total budget of 50,6 million of euros were materialized, with 2.846 benefited persons.

The issuance of 66 ministerial decisions was also promoted, by which the coverage of approximately 990 jobs of the Public Sector is provided, which (jobs) will be covered by the categories under protection of the persons with special needs etc. of Law 2643/98.

Finally, Law 3304/2005 on the “Application of the principle of equal treatment” was voted and the two European Community Directives, 2000/43EC and 2000/78/EC, were incorporated in our national law. More specifically, the prohibition of discriminations because of religious or other beliefs, disability, age or sexual orientation applies to the conditions of access to work and employment, the access to all types and levels of vocational guidance, the terms and the conditions of work etc.

ACTIVATION OF THE AGE GROUP OF 45-64 YEARS OLD

The impact of the forces released by the globalisation causes a serious productive restructuring, that is to say a shrinkage of the sectors of intensity of work (e.g. textile). In Greece, this phenomenon takes a particular form as, in many regions of the country, the local economy was mainly based on these activities. The category of unemployed persons of older age, who worked in these enterprises, constitutes a distinguishable group of unemployed persons, with particular characteristics. In this context, we support the active participation of ageing workforce. Up to 2004, the active policies of the country for the population group of 55-64 years old were almost non-existent. The statistical analysis in this sector did not show a delay of the country and, consequently, the active policies aimed at strengthening other groups, such as the women and the young persons. However, in the past few years, because of the new globalised economy, the trends of the labour market changed rapidly in our country as well and this resulted to the employment rate of the persons 55-64 years old being progressively decreased and, today, falling short of the corresponding average of both the E.U. 25 and the E.U.15 standards. In consequence, the government begins to place higher emphasis on the policies of active ageing, such as flexible retirement plans (part-time jobs and part-time pensions), lifelong learning, aiming at improving the dexterities of the persons of older age and boosting self-employment of these persons.

Furthermore, special employment programs for the persons of older age are applied by the Organization for the Occupation of the Workforce, aiming at their employment and ensuring the necessary revenue stamps, which will lead them over the next years to retirement. In particular, all private enterprises are subsidized, as well as the enterprises of the broader public sector which hire unemployed persons, missing up to 1.500 revenue stamps and one month up to five years to complete the age limit for retirement. From these special programs, 2.480 persons benefited in 2005 and in 2006 (first quarter). The programs were considered particularly effective and they are expected to be continued in the next period. It is worth noting that these programs are included in the logic of the targeted interventions, in connection with regions and

groups of unemployed persons facing intense unemployment problems (mass redundancies).
Furthermore, during the new planning period 2007 – 2013, particular emphasis will be given to the training of unemployed persons and workers of older age, aiming at upgrading their dexterities and professional qualifications. The training programs that are materialized with the involvement of the Organization for the Occupation of the Workforce are focused to the management of the programs of the Account for the Employment ant the Vocational Training (LAEK) and the proclamation of training programs for unemployed persons, which are materialized in the context of co-financed programs. The qualitative elements of the training programs starting in 2005-2006 and in the perspective of the continuous upgrade for the planning period 2007-2013 refer to:

- the planning and materialization of "programmatic contracts for guaranteed employment" between the Organization for the Occupation of the Workforce and the enterprises, aiming at providing training in areas and objectives of the enterprise to workers and unemployed persons and with an agreement to employ part of the unemployed persons after the completion of the training,
- the electronic management of the programs of the Account for the Employment ant the Vocational Training (LAEK), through which the system of statistical follow-up and management of the programs is improved considerably while, at the same time, the procedures for planning and control are accelerated,
- the upgrade of planning and control systems for the training programs. The training which was materialized through the programs of the Account for the Employment ant the Vocational Training (LAEK) involved 141.188 benefited persons, from January 2005 up to March 2006.

WOMEN
Special programs apply to unemployed women, the attendance of which is additionally promoted through increased motives. 60% of the persons participating in the majority of the programs are women, while in certain types of programs, such as those concerning the creation of an free-lance activity, the participation of women exceeds 60%. Moreover, a special program of complete intervention has been drawn for women, which combines advisory services with acquisition of labour experience, by creating jobs or by starting an free-lance activity. For the year 2005 and the first quarter of 2006, 35.000 women benefited from national programs and 1.500 participated in complete intervention. The effort to upgrade the employment policies is expected to be continued at an intense pace. The employment programs will target more to groups of unemployed persons and will be adapted depending on the particularities of each region. The participation motives will be improved, as an example a higher amount of subsidy is provided for a longer period. Selectively higher financing is also given to the women with a minor child, who participate in the New Free-Lancers program (2006). In co-operation with the General Secretariat of Equality of the Sexes (GGI), the supporting structures facilitating the reconciliation of the family and professional lives are strengthened. The institutional framework of parental leaves has also been adapted to the same target. The institutional framework of parental leaves provides for a:

- parental leave for upbringing a child, to each working parent who has completed one year of work in the same employer,
- leave of absence for dependents, as well as
- leave of absence for school follow-up.

From the sample investigation conducted by the competent service it resulted that 1.168 workers made use of the parental leave for upbringing a child, 15.133 of the leave to follow-up school performance and 55 for illness of dependents.
At the same time, measures to enhance the infrastructures of care and services are promoted, by adopting motives for the creation and development of services for child care by the private sector (e.g. through the creation of the relative structures, at least in big enterprises). The access and participation of women in the labour market is

promoted through the operation of the structures for Social Care (Day Nurseries, Centres of Creative Occupation of the Children, Social Care Units, etc.). In the light of boosting employment, the disengagement of the indirectly benefited population, mainly women, which has the responsibility for the daily care of the children or other dependents for certain hours of the day, because of the operation of the suitable structures, creates dynamic conditions to combat unemployment and enhance women's employment. Today 396 structures operate in the context of the Operational Program for Employment, employing 1.972 persons and having a capacity of 53.943 persons. Furthermore, 1.120 structures operate in the context of the Regional Business Programs (PEP), employing 4.400 persons and having a capacity of 49.056 persons.
Finally, educational programs are drawn and materialized in "day-long schools", both in the pre-school education, as well as the primary education. It is estimated that, up to 2006, 4.500 day-long schools and 2.000 day-long kindergartens will be operative.

More particularly, as concerns the actions of the GGI the following are noted:
1. the GGI implements the work "Positive actions in favor of women in the SMEs and Large Enterprises" in the frame of the OP «Employment and Vocational Training 2000-2006». The total badger to the Work is 16865480 E. The work is applied for the first time in Greece and aims at helping the working women in SMEs and large enterprises to obtain further qualifications in order to be able to claim on better terms their carreer development in the enterprise.
2. the GGI applies as a final beneficiary the work : 'Integrated interventions in favour of women" of the OP 'Employment and Vocational Training 2000-2006' of the 3re CSF, through which not only does it practically support unemployed women to find employment, but it also facilitates the combination of professional and family life. The program concerns all the regions of the country, its budget amounts to 53 million E and benefits 9018 women mainly unemployed and irrespective of age.
3. The Center of Research on Issues of Equality (KETHI) starts on an immediate basis the implementation of «Actions of Counseling, Information, and support of Unemployed Women», of a total budget of 2350668 euros. This program which is of a 2 year duration (2005-2007) expects to benefit 2760 women that are threatened by unemployment and belong to socially vulnerable groups.
4. Actions in favor of women are implemented by the GGI and the KETHI as partners in Developmental Synergies of EQUAL II, with a budget of 571884 Euros.
5. the set up at the Ministry of Employment and Social Protection of a «Staff and Technical Group of Work Management» for the «Formulation of an Action Plan for the new frame for the strengthening of the Employability of Women», to which the GGI is an active participant.

PART-TIME EMPLOYMENT
The enhancement of the institutional framework for flexible forms of employment and the new law on the arrangement of the working hours (Law 3385/2005) are expected to bring favourable changes in the labour market for the enterprises, as well as the workforce. The promotion of flexibility, with a parallel preservation of the safety of employment, provide the necessary flexibility to the enterprises, so that they become more competitive and efficient in their undertakings, maintaining the jobs and creating the conditions to make more jobs.
The institutional entrenchment of the full-time, as well as the part-time employment in the Public Sector, of women and persons belonging to vulnerable groups (families having more than four children, persons with special needs, etc.) (Law 3250/2004) is further enhanced. Law 3250/2004 institutes part-time employment in the State, the local government organizations and the legal entities of public law, which are allowed to employ personnel, on private law work contracts of a fixed time, for a part-time employment, to cover needs aiming at rendering services of a social character (care at home, guarding school buildings etc.) to the citizens. The personnel which will be

employed comes from various social groups, such as unemployed mothers, long-term unemployed persons up to 30 years old, unemployed persons close to retirement etc.
At the same time, the existence of flexible forms of employment (full-time, partial-time and seasonal employment) gives the possibility to choose the most suitable, each time, labour relations, depending on the characteristics and the preferences of the workforce. Furthermore, the new law 3385/2005 for the promotion of the employment and the enhancement of the social cohesion, is expected to contribute considerably to the effort made by the Government, in order to increase employment. By the Law 3385/2005, the institution of the extra working hours is restored and their remuneration, as well as the remuneration of overtime, are rationalized. With regard to the arrangement of the working hours, the legal framework of operation of the institution is simplified and it is allowed to be put into practice, based on the real needs of the enterprises. In 2005, we had 238.637 contracts of part-time employment, 42.097 of rotational employment, 42.330 of work or provision of free-lance services and 666 of outwork production.

ACTIVE/PASSIVE MEASURES/YOUNG PERSONS-LONG TERM UNEMPLOYED
The Ministry of Employment applies, through the Organization for the Occupation of the Workforce, active employment policies, aiming at the higher activation of the population in the labour market and the achievement of higher employment rates and lower unemployment rates. More specifically, it materializes a series of programs, such as the New Jobs (NJ), Subsidy of Young Free-Lancers (SYFL) and the acquisition of labour experience (STAGE), which in many cases have specialized and targeted character, at a geographic (emphasis in the regions), thematic and population level. These programs are in progress and, during the years 2003-2005, there were materialized and continue to materialize actions of a total budget of 813,3 million of euros, with an expected of 126.731 benefited unemployed persons.
A central place in the active policies is held by the implementation of the individualized approach of all unemployed persons, with the help of the electronic recording of a “profile” of each one. It has to be noted that the number of individualized interventions amounted to 427.747, during the period from 1/1/2005 to 30/4/2006. Furthermore, the number of beneficiaries during 2005 amounted, for the first time, to 83.000. In the previous two years, a reduction of the rates of unemployment of the young persons and women was observed. Despite the steady progress achieved by our country in the reduction of the unemployment percentages of young persons and women our country will intensively continue its efforts in order to achieve the European targets in employment.
At the same time, the measures provided by Law 3227/2004 were activated to combat unemployment, by which the subsidized unemployed persons may be hired in jobs of full-time or part-time employment, for as long as the subsidy of the unemployment lasts and be remunerated according to the provisions that are in effect for the other workers of the same employer (Ministerial Decision 30874-23.6.2004). Law 3227/2004 aims at progressively replacing passive benefit policies, with active policies in favour of the employment. The remuneration of the employed or appointed person burdens the Organization for the Occupation of the Workforce, for the part of the unemployment benefit to which he/she is entitled and the employer, who has the responsibility of his/her insurance coverage, for the remaining part.
We promote policies based on the approach of the life cycle at work, through the materialization of special programs for the unemployed young persons, who offer the essential acquisition of labour experience. From January 2005 until March 2006, 15.000 young persons were benefited.
The Ministry of Employment facing with sensitivity the workers who lose suddenly their work or are affected by long-term unemployment, has instituted and provides, through the Organization for Workers' Housing and the Workers' FSocial Benefits Organisation (OEE), specific forms of aid to these beneficiaries. The aid takes the form of a subsidy of rent for long-term unemployed persons and those who became unemployed because of termination of the work contract. In 2005, 70.124 applications were

submitted. The amount of subsidy varies, depending on the family status of the applicant. An economic aid is also given to long-term unemployed persons, as well as those who are fired because of bankruptcy of the employer, through the Special Solidarity Fund which is operated by the Organization for Workers' Housing.
In addition, in the course of the following months the 14 Primary Committees of the Act 2643/1998 will proceed to the coverage –all over the country- of 1125 job vacancies in civil services, Legal Entities of Public Law, Local Self-Government Organisations by individuals protected by Act 2643/98. It is noted that by virtue of Article 1 of the Act 3454/2006 the protection of Act 2643/98 covers, under certain conditions, persons having families with 3 children.

EQUAL Community Initiative
The ministry of Employment and Social Protection, through the Special Administration Service for the Program of the Community Initiative EQUAL, has the responsibility to administer and monitor the Community Initiative in question. The EQUAL Initiative is included in the strategy of the European Union to create more and better jobs and to ensure the possibility for everyone to have access to these jobs. As an Initiative of the European Social Fund, EQUAL constitutes the learning basis for the discovery of new ways of achieving the political objectives of the European strategy for the employment and the procedure of social integration. The promotion of the social cohesion and the guarantee of a market without exclusions, which is attempted through the EQUAL Community Initiative, constitutes an essential element of the policies for the full-time employment, the quality and productivity of work.
Business Plan “Employment and Vocational Training 2000-2006
According to the results evident from the update of the interim evaluation of the Business Plan “Employment and Vocational Training”, which was based on the natural and economic progress of the Program, the total employment that was created until 30.6.2005 is estimated to be 154.700 man-years (of a corresponding 12-month duration). Based on the assumption that the Business Plan will be completed successfully and that it will absorb the total of the funds that have been allocated to it, it is expected that the total employment that will have been created until the end of 2008 will approximately amount to 245.420 man/years. The estimation for the year 2008 does not include the employment that was created during the application of certain measures and actions, because the primary stage of implementation of the innovative actions does not allow the conclusion of a precise estimate at present.
Concise description of the actions of the Organization for the Occupation of the Workforce for the period 2005-2006
The basic body materialising the active employment policies is the Organization for the Occupation of the Workforce, which is supervised by the Ministry of Employment and Social Protection.
The period 2005-2006 signals for the Organization for the Occupation of the Workforce the growth of a modern organisation focused:
- on the completion of the effort which started in the previous two years, for the modernization of the network of 119 employment structures and the organisational upgrade of the Organisation
- on the upgrade and enhancement of the strategic role of the Organisation in the labour market.

A. The basic actions in the same period were:
The upgrade of the Centres Promoting Employment (CPE). 6 new CPEs (Ilio, Moschato, Kastoria, Ionia and Neapoli of Thessaloniki, Neos Kosmos) were created, while more than 10 Technical Services (TY) were renovated.
The statistical monitoring of the labour market, through an IT system which connects the CPEs with the Observatory of Employment of the Organization for the Occupation of the Workforce. In the first phase, the characteristics of those seeking work are

monitored and analysed. Until the end of 2006 the Organisation activates itself in the continuous upgrade of the IT tools.
The quantitative and qualitative upgrade of personnel. The integration of more than 443 persons in the workforce of the CPEs, to support the existing Labour Advisers, has been completed. The Labour Advisers provide specialized services to the unemployed persons and the enterprises. The new services concern various forms of advisory work for the unemployed persons (Individualized Approach, as well as Constitution of Advisory Groups in Seeking Work, the Vocational Guidance and the Advisory Business Dexterity), as well as the co-operation with the enterprises to search for suitable vacancies. It is noted that the total personnel of the Public Employment Services (PES) is integrated in a continuous training procedure, which combines knowledge for the new services and the information technology.
The additional specialized services and products, which the Organisation adopted since 2005, aiming at the effective support of those seeking work, include:

- Constitution of Teams of Advisory Search for Work in the CPEs, the objective of which is to activate the persons seeking work in realizing the possibilities, the dexterities, the impossible points and their objectives and be provided (through an intensely structured program of “full-time employment”) with the suitable tools that will help them be incorporated in the labour market.
- Constitution of Teams of Vocational Guidance in the CPEs, the objective of which is to create short but complete programs of Advisory Intervention, by specialized Labour Advisers, for the unemployed persons that do not have a clear vocational target, do not know which profession corresponds to their vocational profile and, in general, to those who find it hard to make vocational choices and/or vocational planning.
- Constitution of Teams of Advisory Business Dexterity in the CPEs, the objective of which is to offer advisory services to unemployed persons, who wish to create their own business through the procedure of undertaking business initiatives. This dynamic procedure will allow the person concerned to progressively convert his/her idea to a business plan and, afterwards, a business with increased prospects of viability.

The labour Advisers were trained in these new services and already materialize them.
The procedures of Individualized Approach, which have been intensified. Indicatively, the number of individualized interventions for the years 2004 and 2005 varies as follows:

From 01/01 until 31/12/2004	252.312 persons seeking work
From 01/01 until 31/12/2005	320.906 persons seeking work

B. Targeting and materialisation of active employment measures
During the two years, 2005-2006, the Organization for the Occupation of the Workforce continues to materialize, at an already intensive pace, active employment measures to fight unemployment which, from 2005 and thereafter, are governed by the principles of innovation, quality and targeting in their planning and materialisation. Specifically, the active employment measures are upgraded as an integral tool supporting those seeking work, as their new orientation is focused on more targeted, to regions or groups of unemployed persons, programs.
These programs concern the subsidy of enterprises for the creation of New Jobs (NJ), the subsidy of Young Free-Lancers (YFL) and the Acquisition of Labour Experience (STAGE). More specifically, and only for the year 2006, more than 60.000 opportunities of employment to unemployed persons – persons seeking work, are expected to be given. The primary priority in the planning of active employment measures are the regional/local approaches, as well as the targeted actions, in particular for special population groups, with priority on those that are at a disadvantage in regards with the prospects to find work, such as, for example, the long-term unemployed young persons

or the women who attempt rehabilitation and the older persons, those seasonally occupied and the newcomers in the labour market.
The innovations in the field of promotion of the employment are intensified, with main points:

- The composition of more than one active employment measures, such as, for example, the planning and the materialization of Combined Programs of training and the employment/acquisition of labour experience and employment and/or part-time employment.
- The expansion and enhancement of the institution of Programmatic Contracts of Guaranteed Employment, which started being implemented on a pilot basis in 2005, with the co-operation of the Organization for the Occupation of the Workforce and the Commerce and Handicraft Chambers, individual enterprises and groups of similar enterprises, with encouraging results. This active employment measure effectively ensures the coupling of offer and demand of work and the stability of work, by guaranteeing, on the part of the Organization for the Occupation of the Workforce, suitable workforce for the vacancies of the enterprises, as well as through the commitment of the employer to provide guaranteed employment in the long term.

The course of materialization in the years 2005-2006, in numbers, is presented as follows:

Number of registered unemployed persons
2005

Average of registered unemployed persons	481.913
Average of persons seeking work	423.167

2006

Average of registered unemployed persons (first five months)	463.940
Average of persons seeking work (first five months)	387.739

Number of appointments in jobs (without a program)

From 1/1/2005 until 30/4/2006	41.788

Number of persons benefited through programs (NJ, YOUNG FREE-LANCERS, STAGE)

From 1/1/2005 until 31/3/2006	57.520

Number of persons benefited through programs of Special Social Groups (SSG)

From 1/1/2005 until 31/3/2006	4.950

Number of persons benefited from supporting services (Advisory, Vocational Guidance, Accompanying Support Services, etc.)

From 1/1/2005 until 31/3/2006	1.214

C. Details of the 2006-2007 Plan
The second phase of modernization of the Public Employment Services (PES) of the Organization for the Occupation of the Workforce includes the model of one-stop-shops, providing the total of services which the citizen may request locally. That is to say, apart from the services that were mentioned above and are focused in the preparation of the person seeking work in order to appoint him/her in a job, actions are included, such as the promotion of the subsidized unemployed persons to a job, as well as other services of allowances and benefits. Time horizon: December 2006. Quantitative objective: 119 one-stop-shops.

The integrated information system of the Organization for the Occupation of the Workforce (IIS), which is under development, will include applications for the total of activities, this resulting to the possibility of detailed monitoring of the labour market (with regard to unemployed persons, enterprises, employments/lay-offs, active policies, policies for benefits etc.). The possibility of primary statistical analysis will constitute an essential tool for the materialization of our strategic objective, which concerns the "upgrade of the intermediary role of the Organization for the Occupation of the Workforce". Time horizon for the completion of the IIS: December 2007.

D. Special programs for unemployed women - young persons
In the context of targeted programs materialized by the Organization for the Occupation of the Workforce, young persons and, more specifically, newcomer in the labour market unemployed persons, as well as women, have benefited. In particular, the integration of young persons in programs that include labour experience and, on a per case basis, combine integration in employment measures, is included in the programs materialized by the Organization for the Occupation of the Workforce and, specifically, have benefited:

From 1/1/2005 until 31/3/2006	15.000 persons

The participation of women is additionally promoted through increased motives in the remaining programs of the Organisation. 60% of those participating are women while, in certain types of programs, such as the creation of a free-lance activity, the participation of women exceeds 60%.
Moreover, a special program of full intervention has been drawn to the benefit of women, which combines advisory services for the integration in the labour market, with the acquisition of labour experience or with the creation of jobs or with the beginning of free-lance activity. Through the above activities are benefited:

From 1/1/2005 until 31/3/2006	In national programs: 35.000 women In the full intervention: 1.500 women

E. Special programs for older persons
Programs have been materialized and continue to be materialized for the creation of new jobs, so that categories of unemployed persons close to the pension age are employed. For the integration of these persons, more favourable motives are provided (higher daily subsidy). Specifically, they were benefited:

From 1/1/2005 until 31/3/2006	2.480 persons

"

16. The Committee invited Greece to bring the situation into conformity with Article 1§1 of the Charter.

1§1 NETHERLANDS (Netherlands Antilles)
"The Committee concludes that the situation in the Netherlands concerning the Netherlands Antilles is not in conformity with Article 1§1 of the Charter as the employment policy efforts are inadequate in the light of the prevailing employment situation."

17. The Netherlands (Netherlands Antilles) delegate indicated that the Netherlands Antilles participates in the Caribbean Employment Forum organised by the International Labour Organisation. National Employment report has been prepared for this occasion which deals with important employment issues such as the change in employment relationships, promotion of vocational training, impact of the Direct Investment on employment etc. The report draws several recommendations, such as

the necessity of legislative amendments in the employment field and the promotion of tripartite meetings.

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

1§1 POLAND

"The Committee concludes that the situation in Poland is not in conformity with Article 1§1 of the Social Charter on the grounds of the inadequacy of the efforts undertaken to fight unemployment."

19. The Polish delegate stated that the difficult employment situation in Poland has necessitated important structural reforms which are now being implemented. However, given the short period of time since this reforms have started, the unemployment rate still remains high. Generally structural reforms of this scale take long time. Importantly, the public funds devoted to the labour market have doubled with a number of new employment programmes underway which have resulted in a doubling of the participation rate. The Polish Government is fully in line with implementation of Lisbon Objectives by means of sustaining economic growth and reducing unemployment. At the end of 2006 unemployment is expected to reach 16.9%.

The Polish report supplied detailed information on the labour market situation, various measures introduced under the employment policy and figures showing:

- unemployed persons' participation in training and the success rates achieved
- Labour Fund expenditure

It showed that Labour Fund expenditure on training for the unemployed doubled between 2002 and 2003 and increased further in 2004, and that the number of persons attending training courses and participation rates in such courses also doubled:

- spending on vocational training rose from 50.8 million złoty (PLN) in 2002 to PLN 113.9 million in 2003 (PLN 181.8 million in 2005),
- Labour Fund expenditure on active employment measures rose from PLN 539.4 million in 2002 to PLN 1 357 million in 2003 (PLN 1 905.3 million in 2005),
- as a proportion of total Fund expenditure, spending on active employment measures rose from 5.4% in 2002 to 12.8% in 2003 (34.3% in 2005).

To ask for even greater increases is somewhat unrealistic.

Since 2003, the labour market situation has been getting better. The unemployment rate has started to fall.

Registered unemployment

2002	20
2003	20
2004	18.5
2005	19.1
2006	16.9

Article 1§1 requires states to introduce policies aimed at achieving as high a level of employment as possible The figures show that the government has made considerable efforts in this direction.

This information can be updated as follows:

The 2005-2008 national reform plan offers a framework for implementing the European Union's Lisbon Strategy. It incorporates employment objectives into economic policy. The national reform plan was approved by the Council of Ministers in December 2005.

The main aim is to foster rapid economic growth, as a basis for creating new jobs. This will be achieved by removing barriers to the development of an enterprise culture, improving infrastructure and the functioning of public institutions and reducing taxes on economic activity.

In 2006, the government undertook an assessment of labour legislation with a view to amending the law on employment promotion and employment agencies and institutions. More stress will be laid on active labour market policies and creating the right conditions for the effective use of the relevant financial resources. The draft legislation will be ready by the end of 2006."

20. The Portuguese delegate agreed that attaining 'full employment' is an objective which takes long time to realise and perhaps the Polish case could be treated with more patience.

21. While the Committee welcomes the positive developments in the Polish labour market, it observes that the situation is still of concern and therefore urges the Government to step up its efforts and increase active policy measures to overcome the high unemployment rate. In the meantime, it decides to await the next assessment of the ECSR.

1§1 SLOVAK REPUBLIC

"The Committee concludes that the situation in Slovakia is not in conformity with Article 1§1 of the Charter on the grounds that there is a high level of unemployment and a very high level of long-term unemployment and insufficient measures have been taken to address the problem."

22. The Slovak delegate informed the Committee of recent positive developments in the employment sector which now closely focus on unemployment programmes with a special emphasis on long-term unemployment. The new programmes aim at increasing the employment rate and enhancing social inclusion.

23. The Committee observes that the unemployment rate was still very high in the reference period and welcomes the decrease of 2 percentage points in 2005.

24. While the Committee welcomes these positive developments, it observes that the situation is still of concern and therefore urges the Government to step up its efforts and increase active policy measures to overcome the high unemployment and long-term unemployment rates. It invites the Government to bring the situation into conformity with Article 1§1 of the Charter. In the meantime, it decides to await the next assessment of the ECSR.

1§1 TURKEY

"The Committee concludes that the situation in Turkey is not in conformity with Article 1§1 of the Charter on the grounds that the Committee is unable to assess whether adequate efforts to increase employment and fight unemployment have been undertaken by the Government."

25. The Turkish delegate informed the Committee of new developments regarding the employment situation and of the Turkish Government's commitment to fighting unemployment.

26. The President recalled that the ground for non-conformity was the low activation rate and also the fact that previous reports did not provide enough information on public expenditure on active and passive labour policy measures.

27. The Belgian, Dutch and Portuguese delegates as well as the ETUC representative reiterated the need for more information and asked that the next report provide the missing data.

28. The Committee took note of the information provided by the Turkish delegate and expressed its concern about the situation and urged the Government to intensify efforts and provide reliable figures to the ECSR on public expenditure on active and passive labour policy measures. In the meantime, it decides to await the next assessment of the ECSR.

Article 1§2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

1§2 AUSTRIA

"The Committee concludes that the situation in Austria is not in conformity with Article 1§2 of the Charter on the grounds that Article 8§2 of the Aliens Employment Act requires an employer when making job cuts to make foreign workers redundant first, which amounts to discrimination prohibited by the Charter. »

29. The Austrian delegate informed the Committee that draft legislation to repeal the offending provisions, which were not applied in practice ("dead law") had been put before Parliament. The Parliament had not accepted a full repeal, but the scope of the provisions had been restricted to cover only non-EU/EEA nationals in connection with their initial access to the labour market and for a maximum period of one year. The delegate indicated that detailed information on this point would be included in the next report.

30. The Committee took note of the developments and decided to await the next assessment of the ECSR.

1§2 BELGIUM

"The Committee concludes that the situation in Belgium is not in conformity with Article 1§2 of the Charter on the grounds that the merchant navy disciplinary and criminal code still makes provision for penal sanctions for disciplinary offences, and which therefore may give rise to compulsory labour even where the security of a ship or the lives or health of the people on board are not at risk."

31. The Belgian delegate informed the Committee that draft legislation to repeal the provisions which the ECSR had found not to be in conformity with the Charter had been submitted to Parliament on 2 February 2006 and had been adopted by the

Chamber of Representatives on 16 March 2006. As the Senate had decided not to discuss the draft legislation it was now awaiting signature by the King and subsequent publication in the official journal (Moniteur belge).

32. The delegate stated that her Government was of the view that the new law would bring the situation into conformity with the Charter.

33. The Committee welcomed this positive development and decided to await the next assessment of the ECSR.

1§2 CZECH REPUBLIC

"The Committee concludes that the situation in the Czech Republic is not in conformity with Article 1§2 of the Charter on the ground that compensation in sex discrimination cases where the victim does not wish to be reinstated is limited."

First ground of non-conformity (for the first time)

34. The Czech delegate provided the following information in writing:

> "This is the first time negative conclusion regarding Art. 1 par. 2. However, the ground for non-conformity is the same as in Art. 4 par. 3 and Art. 1 of the Additional Protocol.
>
> As stated in previous cases (for details see report from the 110th meeting), there was a misinterpretation of the relevant provisions of the Labour Code (since Art. 61 and Art. 7 par. 4 are separate claims). In previous cases 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. Since the last Czech report was submitted in June 2005, detailed information could not be provided yet.
>
> The Czech Republic would like to express its doubts about the effectiveness of assessing the same issue under three different articles of the Charter. Assessing the level of compensation under "the right of the worker to earn his living in an occupation freely entered upon" and at the same time under "the right of men an women workers to equal pay for work of equal value" and "the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex", seems inadequate."

35. 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.

1§2 DENMARK

"The Committee concludes that the situation in Denmark is not in conformity with Article 1§2 of the Charter on the grounds that there are limits to the amount of compensation that may be awarded in the event of dismissal for putting forward a claim for equal treatment."

First ground of non-conformity (for the first time)

36. The Danish delegate provided the following information in writing:

> "Denmark has no longer an upper limit to compensation in certain cases, neither in the event of dismissal for having put forward a claim for equal treatment nor in the event of dismissal on the grounds of pregnancy, maternity leave, and adoption.

Recently, Denmark implemented Council Directive 2002/73/EC of 23 September 2002 in Act No 1385 of 21 December 2005. This Act contains provisions removing all upper limits to compensation."

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.

1§2 GREECE

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

- non EU nationals are prohibited from access to a very wide range of posts in the civil service and public administration; and
- the length of alternative military service remains excessive."

First ground of non-conformity

38. The Greek delegate highlighted the recent amendments made to the law concerning conscientious objection and alternative service including a reduction in the length of alternative service. However he also stated that the nature of alternative service and the conditions under which it was performed was such so as to justify a longer length of service.

39. Several delegates and the representative of the ETUC sought clarification as to whether this was new information or whether this information had been available to the ECSR.

40. It was confirmed that this information had been available to the ECSR at the time of their assessment and the critical point remained that alternative service remained twice as long as regular military service.

41. The Committee urged the Greek Government to bring the situation into conformity with Article 1§2 of the Charter.

Second ground of non-conformity

42. The Greek delegate suggested that the ECSR had not a clear picture of the situation. The expert of the Ministry of Interior outlined the legislation governing the employment of foreigners in the Greek public service.

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

1§2 HUNGARY

"The Committee concludes that the situation in Hungary is not in conformity with Article 1§2 of the Charter on the grounds that all posts in the civil service are reserved for nationals or nationals of member states belonging to the European Economic Area."

44. The Hungarian delegate informed the Committee that certain progress had been made in 2004, since access to civil service employment was now open for all nationals of the EU/EEA area. In addition, an inter-ministerial commission had been established to examine the conclusion of non-conformity of the ECSR and the possibilities of remedying the problem.

45. The ETUC representative asked when the inter-ministerial commission would have completed its work.

46. The Hungarian delegate could not indicate a precise time-frame, but detailed information on the commission's work would be included in the next report.

47. The Dutch delegate reminded the Committee that the Charter's protection extends beyond the EU/EEA area and the Hungarian Government should have been able to take this into account when they changed the scope of persons who could become civil servants.

48. The Committee took note of the developments and urged the Government to bring the situation into conformity with Article 1§2 of the Charter. In the meantime, it decides to await the next assessment of the ECSR.

1§2 ICELAND

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

- legislation prohibiting discrimination in employment on grounds other than sex is inadequate; and
- certain occupations (primary school teaching posts, posts involving pharmacists and occupations involving the operation of an industrial, craft or factory facility) which are not inherently connected with the protection of the public interest or national security and do not involve the exercise of public authority and therefore are not covered by Article 31 of the Charter are restricted to Icelandic nationals or EAA nationals."

Grounds of non-conformity (for the first time)

49. The Icelandic delegate provided the following information in writing:

"First Ground

The Icelandic Government has assign the Minister of Social Affairs to establish an committee with representatives from the social partners and the Government to examine the contents of the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and the Council Directive 2000/43/EC implementing the principle of equal treatment between person irrespective of racial or ethnic origin in the light of the situation on the Icelandic labour market. The committee will begin its work this summer. The Ministry of Social Affairs will inform the committee of the conclusions of the ECSR.

The Minister of Social Affairs will also entrust a task committee, to include representatives of the government and the organisations of the social partners, to examine the position of foreign nationals on the Icelandic labour market.

The aim of this examination is to assess the position of foreign nationals working in Iceland, including those working under the provisions of the EEA Agreement on the right to provide services. Amongst other things, attention will be given to the question of whether there is a need to strengthen the existing labour market structure so as to ensure that foreign workers will enjoy the rights and terms applying on the domestic labour market. It will also be expected to make proposals to the Minister of Social Affairs on how to improve procedure within the administrative system so as to ensure that foreign nationals will reside and work in Iceland in accordance with the law and that reliable data is available on foreign nationals working in the country. The committee will also investigate methods available to expand the flow of information and

assistance available to foreign workers in Iceland. The task committee is to submit its report and proposals to the minister by 1 November 2006.

Second Ground

The Ministry of Social Affairs has taken notice of the ECSR's conclusions concerning the restriction that certain occupations, such as operation licences for pharmacists, the position of a teacher or school principle in a primary school and licences for the operation of an industrial, craft or factory facility, are restricted to Icelandic nationals or EEA nationals go beyond those permitted by Article 31 of the Social Charter in that it cannot be stated that all these occupations are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

The Ministry will have a consultation with the ministries concerned in order to look into the matter and will give more information in its next report to the ECSR."

50. The Committee invited Iceland to bring the situation into conformity with Article 1§2 of the Charter.

1§2 NETHERLANDS (Aruba)

"The Committee concludes that the situation in the Netherlands's is not in conformity with Article 1§2 of the Charter in regard to Aruba on the grounds that legal guarantee of protection against discrimination in employment is inadequate."

51. The delegate from the Netherlands (Aruba) acknowledged that the situation the island regarding protection against discrimination was not in conformity with Article 1§2 of the charter. A tripartite committee has been established on the island in order to modernize the Labour Code, but the Committee had not finished its work. The tripartite Committee will take into account the ECSR's conclusions under Article 1§2 of the Charter in order to ensure its recommendations are in accordance with the requirements of the Charter.

52. The Swedish and Portuguese delegates urged the authorities to speed up the process and give priority to the implementation of the Charter.

53. The Committee welcomed the will of the Government to bring the situation into conformity with Article 1§2 of the Charter and urged the Government to accelerate the procedure. It decided to await the next assessment of the ESCR.

1§2 NETHERLANDS (Netherlands Antilles)

"The Committee concludes that the situation in the Netherlands concerning the Netherlands Antilles is not in conformity with Article 1§2 of the Charter on the grounds that the legal framework prohibiting discrimination in employment is insufficient."

54. The delegate from the Netherlands (Netherlands Antilles) informed the Committee that an Ordinance on Equal Treatment had been prepared and would shortly be sent to Parliament. The Ordinance provides for protection against discrimination on certain grounds, provides for an alleviation of the burden of proof in discrimination cases and provides for protection against reprisals.

55. The Committee welcomed the developments and decided to await the next assessment of the ECSR.

1§2 POLAND

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

- foreigners, nationals of other states parties to the Charter and revised Charter wishing to practice medicine in Poland need the authorization of the National Chamber of Physicians which is discretionary;
- driving test examiners must be Polish nationals.""

First ground of non-conformity

56. The Polish delegate stated that the work underway to amend the relevant legislation is taking longer than expected. Draft legislation pertaining to medical doctors had been prepared and scheduled for the end of 2005. It has been decided to incorporate the amendment into the so-called 'horizontal' act. New horizontal draft legislation is currently before the Council of Ministers for approval and it could possibly be adopted by Parliament before the end of the year.

57. The Committee took note of the information provided. While regretting the delays which had occurred it urged the Government to bring the situation into conformity with Article 1§2 of the Charter as soon as possible. In the meantime, it decides to await the next assessment of the ECSR.

Second ground of non-conformity (for the first time)

58. The Polish delegate provided the following information in writing:

> "Driving test examiners
> Under amendments to the Highway Code Act dated 20 April 2004, as of 1 May 2004 Polish nationality has ceased to be a condition for the post of driving test examiner."

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

1§2 TURKEY

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

- compensation for discrimination in employment is limited to four months wages;
- certain categories of employment are limited to Turkish Nationals;
- section 1467 of the Code of Commerce permits a ship's captain to use force to look after the ship and maintain discipline.
- certain provisions of the Martial Law No. 1402/1971 as amended by Act No.4045/1994 (Section 2) and Act No. 23935/1983 permit the suspension or transfer of civil servants or local government employees on the grounds that their employment is a danger to security in general, law and order or public safety or that their work is not necessary going beyond that permitted by Article 31 of the Charter."

First ground of non-conformity (for the first time)

60. The Turkish delegate provided the following information in writing:

> "The 12th report of Turkey provides information with regard to the compensation for termination based on invalid grounds. In the report, information supplied in this subject was summarized. To understand the situation in Turkey with regard to the Article 1.2 of European Social Charter, the whole text of the related provision No.21 in Turkish Labour Law and the other mentioned Trade Union Act's related provision No.31 and

also Penal Code related provisions 122 and 105 are given below. By this way, the situation in Turkey with regard to Article 1.2 of the Charter can be much more understandable. It is clear that there is no strictly limitation for compensation for termination based on invalid grounds, including discrimination in employment.

Turkish Labour Law No.4857
Consequences of termination based on invalid grounds

ARTICLE 21. – In case the employer does not assert a valid reason or the court or special arbitrator decides that the asserted reason is not valid and the termination is decided to be ineffective, the employer is obliged to employ the worker within one month. If the employer does not employ the worker within one month upon his/her application, the employer becomes liable to pay an indemnity equal to minimum four and maximum eight months' wage to the worker.

When the court or special arbitrator decides that the termination is invalid, they also determine the amount of indemnity payable in case the worker is not employed.
The worker is paid the wages and other benefits that have accrued during maximum four months for the period that he/she has not been employed until the finalization of award.

If the worker is employed, the wage and seniority indemnity paid in advance for the notification period is deducted from the payment to be made under the provisions of the above paragraph. If the worker who is not employed is not granted a notification period or the wage pertaining to the notification period is not paid in advance, the amount of wage pertaining to such periods is paid separately.

The worker is obliged to apply to the employer for starting work within ten business days from the service of the finalized court award or special arbitrator decision. If the worker does not apply within such period, termination by the employer is considered a valid termination and the employer is responsible only for the legal consequences thereof.

The provisions of first, second and third paragraphs of this article can not be amended through contracts; contradicting contract provisions are ineffective."

'Trade Union Act
Guarantee of membership status:

Article 31. The recruitment of workers shall not be made subject to any condition as to their membership of a trade union, or obliging them to join or refrain from joining a given trade union or to remain a member of or resign from a given trade union.

No conditions contrary to the above shall be contained in any contract of employment or collective labour agreement.

It shall be unlawful for an employer to make any discrimination between workers who are members of a trade union and those who are not, or those who are members of another trade union, with respect to recruitment, arrangement and distribution of work, promotion, wages, bonuses, premiums, social and fringe benefits, discipline rules or provisions respecting other questions, including termination of employment.

The provisions of the collective labour agreement with respect to wages, bonuses, premiums and social and fringe benefits shall be excepted.

No worker shall be dismissed on account of his participation in the activities if trade unions or confederations outside his working hours, or during hours of work with the employer's permission, and no worker shall be subject to discrimination for any reason.

If an employer fails to observe the provisions of the third and fifth paragraphs, he shall be liable to pay compensation which shall be not less than the worker's annual wage. The worker shall retain all the rights conferred on him by the labour legislation and other enactments. However, where compensation has been granted by virtue of this paragraph, the compensation provided in the labour legislation for lack of good faith shall not be applicable.'

According to the above mentioned provisions, compensation for discrimination in employment is not limited to four months wages. If the employer violates the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up his (her) four months' wages plus other claims of which he (she) has been deprived. Article 31 of the Trade Unions Act is reserved.

PENAL CODE :
Penal Code contains provisions regarding discrimination:

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

a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,

b) withholds foodstuffs or refuses to provide a service supplied to the public,

c) 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 judicial fine (Art. 122)

Penal Code contains provisions regarding sexual assault:

Where a person is abused sexually, the perpetrator shall be sentenced to imprisonment for a term of three months to two years or imposed a fine.

In cases where these acts are committed by abusing the influential position gained through hierarchy, service providing, provision of training or education, interfamily relations or by taking advantage of working in the same place, the penalty above shall be increased by half. If the victim has been forced to quit his/her job, school or leave his/her family, the penalty cannot be less than one year (Art. 105)."

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.

Second ground of non-conformity

62. The Turkish delegate said that Section 25 of the Labour Law had been amended to provide access to certain occupations, including doctors and opticians, for foreign nationals. However despite this positive development, several categories of employment were still reserved for Turkish nationals.

63. The Portuguese delegate asked what time-frame the Government had in mind for bringing this serious situation into conformity.

64. The Turkish delegate could not indicate a time-frame at this stage.

65. Several delegates (Bulgaria, the Netherlands, Portugal) as well as the ETUC representative considered that a strong message to the Turkish Government was called for.

66. The Committee invited the Government to provide all relevant information and urged the Government to intensify its efforts in bringing the situation into conformity with Article 1§2 of the Charter. In the meantime, it decides to await the next assessment of the ECSR.

Third ground of non-conformity

67. The Turkish delegate stated that new draft legislation to amend the Code of Commerce was currently pending before the Parliament, but she could not say when it could be expected to be passed.

68. The Committee took note of the information provided and urged the Government to bring the situation into conformity with Article 1§2 of the Charter as soon as possible. In the meantime, it decides to await the next assessment of the ECSR.

Fourth ground of non-conformity

69. As regards the Martial Law, the Turkish delegate said that following an amendment to the law an appeal was now possible in case of suspension or transfer of civil servants or local government employees. She further referred to a number of international human rights treaties ratified by Turkey recently, emphasising her Government's commitment to respect human rights.

70. The Dutch delegate and the ETUC representative noted that suspensions or transfers of civil servants or local government employees are still possible and considered that a warning would be appropriate in this case.

71. The Committee proceeded to vote on a warning which was adopted with 19 votes in favour, 2 against and 10 abstentions.

Article 1§3 – Free placement services

1§3 BELGIUM

"The Committee concludes that the situation in Belgium is not in conformity with Article 1§3 of the Charter on the grounds that it is not able to assess whether the right to free employment services is effectively guaranteed in all regions."

First ground of non conformity (for the first time)

72. The Belgian delegate provided the following information in writing:

"Belgium was criticised for failing to provide information on:
- the number of vacancies notified to the employment services,
- the number of placements made by them,
- the market share of public employment services.

The number of vacancies notified to the VDAB (Flemish employment service) between 1999 and 2004 appeared in the addendum to the report in item 2.3 under Article 1§1.

The number of vacancies notified to the FOREM (Walloon region) between 1999 and 2004 appeared in the addendum, under Article 1§3.

The number of placements made by the VDAB appeared in the addendum (figure 3) as did the number of contacts with undertakings (figure 4).

The number of placements made by the FOREM appeared in the addendum.

Public employment services' share of total placements was not currently available in Belgium.

The VDAB and the FOREM were now looking at the possibility of collecting this information."

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.

1§3 TURKEY

"The Committee concludes that the situation in Turkey was not in conformity with Article 1§3 of the Charter during the reference period on the grounds that the placement services were not free for the employers."

74. The Turkish delegate informed the Committee that on 3 January 2005 the fee that employers paid for notification of vacancies to the employment service was abolished.

75. The Committee welcomed this positive development and decided to await the next assessment of the ECSR.

Article 5 – Rights to organise

5 AUSTRIA

"The Committee maintains its conclusion of non-conformity because foreigners could not stand during the reference period for election to works councils unless they had the nationality of a member state of the European Union or a state party to the European Economic Area Agreement."

76. The Austrian delegate said that the legal situation had changed with the entry into force, on 14 January 2006, of legislation allowing all foreigners to be elected to works councils.

77. The ETUC representative shared the congratulations expressed by the Dutch delegate and he hoped that the very extensive way of amending the Austrian legislation would serve as an example for all other delegates confronted with the same situation in their respective countries.

78. The Committee noted the positive developments announced and decided to await the next assessment of the ECSR.

5 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 5 of the Charter for the following reasons:

– closed shop clauses are permitted in national law;
– the legislation on the International Shipping Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seamen resident in Denmark."

First ground of non-conformity

79. The Danish delegate informed the Committee that following the judgment of the European Court of Human Rights in the Sorensen and Rasmussen cases in January 2006 a bill prohibiting claused shop clauses had been submitted to the Danish Parliament. The bill had been passed on 20 April 2006 and the new law entered into force on 24 April 2006. The Government considered that the situation was thereby brought into conformity with the Charter.

80. The Committee welcomed this positive development and decided to await the next assessment of the ECSR.

Second ground of non-conformity

81. The Danish delegate referred to her statement with regard to Article 6§2.

82. The Committee referred to its decision with regard to Article 6§2.

5 ICELAND

"The Committee concludes that the situation is not in conformity with Article 5 of the Charter on the ground that it is not able to assess whether negative freedom of association is fully protected."

83. The Icelandic delegate said Article 74§2 of the Icelandic Constitution specifically established a right not to join a trade union. Efforts had been made to abolish the union closed shop clauses in collective agreements. A Parliamentary Committee discussed the situation regarding priority clauses when amending the Constitution in 1995, but this was an issue that went back a long way and was difficult to change. The Icelandic Government wished to bring the situation into conformity with the Charter but this would have an impact on the labour market. The Icelandic delegate hoped that the social partners would reach agreement on abandoning collective agreements with closed shop clauses, without any state intervention. At all events, these clauses were not applied in practice. There had been no new jurisdictional decision on the subject since 2001.

84. The ETUC representative confirmed the situation and considered that there were sufficient safeguards to protect trade unions and employees. Moreover there was no cases had been brought before the courts.

85. However, several delegates (Netherlands and Portugal) noted that there were still closed shop practices in Iceland and that for this reason the ICSR considered the situation was therefore not in conformity with the Charter.

86. The Committee asked the Government to continue the examination of the matter and to supply any jurisdictional decisions. It agreed to examine the issue at a next meeting,

5 LUXEMBOURG

"The Committee concludes that the situation in Luxembourg is not in conformity with Article 5 of the Charter since national law does not permit trade unions to freely choose their candidates in joint works council elections, regardless of their nationality."

87. The Luxembourg delegate pointed out that elections to works councils were held every five years and that to be eligible, candidates with a non-Community permit had to have worked in the undertaking for at least one year without interruption on the day of the election. The Government's intention was to reduce the number of non-Community nationals with a work permit to one third of the delegates so as to make delegations more stable and reduce the numerous fluctuations in the membership.

88. The French delegate asked for confirmation that this applied only to non-Community nationals with a type A work permit.

89. The Luxembourg delegate confirmed that this was the case. He explained that type A work permits were valid for one year, during which holders were not allowed to change employers. After this, a type B permit was issued. Type B permits were valid for four years and entitled holders to change employers. There was no time limit on type C permits.

90. The Portuguese and Swedish delegates noted that there were restrictions on holders of type A permits for works council elections and proposed that the Luxembourg Government should be asked to give the technical reasons for the restriction.

91. The representative of the ETUC asked if the ECSR was aware of the difference between type A, B and C permits.

92. The Secretariat said that there was no specific reference to or explanation about type A permits in the report.

93. The Luxembourg delegate said that the Government would provide information on the subject in the next report.

94. The Committee asked the Luxembourg Government to give a precise description of the technical details of work permits in the next report so as to avoid any further misunderstanding in the future.

5 POLAND

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

– the Act on the Civil Service prevents public officials from performing trade union functions;
– pursuant to the Internal Security Agency Act members of the Agency do not have the right to organise;
– retired persons, home workers and unemployed persons do not have the right to form independent trade unions."

First ground of non-conformity

95. The Polish delegate said that the proposed revision of the 1998 Civil Service Act had not been approved by the Council of Ministers' Standing Committee. A new draft amendment to the Act was scheduled, and would be examined by the Council of Ministers in June 2006.

96. The Netherlands delegate said that this development did not imply any change in the situation and proposed that a warning be issued to the Polish Government.

97. The Belgian delegate referred to the efforts made in this field.

98. The ETUC representative said that discussions were under way and that efforts had been made, and took note of the changes.

99. The Committee noted the information supplied and asked the Government to increase its efforts to bring the situation into conformity with Article 5 of the Charter as soon as possible.

Second ground of non-conformity (for the first time)

100. The Polish delegate provided the following information in writing:

> "Officials of the Internal Security Agency
> The Polish Government considers that the provisions governing the employment conditions of officials of the Internal Security Agency, including their right of association, are in line with the Charter.
> The duties carried out by these officials and in particular their important contribution to protecting national security justifies the removal of their right to organise, in accordance with Article 31 of the Charter.
> The following restrictions are placed on officials of the Internal Security Agency:
> – a ban on membership of political parties and trade unions;
> – an obligation to inform their superiors of their membership of any other national associations;
> – a requirement to obtain the written authorisation of the Head of the Internal Security Agency before becoming a member of any international association.
> The Agency has specific responsibility for identifying, preventing and eliminating threats to Poland's territorial integrity and its national defence capacity and analysing information on threats to vital national interests.
> The detailed list of its duties are as follows:
> – identifying, preventing and eliminating threats to the country's internal security and its legal system, in particular its sovereignty and international position, its independence and territorial integrity and its capacity to defend its frontiers;
> – uncovering and preventing the following offences:
> - espionage, terrorism, breach of the rules governing the disclosure of classified secret information and other offences against the country's internal security or its economic interests,
> - corruption of persons performing public duties and responsibilities, as specified in Sections 1 and 2 of the Act of 21 August 1997 restricting the right of public officials to engage in business activity if this might pose a threat to the country's internal security,
> - producing and distributing goods and providing access to technologies and services with strategic implications for the country's internal security,

- producing, keeping and distributing internationally weapons, ammunition and explosives, weapons of mass destruction, narcotic drugs and psychotropic substances, and prosecuting the perpetrators of these offences,
- undertaking duties to protect the state and to protect confidential and classified secret information in the international relations context;
- obtaining, analysing and processing information that could be critical to protecting the country's internal security and its legal system, and passing it on to the relevant bodies;
- undertaking other duties laid down in specific legislation and international agreements.

The officials concerned are subject to internal disciplinary rules, the need for which is obvious given the secret nature of their duties.

All personal data that might serve to identify these officials are classified as highly secret. Clearly, one of the consequences of trade union membership would be to reveal their identity.

Officials of the Agency perform their duties as part of armed units and have the same rights and prerogatives as the police when carrying them out. However, whereas the police took action against all offenders, the agency was only concerned with the most serious offences that posed a threat to national security.

The criteria in Article 31 for determining whether the right to organise might be restricted or even removed are satisfied in the case of Agency officials.

In conclusion, the national government is best placed to decide how far the employment status of officials of institutions such as the Internal Security Agency call for special provisions."

101. 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

102. The Polish delegate said that the persons concerned were free to constitute organisations in a form that satisfied their interests, but these could not be trade unions. At the forum of trade unions it had been ruled that trade unions represented workers, so organisations of the unemployed and retired persons must take a different form. Home workers had made no claims to be able to form trade unions.

Poland confirms its interpretation of this Charter provision, which it described in the previous supervision cycle. However, there is an important argument to add. Article 5 refers to the right to form local, national or international organisations for the protection of economic and social interests. It is reasonable to ask whether this article implies that, in the case of workers, the only acceptable form of organisation is a trade union. The Polish government believes that Article 5 requires national legislation to safeguard their right to establish organisations to defend their interests in whatever form is most appropriate.

Polish legislation, in particular the laws on trade unions, on associations and on foundations, establish suitable conditions for the establishment of organisations of various sorts. As a result, those concerned by the negative conclusion of the committee of independent experts – unemployed and retired persons and home workers – are quite free to form organisations to represent their interests in an appropriate form.

The ministry has consulted trade unions that have been recognised as representative. These have expressed doubts about granting trade union status to bodies representing the retired or unemployed, because of the potentially negative effects for the trade union movement in general."

103. The delegates of Sweden, Bulgaria and France as well as the ETUC representative thought the situation strange, in that Poland was being criticised for not allowing unemployed and retired persons to form trade unions whereas these same groups could remain members of the trade unions to which they had belonged when they had been working. They questioned the need to establish parallel organisations. Besides, unemployment was a temporary situation, in which unemployed persons were expected to return to work and rejoin a trade union.

104. The French delegate thought that home workers were a separate category who should not be linked to unemployed and retired persons.

105. The Committee discussed this issue in considerable detail and noted of the practical difficulties of establishing trade unions for the groups concerned. It asked the ECSR to clarify its case law on this matter.

5 UNITED KINGDOM

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

– Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992 which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court and Section 65 of the 1992 Act which severely restricts the grounds on which a trade union might lawfully discipline members represent unjustified incursions into the autonomy of trade unions;
– Section 174 of the 1992 Act, as amended by Sections 33 and 34 of the Employment Relations Act 2004 which entitles to exclude members for reasons linked exclusively or mainly to the fact that they have taken part in the activities of a political party and not because they were affiliated to the party, constitutes an excessive interference by the law with trade union membership conditions."

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

106. The United Kingdom delegate said that it was his Government's firm belief that Section 15 encourages union officials to act responsibly and prudently and by deterring reckless and unlawful behaviour by union officials, union funds are safeguarded. As regards the disciplining of union members, the delegate stated that the law does provide considerable scope for unions to discipline their members and the Government did consider the rules in this respect excessively restrictive.

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

108. The Irish delegate accepted the explanation of the United Kingdom and saw no need to take any measures.

109. The Bulgarian delegate reminded the Committee that the Recommendation previously issued to the United Kingdom still applies and he felt that a strong message would be sufficient in this case.

110. The Committee invited the Government to intensify its efforts to bring the situation into conformity with the Charter bearing in mind the importance of Article 5 and the Recommendation previously addressed to the United Kingdom.

Second ground of non-conformity

111. The United Kingdom delegate informed the Committee that Section 174 of the Employment Relations Act 2004 had been amended so as to provide greater freedom to trade unions to exclude or expel political activists. According to the delegate this measure had received the support of the trade unions who had been consulted on the drafting of the new provisions.

112. The ETUC representative considered that in view of the repeated conclusions of non-conformity voting on a recommendation might be appropriate.

113. The President pointed out that this was first conclusion of non-conformity following the amendment of Section 174.

114. The Committee took note of the legislative development which had occurred and urged the Government to bring the situation into conformity with Article 5 of the Charter.

Article 6§1 – Joint consultation

6§1 MALTA

"The Committee concludes that the situation in Malta is not in conformity with Article 6§1 of the Charter on the ground that it is not able to assess whether adequate joint consultation between employees and employers exists at the enterprise level and whether measures are in place to promote adequate consultation at the enterprise level."

Ground of non-conformity (for the first time)

115. The Maltese delegate provided the following information in writing:

> "In 2006, the Employee (Information and Consultation) Regulations (Legal Notice 10 of 2006) was issued by virtue of the Employment and Industrial Relations Act. These regulations establish the minimum requirements for the right to information and consultation of employees in undertakings established in Malta.
>
> These regulations:
> - bind the employer to make the practical arrangements which are necessary to allow his employees to effectively exercise the right to information and consultation;
> - bind the employer and the employees' representatives to work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests of both the undertaking and the employees;
> - bind the employer to provide the consultation representatives with:
> - information on the recent and probable development of the undertaking's activities and economic situation;
> - information on the situation, structure and probable development of employment with the undertaking and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking;
> - information and consultation on decisions likely to lead to substantial changes in work

organisation or in contractual relations.
- bind the employer to ensure that the consultation is conducted in a manner to ensure that the timing, method and content of the consultation are appropriate and in such a way to enable the information and consultation representatives to meet the employer at the relevant level of management.

These regulations also provide for the appointment or election of information and consultation representatives, any complaints related to the ballot and the manner of disclosing information. It must be noted that these regulations do not prevent the employer and employees from negotiating agreements on the practical arrangements for informing and consulting employees, provided that the minimum requirements set out in the regulations are respected."

116. 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 6§2 – Negotiation procedures

6§2 DENMARK

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

117. The Danish delegate repeated the explanations given on previous occasions. She again referred to the paramount role of the maritime sector for the Danish economy and explained that the Danish International Shipping Register had been introduced in 1988 in order to prevent merchant ships from sailing under foreign flags and in order to render the merchant shipping sector more competitive, thereby increasing employment both on board as well as in the maritime related industries at shore. She went on to explain that in order to reduce manning costs, which represent the major flag related expenses in the international shipping industry, the international register provides for special income taxation schemes for both Danish and foreign nationals and for the possibility of concluding collective agreements with Danish trade unions on local wage level for seafarers residing in Denmark or of concluding collective agreements with foreign trade unions on international wage level for seafarers non resident in Denmark.

The Danish delegate pointed out that the residence criteria was chosen as an objective criteria, since foreign workers on board of Danish ships not residing in Denmark do not have the same costs of living as Danish nationals. She stressed that pursuant to Danish legislation, all seafarers, irrespective of their nationality or domicile, have the right to join the trade unions of their choice and their wages and working conditions may be regulated through collective agreements between their (foreign) seafarers' unions and the ship owners' associations. In reply to the ETUC representative she specified that Danish law does not prevent non-resident seafarers to be treated differently from residents.

The Danish delegate again referred to the framework agreement reached between the ship owners' associations and Danish seafarers' unions in 2000 laying down minimum working conditions also for foreign seafarers. The scope for the agreement had been gradually extended, for the last time in 2004, and had been renewed in 2005. She further referred to various comparative studies of merchant fleets showing a leading role of the Danish fleet in terms of seafarer's working conditions and

salaries. She confirmed that her Government did not intend to amend the legislation, particularly in view of the agreement reached by the social partners.

118. The representative of the ETUC noted that there was no progress in the matter and that no information had been supplied to show that it was intended to rectify the situation. He proposed that the Committee should vote on a renewal of the Recommendation addressed to Denmark regarding this issue or at least refer to the Recommendation in its conclusion.

119. The Portuguese delegate stated that a strong message should be given to the Government for not being in conformity with such a fundamental right of the Charter and to urge the Government to intensify its efforts to bring the situation into conformity with the Charter. The Hungarian shared the concerns expressed by the ETUC representative and joined the proposal made by the Portuguese delegate.

120. The Estonian delegate was of the opinion that two different issues were at stake, firstly the wage and working conditions of non-resident seafarers and secondly the right of trade unions to represent such non-resident seafarers. The Secretariat should make a study on all countries regarding these two aspects in order to disconnect these two issues. The Secretariat informed that the problem has been examined in the past and that the fact that a trade union can not represent non-resident seafarers is specific to Denmark.

121. The Committee expressed its concern regarding the situation in the Danish shipping industry and recalled that Recommendation RecChS(95)2 is still in force. It urged the Government to intensify its efforts to bring the working conditions of non-resident seafarers into conformity with the Charter. 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 6§4 – Collective action

6§4 BELGIUM

"The Committee concludes that the situation in Belgium is not in conformity with Article 6§4 on the following grounds:

– restrictions to the right to strike resulting from judicial decisions go beyond the restrictions admitted by Article 31 of the Charter;
– internal law does not sufficiently prohibit the dismissal of workers as a result of their participation in a strike."

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

122. The Belgian delegate referred to the Memorandum of Understanding agreed between employers and trade unions under which employers would show restraint in seeking injunctions preventing collective action whereas trade unions pledged not to use "forcible" strike pickets. The Memorandum had reduced the number judgments forbidding strike pickets, but the delegate acknowledged that it was not an absolute guarantee against the situations condemned by the ECSR. The delegate further recalled that the Government had at one point intended to introduce legislation to solve the problem, but the proposal had not found sufficient support, including among the social partners.

123. The ETUC representative confirmed the information provided by the Belgian delegate and emphasised that the social partners in Belgium saw for the moment no need for legislative intervention, at least as far as the private sector was concerned, to which the "gentlemen's agreement" applies.

124. The Committee, while acknowledging the measures taken by the social partners, requests the Government to pursue the dialogue with a view to bringing the situation in conformity with Article 6§4 of the Charter.

Second ground of non-conformity

125. The Belgian delegate stated that based on a thorough analysis of domestic case law on this point it was clear that lawful dismissal of workers in connection with a strike was only possible where the worker had committed grave misconduct during the strike. Dismissal is not possible on the mere ground of having participated in a strike. The assessment of whether an act of misconduct justifies dismissal is the responsibility of the courts. She further recalled that Belgian law does not recognise automatic reinstatement in case of unjustified dismissal, but in that case there will be compensation.

126. The Bulgarian and Swedish delegates raised questions about the nature of the domestic case law and in particular requested examples of what could constitute grave misconduct during a strike.

127. The Belgian delegate said that one example was a situation where an electrician cut electricity to an enterprise during a strike with resulting damage to equipment. She emphasised however, that in many cases brought before the courts the finding was actually in favour of the workers, i.e. no misconduct was determined.

128. The IOE representative did not consider the situation to a problem as in her view an absolute prohibition of dismissal what not possible, even in strike situations.

129. The Portuguese delegate considered that in view of the information provided by the Belgian delegate, it would be appropriate for the ECSR to look at the situation again.

130. The Committee took note of the information and urged the Government to include all the necessary details on this point in the next report so as to allow the ECSR to clarify its stand. In the meantime, it decides to await the next assessment of the ECSR.

6§4 CZECH REPUBLIC

"The Committee concludes that the situation in the Czech Republic is not in conformity with Article 6§4 of the Charter on the ground that the time that must elapse before mediation attempts are deemed to have failed and strike action can be taken is excessive."

131. The Czech delegate recalled that the Czech Republic is bound by Article 6§3 of the Charter which obliges it to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes. She also recalled dissenting opinions of three members of the ECSR who claim that a requirement to undergo a mediation before collective action can be

embarked upon equals “cooling-off period” as accepted by established case law. As regards the delay, they recall that in other cases the Committee has held that a delay of 30 days imposed by public authority decision “does not raise any problem of compliance” and that even longer delay periods may be acceptable under Article 6§4.

The Czech delegate informed the Committee that following ECSR’s conclusion a legislative amendment had been drawn up to shorten the period that must be observed before proceedings before the mediator can be regarded as unsuccessful and collective action can be launched. The amendment reducing the period from 30 days to 20 days had been adopted by Parliament and the law was currently awaiting signature by the President.

132. The IOE representative felt that the ECSR’s conclusions was rather strange and wondered what kind of threshold the ECSR had in mind.

133. The ETUC representative noted that the development in the Czech case was an opportunity for the ECSR to clarify what length of period was acceptable under Article 6§4.

134. The Committee welcomed the positive developments and asked the Government to provide detailed information in the next report. In the meantime, it decided to await the next assessment of the ECSR.

6§4 DENMARK

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

- the Public Mediator's power to apply the linkage rule constitutes an undue restriction of the right to strike;
- civil servants employed under the Civil Service Act are denied the right to strike;
- workers who participate in a lawful strike are not guaranteed to be re-employed;
- workers who are not members of the trade union having called a strike are not protected and their participation in a strike is considered as a breach of their contract of employment.”

First ground of non-conformity

135. The Danish recapitulate certain basic features of collective labour law in Denmark, including the large number of collective agreements, the process negotiating renewals every three years and the fact that the trade unions are organised not by industry, but on the basis of the training/qualification of the workers. He further explained that the linkage rule was applied only when the possibilities of negotiation were clearly exhausted and that it helped to avoids situations where a small minority could hold the large majority of the labour market as hostage.

136. The Portuguese delegate asked whether the linkage rule was accepted by the Danish trade unions.

137. The Danish delegate confirmed that as other rules regulating the Danish labour market, the linkage rule was firmly based on the wishes of the social partners.

138. The Committee requested that the Government conduct a dialogue with the social partners taking into account the conclusions of the ECSR.

Second ground of non-conformity

139. The Danish delegate stated that in the Government's view guaranteeing the right to strike to civil servants in general would tip the delicate balance on which the Danish labour market model rests. He emphasised, however, that the number of civil servants employed under the Civil Servants' Act was declining and that with very limited exceptions there was no recruitment of new civil servants. In this way the problem would gradually disappear.

140. The ETUC representative expressed concern that it would take many years before the problem had "disappeared", and therefore suggested the Committee would vote on a renewal of the Recommendation.

141. The French delegate asked what categories of employees were concerned, and whether school teachers were among them.

142. The Danish delegate confirmed that a variety of employee categories were concerned and that some teachers were also civil servants. According to the most recent figures there were currently about 54,000 civil servants, but no figures were available as to the rate of decline in the future.

143. The Committee while recalling that the Recommendation previously addressed to Denmark was still in force urged the Government to remedy the situation as soon as possible and to include in the next report a breakdown of the categories of employees concerned. In the meantime, it decides to await the next assessment of the ECSR.

Third ground of non-conformity

144. The Danish delegate explained that under Danish law collective action had the effect of terminating the employment relationship. However, according to a general principle of collective labour law striking workers were as a rule reinstated in their jobs. Workers could only be dismissed following a strike if the dismissal was objectively justified (for instance, if the enterprise had to reduce its operations for economic reasons such as lack of orders).

145. The French and Portuguese delegates stated that the strike action in itself could not be an objective reason for dismissal under the Charter and asked whether and how employers were required to give evidence of economic reasons for dismissals.

146. The Danish delegate confirmed that ordinary dismissal rules (collective labour law, not statutory law) applied in such cases and that eventually it would be for tribunals or courts to decide.

147. The Committee expressed its concern at the situation and urged the Government to conduct a dialogue with the social partners with a view to remedying the problem. In the meantime, it decides to await the next assessment of the ECSR.

Fourth ground of non-conformity

148. The Danish delegate stated that the right to strike in Denmark was vested in the trade unions and that in order to strike workers had to be members of a trade union or join one or, alternatively, form one of their own. He further recalled that the labour market system which had functioned very well for more than 100 years rested on the principle that the right to strike is a collective right. The Government considered that the ECSR's case law on this point was an unfortunate mixture of individual and collective purpose.

149. The Committee took note of the information provided and urged the Government bring the situation into conformity with Article 6§4 of the Charter as soon as possible.

6§4 GERMANY

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

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

First ground of non-conformity

150. The German delegate again explained the reasons for the ban on strikes that were not aimed at achieving a collective agreement. She stated that in the Government's opinion the situation was in conformity with Article 6§4 of the Charter since the wording of this provision read in conjunction with Article 6§1 of the Charter referred to a close connection between a strike and collective bargaining. She further mentioned that strikes with the aim of enforcing demands that can not be the subject of collective bargaining are of no pratical importance in Germany.

The German delegate went on to explain that collective labour law in Germany is based on Article 9 para. 3 of the Constitution as interpreted by the courts. In reply to questions for clarification raised by the ETUC representative, the Portuguese as well as the Dutch delegate, she specified that, politically speaking, there was no possibility for the Government to introduce legislation codifying the right to strike and thus changing the situation.

She again referred to the decision of the Federal Labour Court of 10 December 2002 indicating that the court might review its case law on this subject in the future. In reply to the Spanish delegate, she confirmed however that for the time being no subsequent court decisions had been rendered on the subject and clarified that participation in a strike not aimed at achieving a collective agreement would be regarded as unlawful.

151. The Committee, recalling that Recommendation RecChS(98)2 was still in force, insisted on the need for the Government to bring the situation into conformity with Article 6§4 of the Charter and asked it to intensify its efforts in cooperation with the judicial authorities in this respect. The Committee invited the Government to provide information on any evolution of the relevant case law in the next report. In the meantime, it decides to await the next assessment of the ECSR.

Second ground of non-conformity

152. The German delegate explained that under German law collective action is subject to the "ultima ratio" principle. Apart from collective bargaining law, further legal provisions related to the so-called works constitution and co-determination at the company level provided for the possibility for an early-on participation of workers via their representatives in the works and supervisory councils for the solution of conflicts in the employer-employee relationship, often making the recourse to strike unnecessary.

153. The Committee, recalling that Recommendation RecChS(98)2 was still in force, expressed its concern about the continued violation of such a fundamental right as the right to strike and urged the Government to bring the situation into conformity with Article 6§4 of the Charter. In the meantime, it decides to await the next assessment of the ECSR.

6§4 HUNGARY

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

- in the civil service, a strike can only be called by a trade union that is party to the agreement concluded between the Government and the trade unions concerned;
- civil service trade unions may only call strikes with the approval of a majority of the staff concerned;
- the critera used to define civil servant officials who are denied the right to strike go beyond the scope of Article 31 of the Charter."

First ground of non-conformity

154. As regards the first ground of non-conformity, the Hungarian delegate informed the Committee that an interministerial Committee had been established having the task to analyse the issue raised in the conclusion of the ECSR and to make a proposal how to remedy the situation. Any amendment in this respect would need a tripartite accord between the Government and the social partners.

Second ground of non-conformity

155. With respect to the second ground of non-conformity, the Hungarian delegate specified that the approval by a majority of civil servants concerned, which is required for a strike pusuant to the agreement concluded in 1994 between the Government and civil servants' trade unions, refers to the majority of civil servants at the respective workplace.

Third ground of non-conformity

156. As far as the third ground of non-conformity is concerned, the Hungarian delegate clarified that the public officials not permitted to strike are essentially officials exercising management functions such as heads of offices and departments. He announced that the next report will contain detailed information in this respect.

157. The Committee expressed its concern about the violation of such a fundamental right as the right to strike and urged the Government to use all its efforts in consultation with the social partners to bring the situation into conformity with Article 6§4 of the Charter and to provide all relevant information on any development in this respect in its next report.

6§4 ICELAND

"The Committee concludes that the situation in Iceland is not in conformity with Article 6§4 of the Charter on the ground that during the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the Charter."

Ground of non-conformity (for the first time)

158. The Icelandic delegate provided the following information in writing:

> "The Government would like to emphasize its priority that the social partners negotiate wages and terms in collective bargaining without intervention from the Government. It should also be reiterated that the Icelandic system of collective bargaining has been developed in a close co-operation with the social partners. Therefore, it is the Government's opinion that an enactment of legislation to end industrial disputes is an emergency measure that should be resorted to only in the most exceptional circumstances.
>
> In this case, the Minister of Social Affairs and the Minister of Fisheries gave jointly attention to the conclusions and would like to consult the social partners concerned on what kind of action is thought to be necessary to take in order to promote their negotiations. However, their assistance was not requested, and collective agreements between the parties were signed on 30 October 2004. These were then approved by the majority of the seamen's union members. The agreements run until 31 May 2008. The Icelandic Government will give information on any new developments in this matter in its next report to the ECSR."

159. The Committee invited Iceland to bring the situation into conformity with Article 6§4 of the Charter.

6§4 NETHERLANDS

"The Committee concludes that the situation in the Netherlands is not in conformity with Article 6§4 of the Charter on the ground that the fact that Dutch judges may determine whether recourse to a strike is premature constitutes an impingement on the very substance of the right to strike as this allows the judge to exercise the trade unions' prerogative of deciding whether and when a strike is necessary."

160. The Dutch delegate reiterated that the right to strike in the Netherlands is not based on statutory law, but directly on Article 6 of the European Social Charter as interpreted by the case law of the Dutch Supreme Court. He noted that the ECSR's conclusion of non-conformity results from an analysis of a ruling of the Supreme Court of the Netherlands as of 2000 and confirmed that since 2002, no new cases in the matter have been brought to the Court. It was thus not yet possible to assess whether the ECSR's conclusion will be reflected in the Court's future case law. He announced that any new developments in this respect will be reflected in the next report.

161. In reply to the representative of the ETUC, the Dutch delegate specified that the conclusion of non-conformity of the ECSR has again been brought to the attention of the judiciary but that no further awareness raising measures have been taken by the Government in this respect. Given the fact that no new court rulings have been rendered in the matter since 2000 he was of the opinion that no specific action was necessary on behalf of the Government.

162. Following questions raised by the Swedish delegate, the President and the representative of the ETUC as to what is the legal basis of the Supreme Court's intervention to the right to strike, the Dutch delegate explained that, in the event a strike is announced, an employer may start an action in tort against the respective trade union on the occasion of which the courts may decide whether the envisaged strike action is proportionate or not. He went on to explain that the relevant rules of procedure were stipulated in the Civil Code and that the Government did not see any reason for the legislator to intervene since there was no urge by trade unions or employers to modify the existing rules and situation. He added in reply to the Portuguese delegate, that the situation has as yet not been criticised by the ILO.

163. The Belgian delegate pointed out that in view of the principle of separation of powers it was difficult for the Government to intervene in the judicial practice. The Swedish delegate stated that there was no indication that the Supreme Court would not take account of the ECSR's conclusion in future rulings and that all that could be asked of the Government was to bring the ECSR's findings to the judiciary's knowledge.

164. The representative of the ETUC stressed that the urge to bring the situation into conformity with the Charter resulted from the finding of non-conformity by the ECSR. The fact that the situation had not been criticised by the trade unions for the time being did not mean that the judicial practice could not trigger problems in the future.

165. The Committee urged the Government to make all possible efforts to bring the situation into conformity with Article 6§4 of the Charter.

6§4 SLOVAK REPUBLIC

"The Committee concludes that the situation in Slovakia is not in conformity with Article 6§4 of the Charter on the ground that it is not able to assess whether the restrictions to the right to strike, at least those applying to certain categories of civil servants and certain categories of employees such as, *inter alia*, workers employed in the social, health, telecommunication and nuclear fields, fall within the limits of Article 31 of the Charter."

Ground of non-conformity (for the first time)

166. The Slovak delegate provided the following information in writing:

> "In the Slovak Republic, the right to strike, including its restrictions is characterised as a constitutional right of citizens and persons, which is fully respected and included under economic and social rights.
> Under the conditions in the Slovak Republic, we distinguish:
> I. a strike within the institute of collective bargaining, and
> II. a strike outside the institute of collective bargaining.
>
> I. The strike within the institute of collective bargaining
>
> 1. In accordance with Article 36 (g) of the Constitution of the Slovak Republic, employees have the right to fair and satisfactory conditions of work; the law provides them, inter alia, the right to bargain collectively. Article 10 of the Fundamental Principles of the Labour Code (Act No. 311/2001 Coll. as amended by later regulations) provides that employees have the right to bargain collectively and the right to strike. Trade union bodies take part in the employment relations, including collective bargaining. The European Social Charter, which the Slovak Republic has ratified (Notification of the Ministry of Foreign Affairs of the SR No. 329/1998 Coll.) provides –

„With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake to recognise the right of workers to collective action in cases of conflicts in interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.“

2. In the Slovak Republic, the Act No. 2/1991 Coll. on collective bargaining as amended by later regulations makes provision for collective disputes, such as the disputes over conclusion of the collective agreement and disputes over fulfilment of the obligations from the collective agreement from which entitlements do not arise to individual employees.

The right to bargain collectively can be restricted in the wartime, or in a state of war [Article 2 (3)(s), Article 3 (3)(r) of the constitutional Act No. 227/2002 Coll. on the state's security in the wartime, the state of war, the state of emergency, and the state of distress, as amended by later regulations].

The right to strike following out of the collective bargaining can be prohibited in the wartime, in the state of war, in the state of emergency, and in the state of distress, in compliance with the constitutional Act No. 227/2002 Coll. on the state's security in the wartime, the state of war, the state of emergency and the state of distress, as later amended [Article 2 (3)(k), Article 3 (3)(k), Article 4 (4)(l) and Article 5 (3)(k)].

3. Where a collective agreement is not concluded even after proceedings before a mediator, and the Contracting Parties have not asked an arbitrator to resolve the dispute, a strike can be called, as an extreme instrument, in the dispute over conclusion of collective agreement (§ 16 (1) of the Act No. 2/1991 Coll. on collective bargaining as amended by later regulations).

The strike means partial or complete suspension (stoppage) of work by employees (§ 16 (2) of the Act No. 2/1991 Coll. on collective bargaining, as amended by later regulations). A solidarity strike means a strike in support of the requirements of employees who are on strike in the dispute over the conclusion of other collective agreement (§ 16 (3) of the Act No.2/1991 Coll. on collective bargaining, as later amended). As a strike participant shall be regarded, during the whole duration of strike, an employee who has consented to the strike, who has joined the strike, from the day of his or her joining the strike (§ 16 (4) of the Act No. 2/1991 Coll.).

4. The Act No. 2/1991 Coll. on Collective Bargaining, as amended by later regulations stipulates:
”§ 17

(1) A strike in a dispute on conclusion of a company collective agreement shall be declared and its commencement shall be decided by the respective trade union body, if the strike is approved by the absolute majority of the employer's employees who are participating in the strike ballot whom the collective agreement concerns to, provided that at least absolute majority of employees counted out of total employees participate in strike ballot.

(2) A strike in a dispute on conclusion of a collective agreement of a higher degree shall be declared by the respective superior trade union body. The commencement of the strike shall be decided by the respective trade union body, if the strike is approved by the absolute majority of the employer's employees who are participating in strike ballot whom the collective agreement of a higher degree concerns to, provided that at least absolute majority of employees counted out of total employees participate in strike ballot.

(3) Strike ballot is secret. A respective trade union body shall elaborate records of the results of the vote.

(4) A respective trade union body shall collect and keep documentation related to the secret ballot records on strike for the period of three years.

(5) Details on the preparation and process of secret strike ballot may be regulated in a strike order[1] by the respective trade union body. A strike order must not be in contradiction with this Act and international treaties on economic and social rights binding for the Slovak Republic.[2]

(6) Employees stated in Article 20 (g), (h), (i), (j) and k) and employees performing work just on the basis of the agreement on performing of work for an employer shall neither be included in the total number of employees pursuant to paragraphs 1 and 2, nor shall they participate in secret strike ballot.

(7) Provisions of paragraphs 1 to 6 shall also apply appropriately to the declaration of a solidarity strike and on its the commencement.

(8) A respective trade union body shall notify an employer in writing at least three working days prior commencement the strike about

a) date of commencement of the strike,

b) reasons and objectives of the strike,

c) a list with names of representatives of the respective trade union body, authorized to represent participants in the strike.

A respective trade union body notifies an employer in writing about the changes in the list pursuant to letter c).

(9) A respective trade union body shall provide an employer with the information relating to strike, which it is aware of and which shall help an employer to introduce work plans at least two working days before the commencement of strike to ensure essential activities and essential services during the strike; essential activities and essential services are such activities and services which in case of their interruption or stoppage shall endanger the life and health of employees or other persons and shall cause damage to machines, equipment and apparatuses the nature and purpose of which do not allow to interrupt or stop their operation during the strike. »

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[1] Article 3 of the ILO Convention concerning Freedom of Association and Protection of the Right to Organize No. 87, 1948 (Notification of the Federal Ministry for Foreign Affairs No. 489/1990, Coll. and point 28 of the Notification of the Ministry for Foreign Affairs of the Slovak Republic No.110/1997, Coll. on Succession Recognition of the Slovak Republic relating to obligations resulting from relevant multilateral International Labour Organization conventions which are deposited with the Director–General of the International Labour Office), Article 2 of the ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively No. 98, 1949 (Notification of the Federal Ministry for Foreign Affairs No. 470/1990, Coll. and point 33 of the Notification of the Ministry for Foreign Affairs of the Slovak Republic No. 110/1997, Coll.).

[2] Article 8 (1) (d), Article 8 (2) and (3) of the International Covenant on Economic, Social and Cultural Rights (Decree of the Minister for Foreign Affairs No. 120/1976, Coll.), Article 6 paragraph 4 of the European Social Charter (Notification of the Ministry for Foreign Affairs of the Slovak Republic No. 329/1998 Coll.), Article 3 of the ILO Convention concerning Freedom of Association and Protection of the Right to Organize No. 87, 1948 (Notification of the Federal Ministry for Foreign Affairs No. 489/1990, Coll. and point 28 of the Notification of the Ministry for Foreign Affairs of the Slovak Republic No. 110/1997 Coll., Article 2 of the ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively No. 98, 1949 (Notification of the Federal Ministry for Foreign Affairs No. 470/1990 Coll. and point 33 of the Notification of the Ministry for Foreign Affairs of the Slovak Republic No. 110/1997 Coll.).

The substantiation to § 17 of the Act on Collective Bargaining (the Act No. 2/1991 Coll.)[A]

[A] The legal regulation in § 17 stipulates only principal and fundamental legal framework of strike in the act and refuses complete liberalization of legal regulation of strike. It is based on the following international documents which stipulate the right to strike and which are binding for the Slovak Republic: International Covenant on Economic, Social and Cultural Rights - Article 8 (1)(d), Article 8 (2) and (3) (Decree of the Minister for Foreign Affairs No. 120/1976 Coll.), European Social Charter - Article 6 (4) (Notification of the Ministry of Foreign Affairs of the Slovak Republic No. 329/1998 Coll.), ILO Convention concerning Freedom of Association and Protection of the Right to Organize No. 87, 1948 – Article 3 (Notification of the Federal Ministry for Foreign Affairs No. 489/1990 Coll. and point 28 of the Notification of the Ministry for Foreign Affairs of the Slovak Republic No. 110/1997 Coll. on Succession Recognition of the Slovak Republic relating to obligations resulting from relevant multilateral ILO Conventions which are deposited with the Director–General of the International Labour Office), ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively No. 98, 1949 – Article 2 (Notification of the Federal Ministry for Foreign Affairs No. 470/1990 Coll. and point 33 of the Notification of the Ministry for Foreign Affairs of the Slovak Republic No. 110/1997 Coll.). ILO Conventions Nos. 87 and 98 are among 8 fundamental (core) ILO Conventions which regulate fundamental principles and rights at work. Slovak Republic is bound by all ILO Conventions stipulating fundamental principles and rights at work. The legal regulation is also based on Article 37 (4) and Article 154c of the Constitution of the Slovak Republic (No. 460/1992 Coll. as amended by later regulations). The wording of § 17 is based on the ILO principles regarding the right to strike, General Survey (paragraph 170) of the ILO Committee of Experts regarding the requirements on strike ballot as well as on recommendations of ILO experts relating to the exercise of the employees (workers) right to strike.
The legal regulation requires an approval of absolute majority of employees of employer (more than half) who are participating in strike ballot whom the collective agreement concerns to, provided that at least absolute majority of employees counted out of total employees participate in strike ballot. The act is based on the ILO principles regarding strike action and the General Survey of the ILO Committee of Experts regarding requirements on strike ballot (paragraph 170). The paragraph says: „In many countries legislation subordinates the exercise of the right to strike to prior approval by a certain percentage of workers. Although this requirement does not, in principle, raise problems of compatibility with the Convention (ILO Convention No. 87), the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice. The conditions established in the legislation of different countries vary considerably and their compatibility with the Convention may also depend on factual elements such as the scattering or geographical isolation of work centres or the structure of collective bargaining (by enterprise or industry). If a member state deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.“
The quorum to approve employees (workers) strike action is precisely qualified. It avoids complicated searching for facts by a respective trade union body regarding absent employees (workers) because of sick leave, holiday, business trips, substitution leave or other workers' obstacles to work, moreover such information is known by an employer and unknown for a respective trade union body. The respective trade union body would have to ask for information relating to the absence of relevant employees (workers), which could in practise cause certain problems (e.g. an employer might refuse to submit such information to the trade union body). Therefore, the quorum needed to approve strike action include all employees (workers) regardless of the fact that some might be on sick leave, holiday, business trips, substitution leave or do not work due to their own obstacles to work, and also regardless of the fact whether they are willing to participate in strike ballot or not - according to fundamental principles of freedom and democracy, nobody can be forced to participate in such ballot unwillingly (thus the text ...“ provided that at least absolute majority of employees counted out of total employees participate in strike ballot“...). In case that the absolute majority of employees (workers) counted out of total employees (workers) does not participate in strike ballot, strike action is not valid. The text of § 17 (1) and (2) relating also to paragraphs 3 and 4 of the Act on Collective Bargaining regarding the requirements of strike ballot, particularly the ballot method (secret ballot), required quorum (provided that at least absolute majority of employees /more than half/ counted out of total employees participate in strike ballot) and required majority for approving of the strike (if the strike is approved by the absolute majority of the employer's employees /more than half/ who are participating in the strike ballot whom the collective agreement concerns to) are at a reasonable level and are based on universal principles of justice and democracy.
The text of existing § 17 (5) of the Act No. 2/1991 Coll. on Collective Bargaining as amended by later regulations regarding the obligation of a respective trade union body to submit lists of names of workers participating in strike action is removed (is repealed), and the text is replaced by the new text of § 17 (9). Based on its opinion, the International Labour Office, with the exception of the Czech Republic (because of the common act on collective bargaining from the period of former Czech and Slovak Federal Republic), is not aware of other states in Europe or world-wide having legislations which impose obligations to submit lists of names of employees (workers) participating in strike action by a respective trade union body. The International Labour Office recommended to consider adoption of modificated version of the legal regulation being in force in Great Britain – the Act on Trade Unions and Industrial Relations. Such wording could satisfy workers fears of anti-trade union chasing and possible dismissal of an employee (worker) for „fictitious“ (false, non-existent)

organizational reasons (§ 46 (1)(c) of Labour Code – the Act No. 65/1965 Coll. as amended by later regulations) in relation to employees (workers) who are listed on the list of names as those who approve the strike. The employer is enabled to make the work plans during strike action to ensure essential activities and essential services. In § 17 (9) the act stipulates compromising wording which was reached during experts discussions within tripartite social partnership in concurrence with the opinion of the International Labour Office and in harmony with the ILO Committee of Experts on the Application of ILO Conventions and Recommendations relating to internationally recognized principles of freedom of association and the exercise of the right to strike; and replaces existing text in § 17 (5) of the Act on Collective Bargaining as amended by later regulations: *"A respective trade union body shall provide an employer with the information relating to strike, which it is aware of and which shall help an employer to introduce work plans at least two working days before the commencement of strike to ensure essential activities and essential services during the strike; essential activities and essential services are such activities and services which in case of their interruption or stoppage shall endanger the life and health of employees or other persons and shall cause damage to machines, equipment and apparatuses the nature and purpose of which do not allow to interrupt or stop their operation during the strike"*. The text of relevant paragraph removes fears and doubts of the Federation of Employers' Unions and Associations in relation to safe operation, and it needs to be said that when all legislation terms are met, all workers shall have the right and possibility of labour measure (protest action, e. g. strike action) to have their wage requirements and requirements relating to working conditions with the exception of essential services during strike action. The Federation of Employers' Unions and Associations refers to safe operation in the relevant text relating to essential activities and essential services during strike action while the legal regulation defines these essential activities and essential services. The responsibility of a respective trade union body regarding the safety of operation during strike action is already stipulated in § 19 of the Act on Collective Bargaining as amended by later regulations. The wording „essential activities and essential services" stated in § 17 (9) of the legal regulation, is general formulated because precise definition in the act is not possible to stipulate for the variety, nature and objective of activities of particular types of employers in the territory of the Slovak Republic. Regarding the issue of wage deductions and benefits, the names of striking employees (workers) can be easily found out during the strike action based on corresponding absence which was not justified by other reasons for leaving the workplace then by submitting a list of employees' (workers') who agreed to strike.

The act regulates the requirement to obtain necessary approval to strike based by secret ballot while details of the preparation and process of secret ballot on strike action as well as other facts relating to strike action may be regulated by a respective trade union body in a strike order. The strike order, however, must not be in contradiction with the act on collective bargaining and international treaties on economic and social rights which are binding for the Slovak Republic. The enabling clause to regulate further issues relating to strike action (e.g. secret ballot of strike action for employees (workers) of those employers where is run constant operation, unequally distributed working time, determined time for voting on strike action etc.) which is stated in the text of § 17 (5) is based on Article 8 of the International Covenant on Economic, Social and Cultural Rights (Decree of the Minister for Foreign Affairs No. 120/1976 Coll.). Article 8 (d) of the Covenant stipulates: „States, the contracting parties of the Covenant shall be obliged to ensure the right to strike provided that it is exercised in compliance with national laws". Article 8 (2) of the covenant stipulates: „This Article does not prevent imposing legal constraints to the exercise of these rights for members of military or police forces or members of state administration bodies". And finally, Article 8 (3) of the Covenant stipulates: „Pursuant to this Article, the Contracting Parties of the ILO Convention on Freedom of Association and Protection of the Right to Organize, 1948, are not authorized to adopt such legal regulations which could prejudice (change) guarantees pursuant to this Convention or to apply law in such a way which could prejudice these guarantees". Article 3 of the ILO Convention on Freedom of Association and Protection of the Right to Organize No. 87, 1948 (Slovak Republic is bound by this Convention - Notification of the Federal Ministry of Foreign Affairs No. 489/1990 Coll. and point 28 of the Notification of Ministry for Foreign Affairs of the Slovak Republic No. 110/1997 Coll.) stipulates: „Workers'(trade unions') and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. Public authorities (state authorities) shall refrain from any interference which would restrict this right or impede the lawful exercise thereof". Thus philosophy of the wording of § 17 (5) of the Act on Collective Bargaining is based on values stipulated in the stated Article of the Convention. The wording in Article 3 of the Convention „in full freedom, to organize their administration and activities and to formulate their programmes" shall also mean that the activity of trade unions include strike action resulting from the exercise of the employees (workers) right to strike and therefore the solution pursuant to § 17 (5) of the Act on Collective Bargaining offers the possibility (not obligation) for the trade union body to regulate details of strike action in a strike order which would regulate issues resulting from the right to strike and other details relating to strike action.

In consideration of the secret ballot on commencement strike action, a list of employees (workers) participating in the strike action is not submitted because from secret ballot it is impossible to say how one has voted; however, the result of the ballot is important for finding out if required majority approves or disapproves with the strike action. Regarding fundamental principles of democracy, minority respects the decision of majority to commence the strike action even though it does not approve with it. In respect of employees (workers) who want to work in spite of the decision to commence the strike, the procedure pursuant to § 18 (2) of the Act No. 2/1991 Coll. on Collective Bargaining as amended by later regulations shall apply.

5. Pursuant to § 20 of the Act on Collective Bargaining (the Act No. 2/1991 Coll. by later regulations) an illegal strike shall be defined as a strike:

"§ 20

a) not preceded by the proceedings before an intermediary (§ 11 and § 12); this shall not apply in the case of a solidarity strike (§ 16 (3)),

b) that has been declared or continues after following start of proceedings before an arbitrator (§ 13 and § 14) or following after conclusion of a collective agreement,

c) that has not been declared or commenced under conditions specified in § 17,

d) declared or commenced for reasons other than those specified in § 16,

e) a solidarity one, provided the employer of participants in strike, especially with regard to economic continuity, cannot influence the course or result of the strike of employees, in the support of whose demands the solidarity strike has been declared,
f) in case of military stand by of the state and in a period of emergency precautions[6)],

g) of employees of the health-care facilities or social care institutions, provided the strike might endanger the life or health of citizens,

h) employees operating equipment of nuclear power stations, facilities with fissionable material and equipment of crude oil or gas pipelines,

i) judges, prosecutors, members of the armed forces and armed corps and employees in charge of air traffic control and operation,

j) members of fire brigades, employees of company fire-fighting units and members of rescue units established under special regulations for specific workplace[7)] and employees in telecommunications, provided the strike might endanger the life or health of citizens, alternatively property,

k) employees working in areas inflicted by natural disasters in which emergency precautions have been declared by the respective state bodies.".

6. Pursuant to § 21 of the Act on Collective Bargaining (the Act No. 2/1991 Coll. by later regulations**): "**The employer, alternatively the employers' organizations or the prosecutor may submit a proposal to declare the strike illegal to the regional court situated in the same district as the respective trade union against which the proposal is directed; the proposal has not dilatory effect. In decision, the regional court shall proceed in compliance with provisions of the civil court procedure governing first degree proceedings.**"**

7. Employment entitlements, entitlements from the sickness insurance and social insurance during the strike, as well as the liability for the damage caused during the strike, are provided under § 22, § 23, § 24 of the Act No. 2/1991 Coll. on collective bargaining, as amended by later regulations.

[6)] § 35 of the Act No. 351/1997 Coll., as amended by the Act No. 401/2000 Coll. Conscription Act.
[7)] e. g. Decree of the Slovak Mining Office No. 69/1988 Coll. on Mining Rescue Service.

8. The participation in a lawful strike is not a legal ground for termination of the employment relationship with an employee* and the employee cannot be denied reimbursements of health care expenses (e.g. fees for medical drugs and medical care).

During the strike, the employer must not accept as replacement for strike participants other citizens in their job positions.

9. The strike shall be terminated, where the trade union body, which had called the strike, or which had decided about the commencement of the strike, has decided it. The relevant trade union body must, without delay, notify the employer in writing of the termination of the strike.

10. As regards the right to bargain collectively, and the issues of the strike in relation to civil servants and employees performing work in the public interest, the act No. 2/1991 Coll. on collective bargaining, as amended by later regulations, applies.

II. The strike outside the institute of collective bargaining

1. We include the strike under the activity of the workers organisations (trade unions), which is covered under Article 3 (1) of the ILO Convention No. 87 - "Workers' (in most cases trade unions) and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes"; within the meaning of the above Article of the cited Convention, the competent trade union body may decide about calling a strike (the activity of the trade union body under Article 3 (1) of the cited Convention). Article 7 (5) of the Constitution of the Slovak Republic provides, inter alia," international agreements on human rights and fundamental freedoms, which the Slovak Republic has ratified and which have been promulgated in the manner set forth by law, shall have priority over the laws of the Slovak Republic…" – the International Labour Organisation Convention No. 87 has priority over the laws of the Slovak Republic), see also Article 154c of the Constitution of the Slovak Republic – full text as following out of amendments – No. 135/2001 Coll. (hereinafter referred to as the "Constitution of the Slovak Republic ") and hence, is part of the rule of law of the Slovak Republic.

In a broader context, the use of the strike measure (the strike) may have political, economic, moral or other consequence, which results, for example, from inability to reach agreement or find a compromise solution, or radicalisation of one's requirements, etc.

2. Article 37 (4) of Constitution of the Slovak Republic provides – „The right to strike shall be guaranteed. The conditions thereof shall be provided by law. This right shall not be had by judges, prosecutors, members of the armed forces and armed corps, and members and employees of fire brigades and rescue service". Subject to Article 54 of Constitution of the Slovak Republic, the law may restrict the right to strike to persons in occupations that are necessary for immediate protection of life and health. Article 37 (3) of Constitution of the Slovak Republic provides – "The activity of trade union organisations may be restricted by law, where it involves a measure that is necessary in a democratic society for the protection of the security of the state, public order or the rights and freedoms of others". It will follow from the above, that the activity of trade union organisations can be restricted by law in three cases:

* Pursuant to § 63(1) (a) to (e) of the Labour Code the employer may not give a notice to an employee for a reason of participation in legal strike and also pursuant to § 68 of the Labour Code the employer may not immediately terminate an employment relationship for a reason of participation in legal strike.

i. Where a measure is involved, which is necessary in a democratic society for the protection of the national security,

ii. Where a measure is involved, which is necessary in a democratic society for the protection of the public order,

iii. Where a measure is involved, which is necessary in a democratic society for the protection of the rights and freedoms of others.

The cited provision of the Constitution of the Slovak Republic draws on Article 8 (1) (c) of the International Covenant on Economic, Social and Cultural Rights, which is binding on the Slovak Republic (Decree of the Minister of Foreign Affairs No. 120/1976 Coll.) – "The States Parties to the present Covenant undertake to ensure the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others." The term „function freely" in the text of the said provision of the cited Covenant means, inter alia, also the activity in the area of strike measures (the strike) on the part of trade union organisations. In Article 22 (1) of the International Covenant on Civil and Political Rights, the right is provided for everyone to freely associate with others and the right to form the trade union for the protection of one's interests and to join it, while Article 22 (3) of the Covenant makes reference to the ILO Convention No. 87 of 1948.

Judgement of the Supreme Court of the Slovak Republic, Case reference number 1 Co 10/98 of 29 June 1999:

The judgment was returned in the dispute over unlawfulness of the strike of the employees of *Bábkové Divadlo* Nitra (Puppet Theatre), who went on strike for returning the theatre the legal competence and reappointing the original director of the theatre in his function, i.e. it involved a strike outside the issues of collective bargaining. The petitioner asked the court to proclaim the strike unlawful because it was not called in compliance with the act on collective bargaining. The Supreme Court dismissed the suit.
In the substantiation of the judgment the Supreme Court of the SR, inter alia, states:
The right to strike is guaranteed to every citizen of the SR by the Constitution of the Slovak Republic in its Article 37 paragraph 4. Therefore, non-existence of the act that would stipulate the conditions for the exercise of this right also outside collective bargaining (over conclusion of collective agreement) cannot lead to questioning the existence and exercise of the constitutional right to strike.

Hence the strike is permitted also outside the act on collective bargaining (Act No.2/1991 Coll. as later amended).

3. Article 37 (3) of Constitution of the Slovak Republic, as regards the measure in a democratic society necessary for the protection of the security of the state is implemented by the constitutional Act No. 227/2002 Coll. on the state's security in the wartime, the state of war, the state of emergency and the state of distress, as later amended.

The right to strike can be prohibited in the wartime, the state of war, the state of emergency and in the state of distress, in keeping with the constitutional Act No. 227/2002 Coll. on the state's security in the wartime, the state of war, the state of emergency and the state of distress, as later amended. [Article 2 (3) (k), Article 3 (3)(k), Article 4 (4)(l), Article 5 (3)(k)].

The provision of Article 37 (3) of the Constitution of the Slovak Republic makes it possible to restrict the activity of the trade union organisations by law, that means, inter alia, also the strike activity of trade unions. Further, from this provision follows a possibility, rather than obligation to restrict the activity of the trade union organisations. As has been stated above, such a possibility of the restriction of the activity of the trade union organisations is provided under the constitutional Act No. 227/2002 Coll. on the state's security in the wartime, the state of war, the state of emergency and the state of distress, as later amended, which means that such activity of trade unions (that is also the strike activity of trade unions) cannot be restricted when there is no wartime, a state of war, a state of emergency and a state of distress.

Pursuant to § 29 of the Act No. 578/2004 Coll. on healthcare providers, medical workers, professional organisations in the health service and on amending of certain acts, as later amended, it is possible to restrict the rights to strike in the performance of health care profession – „Where in consequence of a strike of medical workers that provide healthcare, the life and health is in immediate jeopardy, the Government of the Slovak Republic shall decide about the termination of the strike."

4. ILO principles concerning the right to strike, Bernard Gernigon, Alberto Odero, Horace Guido, ILO 1998, Edition 2000, page 13 "Objectives of strikes" - text see in Annex.

5. The law in the Slovak Republic does not provide for so-called political/protest strikes, that is, the strikes outside the institute of collective bargaining.

The Committee for Freedom of Association of the ILO and the Committee of Experts on Application of Conventions and Recommendations of the International Labour Organisation in the area of freedom of association - the right to bargain collectively – the issues of the strike in the general survey, paragraph 165 of 1994, states:

Political strikes/protest strikes
165. The Committee (the Committee of Experts on the Application of the ILO Conventions and Recommendations) has always considered that strikes that are purely political in character do not fall within the scope of freedom of association. However, the difficulty arises from the fact that it is often impossible to distinguish in practice between the political and occupational aspects of a strike, since a policy adopted by a government frequently has immediate repercussions for workers or employers; this is the case, for example, of a general price and wage freeze. In the legislation of many countries political strikes are explicitly or tacitly deemed unlawful. Elsewhere, restrictions on the right to strike may be interpreted so widely that any strike might be considered as political. In the view of the Committee, organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living.

The law in the Slovak Republic does not explicitly provide for such political/protest strikes (strikes outside the institute of collective bargaining) and a strike as an activity of trade union (Article 37 paragraph 3 of the Constitution of the Slovak Republic) is essentially possible in this regard in defending the economic and social rights and interests of employees in connection with seeking solutions of problems regarding the main trends in the social and economic policy of the Government that have a major implication for their members and workers in general, particularly with regard to employment, social protection, and the living standard, and, equally, such strike is also essentially possible in the application of Article 2 (3) of the Constitution of the Slovak

Republic - “Everyone can do what the law does not prohibit, and nobody can be coerced into doing something that is not imposed by law.”. The principle formulated in the cited provision of the Constitution of the Slovak Republic is one of the pillars of the rule of law and it can be related both to natural persons and legal persons. The meaning of the principle that nobody can be coerced into doing what the law does not impose (is in fact the opposite of the principle that everything is permitted to do what is not prohibited by law) lies in that a legal obligation (e.g. to restrict or prohibit the strike outside the institute of collective bargaining) can be imposed upon a legal person (e.g. the trade unions, trade union organisations) only by a law or on the basis of a law and within its limits. In a strike (the activity of the trade union organisation – Article 37 (3) of the Constitution of the Slovak Republic), trade unions cannot coerce anybody (workers, employees) into doing something that a law does not impose, they can require such action (participation in the strike) only on the basis of their voluntarism and their consent (Article 2 (3) of the Constitution of the Slovak Republic). From the above a complex political and legal problem will have followed of whether to adopt or not a law that would provide other kinds of strike - the strikes outside the institute of collective bargaining or leave the existing legal state unchanged. The social partners (Confederation of Trade Unions of the SR and the Federation of Employers' Associations and Unions of the SR) have made statements against the adoption of such law in the past period.

It is also important to recollect in this regard Article 51 (1) of the Constitution of the Slovak Republic – “It is possible to claim the rights, set out under Article 35, 36, 37 (4), Articles 38 to 42, and Articles 44 to 46 of this Constitution only within the laws that implement these provisions”. The exercise of the constitutional right to strike may be a threat to the constitutional rights and freedoms of others (for example the freedom to carry out legitimate business activity, etc.). In the constitutional law, it holds also in relation to the basic rights, which are broadest, that a particular basic right and the freedom of a particular subject (particular subjects – citizens, natural persons, legal persons) shall end where other particular right and freedom of another subject shall start (other subjects – citizens, natural persons, legal persons). However, Article 51 (1) of the Constitution of the Slovak Republic in this connection does not make reference to Article 37 (3) of the Constitution of the Slovak Republic (activity of the trade union organisation – the strike outside the institute of collective bargaining – Article 3 (1) of the ILO Convention No. 87 of 1948). That means that to claim the right (the right to strike – activity of the trade union organisation pursuant to Article 37 (3) of the Constitution of the Slovak Republic) is possible in this case because the law does not provide it (except for the case of threat to the security of the state – constitutional Act No. 227/2002 Coll. on the state's security in the wartime, the state of war, the state of emergency and the state of distress, as later amended), but on the other hand, it is provided under Article 3 (1) of the ILO Convention No. 87 of 1948, which the Slovak Republic has ratified and this convention is part of the rule of law of the Slovak Republic, in accordance with Article 154c (1) of the Constitution of the Slovak Republic, and has priority over the law of the Slovak Republic, where it ensures greater scope of constitutional rights and freedoms, according to the cited provision of the Constitution of the Slovak Republic, as well as in connection with the application referred to above of Article 2 (3) of the Constitution of the Slovak Republic. The cited convention of the International Labour Organisation, with regard to the application of the facts, referred to under Article 37 (3) of the Constitution of the Slovak Republic ensures a greater scope of constitutional rights and freedoms than the Constitution of the Slovak Republic itself, as regards the right to strike outside the institute of collective bargaining (basic human rights and freedoms – economic and social rights).

The Slovak delegate also provided additional written background information on the situation relating to Article 6§4 in her country.”

167. 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.

6§4 SPAIN

"The Committee concludes that the situation in Spain is not in conformity with Article 6§4 of the Charter, on the ground that Section 10.1 of Royal Legislative-Decree No. 7 of 4 March 1977 authorises the Government to impose compulsory arbitration to end a strike in cases which go beyond the requirements of Article 31 of the Charter."

Ground of non-conformity (for the first time)

168. The Spanish delegate provided the following information in writing:

"In Conclusions XVIII-1 of the European Committee of Social Rights of the Council of Europe, the Committee finds that Spain's legislation on strikes is not in conformity with the European Social Charter. The Committee maintains that section 10.1 of Royal Legislative-Decree no. 17/1977 of 4 March 1977, which authorises the Government to impose compulsory arbitration to end a strike, is contrary to the requirements of Article 6.4 of the European Social Charter, even bearing in mind Article 31.

In this connection, it should be noted that, in its previous conclusion (Conclusions XVII-1), the Committee had stated that Spanish legislation on the subject was in conformity with the Charter and there was a need to examine each specific case separately. The Committee subsequently altered its reasoning, arriving at an opposite conclusion – a conclusion with which we cannot agree, for the reasons set out below.

Under Article 31 of the Charter, the right to strike may be subject to restrictions or limitations prescribed by law and necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

Under section 10.1 of Royal Legislative-Decree no. 17/1977, the Government may impose arbitration to end a strike in the light of its length or consequences, because of the irreconcilable position of the parties or serious effects on the national economy.

In Constitutional Court judgment 11/1981 of 8 April, it was found that this law was compatible with the Constitution provided that the principle that arbitrators must be impartial was observed.

This finding of constitutionality implies a recognition that the law is compatible with the text of the Constitution and in particular with the fundamental rights and public freedoms set out in Chapter Two, including the right to strike itself, which is expressly mentioned in Article 28, and is given precedence over the right to work referred to in Article 35. The balance between the rights and duties of citizens that this entails is expressed in the following terms: "The right of workers to strike in defence of their interests is recognised. The law governing the exercise of this right shall establish the guarantees which are necessary to ensure the maintenance of essential community services".

Together, these two aspects shape the right to strike in the Spanish system. On the one hand, the right to strike is regarded as a fundamental right to be protected to the highest possible degree, while on the other it is limited by the requirement to preserve essential community services, which is directly linked to fundamental rights, public freedoms and constitutionally protected property rights.

The interpretation that the courts make of this rule (section 10.1 of Royal Legislative-Decree no. 17/1977) gives us to understand that it applies only in exceptional cases or in the circumstances mentioned in the relevant case-law, which have to have a cumulative effect before the government can make use of the power in question (see, *inter alia*, the judgment of the Supreme Court of 9 May 1988). At the same time, the power is rarely used and is surrounded by a whole series of safeguards such as the need to take steps to ensure that arbitrators will be impartial, as mentioned above, and the condition that rulings are subject to judicial review.

Arbitration rulings that put an end to strikes can be regarded as fair in that they exercise the same powers as would normally be exercised by workers' and employers' representatives with collective bargaining rights. They effectively take the place of a collective agreement, and have the same force and settle all the same issues as would have been raised in a failed collective bargaining process, but lose that force if a valid agreement is negotiated between the parties entitled to negotiate under section 87 of the Workers' Statute.

For all the foregoing reasons, the Spanish government would submit that the cases where compulsory arbitration is authorised to put an end to a strike in accordance with Spanish legislation are perfectly compatible with the cases covered by Article 31 of the Charter, particularly where the effects on the rights and duties of third parties are concerned, and that the circumstances envisaged by Spanish legislation cannot be considered to extend beyond the limits set by the Charter."

169. The Committee invited Spain to bring the situation into conformity with Article 6§4 of the Charter.

6§4 UNITED KINGDOM

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

– the scope for workers to defend their interests through lawful collective action is excessively circumscribed;
– the requirement to give notice to an employer of a ballot on industrial action is excessive;
– the protection of workers against dismissal when taking industrial action is insufficient."

First ground of non-conformity

170. The United Kingdom delegate said that his Government did not agree with the conclusion of the ECSR as the existing situation matched the needs of the British industrial relations system. Consequently, the Government had not taken any measures to change the situation.

171. The Hungarian and Belgian delegates considered that in view of the warning which had been issued on the previous occasion it was now time to vote on a recommendation. The French and Swedish delegates felt that a renewed warning would be more appropriate. Other delegates, notably Ireland, Denmark, Germany and Turkey did not consider it necessary to take any measures at all.

172. The ETUC representative pointed out that the British trade unions were not satisfied with the situation in this respect, and given that no changes were made to remedy the situation he suggested the Committee to vote on a warning.

173. The Committee proceeded to vote on a warning, which was not adopted (12 votes in favour, 7 votes against and 8 abstentions).

174. The Committee, while referring to the warning previously issued, urged the Government to bring the situation into conformity with Article 6§4 of the Charter as soon as possible. In the meantime, it decides to await the next assessment of the ECSR.

Second ground of non-conformity

175. The United Kingdom delegate recalled that a number of improvements had been made to the Employment Relations Act 2004 to simplify and clarify pre-industrial action notices. However, the Government was of the view that the requirement that unions have to give notice to an employer of industrial action should remain. The Government was satisfied that the law in this area did not represent major difficulties for the trade unions and it therefore saw no reason to change the law.

176. The ETUC representative said that also on this point the British trade unions were not satisfied with the situation. Given also that in the mean time there were no changes made and no willingness to change is shown, a strong message should be send to the Government thereby also remembering that at the last occasion a vote on a warning was not carried.

177. The Committee expressed concern at the continued violation of the Charter on this point and urged the Government to reconsider its position with a view to bringing the situation into conformity with Article 6§4 of the Charter as soon as possible. In the meantime, it decides to await the next assessment of the ECSR.

Third ground of non-conformity

178. The United Kingdom delegate recalled that the Employment Relations Act 2004 extended the protected period from eight to twelve weeks and that under the law lock out days are not counted towards the protected period. He referred to the distinction between official and unofficial action and said that his Government contested the view that individuals taking unofficial industrial action should be accorded the same protection as those taking official action.

179. The Committee, while referring to Recommendation RecChS(2005)1, expressed concern at the continued violation of the Charter on this point and urged the Government to reconsider its position with a view to bringing the situation into conformity with Article 6§4 of the Charter as soon as possible. In the meantime, it decides to await the next assessment of the ECSR.

Article 12§1 – Existence of a social security system

12§1 AUSTRIA

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

Ground of non-conformity (for the first time)

180. The Austrian delegate provided the following information in writing:

"The European Committee of Social Rights criticises for the first time that the level of an unemployment benefit for a single person is too low.

First of all, a misunderstanding should be corrected:

In contrast to the statement in the Conclusions of the Committee of Social Rights, the unemployment benefit for a single person with a monthly working income of €1,000, not including family allowances, is €651 per month.

The pension insurance and sickness insurance contributions paid by the Public Employment Service should be added to the basic remuneration. Also, no tax is payable on €651.

Thus, unemployment benefit at that income level is not below the poverty line.

In principle, however, it should be pointed out that, under the Austrian unemployment insurance system, the unemployment benefit depends on the previous working remuneration.

For example, if a person was employed only part-time, the resultant payments may under certain circumstances be below the poverty line.

However, it is important to emphasise that there is an entitlement to social assistance under the social assistance legislation of the Provinces, if unemployed persons cannot provide for their subsistence with only the unemployment benefit or by means of other income.

The combination of these two benefits ensures that income replacement does not fall below the poverty line.

Although the Committee of Social Rights noted that the Austrian system guarantees basic provision through this combination of unemployment insurance and social assistance benefits, it nevertheless drew a negative conclusion.

The Austrian authorities ask for the opportunity to explain the Austrian system once again in detail in the next report.

We hope that in this way we shall bring about a different assessment on the part of the European Committee of Social Rights."

181. 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.

12§1 CZECH REPUBLIC

"The Committee concludes that the situation in the Czech Republic is not in conformity with Article 12§1 of the Charter on the grounds that the level of the old-age pension and the invalidity pension are manifestly inadequate."

Ground of non-conformity (for the first time)

182. The Czech delegate provided the following information in writing:

"As for the minimum old-age pension and invalidity pension according to MISSOC tables (flate-rate of CZK 1310 plus percentage amount of at least CZK 770), to which the reference is made, it is necessary to point out that there is no "regulatory" minimum old-age pension in the Czech Republic; in case the old-age (invalidity) pension is under the subsistence minimum level, the difference is covered by social assistance benefits.

Percentage amount CZK 770 was set in 1996 (when new law canceled pensions of wives and transformed them into invalidity or old age pensions); since then it has been substantially increased due to valorizations. According to Art. 67 of the Pension Insurance Act, the government valorizes the pensions in relation to growth of prices and growth of real wages.

In 2004 the actual minimum old-age pension was 2 080 Czech crowns. Current statistics register only range of old-pension benefits exceeding 2 800 Czech crowns (approx. 93 Euros); only about 1 % of old-age pensions falls bellow that limit (and are mostly early or permanently reduced pensions).

Today´s pension could be 2 240 CZK (*flate-rate of CZK 1470 plus percentage amount of at least CZK 770; together approx. 74 Euros*) only if it was calculated from the average income of 1 710 CZK (that is less than 1/3 of the minimum statutory wage) in which case the replacement rate would amount to 130 %.
Detailed information will be provided in the next report.

In conclusion, the Czech Republic would like to refer to the positive conclusion under Art. 12 par. 2. The two conclusions, i.e. the negative one concerning the maintenance of a social security system and the positive one concerning the satisfactory level of the social security system confirming that the Czech Republic maintains minimum standards of social security, seems contradictory."

183. 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.

12§1 GERMANY

"The Committee concludes that the situation in Germany is not in conformity with Article 12§1 of the Charter on the ground that there is no reasonable initial period during which the unemployed may refuse a job not matching with his previous occupation and skills without loosing his unemployment benefits."

Ground of non-conformity (for the first time)

184. The German delegate provided the following information in writing:

"General remarks:
In the Job-AQTIV Act, the acts for modern services on the labour market, the Labour Market Reform Act and other related acts, the Federal Government of Germany has implemented a comprehensive reform of the labour market and of the Federal Employment Agency. The reforms are aimed at achieving a clear and lasting improvement of the framework conditions for a more effective and quicker reintegration of unemployed persons into working life ("support and challenge" principle) and a much stronger focus of the Federal Employment Agency on assistance, counselling and placement activities for unemployed persons. The staff and material resources should be concentrated to the largest possible extent on the vocational reintegration of unemployed persons.

Comments :
It is correct that the protection of occupations and skills ceased to be used as a criterion for job acceptability under the legislation on employment promotion; the point is, however, that there is no discrepancy between the practice of the employment services and the legal situation – described in detail in the 23rd report – with regard to job acceptability which primarily depends on the pay an unemployed person may earn in a job.

The purpose of wage replacement benefits paid in the event of unemployment is to replace the loss of earnings which is solely attributable to the fact that an unemployed person does not find a new job, neither through efforts of his own nor through the placement activities of the employment services. Therefore, employment promotion legislation provides that unemployment benefits may only be claimed by a person who seeks employment, i.e. who tries to find a new job on his own and who is available for the placement activities of the employment services. The possibility to finish unemployment by taking up work at any time is the basis of the unemployment insurance scheme and in the end justifies the financing of the risk of unemployment by contributions that are payable by workers in employment and their employers.
Matching processes in the labour market are focused on placing the "right worker" in the "matching job", This is the priority of the employment agencies' placement efforts.

Therefore, the job acceptability regulations are not only governed by the provisions of section 121 of Book III of the Social Code which is described in the report and uses the level of pay as basis but also by the general principles laid down in section 1 of Book III of the Social Code: Accordingly, employment promotion benefits, which also include placement, should in particular promote individual employability by preserving knowledge, skills and capabilities and counteract employment below value. The local employment agencies have to use these objectives as orientation for their placement activities which means that they try to integrate an unemployed person primarily in accordance with his qualification. This is just why the discrepancy between practice and legislation to which the Committee referred does not exist.

To maintain a protection of the qualification of unemployed persons at any rate is no longer acceptable in a modern placement service – which reacts to the situation on the labour market – in view of structural change and globalisation. As a rule, an unemployed person may be expected to accept work also in other sectors for which he is suited as long as such work is adequately remunerated. Consequently, when it has to be decided whether an unemployed person may be expected to accept a job, it is adequate to primarily use the level of pay in relation to his previous income as basis. To strictly maintain a protection of the qualification of an unemployed person seems to be inappropriate especially in cases where it is clear from the outset that it will not be possible to place that person in a job which corresponds to his previous work. A standard initial period of qualification protection would further aggravate the budgetary situation in these cases."

185. 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.

12§1 MALTA

"The Committee concludes that the situation in Malta is not in conformity with Article 12§1 of the Charter because:

- the rates of sickness benefits for a single person, of unemployment benefits, including the Special Unemployment Benefit for a single person, and of the invalidity pension and the survivors' pension are manifestly inadequate;
- the duration for which unemployment benefit is payable is too short."

Grounds of non-conformity (for the first time)

186. The Maltese delegate provided the following information in writing:

"The Government of Malta insists that the rates are adequate. All our minimum benefits paid under the Social Security Act (Chapter 318 of the Laws of Malta) are based on our National Minimum Wage (Present Rate Lm57.88 or €132 per week). As the name implies this is the minimum. Any cost of living allowance or any other increase is reflected into these benefits, e.g. percentage increase is added to the previous years benefit rate.

It would be ideal to increase this National Minimum Wage but the state cannot increase its costs. We also have to keep in mind the costs of the private employers. What is ideal does not mean that it is also affordable.

First ground of non-conformity

In the case of sickness benefit for a single person, who is forming a household of his own may boost his/her weekly income by claiming the means tested social assistance, which will increase his/her weekly income by a third or 33%.

In the case of unemployment benefit and special unemployment benefit for a single person, who is forming a household of his own may boost his/her weekly income by claiming the means tested social assistance, which will increase his/her weekly income by a fifth or 20%. It is also pertinent to point out that in Malta most single person still live with the extended family and not living alone, so expenses to maintain oneself are therefore greatly diminished.

Invalidity pensions for single persons are also based on the National Minimum Wage. These are augmented by the statutory bonuses. Moreover if suffering from a medical condition as specified under the relative schedule of the Social Security Act 1987, they may be provided with Sickness Assistance and his/her income will be increased by another 20%.

Widows/ers or survivors pensions for single persons are also based on the National Minimum Wage. These are augmented by the statutory bonuses. Moreover if suffering from a medical condition as specified under the relative schedule of the Social Security Act 1987, they may be provided with Sickness Assistance and his/her income will be increased by another 20%. In cases where these widows/ers have in their custody children they will also receive child allowance (apart from the normal family benefits)of €9.13 per week. Widows/ers who have in their custody children under 16, may continue with their employment, irrespective of their earnings.

In long term sickness benefit, unemployment benefit, special unemployment benefit, invalidity and survivors pension beneficiaries may also be entitled to a Supplementary Allowance (according to their income) which is €171.27per annum.

Second ground of non-conformity

Unemployment benefit is paid for a maximum of six months and benefit days are paid according to the number of contributions already paid.

A person may benefit from the means tested unemployment assistance after exhausting his or her special unemployment benefit.

If a person who is seeking a job and refuses suitable employment his/her unemployment benefit is suspended. The Employment and Training Corporations studies each and every case carefully before a person is struck from the first part of the unemployed register. Moreover various training courses are offered on an individual requirements basis to avoid any mismatch of skills. Therefore all opportunities are offered before a person is struck of."

187. 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.

12§1 NETHERLANDS

"The Committee concludes that the situation in the Netherlands is not in conformity with Article 12§1 of the Charter on the ground that the information provided by the Government does not allow the Committee to assess that the right to sickness and invalidity benefits is effectively secured as a social security right for all workers."

Ground of non-conformity (for the first time)

188. The Netherlands delegate provided the following information in writing :

"On 1 January 2006 the Disablement Insurance Act was replaced by the Work and Income according to Labour Capacity Act (WIA). The WIA act is the jewel in the crown of the reform of the sickness and disabilities schemes in the Netherlands. The WIA Act has two aims: to promote reintegration and to protect the incomes of employees who are restricted in the work they can do due to illness or incapacity. The primary aim is to promote a return to work, i.e. to increase the long-term reintegration of employees with (temporary) health-related work restrictions. These people will only be eligible for the income protection scheme once it has been clearly established that they will never be able to return to work. Therefore, the WIA consists of two legal provisions: (a) the regulation governing income protection for people who have been registered as being completely incapable of work due to disability and (b) the regulation governing the re-employment of people with a partial disability.
The preliminary results of the WIA Act are promising. In our next report we will provide more figures on the effects of the WIA in connection with the privatised sickness scheme."

189. 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.

12§1 POLAND

"The Committee concludes that the situation in Poland is not in conformity with Article 12§1 of the Charter because the level of the unemployment benefit for a single worker is inadequate."

190. The Polish delegate provide information on Article 12§§1 and 3 together. She recalled the previous position expressed by the Polish delegate during the last cycle of control according to which Article 12§1 of the Charter deals with the existence of a social security system, while Article 12§2 deals with the level of the benefits. The examination of the level of benefits carried out under paragraph 1 follows from the European Committee of Social Rights' interpretation of the Charter and puts in danger the coherence of the mechanism of control.

With respect to the grounds of non conformity under paragraphs 1 and 3 she explained the guidelines of the social security reform in Poland. In particular she emphasised that the low level of the unemployment benefits is a political choice due

to the peculiar characteristics of the Polish labour market, i.e. a low employment rate and a high unemployment rate. The aim of such low unemployment benefits level is exactly that of pushing as many unemployed persons as possible to enter the labour market through activation measures. Once the employment rate will grow, it will also be possible to raise the unemployment benefit.

191. The French delegate asked whether the report provided information on the activation measures. The Polish delegate indicated that no figures were available since these measures were carried out at local level, but a series of measures taken was described in the report.

192. The Committee expressed concern about the situation in Poland and urged the Government to bring the situation into conformity with Article 12§1 of the Charter as soon as possible.

12§1 SPAIN

"The Committee considers that the situation in Spain is not in conformity with Article 12§1 of the Charter on the ground that the level of unemployment benefits is inadequate."

Ground of non-conformity (for the first time)

193. The Spanish delegate provided the following information in writing:

> "In its report on Spain's compliance with the Charter over the period 2003-2004, the European Committee of Social Rights found that Spanish legislation and the situation in Spain were not in conformity with Article 12§1 on the ground that the level of unemployment benefits was inadequate.
>
> Articles 12§1 and 2 of the Charter require states party to establish and maintain social security systems at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102 on minimum social security standards. Spain has ratified Convention 102 and has maintained unemployment benefits at the required level, as indicated in successive reports on the Convention to the ILO. The latter has considered and accepted these reports, with no reference to any inadequacies concerning the level of unemployment benefits.
>
> The Spanish unemployment protection system has two main elements:
>
> - The contributory element, which grants employees who have become involuntarily unemployed entitlement to unemployment benefits to replace lost earnings and requires at least six months' unemployment contributions in the previous six years;
>
> - The assistance element, which complements the contributory element but is designed, not to replace employees' former earnings but to protect unemployed persons who are not entitled to contributory benefits and whose income falls below a certain level. There are a number of forms of such assistance, including unemployment allowance, unemployment allowance for seasonal agricultural workers, the agricultural income and the active reintegration income, some of which protect certain specific groups.
>
> The obligations concerning levels of protection contracted under Article 12 of the Charter and in ILO Convention 102 are taken to apply to contributory unemployment benefits to replace lost earnings from employment and not unemployment assistance benefits.

The level of contributory unemployment benefits is related to the average real wage on which unemployment benefit contributions were based over the 180 days preceding the period of unemployment. Claimants receive 70% of this average real wage for the first 180 days of entitlement and 60% thereafter.

These percentages ensure that those concerned receive a sufficient level of protection, to compensate for their lost earnings.

Contributory benefits are also subject to maximum and minimum levels. The rules governing these were changed on 1 July 2004 by Royal Decree 3/2004 of 25 June, designed to rationalise and increase the national minimum wage (SMI).

The royal decree followed a series of consultations and agreements with the social partners and includes the following measures:

- The national minimum wage (SMI) was increased by 6.6%, from EUR 460.50 per month as of 1 January 2004 to EUR 490.80, thus restoring its purchasing power while maintaining its link with employee earnings.

- The SMI is no longer treated as a benchmark for a large number of benefits, subsidies and other forms of assistance, including unemployment benefit and assistance levels, which in the past had been the main barrier to increasing it.

- A new multi-purpose public income indicator – the IPREM - has been established, the level of which is laid down annually in the National Budget Act. The level set for the IPREM on 1 July 2004 was the same as the previous SMI (EUR 460.50 per month).

- The maximum and minimum levels of unemployment benefits (and assistance benefits), which until 1 July 2004 were linked to the SMI, are now linked to the IPREM.

- The percentages applied to the IPREM to calculate the maximum and minimum unemployment benefits are higher than those applied formerly to the SMI, with the following results:

	From 1 January to 30 June 2004		From 1 July to 31 December 2004	
Minimum:	%	€ per month	%	€ per month
Without children	75% SMI	402.93	80% IPREM	429.80
With children	100% SMI	537.25	107% IPREM	574.85
Maximum:				
Without children	170% SMI	913.33	175% IPREM	940.18
One child	195% SMI	1 047.63	200% IPREM	1 074.50
Two + children	220% SMI	1 181.95	225% IPREM	1 208.81

The amounts are increased by one-sixth of the SMI or IPREM.

• The increase in the percentages means that unemployed persons have benefited from a very significant rise in the maximum and minimum benefit levels similar to the increase in the SMI, which is reflected in actual benefits received, representing a real rise of EUR 26.90 per month as of 1 July 2004.

• From that date, the minimum benefit level for an employee with no children should have equalled or exceeded the poverty threshold, assuming that the 2003 figure shown in the report - EUR 411.25 per month – did not rise by more than 4.5% by 2004.

• The minimum unemployment benefit of employees without children who earned the equivalent of the minimum wage during their period of employment and whose contributions were paid from these earnings is likely to be below the minimum wage. However, the level of benefit that replaces these earnings cannot be considered insufficient since those concerned would have been paying 100% of the assessed contributions to the social security scheme from their earnings, whereas this figure is reduced to 35% in the case of contributions from unemployment benefits.

• Finally, under the aforementioned Royal Decree 3/2004, the level of unemployment assistance, which was set at 75% of SMI until 1 July 2004, became 80% of the IPREM. This had the same effect of increasing and improving benefits as those outlined above, namely a real rise of EUR 23 per month as of 1 July 2004."

194. 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.

12§1 TURKEY

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

- none of the social security schemes cover all the branches;
- the existing social security schemes do not cover a significant percentage of the population;
- there is a high percentage of working people who are not covered by any social security."

Grounds of non-conformity (for the first time)

195. The Turkish delegate provided the following information in writing:

"The Social Security System in Turkey is under the reforming process. The new law has been accepted very recently by Turkish Grand National Assembly on the date of 19 April 2006. Regarding the Article 12.1 of the Charter, the present Social Security System and the new Law which will be in force after the publication of Law on the Official Gazete following the approval of The President will be explained. First, the figures about the present system will be given below. The new law will be submitted to the Committee when it will be in force."

196. 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.

12§1 UNITED KINGDOM

"The Committee concludes that the situation in the United Kingdom is not in conformity with Article 12§1 of the Charter on the grounds that at least for single persons the level of the Statutory Sick Pay, the Short-Term Incapacity Benefit, and the contributory JSA are manifestly inadequate."

Ground of non-conformity (for the first time)

197. The United Kingdom delegate provided the following information in writing:

"The Government notes the Committee's concern. Social security benefits in the UK are paid at a flat rate, that is they are not indexed to the claimant's previous income. The benefits are uprated annually in line with prices. This means that the purchasing power of the benefit remains the same year on year. Earnings, on the other hand, in a

healthy economy tend to increase by more than the rate of inflation. People in work therefore see their standard of living improve year on year. Thus over a period of time there is a tendency to see benefit rates fall behind average earnings but this does not mean that the benefit claimant is getting poorer simply that their standard of living is remaining constant.

The United Kingdom Government believes that benefit rates are pitched at the right level – enough to cover essential needs without encouraging benefit dependency. For those whose needs are greater the UK has a wide range of means tested social assistance benefits that guarantee that no person should live in poverty."

198. 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 12§3 – Development of the social security system

12§3 DENMARK

"The Committee concludes that the situation in Denmark is not in conformity with Article 12§3 of the Charter on the ground that there is no reasonable initial period during which the unemployed may refuse a job not matching with his previous occupation and skills without loosing his unemployment benefits."

Ground of non-conformity (for the first time)

199. The Danish delegate provided the following information in writing:

"The Danish rules on availability for an offer of reasonable work from the first day of unemployment were introduced in connection with the labour market reform from 2002 "More people into employment" and should be seen in this context.

The key element of the agreement "More people into employment" is to bring the individual into focus, that the system should be adapted to the individual and not vice versa and to make the track back to the labour market as short as possible.

The agreement states that the most effective driving force in bringing the individual back to the labour market is always the individual person's own motivation and labour market orientation.

All employable unemployed persons, i.e. persons who are ready to take up a job and have no other problems than being unemployed, must (as an element of the duty to be available for work) draw up a CV, i.e. a description of their own qualifications and previous work history and feed the CV into the digital CV Bank - www.Jobnet.dk - as quickly as possible and at the latest after having been unemployed for one month.

www.Jobnet.dk is used by the enterprises, unemployed persons, persons in employment, unemployment insurance funds, municipalities, the Public Employment Service (PES) and other actors and is a common instrument for all these labour market actors in their efforts to ensure an effective and precise matching of job vacancies and jobseekers.

The agreement also states that the rules on availability and sanctions should be simplified and harmonised. As an element of the simplification and harmonisation exercise the distinction used so far between "appropriate" and "reasonable" work for insured unemployed persons was abolished. However, the agreement also states that

the administration of the rules should take place in a manner that will ensure that the skills and qualifications of the unemployed person are used in the best possible way.

In addition, a number of other rules are simplified and harmonised; this applies, for instance, to the rules on sanctions that are made uniform (one and same sanction compared with the earlier system of different sanctions depending upon the type of violation and the duration of the unemployment period). It has, in many cases, been a matter of more lenient rules compared with the previous sanctions.

The agreement was transposed into legislation (Acts and Orders) that came into operation on 1 January and 1 July 2003.

The rules that an unemployed person must take up a reasonable job offer (i.e. any job that the person concerned is able to perform) from the first day of unemployment and that a sanction will be imposed in the case of refusal to take up an offer of reasonable work in the absence of a valid ground for such refusal are important instruments in relation to the efforts to ensure the quick return of the unemployed to the labour market because these rules contribute to motivating the unemployed persons to seeking and accepting a job. They are also important instruments to underpin and promote a flexible and dynamic labour market where the demand for labour can be met directly – also for the benefit of the unemployed persons who will thus get back into employment more quickly.

The rules are exercised in such a way that job placements take place on the basis of the unemployed persons' own data in their CVs and the individual employer's demand for skills and qualifications. This will lead to a better match in connection with placement activities.

When an enterprise contacts the PES with a specific job vacancy, the PES will make a selection of relevant unemployed candidates on the basis of their CV data at www.Jobnet.dk. The PES will then examine whether there are special circumstances that mean that the unemployed persons should not be referred to the job vacancy in question. Before referral takes place, the unemployed person will be contacted and an interview will be conducted about the vacancy concerned. This interview will form the basis for the possible subsequent referral.

In the case of several possible candidates for a job, the person referred will always be the best suited person. In addition, placement activities are carried out with "due consideration" in the individual case.

In actual practise, the skills and qualifications or the unemployed are thus used efficiently and appropriately in accordance with the letter and spirit of the agreement "More people into employment" and the proposals transposing this agreement into legislation.

It is thus only in cases where it would not otherwise be possible to fill job vacancies or where the supply of jobs in relation to the individual unemployed person (for instance for reasons of education/training background or for geographical reasons) is limited that the unemployed will be referred to a reasonable job at an early stage of the unemployment period.

If it is a matter of a job that the person will only be able to perform after a short educational programme or other type of training, the unemployed will be offered such education or training in connection with the placement.

The Danish availability rules, including the rule that the unemployed must be available for reasonable work from the first day of unemployment, should not be seen in isolation. They should be seen as an integral part of the Danish Government's general employment strategy – and they should be seen in a national Danish context.

The big majority of the unemployed wish to get a job because they wish to make a contribution, to have an active working life and to have workmates and other social contacts.

The rules also contribute to promoting employment and to boosting the Danish economy, but the primary objective is to assist the unemployed in finding a job. They are thus not only for the benefit of the Danish society – but also for the benefit of the individual person who is interested in getting a job, being able to support him/herself and sharing in the growth and prosperity that Denmark is experiencing these years."

200. 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.

12§3 GERMANY

"The Committee concludes that the situation in Germany is not in conformity with Article 12§3 of the Charter on the ground of the restrictions introduced in the social security system with respect to unemployment benefits."

Ground of non-conformity (for the first time)

201. The German delegate provided the following information in writing:

"General remarks:
In the Job-AQTIV Act, the acts for modern services on the labour market, the Labour Market Reform Act and other related acts, the Federal Government of Germany has implemented a comprehensive reform of the labour market and of the Federal Employment Agency. The reforms are aimed at achieving a clear and lasting improvement of the framework conditions for a more effective and quicker reintegration of unemployed persons into working life ("support and challenge" principle) and a much stronger focus of the Federal Employment Agency on assistance, counselling and placement activities for unemployed persons. The staff and material resources should be concentrated to the largest possible extent on the vocational reintegration of unemployed persons.

1. *On the Committee's conclusion that the situation in Germany is not in conformity with Article 12 para. 3 of the Charter because the period of entitlement has been reduced from up to 32 months to up to 18 months for older workers and the reasons and the extent of these changes and their necessity have not been sufficiently explained.*

In its conclusions, the Committee assumes that the period of entitlement to unemployment benefits has generally been reduced from 32 months to 12 months. As a matter of fact, the vast majority of all employees were entitled to unemployment benefits for a period of 12 months also under the previous regulations. Only employees who had completed age 45 could acquire an entitlement for a longer period of time. An entitlement to unemployment benefits for 32 months could be acquired only after completion of age 57.

The previous regulations on the periods of entitlement to unemployment benefits offered older long-term unemployed persons a protection in the event of unemployment

which was generous in international comparison. This also led to considerable undesirable developments, however: Employers made use of the relatively long periods of receipt to send older workers – in part systematically – into early retirement at the cost of the social security systems. Unemployment benefits are not meant to serve as "pre-retirement benefits", however. This could not be financed with the contribution-based funds of the unemployment insurance. The purpose of unemployment benefits is rather to cover a temporary loss of earnings in the event of unemployment.

Scientific studies have shown that long periods of entitlement reduce the willingness of some unemployed persons to make efforts to the required extent so as to find new jobs.

Thus it was no longer possible to permanently finance the previous structure of benefit receipt. It burdened contributing employees and their employers with high social insurance contributions which in turn were an obstacle to employment.
Therefore, to secure existing and create new jobs, the labour factor had to be relieved sustainably, i.e. non-wage labour costs had to be brought down. It was inevitable to restrict the period of receipt of unemployment benefits to 12 months for those under 55 and to 18 months for those over 55. This will help to keep older workers in the companies instead of sending them into a kind of pre-retirement co-financed by the Federal Employment Agency. As a result of the ageing of our society, these workers and their experience are urgently needed.

Due to the transition period (§ 434 SGB III) the reduction will only concern people whose entitlement to unemployment benefits starts February 1, 2006.

2. *On the Committee's conclusion that the future common qualifying period (pre-insurance period) of twelve months within two years (previously three years) has not been sufficiently justified.*

As a result of the introduction of the new regulation on the qualifying period which provides for a reference period of two years within which twelve months of insurable employment have to be completed, the acquisition of an entitlement to unemployment benefits will be governed by a simple, transparent and common regulation easy to handle in administrative terms. The abolition of special qualifying periods for certain groups of unemployed persons is in line with the aim of the reform legislation to simplify the law by means of deleting special regulations.

3. *On the Committee's conclusion that the new regulations on the suspension of unemployment benefits weaken the coverage of the unemployment risk and are therefore not in conformity with Article 12 para. 1 and para.3 of the Charter.*

Also under the previous legal situation a reduction of unemployment benefits was possible if the beneficiary made too little effort to seek employment and if he failed to attend an appointment with the employment agency.

Already under the previous legal situation an unemployed person was required to make use of all possibilities to finish his unemployment and, upon request of the employment agency, establish proof of his own efforts if he had been informed in time of this obligation to establish proof. If he failed to meet this obligation, the employment agency no longer considered him unemployed in legal terms with retroactive effect and could revoke the grant of unemployment benefits with retroactive effect. The fact that the period for which an unemployed person's own efforts to seek employment could be reviewed was not laid down by law could lead to a non-uniform application of the law in practice.

Also under the previous legal situation an unemployed person was obliged to meet a request of the employment agency for an appointment. If he failed to attend such an appointment, his entitlement to unemployment benefits was suspended for two weeks as a rule, and in case of repetition even for four weeks and more.

Under the new legal situation these cases have been integrated into the law on suspension periods. Length of the period of suspension if an unemployed person makes too little effort to seek employment: two weeks; if he fails to attend an appointment: one week. Thus the legal consequences resulting from behaviour contrary to insurance law have only been rearranged and consolidated also with the aim of a uniform application of the law in practice.

If a person fails to attend an appointment, the periods of suspension imposed under the new legal situation are shorter than those under the old legal situation. If an unemployed person makes too little effort to seek employment, the period of suspension of two weeks imposed under the new legislation is probably also shorter than the period for which the employment agencies revoked the grant of unemployment benefits under the old legislation.

This means that factually, the changes made have probably not weakened but rather strengthened the coverage of the unemployment risk."

202. 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.

12§3 NETHERLANDS

"The Committee concludes that the situation in the Netherlands is not in conformity with Article 12§3 of the Charter on the ground that self-employed persons are no longer covered by the sickness, maternity and invalidity branches of the social security system."

Ground of non-conformity (for the first time)

203. The Netherlands delegate provided the following information in writing :

"At this moment the Netherlands' government does not consider re-introducing a scheme for self-employed persons. However, several parties in our parliament are, according to their election programs, in favour of such a scheme. Because we have elections in November 2006, we might be able to provide further information on this matter in our next report."

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.

12§3 POLAND

"The Committee concludes that the situation in Poland is not in conformity with Article 12§3 of the Charter on the ground of the restrictions introduced in the social security system with respect to unemployment benefits. "

205. See Article 12§1.

Article 12§4 – Social security of persons moving between states

12§4 BELGIUM

"The Committee concludes that the situation in Belgium is not in conformity with Article 12§4 of the Charter on the following grounds:
– equal treatment as regards the payment of disability allowance is not guaranteed to nationals of states party not covered by Community regulations or bound by agreement with Belgium;
– the legislation does not provide for retention of accrued benefits when persons move to a state Party not bound by Community regulations or by agreement with Belgium."

First ground of non-conformity

206. The Belgian delegate stated that the disability allowance is not paid out of the social security contributions but entirely from the State budget. Following to a study carried out by the federal administration, the State Secretary decided not to amend the legislation to lift the nationality condition. The reason is the financial burden this would represent. Nevertheless, on the one hand, the administration will now proceed to study whether this condition could be lifted up for the nationals of the other states parties to the Charter and to the revised Charter. On the other hand, a royal decree of 17 July 2006 already lifted the nationality condition for nationals of Iceland and Norway.

207. The Greek delegate recognised the efforts carried out by Belgium to bring the situation into conformity with the Charter and wished the Committee would give more time for the change to take place.

208. The Committee took note of the information provided by the Belgian Government and encouraged it to continue the efforts to bring the situations into conformity with Article 12§4 of the Charter.

Second ground of non-conformity

209. The Belgian delegate recalled that the retention of accrued benefits will be shortly allowed for two additional countries, i.e. Bulgaria and Romania, because of their entry into EU. For the remaining countries, the delegate indicated that the Government does not envisage the conclusion of any bilateral agreements due to the fact that it appears very few people would be concerned by them. Nevertheless, she added that the enlargement of the application of EC Regulation No. 1408/71 to third country nationals moving within the EU will also help in extending equal treatment.

210. The Committee took note of the information provided by the Belgian Government and decided to await the next assessment of the ECSR.

12§4 CZECH REPUBLIC

"The Committee concludes that the situation in the Czech Republic is not in conformity with Article 12§4 of the Charter on the following grounds:
– there is a length of residence requirement for nationals of States Parties not covered by Community regulations or by agreement with the Czech Republic as regards in kind maternity benefits, unemployment benefit and health care;
– the legislation does not provide for the aggregation of insurance or employment periods completed by the nationals of States Parties not covered by Community regulations or bound by an agreement with the Czech Republic."

First ground of non-conformity (for the first time)

211. The Czech delegate provided the following information in writing:

"According to the current Employment Act (No. 435/2004 Coll.), parties to legal relations are natural persons who are capable of being employed. Natural persons are citizens of the Czech Republic and under the same conditions foreign nationals, who fulfil the conditions for employment set out by this Act. A person is entitled to unemployment benefit if he has worked for at least 12 months in the last 3 years before registration in the register of job seekers. This condition is the same for nationals and non-nationals. It follows that foreign nationals have the right for unemployment benefits under the same conditions as nationals.

Personal scope of the Act No. 48/1997 on Public Health Insurance covers both persons with permanent residence in the Czech Republic and persons without permanent residence, provided they are employees of an employer with his seat in the Czech Republic. It follows that not only persons with permanent residence are entitled to health care (and maternity benefits in kind) under Act on Public Health Insurance. Moreover, persons not covered by Act on Public Health Insurance can conclude a private health insurance.

Information will be provided in the next report."

212. 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

213. The Czech Republic delegate explained that insurance or employment periods completed by nationals of other states parties to the Charter or to the Revised Charter are taken into account only when a bilateral/multilateral agreement exists. With respect to other states parties that are also EU members it is Regulation (EEC) No. 1408/71 and its extension to third country nationals through Regulation (EC) No. 859/2003 which apply. All nationals of the other states parties to the 1961 Charter are covered, while this is not the case for nationals of the following states parties to the revised Charter: Armenia, Azerbaijan, Albania, Andorra, Georgia, and Moldova. She added that the Czech Republic is ready to negotiate bilateral agreements if there is a mutual interest of the countries concerned. However, very few people from these countries are present on the Czech territory (no Andorrans, slightly more than 100 persons from Albania, Azerbaijan, Georgia; 394 Armenians; over 3500 from Moldova). Furthermore, she explained that the adoption of unilateral measures is impossible due to technical reasons; the ratification of the European Convention on Social Security will not change the situation since very few countries ratified it so far and those who did it are already covered by other instruments with respect to the Czech Republic.

214. The Committee referred to its decision under Denmark, Article 12§4, second ground of non-conformity (report of the 113rd meeting).

12§4 DENMARK

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

- legislation does not provide for retention of accrued benefits when persons move to a state Party not bound by Community regulations or by agreement with Denmark;
- legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states Parties not covered by Community regulations or bound by agreement with Denmark;

- the length of residence requirement for non-nationals not covered by Community regulations or by agreement with Denmark as regards early retirement pension for people with disability and standard retirement pension is excessive."

215. As a general observation, the Danish delegate indicated that, with regards to the international coordination on social security matters, Denmark is in conformity with Article12§4 in respect to Contracting parties being member of the European Union and the European Economic Area. Furthermore Denmark has concluded association agreements with the applicant countries and is of the opinion that priority should be given to these association agreements that take place alongside with negotiations on accession to the EU and not to conclusion of bilateral agreements with each individual country. Denmark negotiates bilateral agreements only where there is a mutual interest of the countries concerned and where movements between the countries are significant. As far as the Charter is concerned, the conclusion of bilateral agreements concerns only a very few countries, and there is no intention to conclude new conventions, since there have been no attempt from either side to do so. Finally, EC Regulation 859/03 extending the application of EC Regulation No. 1408/71 to third country nationals moving within the EU does not apply in Denmark.

First ground of non-conformity

216. The Danish delegate explained that the retention of invalidity pensions and unemployment benefits is not possible in respect of non-EU/EEA states or states with which Denmark is not linked through bilateral agreements. On the contrary, work accidents or occupational diseases benefits can be transported to any country in the world as it has been pointed out on earlier occasions.

217. The Committee took note of the information provided by the Danish Government and decided to await the next assessment of the ECSR.

Second ground of non-conformity

218. The Danish delegate explained that insurance or employment periods completed by nationals of non-EU/EEA states or states with which Denmark is not linked through bilateral agreements are not taken into consideration with respect to work accidents or occupational diseases benefits since insurance starts from the moment work begins in Denmark.

219. The President recalled that at the occasion of the examination of Conclusions 2004/XVII-1, the Governmental Committee proceeded as follows with regards to all the situations of non-conformity concerning child benefits and accumulation of insurance or employment periods: "The Committee took note of the conclusions of non-conformity reached by the ECSR about these issues but did not consider it possible, in particular for practical and technical reasons, to comply with the requirements following from the interpretation of Article 12§4 for the time being. It therefore decided not to take any measures in respect of states concerned and await the next assessment of the ECSR." (T-SG (2004) 25, p. 33).

220. The Committee maintains its position.

Third ground of non-conformity

221. The Danish delegate provided the following information in writing:

> "It must first be noted, that the ten years of residence requirement only applies for residents from a Contracting Party not bound by community regulations or by bilateral agreements with Denmark that ensures equal treatment of Danes and nationals of the countries in question.
>
> This means that the issue affects only nationals of a very limited number of countries (Albania, Moldova, Armenia and the non-EU part of Cyprus).
>
> With respect to countries not covered by reciprocal agreements we can inform the committee, that is a general Danish policy, that setting up a bilateral convention requires a mutual interest and willingness from the countries in question – and that a convention or agreement will apply on a reasonable number of persons. We have no information that more conventions relevant in this context should be on the way.
>
> The requirement of 10 years of residence should been seen in light of the special features of the Danish pension system. The public old age pension is a universal flat rate pension intended to secure all citizens a fair income when they retire. The pension is not dependent on previous labour market participation, contributions or tax-payments etc. Entitlement to the pension is thus in principle dependent solely on citizenship and residence (these requirements are however waived on certain conditions). The universal character of the scheme means that the scheme is focusing on persons with a close attachment to Denmark, either due to citizenship or due to staying in Denmark for a longer period. 10 years is not considered excessive as an indicator of such an attachment."

222. 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.

12§4 GERMANY

"The Committee concludes that the situation in Germany is not in conformity with Article 12§4 of the Charter on the ground that the legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of States Parties not covered by Community regulations or bound by agreement with Germany."

223. The German delegate explained that accumulation of insurance or employment periods completed by nationals of non-EU/EEA states or states with which Germany is not linked through bilateral agreements is not possible. Agreements currently exist with Turkey, Bulgaria, "the former Yugoslav Republic of Macedonia" and Romania. Negotiations are on-going with Ukraine and Russia, but the delegate emphasised that new bilateral agreements will be negotiated only where there is a mutual interest of the countries concerned and where movements between the countries are significant.

224. The Committee refers to its decision for the second ground of non-conformity under Denmark, Article 12§4.

12§4 GREECE

"The Committee concludes that the situation in Greece is not in conformity with Article 12§4 of the Charter on the grounds that the legislation does not provide for the aggregation of insurance or employment periods completed by the nationals of States party not covered by Community regulations or bound by agreement with Greece."

225. The Greek delegate explained that accumulation of insurance or employment periods completed is possible only for nationals of EU/EEA States or States with which Greece is linked through bilateral agreements. Technical reasons prevent the accumulation for nationals of States with which no agreement exists. However, the delegate emphasised that new bilateral agreements will be negotiated if there is a mutual interest of the States concerned and where movements between the States are significant.

226. The Committee refers to its position for the second ground of non-conformity with the Charter under the conclusion concerning Denmark, Article 12§4.

12§4 ICELAND

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

- the legislation does not provide for retention of accrued benefits when persons move to a state party not bound by Community regulations or by agreement with Iceland;
- the legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by agreement with Iceland."

227. The Icelandic delegate indicated that so far her Government has not received requests for negotiating agreements by states parties to the Charter or the Revised Charter but not to the EEA.

First ground of non-conformity

228. The Icelandic delegate explained that the retention of social security rights is not possible in respect of non-EEA states or states with which Iceland is not linked through bilateral agreements.

229. The Committee took note of the information provided by the Icelandic Government and decided to await the next assessment of the ECSR.

Second ground of non-conformity

230. The Icelandic delegate explained that accumulation of insurance or employment periods completed by nationals is not possible in respect of non-EEA states or states with which Iceland is not linked through bilateral agreements.

231. The Committee refers to its decision for the second ground of non-conformity under Denmark, Article 12§4.

12§4 NETHERLANDS

"The Committee concludes that the situation in the Netherlands is not in conformity with Article 12§4 of the Charter on the following ground the legislation does not provide for the retention of supplementary benefits when persons move to a state Party not bound by Community regulations or by agreement with the Netherlands."

Ground of non-conformity (for the first time)

232. The Netherlands delegate provided the following information in writing :

"In addition to our previous reports we want to point out that the Social Security Supplement Act (Toeslagenwet) on 13 April 2005 has been placed on Annex II bis of Regulation (EEC) no. 1408/71[1]. This has the effect that the Toeslagenwet has been excluded from the export principle of this Regulation. The supplements under the Toeslagenwet will not be paid out in other EU-countries. According to EU law de Toeslagenwet is not related with one of the social security risks as referred to by the ESCR."

233. 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.

12§4 POLAND

"The Committee concludes that the situation in Poland is not in conformity with Article 12§4 of the Charter on the grounds that Polish legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by agreement with Poland."

234. The Polish delegate indicates that accumulation of insurance or employment periods completed by non-nationals is problematic only with respect to pensions for migrant workers covered by the old social security regime, as well as with respect to invalidity pensions and survivors' pensions. Agreements are currently negotiated with Turkey and Moldova. In any event, she explained that that new bilateral agreements will be negotiated only where there is a mutual interest of the countries concerned and where movements between the countries are significant – which it is not the case with states parties such as Albania, Andorra, or Azerbaijan.

235. The Committee refers to its decision for the second ground of non-conformity under Denmark, Article 12§4.

12§4 TURKEY

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

- nationals of States party to the Charter or the revised Charter not bound by agreement with Turkey are not covered by social security insurance for long-term risks;
- these same nationals [nationals of States party to the Charter or the revised Charter not bound by agreement with Turkey] are not entitled to unemployment benefits."

First ground of non-conformity

236. The Turkish delegate clarified that following the abolishment of Article 3/II-A of Act No. 506 on Social Insurance, non-nationals who have a working permit in Turkey are automatically insured for long-term risks, including unemployment. The application of this act is not conditioned by the existence of bilateral or multilateral agreements.

237. The Committee asked Turkey to put this information in the next report and decided to await the next assessment of the ECSR.

Second ground of non-conformity (for the first time)

[1] Regulation (EC) No 647/2005 of the European Parliament and of the Concil of 13 April 2005 amending Council Regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

238. The Turkish delegate provided the following information in writing:

"Citizens of Countries with which Turkey has signed bilateral or multilateral agreements, can work under the Social Insurances Act No: 506. Persons who work according to the Act No: 506 can benefit from rights derived from the Act, whatever their nationalities are.

With the abolishment of Article 3/II-A of the Act No: 506 which envisage the registration of foreigners with the social security system in a voluntary basis, foreign nationals are now automatically insured under long-term insurance programmes.

On the other hand, as a result of abolishment of the provision as from publication of the Act No: 4958 dated 06.08.2003 " invalidity, old-age and survivor pensions are presented to the foreign nationals who work under an employer and present a written request to the Institution starting as from the beginning of the month after the application" which is in the II-A sub-paragraph of Article 3 of the Act No: 506 which is conflicting with the implementation of the Paragraph 1 of Article 3 of ILO Convention Act No: 118 on "Equality of Treatment in Social Security" in our Country, inclusion of foreign nationals who work under an employer under the coverage of all insurance branches compulsorily is provided, whether they are volunteered or not and the criticism made by the Committee on this subject for a long time have now been eliminated.

The term "implementation of this Act to foreign workers in cases there is a reciprocity in bilateral agreements" in the Paragraph 2 of Article 46of the Unemployment Insurance Law No: 4447 has not been abolished yet, but all foreigners who get work permit and contribute the unemployment insurance according to the Work Permit for Foreigners Law No.4817 have right to get unemployment benefit.

In sum, if a foreigner has worked legally in Turkey by getting work and residence permit according to Law No.4817 and contribute the unemployment insurance has right to get unemployment benefit."

239. 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 – Adequate assistance for every person in need

13§1 BELGIUM

"The Committee concludes that the situation in Belgium is not in conformity with Article 13§1 of the Charter on the ground that the guaranteed income for the elderly (GRAPA) is not granted to nationals of states party to the Charter that are not covered by community law or have not concluded reciprocity agreements with Belgium."

Ground of non-conformity (for the first time)

247. The Belgian delegate provided the following information in writing :

"The guaranteed income for the elderly in Belgium is governed by the Act of 22 March 2001 on that subject (Official Gazette of 29.03.2001).

Section 4 of the Act lays down the eligibility criteria for the guaranteed income.

Section 4.1: *"Recipients of the guaranteed income shall have their main residence in Belgium and belong to one of the following categories of persons:*
1. persons of Belgian nationality;
2. persons covered by Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community;
3. stateless persons covered by the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954 and approved by the Act of 12 May 1960;
4. refugees covered by section 49 of the Act of 15 December 1980 on the entry, residence, establishment and removal of aliens;
5. nationals of countries with which Belgium has concluded a reciprocity agreement on the subject or has recognised the existence of de facto *reciprocity;*
6. persons of foreign nationality with entitlement to a retirement or survivors' pension under a Belgian scheme.
For the purposes of this Act, persons of undetermined nationality are deemed to be stateless persons."

Under Section 4.2, the Crown may, under conditions that it shall lay down, extend the application of the Act of 22 March 2001 to categories of persons other than those specified in paragraph 1 whose main residence is in Belgium.

As matters currently stand, there have been no orders under section 4.2 of the Act of 22 March 2001 to extend its application to categories of persons other than those specified in section 4.1 whose main residence is in Belgium.

As a result, the following persons are eligible for the guaranteed income for the elderly, so long as their main residence is in Belgium:
- persons covered by section 4.1 of the Act;
- nationals of countries with which Belgium has concluded a reciprocity agreement on the subject or has recognised the existence of *de facto* reciprocity. Belgium has concluded such agreements with a number of countries, particularly the member states of the European Union. It also has an agreement with Norway;
- the future members of the European Union - Bulgaria and Romania – will be covered by Regulation (EEC) No 1408/71 of 14 June 1971 as of 1 January 2007.

The Belgian authorities' attention has been drawn to the situation of nationals of European Social Charter member states who fall outside the scope of the Act of 22 March 2001 instituting a guaranteed income for the elderly, and Belgium's obligations under that Act."

248. The Committee invited Belgium to bring the situation into conformity with the Charter.

13§1 CROATIA

"The Committee concludes that the situation in Croatia is not in conformity with Article 13§1 of the Charter on the ground that the social assistance granted to persons living alone is manifestly inadequate."

Ground of non-conformity (for the first time)

242. The Croatian delegate provided the following information in writing :

"Subsistence allowance is granted through the social welfare system as defined by the Law on Social Welfare (N.N. Nos. 73/97, 27/01, 59/01, 82/01,103/03 and 44/06) as the base law that regulates the manner of conducting and financing social welfare activities; beneficiaries; entitlements; procedures to be eligible for entitlements; and other issues of importance for these sector.

With regard to the issue of single persons, the following are some of the most significant entitlements:

1. Subsistence allowance:

- Assistance is in the form of an allowance, which can be approved partially or entirely as a grant in kind. The amount of the allowance is determined at a certain percentage in relation to the base amount, which, according to the provisions of the Law on Social Welfare is determined by the Croatian Government. The base amount that the Government determined pursuant to a decision in March 2001 amounts to 400.00 HRK. The amount of subsistence allowance is calculated with the application of the relevant percentage (depending on the personal details of the beneficiary), scaled at a rate prescribed by the law added to the base amount. The scope of the rates for beneficiary categories ranging from single persons (working able) to a four-member family/household (e.g. two working able adults and two children) in Croatia ranges from 100% to 340%. Seeing that the amount of subsistence allowance is determined dependent on the number of family members, their age, working ability and other details, the amount of the allowance is not unique but enables socially oppressed families (e.g. with a greater number of non-working members) to be granted a larger subsistence allowance.

- Earmarked for single persons or families without sufficient income for maintenance as the prescribed amount and who are not able to realise this income through their own work, assets or some other source. The structure of beneficiaries of subsistence allowance are on the most part, unemployed; the aged; the aged who do not have any pension allowance; and children as family members. In August 2006, there were 114,736 persons in Croatia who were eligible for this type of assistance.

- Subsistence allowance can be granted to single person or families that do not have other sources of subsistence to the amount determined by the Law on Social Welfare. In addition other details are taken into consideration, whether the person is able to work; if they are able to work, are they registered with employment services; can funds for subsistence be secured with the sale of or leasing or rent of their property that is not used to settle basic living needs for them or their family; can they realise subsistence from a legal or contracted carer. These details are determined via a questionnaire pursuant to the provisions of the Law on General Administrative Procedures to Collect Evidence of Facts Vital to Realising Entitlements (confirmation from the relevant bodies), and an inspection of the circumstances in the family of the beneficiaries is conducted. Pursuant to the provisions of the Law on Social Welfare, these procedures are considered urgent. The Social Welfare Centre according to the usual residency of the beneficiary, conducts the procedures and brings a final ruling as well as of the allowance to be issued pursuant to such ruling. Allowances are paid out each month and entitlements are valid from the date of application.

- Assistance for single persons unable for work amounts to 150% of the basic amount or 600.00HRK. Official indicators of poverty for 2003, indicate that the relative poverty threshold amounts to 1,600.00HRK for single persons.

2. One-off grants:

- can be approved for a single person or family due to current circumstances and according to an evaluation by the Social Welfare Centre, if they are unable to partially or entirely satisfy their basic living needs.
- one-off grants are granted to single persons or families: working able but unemployed persons, pensioners, employed persons with low earnings and families with school age children, and others.
- according to data for August 2006, 74,449 one-off grants were approved.
- The Social Welfare Centre can independently approve assistance to settle some specific needs to three times the basic amount for social allowances. Any larger amounts require approval from the Ministry responsible for social welfare.

3. Assistance to settle housing costs:

- intended to settle costs determined by rental contracts that relate to rental costs or costs that are paid relating to housing and maintenance (utility costs, electricity bills, gas, heating, water, sewage, etc. costs). Funds for this type of assistance are secured by local and regional self-government units.

- allowances for heating fuel is secured or an allowance to the amount determined by the local or regional self-government unit or the equivalent of 3m³ of wood.

- this type of assistance can be approved to a single person or family whose income is not greater than the census to realise subsistence allowance; or single person or family living in an apartment that is not above the standards prescribed by sub acts of the law

Of the remaining forms of allowance there is a care supplement; home care allowance; personal disability allowance; equipping for independent living and work allowance (including an allowance until employment); food supplement; supplement for food and footwear; allowance for personal needs for beneficiaries living in social welfare homes; settling funeral costs; counselling services; and assistance for single persons to overcome the difficulties of living alone; and families. In all, there were 13,756 beneficiaries of this type of allowance at the end of August 2006.

Reforms to the social benefits system

As part of the Second Programme of Adaptation Loan – PAL 2, steps take to produce a Reform Strategy of Social Allowances 2006 – 2008.

The reform to social allowances was approached with the basic aim to determine the possibility of increasing the share of allowances of social benefits based on assets tests in the total costs of social benefits which in 2004 amounted to 0.65% of the GDP. In that regard, a review of all social benefits was conducted that are included in the reform which present the legislative basis, that is, conditions to become eligible for allowances as well as the number of beneficiaries and financial indicators.

The Social Security system in Croatia consists of the pension and health systems; unemployment benefits; family allowance benefits; and social assistance; and social welfare (officially known as “social welfare”). The strategy included reforms to the following social benefits: a) allowances that are not based on insurance: child allowance; maternity allowance; social welfare; allowances for military and civil war invalids and veterans’ allowances; b) certain benefits based on insurance entitlement: unemployment benefits; maternity leave benefits up to 6 months.

Seeing that until now not enough attention was paid to the problem of multiplying and overlapping of entitlements under various benefit schemes, the Strategy is directed towards better co-ordination and information exchange between various sections of the

social welfare system. Insufficient conformity of entitlements is common both for allowances that are realised at various government levels as well as allowances that are realised at the same government level (primarily at the national level). Mutual conformity of expenditure for social benefits is an important component of Croatia's fiscal programme. Attention is being directed to setting up ties between various aspects of social benefits (allowances) instead of treating them as isolated cases in order to avoid unjust accumulation of entitlements or excluding certain categories who may be potential beneficiaries (because they are not eligible for one type of benefit that renders them ineligible for other benefits too).

More attention is directed towards the actual approach regarding social benefits. Legislative provisions, procedures and administrative organisations in certain segments are not conformed and as such hamper eligibility for certain entitlements. It is necessary to keep in mind that beneficiaries of social benefits often belong to so-called vulnerable groups whose personal resources (awareness, social skills, education, etc) can further hamper their approach to social benefits.

Consequently the basic objectives of reforms are:
1. better aiming target groups for social benefits
2. faster and better quality approach to social benefits
3. equalising social benefits

With regard to simplifying administration of social benefits, several recommendations were made that include setting up: an integrated information system; single register of beneficiaries of all entitlements; single catalogue of entitlements; quality and speedy exchange of data; and a single "one-stop-shop" where to apply and become eligible for entitlements.

Furthermore, seeing that calculations for social allowances by law determine various base amounts, that is, the relevant ministry to determine the amount of certain allowances use various criteria, with the aim of better targeting social allowances and equalising them a unique base amount will be introduced for all social benefits except allowances realised for social welfare.

The Social Welfare system is set aside due to its specific role and relatively small share of the total resources used for social security. Compared to other systems, the primary duty of social welfare is to relieve poverty and social exclusivity, which means that this system is almost entirely earmarked for the poor. The basis to realise these entitlements pertaining to social welfare (assistance) is determined by the Croatian Government and currently amounts to 400.00 HRK. The said basic amount, as we have mentioned before, was determined in 2001 and has not changed since then even though the cost of living has changed. Namely, even though it has been determined that entitlements for social welfare are the best targeted entitlements compared to other social benefits and that they take into account asset tests, the amount of social benefits is the lowest allowance offered to the most oppressed sector of the population.

The duty of social welfare is to settle basic needs for beneficiaries, which is closely related to the notion of absolute poverty. As such, its is recommended that allowances for social welfare be determined based on the absolute poverty threshold which would be calculated regularly by the State Bureau of Statistics. The absolute threshold is based on the recommended minimum level of food-energy intake in keeping with nutritional standards and indirect estimate of other costs. Consequently an increase in the basic amount for social welfare entitlements is recommended and its periodical conformity to the poverty threshold.

In addition to increasing the basic amount to be eligible for social welfare, recommendations were made for each individual entitlement including recommendations to combine certain entitlements in keeping with proposed reforms of the entire social security system. Namely, mutually combining certain entitlements from the current 18 that can be realised through the social welfare system could be brought down to 6 basic entitlements which would be encompassed within other entitlements which would simplify the process of recognising eligibility of individual entitlements and decrease administration procedures and costs. It is also proposed that two entitlements that are realised based on an assets test and that are regulated by the Labour Law and other sub legislative acts, can be realised through other systems. These are entitlements pertaining to parents with children with serious problems in development which includes the right to maternity leave of 7 years and the right to part-time working hours which should be realised as part of the entitlements offered by the Croatian Health Insurance Institute; and entitlements to allowances until employment for disabled persons as part of entitlements offered by the Croatian Employment Institute.
Social Work services would be provided by reformed social welfare centres. The State system of social services programme would gain a new partner that would provide various forms of social services, these being: NGO's, non-profit and profit organisations with special approval to offer such services. This would offer beneficiaries the right to choose certain services or several at the same time as well as the right to chose the provider of such services according to a point system that would be replaced by a certain monetary allowance. In that case the social welfare centres would conclude a contract with the relevant service provider.

As part of the social benefits that are realised through the health system, a proposal was made to improve exemptions from payment of participation in such a way that these would be offered to those most in need as well as decreasing the possibility of abuse of the system and improving sustainability.

Consequently, we wish to point out that the Strategy endeavours to determine possible savings by simplifying administrative procedures and by bringing possible entitlements closer to the beneficiary, better targeted, and decreased overlapping of entitlements and to decrease possible abuse of the system. At the same time we wish for beneficiaries not to be damaged by possible loss of existing social benefits but instead to assist in realising entitlements for those most in need to the most appropriate amount."

243. 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.

13§1 CZECH REPUBLIC

"The Committee concludes that the situation is not in conformity with Article 13§1 of the Charter on the grounds that the granting of social assistance to nationals of other parties to the Charter and the Revised Charter is conditional on a continuous presence in Czech territory that is manifestly excessive."

Ground of non-conformity (for the first time)

244. The Czech delegate provided the following information in writing :

"Since 1 January 2007 a new legal regulation will come into force - the Act No. 111/2006 Coll. on Assistance in Material Need - that will replace the Act on Social Need. Following benefits will be provided according to this Act: benefit for living, supplement for housing, exceptional immediate help. For the benefits set down in this Act are, inter alia, entitled foreigners without permanent residence in the Czech Republic if an international treaty provides so (see Art. 5 letter c) of the afore-

mentioned Act). According to the interpretation of the competent authorities, European Social Charter is such an international treaty.
For exceptional immediate help in a situation in which the person concerned is in risk of serious harm to his health due to the lack of financial resources, are entitled also persons staying in the Czech Republic and complying with the Act on the Residence of Foreigners in the Czech Republic.
To provide all essential data, the Czech Republic would like to draw the Committee`s attention to the fact that there existed several exceptions from the 10-year period, which enabled to obtain permanent residence sooner. However, this 10-year requirement does not exist any more since from the beginning of the year 2006 the period was substantially reduced and at present the required period is 5 years (the length was thus unified with the period necessary for the acquisition of long-term residence status).

It follows from the above mentioned that the definition of categories of persons entitled to social assistance benefits according to the new Act corresponds to the requirements of the European Social Charter."

245. 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.

13§1 DENMARK

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

- persons who are not European Union nationals and not bound by the European Economic Area agreement or covered by agreements concluded by Denmark must have resided in Denmark for more than seven years to be eligible for continued assistance (*vedvarende hjælp*), this length of residence requirement being a direct discrimination against foreign nationals;
- persons who are not European Union nationals and not bound by the European Economic Area agreement or covered by agreements concluded by Denmark may be repatriated on the sole ground of being in receipt of social assistance, unless they have resided in Denmark for more than seven years or are covered by the Nordic Convention on Social Assistance and Social Services."

First and second grounds of non-conformity (for the first time)

246. The Danish delegate said that his country's policy was designed to ensure that both non-Community nationals and Community nationals, who are not job seekers, did not abuse Denmark's particularly generous social protection system. Under Community law, nationals of both Community-countries and other countries were not entitled to remain in the host country if they could not find employment and, subject to certain exceptions such as family reunion, could be repatriated if they were likely to become a burden to the host country's social assistance system. These principles are common to all EU-countries. Another interpretation would violate Community Law, and each and every Community Member thereby has the possibility to repatriate ie. destitutes on the sole ground that they are in need of assistance. He noted furthermore that the Charter referred to the 1953 Convention on Social and Medical Assistance, which authorised restrictions on eligibility for assistance and authorized the possibility of repatriation, and that Danish law was compatible with this convention.

247. The Secretariat referred to the European Committee of Social Rights' case-law on Article 13§1. Foreign nationals residing legally in the territory of another state party could not be repatriated on the sole ground that they were in need of assistance. So long as they were lawfully resident or working regularly they were entitled to equal treatment and, in the case of migrant workers, to the protection of

Article 19§8, which did not allow expulsion on economic grounds. Once a residence and/or work permit had expired, states were no longer bound by the relevant Charter obligations, even if the foreign nationals concerned were in need. However, this did not authorise the authorities to withdraw residence permits solely on the ground that individuals had no means of support and could not meet their families' needs. Regarding the reference to the 1953 convention in Article 13§4, it was the Charter itself that determined the material and personal scope of that article and the only link between Article 13§4 and the convention was that states were authorised to repatriate foreign nationals who were in need of assistance, so long as the convention's conditions relating to repatriation were met.

248. The Portuguese delegate, supported by the delegates of Turkey and Hungary and the ETUC representative, thought that this was a clear example of discrimination based on nationality and that whatever the situation in Community law this requirement was manifestly excessive.The French delegate referred to Directive 2004/38 on the right of citizens of the Union and their family members to move and reside within the territory of the member states and pointed out that even under the directive only those holding a permanent residence permit, in other word persons with five years' uninterrupted residence in the host country, were eligible for social assistance.
250. The Committee voted on a warning to Denmark. The warning was not adopted (11 for, 6 against and 15 abstentions).

251. The Committee urged the Danish government to bring the situation into conformity with Article 13§1 of the Charter.

13§1 GERMANY

"The Committee concludes that the situation in Germany is not in conformity with Article 13§1 of the Charter on the ground that nationals of other states party are not granted the same social assistance benefits as nationals."

252. The German delegate confirmed that foreign nationals lawfully resident in Germany had the same entitlement to all the basic social assistance benefits as nationals. The other benefits, such as the one covered by Section 30 of the BSHG, were not entitlements and were awarded on a case-by-case basis. The number of benefits awarded under section 30 was very limited. In 2003 it concerned 20 cases out of 617 000 foreign nationals receiving social assistance. However, the equivalent provision did not appear in the new Social Code, which had come into force on 1 January 2005.

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

13§1 GREECE

"The Committee concludes that the situation in Greece is not in conformity with Article 13§1 of the Charter on the grounds that there is no general social assistance scheme in the country that ensures that everyone has a legally enforceable right to assistance for which the sole criterion is need."

254. The Greek delegate said that access to medical and social services was open to all Greek citizens and all nationals of States parties to the Charter and the Revised Charter residing lawfully in Greece.

255. Under current legislation (the decree of 1973 and ministerial decision of 2001), all people in need were entitled to a financial allowance of € 250 and free medical assistance, provided that they were not covered by another specific health insurance scheme. There were other types of social benefit in various public sectors and health care was free for all elderly people in need.

256. The delegate also emphasised that anyone who was refused financial or medical assistance could call, free of charge, on the services of the national ombudsperson appointed pursuant to Act No. 2477/1997 and, in particular, on a health and social security service set up by an act of 2004.

257. In reply to a question from the Swedish delegate, the Greek delegate said that, in practice, the authorities were bound by the national ombudsperson's decisions.

258. Under the decree of 1973, the Greek delegate underlined that all citizens were entitled to appeal to the administrative courts in such cases.

259. The Portuguese delegate pointed out that the information provided by Greece was negligible and suggested that the Committee should give the Greek authorities extra time to report on the various measures currently being taken to come to the aid of citizens in need.

260. The Greek delegate said that certain measures along these lines had already been taken or were due to be taken, such as the significant increase in social spending in the 2005 and 2006 national budgets, income support measures and new institutions for the supervision and assessment of the impact of social protection and assistance systems.

261. Further to the statement by the Portuguese delegate and the ETUC representative, the Committee proposed that a vote be held on the adoption of a warning against Greece for a repeated failure to provide sufficient information.

262. The Dutch delegate suggested that Greece should also be asked to report to the Committee on all its legislation in this area.

263. The Committee voted and a warning was adopted (by 16 votes for, 1 against and 15 abstentions).

13§1 HUNGARY

"The Committee concludes that the situation in Hungary is not in conformity with Article 13§1 of the Charter because there is no right of appeal against social assistance decisions to an independent body within the meaning of this provision."

Ground of non-conformity (for the first time)

264. The Hungarian delegate provided the following information in writing :

> "The courts only have authority to modify decisions of administrative bodies in certain types of proceedings relating to social law and a few courts lack this jurisdiction. The government undertakes to bring the situation into conformity with the Charter. It will report on these measures and supply any other relevant information on the situation in the next report."

265. The Committee invited Hungary to bring the situation into conformity with the Charter.

13§1 ICELAND

"The Committee concludes that the situation in Iceland is not in conformity with Article 13§1 of the Charter on the grounds that entitlement to medical assistance is subject to a six months' residence condition."

266. The delegate of Iceland confirms that there is a six months' residence period required before persons moving to the country are fully covered by medical insurance. This requirement applies equally to Icelandic people who have lived abroad and would like to move back home to Iceland and to foreigners who would like to live in Iceland.

The six months' residence period starts when the person concerned has registered by the National registry. There is no waiting time to register by the National registry when a person has a permit to stay in the country.

Foreigners, other than nationals of the EEA member states, who would like to live in Iceland have to apply for a permit to stay before they enter the country. When they receive their permits, they can come to the country and register by the National registry the same day. From that day the six months' residence period according to the Social Security Act will begin.

According to the Act on Foreign Nationals Right to Work, from 2002, which entered into force on 1 January 2003, employers are obliged to insure foreign workers for the first six months they are living in Iceland. This should preclude the possibility that foreign workers in Iceland will be uninsured during this six-months' period. The Foreigners Nationals Act, also from 2002, has a medical insurance for the first six months in Iceland as a condition for the first permit to stay. The medical insurance for foreigners is not expensive; this costs ISK 50,000-70,000 per person for the whole period, which is around 500 – 700 Euros.

There are special rules based on the EEA agreement. According to agreement, having held medical insurance in one of the EEA countries for the last six months is considered equivalent to the six-month residence period in Iceland. Thus, if a person from one of these countries, who has held insurance there for the prescribed period, takes up residence in Iceland, he or she is fully covered by medical insurance in Iceland from the first day of stay.

The Icelandic authorities have been making agreements with authorities in other countries and have decided to negotiate with countries where the most exchange takes place between nationals of the countries. It has to be born in mind that Iceland has a very small administration and cannot negotiate with all countries concerned, especially if these countries show little or no initiative in making agreements with Iceland. Iceland has not received requests from countries that are members of the Social Charter but not members of the EEA Agreement to make agreements on social security.

Furthermore, a governmental regulation provides for waiving the six-month residence requirement. This is done, for example, when there is an urgent need for medical service in the case of an acute illness, when a kidney patient needs regular

treatment, when a person has communicable disease and the Directorate General of Public Health has ordered treatment, etc. These are all reasons of a humanitarian nature.

As stated in the last reports, the six months' residence period is required to avoid misuse of the services. People could, and did, take up residence in Iceland mainly to use the medical insurance as it had such wide coverage. A six months' residence requirement was thus introduced to protect the system from abuse.

Medical assistance is very expensive services and the health insurance system in Iceland is tax-financed. The aim is not to discriminate between people rather to make sure that the people who actually live in the country and pay their taxes, receive and enjoy the services.

However, it should be emphasised that doctors and hospitals in Iceland are required to treat those in need of urgent care. Individuals who have no medical insurance in Iceland always receive medical services, but must pay for them afterwards. In fact no one would be refused medical attention in emergency cases even if it were revealed that he/she was unable to pay.

267. 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.

13§1 LUXEMBOURG

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

- persons aged under 25 and in need are not entitled to adequate social assistance;
- persons who have been dismissed for serious misconduct are not entitled to the guaranteed minimum income (RMG);
- RMG is subject to an excessive length of residence condition."

First ground of non-conformity (age limit)

268. The Luxembourg delegate said that his Government adhered to the view that the social assistance system ought not to encourage abuses or prompt young people to leave school early. It considered itself duty bound to do its utmost to ensure that young people, even those with few or no qualifications, could find a job without needing to resort to social assistance. From another angle, young people must make efforts to find employment, and increase their employability by participating in training and qualification schemes, such as training courses, work experience periods, or contracts for temporary auxiliaries offered by the employment department. In that way, young people would receive a wage and not need to resort to social assistance. The Government did not intend for the time being to grant entitlement to minimum guaranteed income benefits (*revenu minimum garanti* – RMG) to young people under 25 years of age, apart from the exceptions already prescribed by law. Persons under 25 years of age already in receipt of RMG, being considered unfit for work as a result of illness or infirmity, were henceforth to receive benefits under the Disabled Persons Act of 1 September 2003. These benefits were no longer subject to means test. In addition there were two bills, one of which provided for an extension of voluntary service for young people to enable them to regain contact with the working and training environment, supplementing the numerous means of vocational integration offered by the employment department, while the other provided for the

introduction of a training allowance for persons not drawing the RMG but qualifying for it by means test. Thus, young under 25 years of age could receive an income close to 80% of the RMG if they agreed to undergo a training and qualification measure. Nevertheless, the Government was aware that in spite of all efforts a number of young adults were at risk of finding themselves without social protection for a certain length of time before reaching the age of 25. Besides these persons, there were those over 25 years of age not yet meeting the requirements for award of RMG, and those whose entitlement had been withdrawn principally for having refused to participate in occupational activities or for having seriously impeded the application such measures. These persons could receive social assistance under the 1897 Emergency Residence Act, but award remained dependent on the willingness of the administrators of the municipal welfare offices who could grant or refuse it as they saw fit, since there was only a moral obligation to render assistance to people having no legal claim to it. That was why the Government had entered into the undertaking to reform the Act and create a new basis for a modern municipal welfare service founded on clearly defined rights in respect of benefits and the lodging of an appeal in the event of refusal. No age of eligibility for these benefits was prescribed.

269. The representative of the ETUC requested information on the number of young people left out of the integration schemes and other measures, and on the value of the allowances mentioned by the Luxembourg delegate.

270. The Luxembourg delegate said he did not have information on the number of young people left out. On the other hand, he had data on the number of participants in the vocational integration schemes (some 600 young people and 3000 persons of all age groups). As to the training allowances, they amounted to 680€/month to date and would be increased under the terms of a bill to 80% of the RMG for adults, with a reduction of 20% for young people and support subsidies (eg rent) added on.

271. The representative of the ETUC stressed that these measures did not entirely remedy the breach of the Charter. The qualifying age of 25 years for award of the RMG would have to be lifted because certain young people were necessarily outside the scope of the arrangements whereas the Charter required that a decent standard of living be guaranteed for all.

272. The Luxembourg delegate pointed out that by assumption no category should be excluded from the new system which moreover deployed very considerable funds.

273. The Swedish delegate, supported by the Portuguese delegate, stressed that the problem over the discretionary character of the emergency assistance remained and that the guarantee of individual entitlement to assistance was not fully provided in Luxembourg.

274. The Committee took note of the positive developments which had occurred and invited the Luxembourg Government to proceed further with the legislative reforms embarked upon and to supply the ECSR with full particulars of emergency social assistance.

<u>Second ground of non-conformity (for the first time)</u>

275. The Luxembourg delegate provided the following information in writing :

"Section 3§1(b) of the Act of 29 April 1999 establishing entitlement to a guaranteed minimum income (*revenu minimum garanti* – RMG), as amended (referred to hereinafter as the RMG Act), provides that "The benefits described in this Act may not be granted to persons who: (b) have been dismissed for serious misconduct; …".

Section 3 of the Act lists persons who cannot claim RMG and is intended to prevent RMG from being used improperly for purposes other than those for which it was intended[1]. The aim of this provision was to ensure that benefit claimants would adopt the serious attitude that is necessary for them to keep their jobs. This was why the authors of this legislation agreed to the idea of at least temporarily disqualifying claimants who had been dismissed for serious misconduct from RMG[2].

It should be noted that:

1. Disqualification from RMG on account of dismissal for serious misconduct is temporary and applies only to events occurring in the six months leading up to the claim.
2. The law allows for exceptions (in section 3§2 of the RMG Act) to the disqualification rule laid down, *inter alia*, in sub-paragraph (b) of section 3 of the Act if, when filing their claims for benefit, claimants provide supporting evidence which the claims office considers to be genuine and serious. In practice, this means that a reason given for dismissal for serious misconduct which takes account of the relevant labour legislation (e.g. alcohol abuse when working) will not be regarded by the claims office as a ground warranting disqualification from benefit if the claimant needs RMG to afford treatment.

It follows that the reasons for exclusion listed in section 3 of the RMG Act are only included in order to prevent abuses.

Claimants in need who are disqualified from benefit under section 3 of the RMG Act and cannot take advantage of the derogation provided for in section 3§2 may take advantage of the provisions of the Emergency Residence Act until they are able to make a new claim for benefit three months after they are notified by the claims office that their claim has been rejected.

The RMG Act contains a second provision stipulating that benefits paid under the RMG Act will be withdrawn from all recipients of the employment integration allowance found guilty of serious misconduct.

Paragraphs 1 and 2 of section 15 of the RMG Act provide as follows: "(1) Where 'a claimant who has signed an employment integration contract or' the recipient of an employment integration allowance does not comply with the contract referred to in section 8 or where, by his or her conduct, he or she disrupts the smooth functioning of the measures set out in section 10 or his or her chances of reintegration, the national social action department sends the person concerned a warning, having, where appropriate, taken advice from the social security service's medical monitoring department."

"(2) If the person concerned refuses to heed the warning, he or she may lose the right to employment integration allowance and, according to the circumstances, to supplementary allowance.

[1] See the comment on section 4 of Bill no. 4229/00.
[2] See the opinion of the *Conseil d'Etat* (parliamentary document no. 4229/15) of 20 October 1998 on section 4 of Bill no. 4229.

This penalty may be imposed without the prior warning described in the preceding paragraph where the recipient of integration allowance is guilty of serious misconduct in the course of a vocational integration activity …".

When drawing up this provision, the authors were motivated by the need to prevent abuses and deal with people who intentionally jeopardise the success of integration measures by dropping out of them without proper reason[1].

Here again the penalty of withdrawal of the right to take part in integration measures was introduced by the Act of 8 June 2004 to fill a gap in the legislation with regard to persons who are guilty of serious misconduct in the course of a vocational integration activity. Under the law previously in force, such persons were duly warned, but it was not possible to put an end to the measure unless there was evidence that the warning had not been heeded. There is a need to avoid such untoward events which undermine the proper functioning of a workplace or a company.

By including the words "according to circumstances" the authors of the Act of 8 June 2004 amending the RMG Act enabled the relevant body to impose a penalty more discerningly, taking account of the person's situation and possibly not withdrawing the entitlement to supplementary allowance so as to avoid penalising the other members of the recipient's household for his or her serious misconduct when performing an integration activity.

It should be noted that the entitlement to integration allowance is only suspended temporarily[2] and that during the suspension period the person concerned is covered by the Emergency Residence Act."

276. 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 (residence requirement)

277. The Luxembourg delegate pointed out that the stipulation of 5 years of residence did not affect European Union citizens. He reiterated that the RMG was awarded only to persons who had entered in order to work and were in need owing to loss of job, for example. He stated that his Government did not intend to modify the situation except in the context of the reform of the Emergency Residence Act.

278. The Portuguese delegate, supported by the Hungarian delegate and the representative of the ETUC, stressed that it was a case of a manifest breach of the Charter which had not been remedied for 10 years and which the Government evidently had no intention of righting.

279. The Committee adopted a warning (10 in favour, 2 against and 14 abstentions) to Luxembourg and urged it to take the necessary steps to remedy the violation of Article 13§1 of the Charter.

13§1 SLOVAK REPUBLIC

[1] See parliamentary preparatory documents no. 5163/00.
[2] A fresh application for integration allowance can be made three months after the date of refusal. The suspension can last up to twelve months in cases where integration allowance has had to be withdrawn three times in a row from the same claimant.

"The Committee concludes that the situation in Slovakia is not in conformity with Article 13§1 on the grounds that it is unable to assess whether:
- everyone in need has the right to social assistance;
- the right to assistance is guaranteed in practice."

First ground of non-conformity

280. The delegate of the Slovak Republic states that the right to social assistance was ensured both under the legislation in force until 31 December 2003 (Act 195/1998 Coll. on social assistance) and the Act 599/2003 Coll. on the assistance in material need in force as from 1 January 2004. The previous Act solved material need at two levels, depending on the reasons involved - subjective or objective. The constitutional guarantee of the provision for the basic living conditions was reflected in the Act 195/1998 Coll. The financial expression of assistance in material need was the benefit on subjective grounds to which every person had the right. A citizen in material need who satisfied certain conditions stipulated in the Act had an entitlement to a higher benefit on objective grounds. The application practice showed that this legislation had been de-motivational for the citizen in the light of its penalising nature while objective conditions had not been created for claiming the entitlements. From 1 January 2004, the Act 195/1998 Coll. no longer deals with the issues of assistance in material need; a separate law is in force, namely the Act 599/2003 Coll. on the assistance in material need that was drafted drawing on the "Strategy for the support of employment growth, based on the reform of the social system and the labour market". The new Act retains the principle of targeting which is reflected in practice in a way which does not consider the past of the citizen - the reason for his material need, but rather, his activity, his own contribution in solving material need while maintaining his constitutional social and economic rights. Therefore it follows from the above, that every person who is in material need had and has the right to the assistance in material need, both in the period under review and in the preceding reference period. The delegate states that the information about the new Act will be provided in the next report.

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

Second ground of non-conformity (for the first time)

282. The Slovakian delegate provided the following information in writing :

> "Slovak Republic maintains that the effective legislation ensures the exercise of the right to assistance in material need in practice.
>
> The Act No.599/2003 Coll., on the assistance in material need and on amending of certain acts provides for the proceedings in matters of material need as follows:
>
> - General regulations on administrative proceedings (Act 71/1967 Coll. on administrative proceedings, as amended by later regulations – Administrative Code) are applicable to the proceedings on the assessment of material need, provision for basic living conditions and assistance in material need through the benefit and the allowances. It follows from the above that the entitlement to the benefit and allowances in material need arises through a valid decision of the competent body. It is a two-stage proceeding, at first instance, the competent body is the Office of Labour, Social Affairs

and Family in the place of permanent residence of the citizen, and the appellate body is the Centre of Labour, Social Affairs and Family.
- Valid decisions are open to judicial review by court, subject to a special regulation, which is the Rules of Civil Procedure (§ 244 through 250k). In the reference period, 11 decisions have been reviewed by court upon petition of citizens of which 4 were upheld, 5 were sent back to new proceedings, and in 2 cases the proceedings were ceased.

The citizen has an option to request assistance for the exercise of the right, within the meaning of the Act 327/2005 Coll. on the provision of legal aid to persons in material need, in force from 1 January 2006."

283. 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.

13§1 SPAIN

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

– eligibility for the minimum income is subject to a length of residence requirement in one of the autonomous regions;
– the majority of regions stipulate 25 as the minimum age for eligibility for the minimum income;
– social assistance for persons living alone is manifestly inadequate in several regions;
– the minimum income is not paid for as long as the need persists."

First and second grounds of non-conformity

284. The Spanish delegate made the preliminary point that the introduction in Spain of a minimum social income (RMI) had coincided with the development of the Autonomous Communities and the transfer to them of powers in respect of social assistance and social services. In accordance with its Constitution, Spain was a State with a complex territorial structure consisting of 17 Autonomous Communities holding a great many administrative and political responsibilities in their own right. In particular, they had sole authority over social assistance – RMI included – and social services. In these areas, the State had no power to intervene. Unlike other instruments (such as Article 19§7 of the ILO Constitution), the Charter did not contain any specific provision relating to States with a structure of decentralised or devolved government and to the effect of that structure on the manner of fulfilling the obligations under the treaty. Regarding the ground of non-compliance constituted by length-of-residence requirements for award of the RMI in several Communities, the Spanish delegate explained that these requirements were justified by the intrinsic purpose of the RMI, namely social and occupational integration and unified community life. For persons not fulfilling the conditions of award there were forms of assistance mechanisms to meet basic needs (urgent social assistance). These mechanisms and the RMI were being reformed to make their allocation more universal. Regarding the ground of non-compliance relating to the minimum age, the delegate again explained that it had been fixed in order to encourage young people to become integrated into the labour market but that they could receive the urgent social assistance available in all communities.

285. The representative of the ETUC observed that these particulars provided no new factual element.

286. In reply to the Swedish delegate, the Spanish delegate confirmed that the conditions of award that were incompatible with the Charter could be waived, but this called for consultation of the statutes applicable in each of the Communities.

287. In reply to the Belgian delegate, the Spanish delegate said that in addition to the urgent assistance, young people could turn to private charity.

288. The Committee adopted a warning to Spain (14 votes in favour, 1 against and 17 abstentions) asking it to take all necessary steps to remedy the violation of Article 13§1 of the Charter.

Third and fourth grounds of non-conformity (for the first time)

289. The Spain delegate provided the following information in writing :

> "The introduction in Spain of a minimum social income (*revenu minimum d'insertion - RMI*) coincided with the development of the Autonomous Communities and the transfer to them of powers in respect of social assistance and social services. In accordance with its Constitution, Spain is a State with a complex territorial structure consisting of 17 Autonomous Communities holding a great many administrative and political responsibilities in their own right. In particular, they have sole authority over social assistance – RMI included – and social services. In these areas, the State has no power to intervene.
>
> Unlike other instruments (such as Article 19§7 of the ILO Constitution), the Charter does not contain any specific provision relating to States with a structure of decentralised or devolved government and to the effect of that structure on the manner of fulfilling the obligations under the treaty."

290. The Committee invited Spain to bring the situation into conformity with Article 13§1 of the Charter.

13§1 TURKEY

"It concludes that the situation in Turkey is not in conformity with Article 13§1 on the grounds that there is no individual right to social and medical assistance for all persons in need."

291. The delegate of Turkey states that the new Social Security Reform in Turkey will be in force as from 1 January 2007. One of the main goal of this new reform is the gathering of social benefits and services that are currently being carried out in a dispersed manner and establishment of a system where they are based on objective benefit criteria and can be reached by all groups who are in need.

292. 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.

293. The Committee recalls the Turkish government that the warning it addressed in 2002 is still in force.

Article 13§3 – Prevention, abolition or alleviation of need

13§3 GERMANY

"The Committee concludes that the situation in Germany is not in conformity with Article 13§3 of the Charter on the ground that nationals of other states party are not granted the same social assistance benefits as Germans."

294. The German delegate stressed that very few persons were concerned, particularly as other forms of assistance and advice were available. The new version of the Social Code that came into force in January 2005 did not include an equivalent provision to section 72 of the BHSG. In contrast to section 30 of the BHSG, however (see under Article 13§1), the content of section 72 was reflected in several articles of the new code.

295. The ETUC representative asked whether under the new code, foreign nationals would now have the same eligibility for former section 72 assistance as nationals, in the sense that the authorities would apply the same criteria to everyone.

296. The German delegate said that his authorities planned to supply much more detailed information in the next report.

297. The Belgian delegate also hoped that the next report would clarify the situation regarding Germany's reservation to the 1953 European Convention on Social and Medical Assistance.

298. 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.

13§3 MALTA

"The Committee concludes that Malta is not in conformity with Article 13§3 of the Charter on the ground that it is unable to assess whether help and advice services provided by social services have been established and operate in accordance with this provision."

Ground of non-conformity (for the first time)

299. The Maltese delegate provided the following information in writing :

> "Although we are a very small, the Maltese and Gozitans have 24 District Offices or Area Offices as they are commonly known. Each office caters for a specific area or district and is also manned according to the number of residents living in the area. One has to note also, that for the size of the Island these offices cater sufficiently for the whole spectrum of the population. (400,000/25 = 16,000).
>
> These offer services to all those who need help, being social security and other social services. These offices are properly manned by trained staff and are geared to offer help as needed. These front offices are also electronically linked to the main or central offices as back up. I have to mention also that at head office we also have a customer care office that deals with the various branches of social services.
>
> It is also to be emphasised that all members of staff were given appropriate training in i) all social security matters from the back office of the Department of Social Security and ii) by the three agencies i.e. Appogg, Sedqa and Sapport that deal with all contingencies (apart from social security). This means that staff at our customer care offices can deal with request for financial assistance and also can lead and inform the general public which agency deals with what.

It is also pertinent to point out that one of these area offices, situated in highly densely populated are of Cottonera, has been developed into a community resource centre. It offers all services in a one stop shop. It is called Access Complex.

The Community Resource Centre's philosophy revolves around the concept of the community as a resource rather than a problem. The Resource Centre fosters the promotion of family welfare; works towards a climate in which innovative solutions to complex social problems are sought, whilst engendering a decent quality of life. It will also seek to create a society which is evermore socially and economically inclusive, that is, a society where equality of treatment, opportunity of access and respect for the autonomy of the individual are the norm.

This project is in line with the concept of being promoted by the Council of Europe whereby professionals and groups at the local level are empowered to work together to upgrade the quality of the social work services in the community. Moreover, the services and programmes are customised to the needs of the locality and would reflect the social priorities of the region.

The Resource Centre is spearheaded by the Cottonera Local Councils together with the Foundation for Social Welfare Services, the Employment and Training Corporation and the Housing Authority. However, other service providers can deliver their services from this centre. The project will also provide the support necessary for the existing resources in the community such as cultural, sport, social and other groups. The Centre will offer its facilities to these groups to enhance their capabilities and improve networking in the region.

The main features of the project would be Social Work support, Counselling to families, advice regarding the needs for the Elderly, Child Psychology, a Child Nursery, Family Counselling, Job Centre facilities, Vocational training, advice on Housing needs and Housing Support.

The Department for Social Welfare Standards is also in the process of assuming the role of a regulatory body for the Social Welfare sector. Its operations will focus on the registration of Social Welfare services, monitoring and assessment of set standards, and ensuring compliance with regulations set out by Government.

The overall objective is to improve the quality of life for people using Social Welfare services, thus protecting and enhancing their dignity, safety and welfare. The department will adopt a supportive, developmental and collaborative approach, while taking into consideration the views of stakeholders.

The previous role of the Department of Welfare has been taken over by the Foundation for Social Welfare Services, with its three agencies, namely: Appogg, Sedqa, and Sapport.

Assistance is provided to Maltese and foreign nationals legally residing in our Island.

Malta will be providing in its next report a detailed list of the offices in Malta that provide advice and assistance in all matters of Social Services."

The Maltese delegate also provided additional written background information on the situation relating to Article 13§3 in his country."

300. 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.

13§3 POLAND

"The Committee concludes that the situation in Poland is not in conformity with Article 13§3 of the Charter on the grounds that access to social services by nationals of other parties to the Charter and the revised Charter is subject to an excessively long length of residence requirement."

Ground of non-conformity (for the first time)

301. The Polish delegate provided the following information in writing:

"The conclusion is the same as the one on Article 14§1 (based on the fourth report), and the explanations are therefore the same:

The negative conclusion had been drawn to the attention of the relevant sections of the Ministry of Labour and Social Policy. The matter was under consideration. It had to be seen in the more general context of national policy on the integration of foreign nationals.

The new integration policy was currently being drawn up, under the responsibility of the Ministry of Labour and Social Policy. The Council of Ministers had approved proposals for a coherent policy for integrating foreign nationals and a working group had been established in March 2005 to implement them. The group had prepared a progress report and would be discussing the conclusions to emerge and the direction of its future activities that same month.

The Polish delegate said that the results of these discussions would appear in the next report. "

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

13§3 TURKEY

"The Committee concludes that the situation in Turkey is not in conformity with Article 13§3 on the grounds that the provision of social services is manifestly inadequate."

Ground of non-conformity (for the first time)

303. The Turkish delegate provided the following information in writing :

"Financial year 2006 consolidate budget was determined as 174 billion 339 million 990 thousand and 202 New Turkish Lira. The level and proportion of public spending on main institutions providing social services and social assistances are shown below:

- Administration for Disabled people : 3.507.100.- New Turkish Lira. (NTL)
- General Directorate of Family and Social Research : 3.781.000.- NTL
- Social Assistance and Solidarity Funds : 1.947.000.- NTL
- General Social Services and Child Protection Directorate : 512.084.000.- NTL

Apart from these above mentioned Institutions, there are others. Ministry of Health is providing medical Assistance for persons in need as a free of charge. Municipalities are also providing assistance in kind and also providing nursing, child and youth centers, old-aged houses, centers for people with disabilities and houses for separated women.

Associations and foundations are providing nursing homes, rehabilitation centers, child and youth centers. There are several nursing homes under the coverage of pension fund.

By March 2006, Social Assistance and Solidarity Funds paid education assistance amounted to 353.620.872.- NTL for 1.573.916 children and health assistance amounted to 117.014.774.- NTL for 938.468 children.

The Social Support Project in rural area is executed by SYDGM in cooperation with the Ministry of Agriculture and Rural Affairs, by March 2006; 29.189 families took part in this project, 380 projects implemented and 220.533.318.- NTL spent for these projects. Other projects for youth people are also executed in 14 cities.

Together with the Municipalities, “Decreasing Social Risks Projects” are implemented, 151.860.407.- NTL spent for these projects by March 2006 and 336.882 people attended them.

Above explanations show that services provided by SYDFT and other institutions which give social service and assistance do not consist of only assistance in kind or cash to persons in need but also the provision of advice “to prevent, to remove, or to alleviate personal or family want” in accordance with Article 13&3. In Turkey, there is no discrimination in terms of nationality to access to social services and assistance. Nationals of other countries, not only the nationals of other parties to the Charter and the Revised Charter who are living in Turkey, can access to social services on an equal footing with Turkish nationals.

Turkish Red Crescent Society (Kizilay) is a humanitarian organisation that provides relief to the vulnerable and those in need by mobilising the power and resources of the community to protect human dignity anytime, anywhere, under any conditions and support the enhancement of the community’s capacity to cope with disasters.

The activity and service areas that the Turkish Red Crescent Society have, in time, assumed responsibility for are as follows:

1. Disaster Preparedness and Response
- In the event of war
- During natural disasters
- In ordinary periods

2. Cash and in-kind relief services

3. Health and Social Support Services
- Medical Centres
- Psychosocial Support Services
- First Aid courses

4. Youth and Volunteer services
- Youth camps
- Scholarships
- Dormitories
- Volunteer Services

5. Blood Services

6. International Relations

RESPONSIBILITIES OF THE TURKISH RED CRESCENT SOCIETY

In wartime and peacetime, the Turkish Red Crescent Society carries out the services required by its mission and given to it by law.

In wartime and emergency situations declared by the government; The Turkish Red Crescent Society assists the Turkish People and the Turkish Armed Forces on and behind the front in accordance with the needs and requirements determined by the Government and in line with its mission, Maintains continuous control over tools, materials, and medicines that will be used in the accomplishment of war-related duties, disposes of them without leading to loss or malfunctioning, tries to maintain the stock levels through the replenishment of the disposed materials, Assigns an adequate number of delegates from among the members of the Executive Committee or, depending on the situation, other staff appointed by the Executive Committee to the Armed Forces in order to establish communication and ensure cooperation with the Armed Forces.

Participates in the fight against possible contagious diseases that may be encountered within the Armed Forces, Acts as an intermediary in the repatriation, communication with their families, and sending of money and articles to the Turkish, friendly, and enemy prisoners of war and those under surveillance; establishes the investigation and organization of communication to this end,Assists in the relocation and settling of children and vulnerable people into the locations shown by the Government.

Establishes hospitals according to the wishes of the government in locations shown by the Government.

In peacetime; trains nurses, volunteer nurses and sick attendants, first aid and emergency care, laboratory, radiology and other health professionals in the required fields. Establishes and operates dispensaries, health centres and hospitals, training and educations centres and educational institutions, and rehabilitation centres in line with its objectives.

Establishes, operates, and takes the necessary measures to allocate the organization necessary to provide blood and blood products throughout the entire country.

Participates and assists in the fight against contagious diseases, and similar disasters related to public health, and child deaths.

Prepares the necessary tools and equipment needed to carry out its duties in wartime and peacetime.

Provides relief to the poor. Gives treatment relief to needy patients; tries to provide complementary, supportive, and prosthetic replacements for their missing or damaged organs.

Provides the necessary relief assistance in fires, earthquakes, floods, drought, famine, mass migration or displacement because of war, and other similar situations.

Trains rescuers and first aid workers, forms the teams that will constitute the required cadres, maintains a ready stock of all the required materials-tools and equipment and establishes their operational standards with regulations.

Establishes the volunteer organization of The Turkish Red Crescent Society.

Assists in civil defence planning and training.Manages just as a commercial organization the goods within the possession and privilege of The Turkish Red Crescent Society in line with regulations prepared consistent with the benefit of the public.

Receives and operates foundations and facilities that juridical and real persons would like to establish via The Turkish Red Crescent Society in line with the Turkish Civil Law.

Executes Governmental decisions and requests that are in accordance with the purpose of The Turkish Red Crescent Society.

In relation to international cooperation;

The Turkish Red Crescent Society participates in the disaster response and emergency relief assistance activities of the International Committee of the Red Cross, the International Federation of the Red Cross and Red Crescent Societies and the National Societies that are part of this federation. It sends teams, gives emergency relief materials and cash aid.

In wartime and peacetime, it carries out joint activities with the International Committee of the Red Cross, the International Federation of the Red Cross and Red Crescent Societies and the National Societies that are part of this federation and sends representatives to these.

Accepts their representatives, facilitates the relationships of foreign teams with civilian and military authorities.

Committee considered that the only services that certainly fall within the scope of Article 13 paragraph 3 is General Social Services and Child Protection Directorate. But, in Turkey there are other institutions which fall within the scope of this Article of the Charter. Especially General Directorate of Social Assistance and solidarity is an other important Directorate which directly fall within the scope of this Article. Besides the assistance in kind and cash to persons in need, several education and health programs are executed by this Directorate to prevent the deprivation of families and individuals from social life and to alleviation of need. This Directorate is implementing several social assistance programs and is supporting projects. It performs its functions through 931 foundations established in provinces and sub-provinces, governed jointly by relevant public institutions, local administrations and NGO's. Besides the other education and health programs executed by General Directorate of Social Assistance and Solidarity, under the Social Risk Mitigation Project, Conditional Cash Transfer are made to the children of the families in most need in order for them to access health and education services.

Within the scope of the Conditional Cash Transfer, monthly economic support for the families, who can not send their children to school or withdraw them from school, are made. This support is made only under the conditions if these families sent their children to school and have regular health checks for their children at pre-school age. If these conditions are met by the families; this Directorate in a month pays to these families 17 new Turkish Lira per child as for health assistance, 18 new Turkish Lira per male child who is going to primary school, 22 new Turkish Lira per female-child who is going to primary school, 28 new Turkish Lira per male-student who is going to high school and 39 new TL per female –student who is going to high school as for education assistance. These cash payments are allocated to the mothers. The most important idea behind this is to strengthen the status of women in both family and society and

improve their self confidence. In order to encourage more girls to attend to school, the amount of assistance for girls is higher than the amount of boys.

As for education assistance, in this year, 353.620.000.- NTL for 1.573.916 children in education by March 2006.

As for health assistance, in this year; 117.014.000.- NTL paid for 938.468 eight children who get health care by March 2006.

On the other hand, this Directorate in cooperation with several institutions, support several projects. One of them is "Social Support Projects in Rural Areas". The objective of this project is to support and advice people in need to participate in production, social life and increase their economic and social conditions. In the period between 2003 – 2006 years, 29.189 families participated in 380 projects and for these projects, 220.533.000. - NTL spent. Another project called "Information Apprenticeship Project" is a training project for young people who can not continue their higher education after secondary education. Small and Medium Sized Enterprises, İŞKUR Turkish Employment Agency, Turkish Exporter's Council, Small and Medium Sized Industry Development Organization are taking part and supporting this project. In 2006, 1020 young people participated in this project and found a job by March 2006. The other one is Local Initiatives Program under the Decreasing Social Risk Project. 336.882 people participated in this project and under this project, 6.418 sub-projects got financial support amounted to 151.860.000. - NTL.

The rate of social projects' expenditure among the total expenditure of General Directorate of Social Assistance and Solidarity fund was 3% in 2003, but it increased to 8% in 2004 and 15% in 2005. It is planned to reserve %50 of total expenditure for social project support in future.

In regard to the capacity of General Social Services and Child Protection Directorate, 9.107 personnel are working for this Directorate, 1.054 of them are social workers, 194 of them are psychologists. In addition to current staffs, 6.258 new staffs have been asked from the Prime Ministry, 700 of them will be social workers and psychologists. This directorate has 81 provincial and 35 sub-provincial directorates. It has orphanages for children and the young, nursing homes for the old-aged rehabilitation centers for disabled people, women shelter house, child and youth centers.

Other Social Services:

- 66 nursing homes provide services for the elderly,
- 65 public care and rehabilitation center serve for 5.000 disabled people
- 511 private rehabilitation center serve to 30 000 disabled people
- 5000 abused women and 4000 children benefited from sheltered house service, 1000 women found a job
- 61 society centers in slum areas provide education and rehabilitation services to women and children
- General Directorate for Foundation paid an average of 137 Euros to 2500 disabled, poor and orphan in 2005.
- 94 alms house provide 80 000 people with meals annually. Approximately 5000 people get food assistance
- 47000 people are served a time of meal in a day at their homes

By the way, New Social Security Reform in Turkey will be in force starting from the date of 1 January 2007. One of the main goal of this new reform is the gathering of social benefits and services that are currently being carried out in a dispersed manner and

establishment of a system where they are based on objective benefit criteria and can be reached by all groups who are in need."

304. 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

13§4 ICELAND

"The Committee concludes that the situation in Iceland is not in conformity with Article 13§4 of the Charter on the ground that foreign nationals who are not domiciled in Iceland are not entitled to urgent social assistance when in need."

305. The delegate of Iceland maintains that there is some misunderstanding in this case which the Icelandic Government has tried to clarify in its last three reports.

Firstly, there is no waiting period to qualify for social services from the local authorities once an individual, irrespective of his/her nationality, has registered by the National registry.

It should also be underlined that there is no waiting time to register by the National registry when a person has a permit to stay in the country. Foreigners, other than nationals of the EEA member states, who would like to live in Iceland have to apply for a permit to stay before they enter the country. When they receive their permits, they can come to the country and register by the National registry the same day. From that day they have the same rights regarding local authorities' social services in the municipality where their homes are as other residents of their local government areas.

Consequently, when a foreigner has registered by the National registry the same condition regarding the social services applies to the Icelandic people and foreigners, irrespective they are nationals of the Nordic countries, the EEA member states or other contracting state of the Social Charter.

Foreign nationals who have not registered by the National registry but stay in the country for some reasons, such as travellers or people staying unlawfully in the country, do not have the right to social services. If such individuals are in financial or social difficulties during their stay, they are to apply to their embassies or consuls. Nevertheless, foreign nationals in such a situation in Iceland are to be given social assistance in special cases under Article 15 of the Local Authorities' Social Services Act, as amended in 1997.

This provision covers these emergency instances in which a foreign national is without money in Iceland. The explanatory notes to the bill that became the Act No. 34/1997 states that Article 15 constitutes a special rule. It also states: "First and foremost, what is involved here is assistance to return to the home country. Also, in exceptional cases, it may involve financial assistance for urgent needs for a short period." This assistance is to be given by the local authority of the area in which the person is staying, in consultation with the Ministry of Social Affairs, providing that assistance has previously been sought from the person's home country.

In practice, foreigners in such situations are given financial assistance for a short period and get assistance to return to the home country.

306. 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.

13§4 LUXEMBOURG

"The Committee is not able to assess whether foreign nationals are entitled to assistance to enable them to deal with an immediate state of need."

Ground of non-conformity (for the first time)

307. The Luxembourg delegate provided the following information in writing :

"It should be noted that under the Act of 27 July 1993 on the integration of foreign nationals into the Grand Duchy of Luxembourg and welfare measures for foreign nationals, the term "foreign national" covers all persons who do not have Luxembourg nationality and live on the territory of the Grand Duchy of Luxembourg.

(a) Asylum seekers

Under the Grand-Ducal Regulation of 4 July 2002, as amended by the, as yet unpublished, Grand-Ducal Regulation of September 2006, establishing the conditions and the practical arrangements for the granting of social assistance to persons seeking international protection, the following benefits are granted to these persons:

- accommodation, including full board or the provision of meals or, where appropriate, foodstuffs;
- a monthly allowance;
- urgent medical assistance;
- payment of the contributions in respect of the voluntary insurance provided for by Article 2 of the Social Insurance Code over the full period of entitlement to social assistance;
- special access to the Grand Duchy of Luxembourg's public transport network;
- social guidance;
- support for unaccompanied minors;
- free psychological care and follow-up for persons who need it, particularly trauma victims;
- sexual and reproductive advice;
- one-off assistance when needed.

For details, consult the Grand-Ducal Regulation appended.

Persons who have refugee status and the subsidiary protection status granted under the Act of 5 May 2006 on the right to asylum and additional forms of protection[1] have the same social rights as Luxembourg nationals.

(b) Illegal migrants

There is no real legislation on the access of illegal migrants to health care and social benefits.

[1] Official Gazette A no. 78 of 9 May 2006, p. 1401.

However, because of human rights principles, the established criminal-law principle[1] that all citizens have a duty to assist any person in danger and the professional ethics[2] and other standards that apply to doctors, everyone in Luxembourg, whatever their legal status, will be granted access to urgent medical assistance.

In practice, illegal migrants in need of urgent medical assistance should go to an emergency service or a social service, which will see to it that they are transferred to a hospital, and in principle the hospital will not refuse such a patient. In all cases, checks are carried out to see whether persons given urgent medical assistance have a medical insurance policy covering their treatment. If not, the hospital sends its bill to the Ministry of Health, which has a budget appropriation covering costs of this sort.

To prevent abuses, a Ministry of Health committee decides on the basis of an individual file whether the medical costs in question should be covered by means of a subsidy awarded to the health care provider. Where the costs of the health care exceed € 2 500, a report has to be prepared for the Ministry of Health which then decides what action to take.

There have also been cases where a non-governmental organisation approved by the Ministry of Health or the Ministry of the Family Affairs and Integration (e.g. the social service) which has looked after an illegal migrant has taken it upon itself to recover costs incurred as a result of medical treatment.

With regard to housing, "illegal migrants" arriving in Luxembourg who have not yet been able to begin the necessary administrative formalities to put their situation in order are assigned accommodation in a hostel for one or two days to give them the chance to set the necessary procedures in motion with the relevant authorities in order to clarify and, in some cases, regularise their situation. Provisional housing and meals are provided on a one-off individual basis, taking account of each "illegal migrant's" specific situation. For instance, a family of illegal migrants will be given up to two days to clarify their situation and the persons concerned must take an active part in doing so and putting their situation in order."

308. 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.

13§4 SPAIN

"The Committee concludes that the situation in Spain is not in conformity with Article 13§4 of the Charter on the grounds that it is not able to assess whether foreign nationals staying in Spain are granted emergency assistance."

Ground of non-conformity (for the first time)

309. The Spanish delegate provided the following information in writing:

[1] Article 410-1 and 410-2 of the Criminal Code on criminal failure to help someone in danger. Article 410-1, paragraph 1 of the Criminal Code provides as follows: "A sentence of eight days' to five years' imprisonment and a fine of 251 to 10 000 euros, or one of these penalties only, shall be applied to anyone who, in the absence of any danger to themselves or others, intentionally fails to come to the assistance of or seek assistance for a person exposed to a serious threat, irrespective of whether he or she has witnessed this situation him or herself or it is described by those calling for his or her help".

[2] Under Article 11 of the Ministerial Decree of 7 July 2005 approving the code of professional conduct for doctors and dentists drawn up by the Medical College: "All doctors finding themselves in the presence of a sick or wounded person in danger or who are told about a sick or wounded person in danger, shall assist that person or ensure that he or she is given the necessary assistance".

"When considering medical assistance for foreign nationals, it is necessary to distinguish between:

A. Foreign nationals who are nationals of EU member states: the matter is governed by Community Regulations 1408/71 and 574/72, under which possession of the so-called "European Health Card" is sufficient to ensure eligibility for public health services throughout the Community area.

B. Nationals of non-European Union countries: the matter is governed by the Institutional Act on the rights and freedoms of foreign nationals in Spain of 11 January 2000:

Under Section 12.1 of the Act, foreign nationals in Spain who are registered on the population register of the municipality in which they normally resided were entitled to health care under the same conditions as Spanish nationals;

Under Section 12.2, foreign nationals in Spain, including ones who are there unlawfully, are entitled to emergency medical treatment in the event of serious illnesses or accidents, whatever their cause, and to the continuation of this treatment until their medical discharge;

- Under Section 12.3, foreign nationals aged under 18 in Spain, including ones who are there unlawfully, are entitled to health care under the same conditions as Spanish nationals;

- Finally, under Section 12.4, pregnant foreign women in Spain, including ones who are there unlawfully, are entitled to health care during their pregnancy, childbirth and post-childbirth periods."

310. The Committee took note of the positive developments which have taken place and decided to await the next assessment of the ECSR.

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

16 AUSTRIA

"The Committee concludes that the situation in Austria is not in conformity with Article 16 of the Charter on the ground that equal treatment for nationals of the other state party to the Charter and the revised Charter in the payment of family benefits and housing allowances is not ensured."

First ground of non-conformity (housing benefit)

311. The Austrian delegate said that since the ECSR's first conclusion of non-conformity in 2000, progress had been made in the provinces despite the difficult financial situation. In this connection, the delegate said that in Tyrol, the length-of-residence requirement had now been removed and nationals of states party to the Charter and the revised Charter were entitled to grants for the construction or renovation of housing under the same conditions as Austrian nationals. Five years' residence was still required, however, for entitlement to housing benefits.

With regard to Burgenland, the Austrian delegate wished to refute the ECSR's allegation that only Austrian citizens and nationals of the European Economic Area were entitled to housing grants. Entitlement to such benefits, particularly to

subsidised housing allowances and loans for the purchase of housing, was not actually dependent on nationality.

The provinces' financial problems were holding back their efforts to extend entitlement to subsidies to all their residents. An extension of the sort would inevitably lead to a reduction in the size of subsidies.

Substantial improvements had been made in the area of housing benefits over the last five years and so the delegate asked the ECSR to take account of this and give the provinces' time to bring the situation into conformity with the Charter.

312. The Committee welcomed the progress made in certain provinces and asked the Government to step up its work with them to bring the situation into conformity with Article 16 of the Charter.

Second ground of non-conformity (family benefits)

313. The Austrian delegate said that a reform, which had come into force on 1 January 2006, had removed the three-month employment requirement for entitlement to childcare benefit and large-family allowance. Nationals of states party to the Charter and the revised Charter residing lawfully in Austria were now entitled to these benefits on the same footing as Austrian nationals. The bill on the payment of childcare benefit had also been abandoned.

314. The Committee welcomed the positive developments described and decided to await the next assessment of the ECSR.

16 CROATIA

"The Committee concludes that the situation is not in conformity with Article 16 of the Charter, as equal treatment of nationals of other States party in the payment of family benefits is not ensured because of excessive residence requirement."

Ground of non-conformity (for the first time)

315. The Croatian delegate provided the following information in writing :

> "Croatian legislation that regulates the area of social security does not contain any examples where treatment of persons who are not Croatian citizens is less favourable than that of Croatian citizens with the exception of child allowances (family allowance).
>
> Pursuant to the Law on Child Allowance (N.N. 94/01) Child Allowance is a supplement for children paid to parents or other persons as determined by this Law, for the purpose of subsistence and raising children. Eligibility for child allowance can be realised by parents, adopted parents, guardians, step-father, step-mother, grandparents and persons to whom, pursuant to a ruling by the relevant body conducting social welfare, the child is placed in their care to be raised (hereinafter: beneficiary); for all children they support under the conditions determined by this Law. The beneficiary of child supplement can also be an adult without both parents who is attending regular schooling.
>
> Beneficiaries of child allowance can be a Croatian citizen who continually had residency in the Republic of Croatia for three years prior to submitting an application and who fulfils all the conditions prescribed by this Law. Children who are Croatian

citizens residing abroad are not eligible for child allowance unless stated otherwise by international agreement. Children of foreign citizens or a child without citizenship residing on the territory of the Republic of Croatia is not eligible for child allowance according to this Law, unless determined otherwise by international agreement. A child of foreign citizens who has been given approval to permanently settle/permanent residency is eligible for child allowance according to this Law.

Pursuant to Article 11, of the Law on Social Welfare, social welfare benefits are determined by the said Law and ensured to Croatian citizens and persons without citizenship who are permanently residing in the Republic of Croatia. Foreign citizens with permanent residency in the Republic of Croatia are ensured those social benefit entitlements that relate to them as determined by this Law and international agreements. Persons who are not included in Par. 1 & 2, of this Article, can be temporarily eligible for social welfare under the conditions prescribed by this Law if living circumstances are such that they require assistance. Social welfare entitlements cannot be transferred to other persons nor be inherited.

Pursuant to the Law on Foreigners (N.N. 109/03) Article 33, residency for foreigners means up to 90 days, temporary residency and permanent residency. Permanent residency is approved to foreigners who: until the day of applying for permanent residency have been granted temporary residency continually for five years or have been married for three years with a Croatian citizen or a foreigner who has been granted permanent residency in the Republic of Croatia and who has temporary residency status. Minors with temporary residency in the Republic of Croatia shall be approved permanent residency if one of the parents is a foreigner and has been granted permanent residency with the approval of the other parent. Exceptionally, permanent residency can be approved to other foreigners with temporary residency for humanitarian reasons or if this is considered to be in the interest of the Republic of Croatia.

Also, pursuant to Article 74, of the Law on Social Welfare, a child that is caught wandering without parents or other adult supervision, or an adult who is caught outside their permanent residency and who are not in a state to care for themselves or have been faced with some other misfortune, are ensured temporary care outside their own family until they are able to return to their own or adopted family, social welfare home or some other accommodation. Temporary accommodation under conditions noted in Par. 1 of this Article can be ensured for foreign citizens or persons without citizenship who do not have residency in the Republic of Croatia.

All foreigners in Croatia who, pursuant to the provisions of the Law on Foreigners have regulated their employment-legal status in the Republic of Croatia have equal status on the labour market as do Croatian citizens. Pursuant to Article 2, of the Labour Law, they must not be discriminated with regard to conditions of employment and labour and all other entitlements pertaining to employment relations including the right to an equal pay, job advancement, access to all forms and levels of professional training, further education and re-qualifications, cancellation of working contract and rights to membership and activities in union or employer associations or any other professional organisation and workers' councils including all privileges that such membership may entail. Consequently, all forms of discrimination are strictly prohibited in Croatia (direct or indirect) of legally employed migrant workers and there is no need to amend legislation in this regard.

Workers in the EU who have regulated temporary residency and have a working permit issued pursuant to the provisions of the Law on Foreigners are treated equally to Croatian citizens with regard to housing, i.e. they can use housing based on a rental contract concluded in keeping with the Law on Rent of Apartments with Payment of Rent which are freely concluded. There is also the availability that employers with

whom they are employed ensure appropriate accommodation, housing, residency. In that case, pursuant to Article 2, of the Labour Law, employers must not discriminate against foreign workers in comparison to workers from Croatia. With the exception of that noted, and under the condition of mutuality, natural persons can be eligible to own property in Croatia.

In the 4th quarter of 2006, Croatia intends to prepare amendments and supplements the Law on Foreigners, so that one entire chapter regulates the issue of entries, residency and working of EU country member citizens and members of their families (regardless of their citizenship). The amendments and supplements will conform the law in keeping with Directive 2004/38/EZ.

In the 1st quarter of 2007 it is planned to prepare amendments and supplements to the Law on Administrative Taxes as well as relevant sub legal acts in order to simplify, speed up and provide visas free of charge for family members of EU migrant workers requiring an entry or residency visa.

The planned amendments and supplements to the Law on Foreigners, in keeping with Directive 2004/38/EZ, will regulate the problem of residency for workers in cases of unintentional unemployment, illness or injury as well as the question of independent residency for family members of migrant workers (e.g. in case of a worker's death, divorce, etc.), and of approval of permanent residency for migrant workers and their families from EU member countries.

The Republic of Croatia will not have any problems in implementing principles to prohibit discrimination against family members of workers with regard to employment,

Furthermore, it is assumed that it will be necessary to amend the Law on Child Allowance for the purpose of becoming eligible for social benefits from the State Budget aimed at providing subsistence and raising a child, to be provided for migrant workers whose income is less than that prescribed. Amendments and supplements to the Law on Child Allowance are foreseen in the IVth quarter of 2007.

For the purpose of conforming to EU law concerning access to the labour market, e.g. its facilitation and implementation, the Republic of Croatia intends to prepare amendments and supplements to the following laws and sub-legal acts:

- Law on Foreigners (IVth quarter 2006)
- Law on Administrative Levies (Ist quarter 2007)
- Law on Mediating in Employment and Entitlements during Unemployment (IVth quarter 2007)
- Law on Child Allowance (IVth quarter 2007)
- Law on compulsory and voluntary pension funds (IInd quarter 2007)
- Law on Pension insurance Companies and Payment of Pensions pursuant to Individual Capital Savings (IInd quarter 2007)."

316. 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.

16 DENMARK

"The Committee concludes that the situation in Denmark is not in conformity with Article 16 of the Charter on the following grounds:

– the length of residence requirement for housing benefits is excessive;
– the length of residence requirements for ordinary and special child allowances are excessive."

Grounds of non-conformity (for the first time)

317. The Danish delegate provided the following information in writing:

"First ground
Apparently the Committee has understood the Danish reply to the effect that a permanent residence permit is required in order to qualify for housing benefit. That is *not* the case.

What is required in order to qualify for housing benefit is "lawfully established registered residence (fast bopæl), which means that foreign nationals may qualify for housing benefit on equal terms with Danish nationals provided they have a lawfully established registered residence.

This provision is laid down in Section 5, 1) of the Act on Individual Housing Benefit.

Reference should in this connection not be made to the Aliens Act as the qualification for housing benefit is determined under the regulations of the Act on Individual Housing Benefit.

Second ground
All families with children under 18 receive a basic family allowance. However, under the terms of the consolidated Family benefits and advance payment of the child allowance Act of 2000, ordinary child allowances (in the case of single and retired parents) and supplementary allowances (single parents) are subject to a one-year residence requirement. Special child allowances (for children who have lost one or both parents or when paternity has not been determined) are subject to a residence requirement of three years. The Committee holds that these length of residence requirements are excessive and considers that the situation is not in conformity with the Charter.

In the conclusions on Article 16 the European Committee of Social Rights states, that the length of residence requirements for ordinary and special child allowance are excessive and not in conformity with the Charter.

The 25. Danish Report on the European Social Charter contains on page 70-71 an overview on the conditions for receiving different kinds of child allowances. The condition in question is the length of residence requirements for ordinary child allowances (single or retired parents; 1 year of residence), supplementary allowances (single parents; 1 year of residence) and special child allowances (children who have lost one or both parents or when paternity has not been determined; 3 years of residence).

However, these length of residence requirements do not apply for persons, who fall under the following regulations and conventions:

- The Nordic Convention on Social Security ("Nordisk konvention om social sikring")
- Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community
- Bilateral conventions and agreements with other countries, including i.e. Turkey, Croatia, Slovenia, Pakistan, Morocco and Israel.

It is a general Danish policy that setting up a bilateral convention requires that there is a mutual interest and willingness form the countries in question and that a convention or agreement will apply on a reasonable/substantial number of people.

Furthermore, the length of residence requirements does not apply for refugees.

Still, there remains a group of families living in Denmark, who are not entitled to child allowances. In relation to these families, Denmark does not agree with the interpretation of article 16 by the ECSR regarding length of residence requirements. The residence requirements for child allowance cannot be viewed isolated. The right to child allowance must be viewed in connection with the whole system of public financial support of children.

The Danish system of public financial support of children may be divided into three categories:
- A basic public financial support of children: family allowance (”børnefamilieydelse”),
- A general financial support of children in special situations: child allowances (“børnetilskud”)
- Specific financial support of families in need

The basic public financial support of children is family allowance, which children living in Denmark are entitled to regardless of the economical situation of their parents. Thus, it is not a social allowance aimed specifically at vulnerable families.

In special situations children are also entitled to different kinds of child allowances. The situations include single or retired parents and children who have lost one or both parents or when paternity has not been determined. In these situations, child allowance is paid regardless of the economical situation of the child and its parents. Thus, it is also not a social allowance aimed specifically at vulnerable families.

For children in need who are not entitled to child allowance there exist several other possibilities for financial support, including i.e. the following:

- According to Act on Social Service (”lov om social service”), all children have access to day-care facilities. The municipality subsidies the expenses for day-care facilities. The subsidy is at least 67 % and the parents’ own payment a maximum of 33 % of the costs of day-care facilities. For children under 3 years the subsidy is at least 75 % and the parents’ own payment a maximum of 25 % of the costs. If the parents have a low income or more than one child in day care, or if the child has special needs, the subsidy may be raised.

- According to Act on Social Service (”lov om social service”), the municipality may contribute to the payment of expenses to prevent a situation, where is it necessary to place the child in an institution.

- According to Act on an Active Social Policy (”lov om aktiv socialpolitik”) the municipality may contribute to the payment of reasonable expenses for a person who has experienced a change of circumstances, provided that it will be difficult for the person to support his family, if he has to pay the expenses himself. The municipality may also contribute to the payment of medical expenses.

These different kinds of social allowances are aimed specifically at vulnerable families.

Beside the above mentioned public financial support of children, it is also important to take into account that the prime obligation for supporting children belongs to their parents. Ordinary child allowance and extra child allowance are aimed at single parents. In these situations according to the Danish Act on Child Maintenance (“lov om børns forsørgelse”), the parent living with the child may ask the other parent to pay child maintenance. If the other parent does not pay child maintenance, the local Government Office (“statsamtet”) may – by request from the first parent – order the

other parent to pay child maintenance. The basic amount of child maintenance in 2006 is 1.038 Dkr. (138 Euros) a month, free of tax. If the other parent has a more than average income, the amount of child maintenance may be raised.

If the other parent still does not pay child maintenance, the child maintenance decision may be enforced through wage withholding. If the other parent does not live in Denmark, the first parent may ask – through Danish authorities – to have the decision enforced in the member states of the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations and the Nordic Convention On Recovery of Maintenance. All these possibilities are available to parents living in Denmark with no residence requirements and they are free of charge for the parent asking for enforcement.

Even though they may not be entitled to child allowance, vulnerable families in Denmark are entitled to financial support, if they are in need. Therefore, Danish legislation on child allowance is conformity with article 16 of the Charter."

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.

16 GERMANY

"The Committee concludes that the situation in Germany is not in conformity with the Charter because equal treatment is not guaranteed regarding supplementary child-raising allowances to nationals of other states party to the Charter and the revised Charter."

319. The German delegate said that the *Land* of Baden-Württemberg had amended its legislation in 2004, in keeping with a decision of the Federal Constitutional Court in 2001, to bring the situation into conformity with the Charter. Entitlement to the supplementary child-raising allowance had been extended to Turkish nationals.

Bavaria had also extended this entitlement to European Union and European Economic Area nationals and to nationals of countries with which Germany had negotiated bilateral agreements (including Turkey). As a child-raising allowance was to be introduced at federal level in 2007, no legislative changes were planned in Bavaria or Baden-Württemberg.

In Mecklenburg-Vorpommern the law on child-raising allowance had been repealed in May 2005, while in Saxony and Thuringia the relevant law referred directly to federal law, which meant that equal treatment between German nationals and nationals of other states party to the Charter and revised Charter was guaranteed.

320. The ETUC representative asked whether the new federal law would apply to all the *Länder*. The German delegate confirmed that it would.

321. The Committee noted and welcomed the progress made and decided to await the next assessment of the ECSR.

16 GREECE

"The Committee concludes that the situation in Greece is not in conformity with Article 16 of the Charter for the following reasons:

- there is still a shortage of housing suited to the size and the needs of Roma families (Follow-up to Collective Complaint no. 15/2003 by the European Roma Rights Centre against Greece);
- Roma families still do not have sufficient legal protection."

First ground of non-conformity (for the first time)

322. The Greece delegate provided the following information in writing :

"Further to the publication of a negative conclusion by the European Committee of Social Rights, with regard to the application of article 16 from Greece, and as a follow up to the 15/2003 Collective Complaint filed against Greece by the NGO "European Center for the Rights of Romas" we would like to submit the following information in the context of the works of the 113th session of the Governmental Committee (Strasbourg, 12-14 September 2006) and with respect to the developments noted so far in the field of housing of the Greek Romas.

Information with respect to the housing of the Greek Romas further to the above mentioned Complaint were not included in the 16th Greek Report (2003.2004) because the compiling of the report had been finalized at the date of issue of the relevant Resolution of the Committee of Ministers.

More particularly, following the transmission by the European Committee of Social Rights to the Committee of Ministers of the Council of Europe of the decision on the merits, the Committee of Ministers, taking into consideration the most recent information on the issue forwarded by the (Permanent) Representation of Greece, decided by its resolution (ResChs(2005)11) not to take any further measures concerning the said question, given that:

(a) the Integrated Action Plan is in progress as to its actions being implemented, while at the same time it is being evaluated and reviewed;

(b) an Inter-Ministerial Committee has been established to coordinate and evaluate the actions of the Integrated Action Plan; and

(c) the current institutional framework for the housing loans has been revised and more loans have been given to Greek Roma.

Therefore, since then, the following developments have taken place per field of action and competent body:

MINISTRY OF INTERIOR, PUBLIC ADMINISTRATION AND DECENTRALIZATION
1. Housing loans programs for Greek Roma: 9,000 housing restoration loans in the amount of 60,000 euro each with the guarantee by the Greek State and under favourable terms of repayment (that is, subsidy to the borrowers at 80% of the interest by the Greek State and guarantee at 100% of the principal amount granted and of the interest thereon). Following an evaluation of the implementation of the program, the current institutional framework has been revised once more with respect to the procedure of applications evaluation and the terms for the disbursement of the loans, so as, in conjunction with the database created in 2005, to ensure the most effective implementation of the program for the utilization of the loans with a view to satisfying the existing housing needs. The said revision (33165/23-6-2006 Joint Ministerial Decision of the Minister of Interior, Public Administration and Decentralization and Minister of Economy and Finance (Official Gazette 780/B/29-6-2006)) brought about the following changes:

- Evaluation social criteria (e.g. single-parent families, large families, persons with disabilities, families with low income, etc.) have been established, which introduce into the Greek legislation and practice the demands set by the international community in respect of the adaptation of the implemented policies and actions to the particular living conditions of Roma;

- The applications are now evaluated by the Local Government Organizations – which are closer to their citizens – within the framework of a Committee, wherein representatives of Roma and of the social agencies of the Local Government Organizations can participate equally;

- The procedure of loan disbursement is simplified and now the borrower collaborates directly with the financing bank chosen by him/her, provided that the bank is situated within the administrative limits of the Prefecture, wherein the real property to be acquired is located;

- The financed works are certified exclusively by an engineer appointed by the bank which will disburse the loan;

- New applications may be submitted by those who have never submitted an application or have submitted one that was rejected and the files of all candidates are updated so as to ensure the objectivity of the evaluation procedure;

- The loans granted may be used as the borrower may decide in conjunction with the housing restoration (infrastructure) actions implemented by the Local Government Organizations.

To date the Ministry of Interior, Public Administration and Decentralization has issued 5,754 decisions to an almost equal number of Greek Romani families. By virtue of the decisions issued, 4,837 loans have been disbursed until 30/6/2006 by the appropriate banks (absorption rate 84.06%). It should be clarified that the aim and amount of the subsidy (up to 60,000 euro) is determined according to the case and the housing needs of each borrower and following their personal choice. It must be, however,
mentioned that Greek Roma also participate in other housing loans programs implemented by the State, e.g. by the Workers Housing Organization (Ministry of Employment and Social Protection), which, although they have not been advertised sufficiently, finally contribute to the effective handling of the housing issue of Greek Roma. Thus, with a view to diffusing information and ensuring the right of access thereto and simplification of the procedures, the relevant institutional framework and the instructions for the filling in of the forms are accessible by every person concerned through the website of our Ministry.

Finally, the implementation of the program to date has shown that the program is being continually evaluated and duly modified according to the existing needs, the targets sought and the results achieved and that therefore, contrary to the findings of the European Committee of Social Rights, it does not constitute just a step towards the housing restoration of Greek Roma. On the contrary, it is an integrated action for the housing restoration and an important tool – good practice, with measurable and continually increased results, with the money and guarantee of the Greek State and on absolutely favourable terms intended for any vulnerable group of the Greek population.

2. Financing of infrastructure: within the framework of the Integration Action Plan for the social integration of Greek Roma, the Ministry of Interior, Public Administration and Decentralization is financing the implementation of infrastructure projects at Local Government Organizations, where Greek Roma live. This action is financed by national resources and its approved budget amounts today to 60,000,000 euro with a credit for

2006 of 9,000,000 euro. The aim is the implementation of projects of restructuring, networks construction in existing and new settlements and the purchase of land for the creation of new settlements with a view to improving the existing living conditions. In total, the payments effected until 31/7/2006 (inclusive) amount to 22,942,698 euro. More specifically, during 2005 decisions were issued for the financing of 25 Local Government Organizations in the amount of 20 million euro and during 2006 decisions were issued for the financing of infrastructure projects at 29 Local Government Organizations of a total budget of 7.55 million euro. Within such limits and according to the progress of the works (accounts) during 2005 the amount of 7.63 million euro was paid, while during 2006 the amount of 4.6 million euro was paid.

3. Free concession of the absolute ownership of municipal real property by the Local Government Organizations to Greek Roma who are their citizens on the basis of evaluation social criteria: this action was established on 14/12/2004 and already relevant interest has been expressed by the Local Government Organizations of the country through the submission of plans-frameworks for the preparation of organized housing building programs and implementation thereof upon completion of the necessary preliminary procedures. To this end, and for expediting the relevant procedures and settling explanatory issues that may emerge, article 34§1, Law 3448/2006 stipulates that Greek Roma fall under the category of 'special social groups', so that, within the context of the housing restoration programs being currently executed, the local street plans can be approved as urgent. It is pointed out that the said procedure is controlled and monitored by the Ministry for the Environment, Physical Planning and Public Works.

4. Evictions of Roma families: as regards this issue, we should reiterate that the use of the term 'eviction' is unfortunate, given that the case concerns the voluntary establishment on a land belonging to third parties (legal or natural entities) and then, the expulsion of the trespassers from the said site. Therefore, it is an 'execution of protocols of administrative expulsion' as prescribed by the Law[1].

[1] This explanation was also given before the European Committee of Social Rights during the public hearing of the complaint No. 15/2003.

In addition and on the merits we wish to inform you that the Ministry of Interior, Public Administration and Decentralization is financing the purchase of land for the creation of settlements and the implementation of infrastructure projects in existing and new settlements. For example, on the occasion of the housing problem of Roma living in the areas of the Municipality of Patra (Makrygianni, Riganokampos), the Ministry of Interior, Public Administration and Decentralization, pursuant to the Decision of the Deputy Minister of Interior, Public Administration and Decentralization no 40944/11-8-2005, subsidizes the Municipality of Patra in the amount of 320,000 euro for the implementation of the project 'Infrastructure settlement works for the relocation of Roma of the Municipality of Patra'. Similarly, the Municipality of Trigono, Prefecture of Evros, was subsidized in the amount of 23,008 euro for the creation of a reception area for Roma, the Municipality of Spata is subsidized in the amount of 3,200,000 euro for the restructuring of the dwelling area and upgrading of the quality of life of Roma living there, etc. Consequently, the manner of dealing with the issue of 'evictions' ought to take sufficiently into consideration the steps taken by the State for the provision of alternative housing, whether temporary or permanent.

Considering the above, we would like to recall again the case law of the European Court of Human Rights, which in a similar case (Chapman v. UK (2001)) had decided that: 'The Court does not, however, accept the argument that, because statistically the number of Gypsies is greater than the number of places available on authorised Gypsy sites, the decision not to allow the applicant Gypsy family to occupy land where they

wished in order to install their caravan in itself, and without more, constituted a violation … This would be tantamount to imposing … as on all the other Contracting States, an obligation … to make available to the Gypsy community an adequate number of suitably equipped sites' and goes on 'While it is clearly desirable that every human being have a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political decision…', which has anyway been already ascertained for Greece, if we bear in mind that the housing policy in favour of Greek Roma is implemented exclusively by the use of national resources unlike other actions and other member states which are (co)financed by community resources.

In addition and with respect to the housing loans program we wish to inform you that almost three years from the commencement of the program and on the occasion of the fact that the majority of the applications were accompanied by incomplete supporting documents (consequently the candidates did not meet the requirements) and that a significant percentage of the candidates had filed more than one application, in 2005 the computerization of the program was modified. More specifically, a new database was created for a more effective check of the submitted particulars of the candidates and safer allocation of the loans granted. In particular, within the first half of 2005 all applications not examined were evaluated and registered. The processing of the supporting documents of the applications showed the need for updating or correct submission of the required particulars (e.g. candidates with more than one identity card, different family entries, copies of income tax returns without the particulars of both spouses, etc.), which is stipulated by the new ministerial decision (Joint Ministerial Decision 33165/23-6-2006, Official Gazette 780/B) in respect of the submission of new applications for housing loans. Thus, of the approximately 15,600 applications that had been submitted, those fulfilling the requirements (5,754) were approved, while the remaining candidates – instead of being rejected finally – were given the opportunity to submit anew the completed applications (it is noted that the time-limit has not expired, therefore, the registration of the particulars submitted to the Local Government Organizations of the Country has not been completed yet). Consequently, there is no application pending today.
Furthermore, as regards the disbursement of the loans (that is, the exercise of the right to a loan by the persons concerned) according to data given by the Banks, until 31/7/2006 (inclusive) of the 5,754 beneficiaries, 4,912 beneficiaries received the amount they were entitled to from the Banks (absorption rate 85.37%). It must be clarified that this percentage changes every month. Finally, it is pointed out that the overwhelming majority of borrowers has received the maximum amount they are entitled to, that is, 60,000 euro.

MINISTRY FOR THE ENVIRONMENT, PHYSICAL PLANNING AND PUBLIC WORKS
The Integrated Action Plan laid down the issue of the social integration and the housing settlement of the Roma citizens on a sound basis, especially as concerns the finding of grounds suitable for housing, for the specification of boundaries of permanent or temporary dwelling settlements for the stay of Roma tent-dwellers and as concerns the reformation-institutional consolidation of existing settlements, granting special attention to the housing needs of the Roma tent-dwellers.

As regards the specification of boundaries of permanent dwelling settlements, the Ministry for the Environment, Physical Planning and Public Works has ensured the appropriate institutional framework, so that such specification of boundaries be made pursuant to the guidelines and requirements of the approved land use plans and the pertinent town planning be made in accordance with the town planning provisions in force from time to time (Law 1337/1983, as amended by Law 1512/1985, and Law

2508/1997). The said framework does not include provisions exempting any categories of citizens.
In case permanent dwelling programs are considered as emergency state housing programs and come under the procedures of article 26, Law 1337/1983, as amended and currently in force, the procedure of local street plan approval shall be followed, whether it concerns a housing improvement, reconstruction and legislative protection of an existing settlement or it concerns its relocation to a new position, provided that there is a relevant provision for a housing development in the specific area according to the general physical and town planning.
Moreover, the Ministry for the Environment, Physical Planning and Public Works promoted policy measures that contribute to the social integration of various vulnerable categories of population.
As an indication, we cite the following:

- For the expedition of solution of the housing problem of households in remote and inaccessible areas and of disadvantaged population groups, paragraph 4, article 7, Law 3212/2003 (Official Gazette 308A/31.12.2003) stipulates that 'the owners who erect a dwelling on their own or on a conceded ground or plot of land situated in a remote or inaccessible area and the owners belonging to a disadvantaged population group may receive free of charge model studies of various types of houses from the town planning agencies'.
  A decision of the Minister for the Environment, Physical Planning and Public Works shall be issued for the enforcement of this provision, which shall specify the bodies to prepare the model studies of various types of dwellings and the procedure of assignment of study preparation and approval, the remote and inaccessible areas and disadvantaged groups, as well as the required supporting documents, the procedure, manner of issuance of the pertinent building licence and manner of supervision of the building works.
- For the solution of the housing problem of special social groups, paragraph 11, article 13, Law 3212/2003 stipulates that the beneficial provisions of paragraph 2, article 6, Law 2790/2000 concerning the execution of emergency housing programs for the restoration of repatriated Greek expatriates by the approval of the local street plan shall also apply to the execution of emergency housing programs for the restoration of special social groups on land allocated by the State, the Local Government Organizations or other Public Law Entities or on land owned by the persons falling under the social group.

This provision gives the possibility to the Minister for the Environment to approve studies of emergency housing programs for the restoration of special social groups.
The enforcement of this provision requires the issuance of a joint decision by the Minister of Interior, Public Administration and Decentralization, Minister for the Environment, Physical Planning and Public Work, Minister of Economy and Finance and the competent Minister from time to time, which shall designate the procedure and criteria for the allocation of plots, so that emergency housing programs for the restoration of special social groups be carried out.
In addition, the Ministry for the Environment, Physical Planning and Public Works promoted a provision [paragraph 1, article 34, Law 3448/2006 (Official Gazette 57A/2006)], which specifies that the special social groups of paragraph 11, article 13, Law 3212/2003 (Official Gazette 308A/2003) in respect of the execution of emergency housing programs for their restoration, include also Greek Roma.
Within the context of attempting to solve the problem of housing restoration of Roma tent-dwellers, the Ministry for the Environment, Physical Planning and Public Works has drawn up and will forward to the Local Government Organizations concerned and to the Ministry of Interior, Public Administration and Decentralization, a Text of Instructions that contains guidelines for the proper handling of the issue of appropriateness of the lands for the creation of new settlements or for institutional protection (integration in the town plan) of the existing camps.

MINISTRY OF HEALTH AND SOCIAL SOLIDARITY
'PROTECTION – PROMOTION OF HEALTH AND PSYCHOSOCIAL SUPPORT OF GREEK ROMA'

The Integrated Action Plan was drawn up on the basis of the framework of national policy and the aim of the Third Community Support Framework and, in addition to the description of the socioeconomic situation of Greek Roma and the strategy of the Integrated Action Plan, presents the main Action Plan that includes 2 Axes:

Axis 1: Infrastructure (new settlements, improvements, restructuring and laying out of the environment, town and physical planning, etc.)

Axis 2: Services (education, training, employment, social welfare, adult training).

The Ministry of Health and Social Solidarity, within the framework of this Plan and aiming at the social integration of Greek Roma, is implementing the following Programs:

1. In cooperation with the Regional Health Administrations, the Centre for Disease Control and Prevention and the Health Directorate of the Prefectural Self-governments of the country, it organizes a Vaccination Program in the settlements of the itinerant Greek Roma.
Mobile Units visit the settlements with medical and nursing personnel and a social scientist. During the interventions the children and the vaccinations are recorded and a file is created. Moreover, the cases needing an intervention are referred to hospitals, institutions or Welfare Directorates.

2. It establishes Medicosocial Centres at the organized Romani settlements for their integration in society.
Due to the fact that in Greece today a great number of Roma is housed permanently or quasi-permanently in settlements with temporary and inappropriate means (tents, huts, shacks, etc.) and without the elementary infrastructure, the Integrated Action Plan provided for the establishment of new settlements according to standards and with infrastructure, such as water supply, sewage system, electrical supply, as undertaken by the Ministry of Interior, Public Administration and Decentralization.
By the creation of the Medicosocial Centres the Ministry of Health aims at the preparation of the population for their social integration through the provision of supporting services, which, however, will in no case substitute for the existing structures. For this reason, their role is referring-counselling-mediating.
The target will be achieved through the utilization of the services and benefits from the National System of Health and Social Care, as well as by their familiarization with the Public Agencies.
The personnel staffing the Centres comprises 1 doctor, 1 social worker, 1 medical attendant, 1 psychologist, 1 teacher of physical education, 1 mediator who is a Rom.
37 Centres are to be founded and 18 of them have already started operating.

Within the context of operation of the Medicosocial Centres, in addition to the awareness of the target-group on issues of health and counselling support, the local population is informed on the cultural particular characteristics of the target-group, the problems, needs and manners of solving problems, with the basic principles being the respect for the dignity and equality, the provision of equal opportunities to all persons and the combating of discriminations.

More specifically, the following are being realized:

- civil municipal arrangement (issuance of identity cards, enrolment of children in registries and schools, creation of a family entry, etc.);
- visits to schools;
- visits to houses of Romani families or individuals;
- meetings with officials of the Prefectures, Municipalities/Communities and the Church for a better coordination of the overall project that concerns the target-group;
- speeches – seminars – creation of posters and information leaflets – articles in the local daily press;
- celebrations, participation in feasts and fairs of the target-group.

An example of the 18 already operating Medicosocial Centres is the Centre of the Municipality of Nea Ionia, Volos.
It started operating on 2-3-2005.
The basic targets of the Centre are the civil municipal arrangement of the population, the cooperation with the local or other bodies and the possibility of networking of the Medicosocial Centre with other agencies."

323. 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

324. The Greek delegate said that legislative and policy measures promoting the social inclusion of Roma had been taken.

325. On the one hand, the legal framework against discrimination had been strengthened through the adoption of new legislation, namely Law No. 3304/2005 on equal treatment in the employment sphere (transposing Directive 2000/43/EC of the Council of the European Union of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin).

326. On the other hand, various measures had been taken with the intention of bringing Roma closer to the administrative structures from which they could benefit. A total of 37 medical and social centres focusing on preventive activity and care for Roma would be established beginning in 2000 to serve as intermediaries between the Roma and society, in order to foster their integration. 25 of these centres were already operational, especially in remote regions. Other Employment Ministry initiatives promoting equal opportunities had also been started, including specific programmes for Greek Roma.

327. The Greek delegate described a number of measures relating to civil status that had been put into effect to enable Roma to enjoy the social benefits to which they were entitled not only as Greek citizens, but also as members of a socially vulnerable group. Among other measures, a recommendation was issued in 2007 establishing an obligation on the local authorities to process applications from Greek Roma observing the principles of good governance and citizens' convenience.

328. Along with common legal instruments, positive discrimination had also been practised in order to promote access to social services and social benefits for Roma. The measures concerned stemmed inter alia from statutory obligations involving the Greek government and local authorities. The Greek delegate also pointed to the review in 2006 of the legal framework on housing for Roma upon social criteria taking into account the particular needs of Roma, living conditions and lifestyle as well as to

the action taken by the government in relation to the granting of loans to promote access to housing for Roma. To date 5,773 such loans had been granted. In pursuance of a joint ministerial decision now in force, Roma with non qualifying applications were also allowed to submit a second loan application.

329. The delegate further said that official statistics could be carefully obtained in the context of Roma being targeted by measures of positive discrimination. In that context, the figures claimed on lack of identity papers are inconsistent with the figures put forward by the Roma themselves. The Greek delegate also pointed out that the majority of the Roma already held marriage, tax or other certificates and already received family benefits for their children, as well as in respect of medical disabilities. This information was shown on the charts forwarded to the Secretariat by the Greek delegate.

330. The Committee thanked her for this new information and decided to await the next ECSR assessment.

16 MALTA

"The Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter on the ground that it is not able to assess whether the childcare facilities are affordable and of good quality."

Ground of non-conformity (for the first time)

331. The Maltese delegate provided the following information in writing:

> "Since 2002, the then Ministry for Social Policy (MSP) started collecting data about childcare centres and the list currently includes around 50 child care facilities (including home-based, centres and private kindergartens)- It is estimated that there are over 1000 children making use of these services.
>
> In 2002, the Technical Committee on Child Day Care (TCCDC) was set up by the then Minister of Social Policy, specifically to start the process which will eventually lead to the establishing of standards for ehiidcare facilities The Ministry for the Family and Social Solidarity (MFSS) is currently the lead Ministry responsible for services catering for the 0 to 3 age bracket and works in very close collaboration with the Ministry for Education, Youth and Employment (MEYE) on the matter due to the strong educational aspect within the service.
>
> A consultation document was published in July 2004 jointly by MEYE and MFSS The document put forward proposals on the principles and standards to be achieved in a number of areas (including training, staff to carer ratios, health and safety, programme of activities etc).
>
> Concurrently with the consultation process, the TCCDC commissioned the Management Efficiency Unit to earn/ out a financial feasibility study on the proposed child day care standards. A representative sample of existing facilities catering for children under 3 years were interviewed and the findings of the study were reviewed by the TCCDC and MFSS.
>
> It must be noted that the proposed standards have, ever since their publishing, been used as a guideline for both current and prospective service-providers. For example, the maximum number of children a centre can take is determined by the space ratio ($5m^2$ per child) and prospective providers are informed that training is compulsory.

Moreover, planning applications for childcare centres are forwarded to MFSS for consultation.

In 2005, the Department for Social Welfare Standards (DSWS), formerly known as the Department for Family Welfare, was renamed to reflect the process being undertaken by the same Department relating to a change of its responsibilities. This Department formerly performed a social work service delivery function. It has now assumed the role of a regulatory body for the social welfare sector. Its operations will focus on the registration of social welfare services, monitoring and assessment of set standards, and ensuring compliance with any policies and legislation adopted by Government. The overall objective is to improve the quality of life of people using services, thus protecting and enhancing their dignity, safety and welfare. The department will adopt a supportive, developmental and collaborative approach, while taking into consideration the views of stakeholders. One of the priority areas identified by the Department, and which is being addressed, is precisely the child day care sector.

The DSWS has in the past months undergone a gap analysis exercise with facilities catering for children under 3. Providers were invited to fill in a self-assessment questionnaire, indicating the level of compliance with the proposed standards for facilities catering for children under 3. Providers were offered the assistance of a Welfare Standards Assessor, who together with officials from MEPA, ETC and the National Commission for Persons with Disability, evaluated the quality of the service being delivered and the suitability' of the premises. The scope of such an assessment exercise was to gather the necessary data regarding the eligibility of the identified premises so as to inform the decision making and implementation process related to the measures aimed at supporting the setting up of childcare facilities as identified in the National Action Plan. This essential exercise was also valuable for the planning of the phasing in programme for the implementation of established childcare standards. The information gathered has recently been analysed, a report drawn up and recommendations put forward by DSWS to MFSS regarding a programme of priorities and timescales for the phasing-in of the implementation of the proposed standards.

An ESF childcare project was launched and carried out by the Employment and Training Corporation. This includes:

- a start-up grant of 900 euros to each organisation to adapt the premises to a desirable standard and/or to render *it* safe and stimulating for toddlers and children
- a start-up grant of 1500 euros to each organisation to buy the equipment and furnish the place adequately The grant can also be used to buy toys and other necessary material used in a childcare centre.
- half the salaries of trained child carers The action provides for the payment of half the cost of a child carer, to be matched by the organisation (proposed salary of 10,000 euros per annum plus statutory benefits).
- fees chargeable to parents are not to exceed 100 euros per month for each child in full-time care This figure has been set for two reasons: (]) it constitutes 20% of the minimum wage, and 10% of the median wage, and is thus considered to be a fair fee, and (2) if each carer employed cares for at least 5 children (while respecting the carer-child ratios for different age groups), the providing entity will be able to recoup the half of the carers salary to be home by itself Fees are to be charged according to use. as soon as the childcare centre is up and running and the service is being utilised by the parent.

In 2005, the Malta Environment and Planning Authority (MEPA) issued a Supplementanary Policy Guidance (SPG) for childcare centres. Prior to the issuance of such Policy Guidance, planning applications for childcare centres were assessed according to the SPG document for kindergarten facilities and schools The TCCDC had

advocated the drawing up of a SPG to deal with the particular characteristics and exigencies of childcare centres. Both entities collaborated closely on the matter and a separate SPG for childcare facilities was drawn up This document was also published for public consultation and the feedback received during the consultation period is currently being reviewed by MEPA.

In November 2005, during the 2006 Budget speech. Government announced that it would be allocating Lm 130,000 to support existing childcare facilities which are registered with DSWS and which meet the established standards. Government plans to issue an administrative scheme shortly by virtue of which existing facilities may avail themselves of this support being provided by Government."

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.

16 NETHERLANDS (Aruba)

"The Committee concludes that the situation in the Netherlands concerning Aruba is not in conformity with Article 16 of the Charter because eligibility for certain family benefits is subject to a nationality condition."

Ground of non-conformity (for the first time)

333. The Netherlands delegate provided the following information in writing :

"The Government informs the Committee that the requested information will be submitted in the next report.

As regards the eligibility of a certain family benefit that is subject to a nationality condition, the Government informs the Committee that due the small size of the island, the Government strives in the scope of the public interest, economics reasons and the protection of the labour market to protect its nationals. The State Ordinance of Admittance and Expulsion (LTU) allows foreigners to be eligible for a residence permit, as long as he/she is financially self-supportive and do not pose a burden on the social services, including family benefits. Taking into consideration Aruba's limited resources, the Government is of the opinion that its immigration policy is justified and that eligibility for certain family benefits can remain subject to nationality condition. »

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.

CSE 16 NETHERLANDS (Netherlands Antilles)

"The Committee concludes that the situation in the Netherlands concerning the Netherlands Antilles is not in conformity with Article 16 of the Charter because family benefits are not paid to a significant number of families."

335. The Dutch delegate told the Committee that, following the ECSR's 2002 conclusion of non-conformity, a family benefits committee had been set up in order to produce a description of the current situation relating to financial support measures for families with children, in consultation with the social partners throughout the country, and to put forward solutions with a view to bringing the situation into conformity with Article 16 of the Charter through the introduction of a universal child allowance system, together with the consequences that the introduction of such a system would have.

336. The Dutch delegate pointed out that the main obstacle at the moment was financial, in so far as the resources available were limited, but the Government undertook to describe the main progress made in its next report.

337. The Committee took note of the developments that had occurred, but considered that the situation still gave cause for concern. It invited the Government to do everything to bring the situation into conformity with Article 16 of the Charter.

16 POLAND

"The Committee concludes that the situation in Poland is not in conformity with Article 16 of the Charter on the ground that an excessive length residence requirement is imposed on certain nationals of other states party to the Charter or the revised Charter for receipt of family benefits."

338. The Polish delegate wished to rectify the description of the situation given by the ECSR in its previous report. For example, the family allowance was a non-contributory benefit financed by the budget and contacts were under way with the relevant authorities of states concerned to obtain statistics on the number of foreign nationals concerned.

It was true that the statistic-gathering process was progressing somewhat slowly, but the Government intended to step up its efforts. At its next assessment of the situation, the ECSR will examine this issue together with additional information provided by the Government in the next report.

339. The Committee noted that contacts with the relevant authorities were under way and that the Government intended to remedy the situation. It welcomed this and urged the Government to speed up the process as much as possible.

16 SLOVAK REPUBLIC

"The Committee concludes that the situation of the Slovak Republic is not in conformity with Article 16 of the Charter on the ground that the granting of childbirth allowance and child-minding allowance is subject to an excessive length of residence requirement."

Ground of non-conformity (for the first time)

340. The Slovak delegate provided the following information in writing:

> "The conditions of the entry and stay of aliens in the territory of the Slovak Republic are provided under the Act No. 48/2002 Coll. on stay of aliens, and on amending of certain acts, as amended by later regulations (mainly the Act No 558/2005 Coll. entering into force as of 15 December 2005).
>
> Pursuant to the provision of § 34 of the cited act, a police section shall, subject to application of the alien, grant permanent residence permit for the first time for five years, i.e., the first permit (until 15 December 2005, the permanent residence permit was granted for three years). After the lapse of five years, the police section shall, upon subsequent application of the alien, grant permanent permit for indefinite period of time, i.e., the subsequent permit.
>
> The police section shall grant the first permanent residence permit to an alien (§ 35):
>
> a) who is a spouse of a national of the Slovak Republic with permanent residence in the territory of the Slovak Republic, or who is a dependent direct relative in

the ascending line of a national of the Slovak Republic, with permanent residence in the territory the Slovak Republic;
b) who is an unmarried child, under the age of 18 years, entrusted in personal care of an alien who is a spouse of a Slovak Republic national, with permanent residence in the territory of the Slovak Republic;
c) who is an unmarried child, under the age of 18 years, of an alien, with the permanent residence permit, or a child under the age of 18 years, entrusted in personal care of an alien with permanent residence permit;
d) who is a dependent child, over the age of 18 years, of an alien with the permanent residence permit, or
e) where it is in the interest of the Slovak Republic.

Pursuant to §37 (6) „The police section shall decide on the application for granting of the first permit within 90 days of the delivery of the application to the police section; in particularly complex cases, the period may be prolonged, by 90 days at most"

Special provisions of the cited act shall apply to the nationals of the EEA and their family members who have the right to move freely and stay in the territory of the Member States (§ 45a).

Note:
As regards the two types of benefits - the childbirth allowance and the child-minding allowance (annual nursery-school allowance for large families) Slovakia would like to inform about the correct title and content of the latter benefit: according to MISSOC – EC tables 2005 (to which the ECSR refers) there is stated on page 867 as follows:

- State subsidy for kindergartens – which means the state financial subsidy for operational costs of all kindergartens´ facilities in Slovakia, and
- Annual benefit for multiple births (only for those with permanent residence) equal to SKK 2,340 (€ 61) SKK 2,880 (€ 75) or SKK 3,070 (€ 79) for each child depending on the child's age – which means the allowance pursuant to the Act No. 235/1998 Coll. on the child birth allowance and on allowance for the parents having given birth to triplets or more children simultaneously, or to twins born repeatedly within the period of two years, as amended by the Act No. 601/2003 Coll. on subsistence minimum and on amendment of certain Acts;
Allowance for parents to whom three or more children were born simultaneously, or to whom within a two years period, twins were born repeatedly is a state social support benefit, by which the state contributes once a year to parents or the entitled persons to cover increased expenses connected with the care of three or more children born simultaneously, or twins born repeatedly within a two years period. The amount of the allowance for parents depends on the age of the child and is provided at:

- SKK 2,340 per child up to 6 years of age;
- SKK 2,880 per child between 6 and 15 years of age;
- SKK 3,070 per child 15 years age.

In 2003, the allowance for parents was paid to 95 entitled persons. The spending on the allowance for parents in 2003 amounted to SKK 708 thousand.

In 2004, the allowance for parents was paid to 99 entitled persons. The spending on the allowance for parents in 2004 amounted to SKK 754 thousand.

E-IX-15	E-IX-15-SK
2. Child care allowances	State subsidy for kindergartens. Annual benefit for multiple births (only for those with permanent residence) equal to SKK 2,340 (€ 61) SKK 2,880 (€ 75) or SKK 3,070 (€ 79) for each child depending on the child's age."

341. The Committee invited the Slovak Republic to bring the situation into conformity with Article 16 of the Charter.

16 SPAIN

"The Committee concludes that the situation in Spain is not in conformity with Article 16 of the Charter on the ground that the amount of family benefits is not sufficient."

342. The Spanish delegate confirmed that there were supplementary family benefits (tax relief, financial assistance for large families, housing benefits). Efforts had also been made in recent years to increase the amount of family benefits and the income levels below which families were eligible for them.

Other steps to protect families had been taken such as measures to promote jobs for women after maternity (under the 2004 Employment Promotion Programme), the 2001-2004 Integral Family Support Scheme, Act no. 46/2002 on the partial reform of income tax and the 2002-2005 Housing and Land Programme.

343. The Committee noted and welcomed the new information provided by the Spanish government and urged it to continue its efforts. It decided to await the next assessment of the ECSR.

16 TURKEY

"The Committee concludes that the situation in Turkey is not in conformity with Article 16 of the Charter on the ground that there is no general system of family benefits."

344. The Turkish delegate pointed out that there were three different social security schemes in Turkey, one for civil servants, one for employees and one for self-employed workers, and that there were a number of social benefits but no general system of family benefits.

Non-working wives of civil servants and their children (up to the age of 18) were entitled to family allowances. Child allowance could also be claimed for children up to the age of 25 if they continued their studies and even beyond this if the child was a woman (until she married or began work).

In connection with the three social security schemes, all non-working widows were entitled to a life-long monthly benefit calculated on the basis of their deceased husband's salary. Insurance funds and offices ensured that these family benefits were paid and also funded the care provided in specialised centres.

345. The ETUC representative asked what tangible improvements had been made.

346. The Turkish delegate said that a new law designed to bring together all social benefits on the basis of objective criteria would enter into force on 1 January 2007.

347. The Committee noted the new measures and progress described by the Turkish government and decided to await the next assessment of the ECSR.

16 UNITED KINGDOM

"The Committee concludes that the situation in the United Kingdom is not in conformity with Article 16 of the Charter for the following reasons:

- equality between spouses with respect to their matrimonial property is not guaranteed in Northern Ireland;
- the right of Roma/traveller/gypsy families to housing is not effectively guaranteed."

First ground of non-conformity

348. The United Kingdom delegate said that, as the result of an agreement of 6 June 2005 designed to rectify inequalities between spouses with regard to matrimonial property in Northern Ireland, the situation was now in conformity with the Charter.

349. The Committee welcomed the positive developments described and decided to await the next assessment of the ECSR.

Second ground of non-conformity (for the first time)

350. The United Kingdom delegate provided the following information in writing:

> "The Government would like to respond by stating that a comprehensive review of Gypsy and Traveller accommodation policy has been undertaken by the Office of the Deputy Prime Minister (ODPM), as a result of which numerous changes have been put in place. These ensure that an informed and strategic approach is taken to accommodation needs, and that the planning system identifies land to meet these needs. Government funding for socially rented sites is now available, and the security of tenure of those resident on such sites has been strengthened.
>
> In detail:
>
> · Under new measures in the Housing Act 2004, local authorities will be required to review the accommodation needs of 'gypsies and travellers' residing in, or resorting to, their district when carrying out reviews of housing needs under section 8 of the Housing Act 1985. Guidance on how to carry out housing needs assessment, including for Gypsies and Travellers, will be issued later this year.
>
> · The Housing Act 2004 also provides for local housing authorities to be required to prepare and supply a strategy in respect of the meeting of the accommodation needs of Gypsies and Travellers in their district.
>
> · The permissible purposes of the Housing Corporation will be extended to allow Registered Social Landlords (private sector providers of publicly funded social housing) to provide as well as manage Gypsy and Traveller sites, and to receive public subsidy to do so.
>
> · From 2006/07, mainstream funding for local authority and Registered Social Landlord sites will be available from the £2.5bn housing capital budget, which is distributed on the advice of the nine Regional Housing Boards.
>
> · The Gypsy Sites Refurbishment Grant (GSRG) continues to support the improvement and expansion of the local authority network of sites. GSRG will be providing £8m

funding for this purpose in 2005/06. The scope of the grant has been widened for 2005/06 to cover the provision of new residential sites.

· The new planning system, introduced in the Planning and Compulsory Purchase Act 2004, will ensure a systematic and comprehensive approach is taken to the assessment of housing needs and site provision. Where a need for sites is identified, it will require that land for such sites is identified in local development plan documents.

· Planning Circular 1/94, which deals with Gypsy and Traveller sites, has been revised and consulted on, in order to overcome some of the barriers to site provision which have become apparent since the Circular was issued in 1994. Responses are currently being considered by the Department.

· The Housing Act 2004 allows judges to suspend eviction orders against residents of local authority sites. This brings the situation for residents of local authority sites in line with those on private Gypsy and Travellers sites and those with secure tenancies in bricks and mortar housing in this respect.

· The Housing Act 2004 brings security of tenure on County Council sites in line that on other local authority sites.

· The Social Exclusion Unit based within ODPM is undertaking a study into 'Better Service Delivery for Disadvantaged People who Move Frequently', which will include an examination of the particular issues faced by Gypsies and Travellers.

· ODPM will be issuing a range of guidance related to the establishment, design and management of sites, and the production of Gypsy and Traveller accommodation strategies.

· In addition, a Gypsy and Traveller Unit has been set up within the Department. This will implement legislation, work with Local Authorities to promote site and service provision, promote the effective use of enforcement powers, and promote greater community cohesion."

351. 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 19§4 – Equality regarding employment, right to organise and accommodation

19§4 GERMANY

"The Committee concludes that the situation in Germany is not in conformity with Article 19§4 of the Charter, on the ground that nationals of certain States party are excluded from the scope of the Employment Protection Act on Military Service and consequently are not secured treatment not less favourable than that of naturals."

352. The German delegate indicated that the Ministry of Defence was in the process of revising the Employment Protection Act on Military Service. The scope of the Act would be extended to cover migrant workers employed in Germany. However, she mentioned that until the revision had not been completed, she could not guarantee that the situation would be brought into conformity with the Charter.

353. The Committee welcomed this positive development and decided to await the next assessment of the ECSR.

19§4 LUXEMBOURG

"The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§4 of the Charter on the ground that certain categories of foreign migrant workers cannot be elected for joint work councils."

354. The Luxembourg delegate referred to his statement under Article 5.

355. The Committee referred to its decision under Article 5.

19§4 TURKEY

"The Committee concludes that the situation in Turkey is not in conformity with Article 19§4 of the Charter on the grounds that migrant workers may not become founding members of trade unions."

356. The Turkish delegate indicated that the provision which limited the right of migrant workers to become a founding member of a union would be abolished by a draft law on trade unions which was under preparation. The draft had been submitted to the social partners with a view to reaching a consensus, before submitting it to the Parliament.

357. The Committee welcomed the Government's intention to amend the situation, as well as the on-going social dialogue. It invited the Government to speed-up this social dialogue so as to bring the situation into conformity with Article 19§4 of the Charter as soon as possible.

Article 19§6 – Family reunion

19§6 AUSTRIA

"The Committee concludes that Austrian situation is not in conformity with Article 19§6 of the Charter on the ground that Austrian law and practice do not provide for family reunion up to the age of twenty-one for the children of all migrant workers who are nationals of States Parties which are not party to the European Economic Area Agreement."

358. The Austrian delegate indicated that the age limit used for family reunion in respect of dependent children was the age of majority. She mentioned that ratification of the revised Social Charter was on the Government's agenda, and that a decision on this would be taken after elections in October 2006.

359. The Committee noted that some progress had been made towards ratification of the revised Social Charter, and encouraged the Government to speed up such ratification. Otherwise, it should reconsider the matter to bring into conformity with Article 19§6 of the Charter.

19§6 GERMANY

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

– children of migrant workers, aged between 18 and 21 years, nationals of Contracting Parties to the Charter who are not covered by Community regulations, are not admitted in practice for the purposes of family reunion.
– young persons with only one parent residing in Germany, have no right to family reunion except in special cases;
– there is no right to family reunion for spouses of second-generation foreigners."

360. The German delegate indicated that the new Immigration Act had come into force in 2005 (after the reference period). The Act contained new provisions on family reunion, and the ECSR therefore still had to examine the new regulations.

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

19§6 GREECE

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

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

First ground of non-conformity

362. The Greek delegate indicated that a number of laws and regulations on the question of entrance, residence and social integration of third country nationals had been adopted between 2005 and 2007, harmonising domestic legislation with Council Directive 2003/86/CE of 22 September 2003 on the right to family reunification. The ECSR still had to examine the new regulations. In any event, she mentioned that consideration had been given to ratification of the Revised Charter, upon which the problem of the age limit for family reunion of dependent children would no longer exist.

363. Although new legislative developments were adopted, exceptions for the group of children between 18 and 21 years still seemed to exist. Given this and the fact that there seemed to be no intention to change, the ETUC representative suggested that the Committee would vote on a warning.

364. The Committee took note of the information and expressed its concern that the situation was still not in conformity with the Charter. It encouraged the Government to ratify the Revised Charter as soon as possible.

Second ground of non-conformity

365. The Greek delegate recalled that the residence requirement before a migrant worker could exercise family reunion had already been lowered from five years to two years, and that a new amendment lowering the length of the residence requirement was not envisaged. Moreover, taking into account the existing structure of Greek society, the two years residence requirement was still deemed necessary for the maintenance and preservation of permanent and viable living conditions.

366. The Estonian delegate indicated that Council Directive 2003/86/CE of 22 September 2003 on the right to family reunification established that Member States could require a migrant worker to have stayed "a period not exceeding two years" before being joined by his/her family.

367. The Secretariat recalled that the ECSR still considered one-year as acceptable, but that two-years were excessive. In addition, the Directive stipulated that its

provisions were without prejudice to more favourable ones in the European Social Charter.

368. The Committee encouraged the Government to reconsider its legislation in this area given the fundamental importance of migrant workers being able to enjoy family life. Furthermore, it expressed its concern that the Government had no intention of bringing the situation into conformity with the Charter.

19§6 LUXEMBOURG

"The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§6 on the grounds that national law fails to recognise the right to family reunion for non-European Economic Area migrant workers and it is not possible to assess if in practice they have been able to be joined by their families."

369. The Luxembourg delegate indicated that the Government was in the process of preparing new immigration legislation, which would transpose Council Directive 2003/86/CE of 22 September 2003 on the right to family reunification into domestic law, and would hence bring Luxembourg regulations into conformity with the Charter.

370. The Committee urged the Government to speed up this legislative process, to provide all relevant information in its next report and decided to await the next assessment of the ECSR.

19§6 NETHERLANDS

"The Committee concludes that the situation in the Netherlands is not in conformity with Article 19§6 of the Charter on the ground that welfare support benefits are not counted towards the income level above which family reunion is approved."

371. The Dutch delegate recalled that anyone in the Netherlands with insufficient income could claim welfare support (a single person received 70% of the minimum wage, a couple 100%). Given that welfare support was paid from public funds, it was deemed necessary to protect such public funds by setting an income requirement prior to bringing a partner/family member from abroad into the country. The income requirement applied equally to Dutch and foreign nationals. He also mentioned that the income requirement was conducive to the social participation of the new family member, who would join a working family.

372. The majority of delegates that took the floor considered that the Dutch position was understandable and justified. This was a sensitive question with budgetary and economic implications.

373. The ETUC representative mentioned that the level of the income requirement had been considerably increased over the past few years, and asked if there had been any changes.

374. The Dutch delegate replied there had been no further changes.

375. The Committee took note of the information and decided to await the next assessment of the ECSR. However, taking into account economic, social and political considerations, the Committee did not find it necessary to take any further steps in this case.

19§6 SPAIN

"The Committee concludes that the situation in Spain is not in conformity with Article 19§6 of the Charter on the ground that neither legislation nor practice provide for family reunion in respect of migrant workers' children aged between 18 and 21 years."

376. The Spanish delegate indicated that under Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain, a foreigner residing in Spain could only exercise family reunion to bring in children below the age of 18. The only exception to this age limit was if a child was handicapped. He mentioned that this was in line with Council Directive 2003/86/CE of 22 September 2003 on the right to family reunification.

Nevertheless, he also mentioned that Directive 2004/38/CE concerning the right of citizens of the European Union and their family members to circulate and reside freely within the territories of the Member States established that children up to the age of 21 could benefit from family reunification. Once this Directive had been transposed, it was possible that the age of 21 would be generally applied for all cases of family reunification, in conformity with the Charter.

377. The Committee requested the Government to reconsider its regulations on this matter to bring into conformity with Article 19§6 of the Charter. It encouraged the Government to ratify the revised Social Charter, which would enable complying with both the revised Charter as well as Directive 2003/86/CE on the right to family reunification.

19§6 TURKEY

"The Committee concludes that the situation in Turkey is not in conformity with Article 19§6 of the Charter, on the ground that neither legislation nor practice provide for family reunion in respect of migrant workers' children aged between 18 and 21 years."

378. The Turkish delegate stated that there were no restrictions for children aged between 18 and 21 to join their parents if the latter had a legal residence permit in Turkey. She mentioned that high priority was given to family reunion by the authorities, in particular as there were so many Turkish workers abroad suffering from restrictions in this area. She considered that Turkey was in conformity with this provision, and that practice went beyond the requirements of the Charter.

379. The Cypriot delegate asked if there was a law which entitled migrant workers to family reunification. The Turkish delegate confirmed that this right was included in legislation on foreigners.

380. The Committee took note of the information and asked the Government to clarify the situation in the next report. It decided to await the next assessment of the ECSR.

19§6 UNITED KINGDOM

"The Committee concludes that the situation in the United Kingdom is not in conformity with Article 19§6 of the Charter on the ground that neither legislation nor practice provide for family reunion in respect of migrant workers' children aged between 18 and 21 years."

381. The United Kingdom delegate indicated that people over 18 years of age were adults. They were not considered as dependants. Nevertheless, all applications for family reunification were considered on the merits. Therefore, if a person over 18 years was dependent he/she would be allowed to join the family. He also mentioned that no

statistics were available concerning the number of 18 to 21 years old which had been admitted for family reunion.

382. The Committee requested the Government to reconsider its regulations on this matter to bring into conformity with Article 19§6 of the Charter. It encouraged the Government to ratify the revised Social Charter, which would enable complying with both the revised Charter as well as Directive 2003/86/CE on the right to family reunification.

Article 19§7 – Equality regarding legal proceedings

19§7 LUXEMBOURG

"The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§7 given that migrant workers from States which are not parties to the Hague Convention on civil proceedings of 1 March 1954 are discriminated against since they must deposit a *cautio judicatum solvi* when bringing proceedings before domestic courts."

383. The Luxembourg delegate indicated that the conclusion could give the wrong impression that foreigners (from countries not parties to the Hague Convention of 1954) always had to deposit a *cautio judicatum solvi* when bringing proceedings, whereas this only happened upon request of a party and the judge's consent.

384. The Secretariat was asked to verify the exact legal situation. Following research, it informed the Committee that under Article 16 of the civil code the deposit of *cautio judicatum solvi* was mandatory for foreigners instituting proceedings. However, this obligation was dispensed of under Articles 166 and 167 of the code of civil procedure, which stipulated that the deposit of security had to be requested by the defending party and agreed to by the judge.

385. The delegate of Portugal mentioned that her country had a similar provision in the past, which had been abrogated on constitutional grounds.

386. The Estonian delegate asked why the provision was not deleted in Luxembourg if it was rarely used.

387. The delegate of Luxembourg confirmed that the practice had fallen into disuse, and that the Ministry of Justice would be looking at the case and considering the possibility of abrogating this provision.

388. The Committee welcomed the positive intention of the Government to find a solution for this problem.

389. In the context of the discussion on this agenda item, the delegate from "the former Yugoslav Republic of Macedonia" requested that the participants refrained from naming her country the name of "Republic of Macedonia".

390. In reply, the Greek delegate stated:

"Although our good bilateral relations with our neighboring country of "the former Yugoslav Republic of Macedonia" are unquestionable I wish to remind you that there

does remain a difference between the two countries concerning the name of the latter.

May I also remind you that Resolution 817/1993 of the UN Security Council establishes the international name of "the former Yugoslav Republic of Macedonia" and invites the two countries to settle their difference over the name of the latter state.

This process is still ongoing.

In addition let me also kindly remind you that By order of Resolution 23 adopted by the Committee of Ministers on the 19th of October 1995 the use of the international name of "the former Yugoslav Republic of Macedonia" has been established in the Council of Europe.

As a result, this international name should be used for the sake of good order in the framework of the Council of Europe even by those member states which have recognized "the former Yugoslav Republic of Macedonia" with the name "Republic of Macedonia".

I wish my statement to go down in the records."

391. The Secretariat indicated that the name which has to be used in written form or orally, in accordance with Council of Europe policy, is "the former Yugoslav Republic of Macedonia".

Article 19§8 – Guarantees concerning deportation

19§8 GERMANY

"The Committee concludes that the situation in Germany is not in conformity with Article 19§8 of the Charter on the ground that migrant workers who are nationals of Contracting Parties may be expelled for reasons which are not permitted by the Charter."

392. The German delegate indicated that the new Immigration Act had come into force in 2005 (after the reference period). The Act contained new provisions on the expulsion of foreigners, and the ECSR therefore still had to examine the new regulations.

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

19§8 GREECE

"The Committee concludes that the situation in Greece is not in conformity with Article 19§8 of the Charter on the ground that legislation permits the expulsion of foreigners when "their presence in Greece poses a threat to public order", which is too vague a criteria and can lead to the arbitrary expulsion of migrant workers."

394. The Greek delegate indicated that a new law on Migration had been adopted in 2005 (Law 3386/2005), which, *inter alia*, dealt with the question of administrative deportation of foreigners. The circumstances of the migrant worker were taken into account prior to expulsion, and the person concerned could appeal the decision, first to the Ministry of Public Order, and, subsequently, before the courts.

395. The Committee welcomed this positive development. It also asked the Government to provide information on the situation in the next report, and decided to await the next assessment of the ECSR.

19§8 LUXEMBOURG

"Accordingly, the Committee concludes that the situation in Luxembourg is not in conformity with Article 19§8 on the grounds that the expulsion of migrant workers provided for by legislation i.e. the lack of legitimate means of subsistence or a threat to public health, go beyond the grounds acceptable under the Charter."

396. The Luxembourg delegate indicated that as long as a migrant worker had a work permit he could not be expelled. However, a person without sufficient means could represent a threat to the country, so this was still retained as a reason to refuse entry to the country as well as to expel someone. Prior to taking a decision on expulsion, the Ministry of Foreign Affairs, who is responsible for immigration matters, had to obtain an opinion from a specialised body. Moreover, the decision could be appealed before the administrative courts.

The Luxembourg delegate nevertheless also mentioned that a new law on immigration was being prepared to align legislation with relevant EC Directives in this field. In this context, the authorities would consider the comments by the ECSR with a view to bringing the situation into conformity with the Charter.

397. The representative of the ETUC regretted that the progress being made was primarily because of EU regulations, and not directly linked to the Charter itself.

398. The Estonian delegate backed this comment and urged that the situation be brought into conformity.

399. The Committee took note of the steps taken by the Government to bring the situation into conformity with Article 19§8 of the Charter and decided to await the next assessment of the ECSR.

19§8 NETHERLANDS

"The Committee concludes that the situation in the Netherlands is not in conformity with Article 19§8, on the grounds that a migrant worker's family members who have settled in the Netherlands as a result of family reunion are expelled when the migrant worker is expelled."

400. The Dutch delegate indicated that if the members of the family had joined the migrant worker under the rules of family reunification, the status of such family members was derived from the status of the migrant worker. In consequence, when the migrant worker was expelled, the dependent family members lost their residence permit. If they wished to stay they had to file their own application for a residence permit under the normal rules of migration.

401. The Swedish delegate considered that family members should not be held responsible for an offence committed by the migrant worker.

402. The Luxembourg delegate recalled that under Council Directive 2003/86/CE of 22 September 2003 on the right to family reunification, the family members of a

migrant worker had an independent right to stay after five years of residence in the country.

403. The Committee recalled that family members who had joined a migrant worker through family reunion had an independent right to stay in the territory in the event of the expulsion of the migrant worker concerned. It asked the Government to provide more information on the situation in the next report, including on cases of family members who had stayed in the host State following the expulsion of the migrant worker.

19§8 UNITED KINGDOM

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

404. The United Kingdom delegate indicated that non-EEA or EU nationals must gain entry clearance, and that people who come to work –once their contract has expired- leave the country. If a worker leaves, there are no reasons for the family members who have come for family reunification, to stay. However, they may apply for leave to remain. He mentioned that there was no automatic expulsion of family members on expulsion of the worker.

405. The Greek and Irish delegates considered that the United Kingdom system was reasonable. The Swedish delegate asked if it was easy and frequent for family members to stay following the expulsion of a migrant worker. The Secretariat recalled that under the case-law of the ECSR, family members who had joined a migrant worker through family reunion could not be expelled as a consequence of the workers own expulsion, since they had an independent right to stay in the territory.

406. The Committee asked the Government to provide detailed information in the next report on the criteria which family members had to meet when applying for leave to remain in the country. It decided to await the next assessment of the ECSR.

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

19§10 GERMANY

"Accordingly, the Committee concludes that the situation in Germany is also not in conformity with Article 19§10 of the Charter."

407. The German delegate referred to her statement under Article 19§§6 and 8.

408. The Committee referred to its decision under Article 19§§6 and 8.

19§10 GREECE

"Accordingly, the Committee concludes that the situation in Greece is also not in conformity with Article 19§10 of the Charter."

409. The Greek delegate referred to her statements under Articles 19§6 and 19§8.

410. The Committee referred to its decisions under Articles 19§6 and 19§8.

19§10 LUXEMBOURG
"Accordingly, the Committee concludes that the situation in Luxembourg is also not in conformity with Article 19§10 of the Charter."

411. The Luxembourg delegate referred to his statements under Articles 19§4, 19§6, 19§7 and 19§8.

412. The Committee referred to its decisions under Articles 19§4, 19§6, 19§7 and 19§8.

19§10 NETHERLANDS
"Accordingly, the Committee concludes that the situation in the Netherlands is also not in conformity with Article 19§10 of the Charter."

413. The Dutch delegate referred to his statements under Articles 19§6 and 19§8.

414. The Committee referred to its decisions under Articles 19§6 and 19§8.

19§10 SPAIN
"Accordingly, the Committee concludes that the situation in Spain is also not in conformity with Article 19§10 of the Charter."

415. The Spanish delegate referred to his statement under Article 19§6.

416. The Committee referred to its decision under Article 19§6.

19§10 TURKEY
"In its conclusions under Articles 19§4 and 19§6, the Committee has considered that the situation in Turkey is not in conformity with the Charter.
Accordingly, the Committee concludes that the situation in Turkey is not in conformity with Article 19§10 of the Charter."

417. The Turkish delegate referred to her statement under Article 19§§4 and 6.

418. The Committee referred to its decision under Article 19§§4 and 6.

19§10 UNITED KINGDOM
"Accordingly, the Committee concludes that the situation in the United Kingdom is also not in conformity with Article 19§10 of the Charter."

419. The United Kingdom delegate referred to his statement under Article 19§§6 and 8.

420. The Committee referred to its decision under Article 19§§6 and 8.

Article 1 of the 1988 Additional Protocol - Right to equal opportunities and treatment in employment and occupation without sex discrimination

P1 CROATIA
"The Committee concludes that the situation in Croatia is not in conformity with Article 1 of the Additional Protocol to the Charter on the ground that night-work and access to dangerous occupations is prohibited to women in general."

Ground of non-conformity (for the first time)

421. The Croatian delegate provided the following information in writing :

"Although working hours are not directly defined, Article 7 of the Labour Act stipulates that working hours is the time during which the worker personally performs tasks assigned to him/her in accordance with employer's instructions.

The Labour Act especially stipulates rules for night work as well as principles regarding night work of women and minors.

Night work is defined as work between 10 p.m. and 6 a.m. of the next day and, in agriculture, between 10 p.m. and 5 a.m. of the next day. Other arrangements can be stipulated by the law, another regulation, the collective agreement or the agreement concluded between the employer and the workers' council. Although the definition of a night worker does not exist, it can be concluded from the above stated that the night worker is the worker who works during the defined night work period. Regarding the general prohibition of night work for minors, the time defined for these purposes when minor workers must not work is between 7 p.m. and 7 a.m. of the next day for minors employed in industry and the time between 8 p.m. and 6 a.m. of the next day for minors employed outside industry.

Night work of women is in principle prohibited in industry, but that prohibition does not apply to:

- employers who employ only members of their families, women who perform managerial or technical jobs, and to women employed in health and social services who generally do not perform work of manual nature.

- night work of women in industry, with the approval of the minister responsible for labour relations in cases of grave danger or for the protection of national interests upon obtaining the opinion of trade unions and employers' associations

Women can be ordered to work at night if such work is indispensable due to *force major* or to prevent damage to raw materials, but the labour inspector authorized to prohibit such work if not indispensable, must be informed 24 four hours before the initiation of such work. The minister responsible for labour relations may order night work for women due to the need to better utilize resources for work, to increase employment or for similar important economic reasons under the condition that the approval is obtained from the responsible body.

In principle, night work of minors is prohibited unless such work is indispensable due to *force major* or the minister responsible for labour passes a temporary decision on the need for such work in cases of grave danger or for the protection of national interests.

For minors employed in industry, work between 7 p.m. and 7 a.m. of the next day is considered night work. For minors employed outside industry, work between 8 p.m. and 6 a.m. of the next day is considered night work during which minors are prohibited to work.

A pregnant woman, a mother with a child under two years of age and a single mother with a child under three years of age need not work at night, unless she herself so requests.

In 2005, the State Inspectorate, based on inspectional supervision determined that 5.684 workers worked illegally overtime (of which 2.873 workers were women), 481

workers worked illegally at night (of which 445 were women without the obligatory prior authorisation), 376 workers worked illegally rescheduled working hours (of which 206 women: pregnant women, mothers with children up to three years of age and single mothers with a child up to six years of age), and that 2.609 workers were denied the proscribed weekly rest. For these cases legal proceedings were initiated against employers and such work has been prohibited by an order.

It is a common opinion that the Labour Act prohibits night work for women too broadly and as a result there may be inequality of pay between women and men because it prevents them from gaining the right to increased pay for night work (Article 92 of the Labour Act "*A worker has the right to an increased salary for arduous working conditions, overtime and night work, and for work on Sundays, holidays, and other days that are not working days according to the law"*).

As regard to the above mentioned the Republic of Croatia in the light of the forthcoming labour law reform will amend the regulations regarding the night work for women in a way to eliminate discrimination at any basis."

422. 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

LIST OF PARTICIPANTS

(1) 112e réunion : 2-4 mai 2006
(2) 113e réunion : 12-14 septembre 2006
(3) 114e réunion : 10-12 octobre 2006
(4) 115e réunion : 16-19 avril 2007

STATES PARTIES / ETATS PARTIES

ALBANIA / ALBANIE
Mrs Albana SHTYLLA, Director of the Legal Department, Ministry of Labour and Social Affairs, Equal Opportunities (1) (2) (3) (4)

ANDORRA / ANDORRE
Mrs Iolanda SOLA, Coordinator of the Social Charter, Lawyer, Carrer Prat de la Creu (4)

ARMENIA / ARMENIE
M. Tigran SAHAKYAN, Chef du Département des Relations Internationales, Ministère du Travail et des Questions Sociales (1) (2) (3) (4)

AUSTRIA / AUTRICHE
Mrs Elisabeth FLORUS, Federal Ministry of Economics and Labour (1) (2) (3) (4)

AZERBAIJAN / AZERBAÏDJAN
Mr Hanifa AHMADOV, Deputy Head of the International Cooperation Department, Ministry of Labour and Social Protection of Population (2) (3) (4)

BELGIUM / BELGIQUE
Mme Marie-Paule URBAIN, Conseillère, Service Public Fédéral Emploi, Travail et Concertation sociale, Services du Président, Division des Etudes (1) (2) (3) (4)

Mme Murielle FABROT, Attachée, Service Public Fédéral Emploi, Travail et Concertation sociale, Services du Président, Division des Etudes (1) (2) (3)

BULGARIA / BULGARIE
Mr Nikolay NAYDENOV, Head of International Organizations Section in International Relations Unit of Directorate for European Integration and International Relations, Ministry of Labor and Social Policy (1) (2) (3) (4)

CROATIA / CROATIE
Mrs Katarina IVANKOVIC KNEZEVIC, Senior Adviser, Ministry of Economy, Labour and Entrepreneurship (2) (3) (4)

CYPRUS / CHYPRE
Mr Stavros CHRISTOFI, Administrative Officer, Ministry of Labour and Social Insurance (1)

Mr Costas CHRYSOSTOMOU, Administrative Officer A, Ministry of Labour and Social Insurance (2) (3) (4)

CZECH REPUBLIC / REPUBLIQUE TCHEQUE
Ms Zuzana SMOLÍKOVÁ, Head of the Unit for Integration of Foreigners, Ministry of Labour and Social Affairs (1)

Ms Jana SAFROVA, Expert officer; Department for Migration and Integration of Foreigners, Integration of Foreigners Unit (3)

Ms Kateřina MACHOVÁ, Expert Officer; Department for Migration and Integration of Foreigners, Integration of Foreigners Unit (4)

DENMARK / DANEMARK
Mr Michael Harbo PAULSEN, Ministry of Social Affairs (1) (2)

Mr Kim TAASBY**,** Special Adviser, Ministry of Employment (1)

Ms Birgit SOLLING OLSEN (12 and 13 September), Søfartsstyrelsen (2)

Mr Leo TORP (13 and 14 September) Arbejdsdirektoratet (2)

ESTONIA / ESTONIE
Mrs Merle MALVET, Head of Social Security Department, Ministry of Social Affairs (1) (2) (3) (4)

Mrs Thea TREIER ; Head of Labour Relation Unit, Ministry of Social Affairs (1) (2) (3) (4)

FINLAND / FINLANDE
Mrs Liisa SAASTAMOINEN, Legal Officer, Ministry of Labour (2) (3) (4)

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Ms Kristina VYSNIAUSKAITE-RADINSKIENE, Chief Specialist of the International Law Division, International Affairs Department, Ministry of Social Security and Labour (2) (4)

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M. Joseph FABER, Conseiller de Direction première classe, Ministère du Travail et de l'Emploi (1) (2) (3) (4)

MALTA / MALTE
Mr. Franck MICALLEF, Assistant Director (Socilal Security), Department of Social Security (1) (2) (4)

Mr Joseph CAMILLERI, Director, Department of Social Security (3)

MOLDOVA
Mme Lilia CURAJOS, Chef adjoint, Direction des relations internationales et de l'intégration européenne, Ministère de la Santé et de la Protection sociale (1) (2) (3) (4)

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Mr Anthony Lee RIVIEARS (Aruba) (3)

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Mrs Janja KAKER, Senior Adviser, International Cooperation and European Affairs Department, Ministry of Labour, Family and Social Affairs (2) (3) (4)

Mrs Alenka SNOJ (11 October/octobre 2006) (3)

Mr Marko JURISIS (11 October/octobre 2006) (3)

SPAIN / ESPAGNE
M. Carlos LÓPEZ-MONIS DE CAVO, Conseiller technique, Sous-Direction Générale des Relations sociales internationales, Ministère du Travail et des Affaires sociales (1) (2) (3) (4)

SWEDEN / SUEDE
Ms Petra HERZFELD-OLSSON, Head of Section, Division for Labour Law and Work Environment, Ministry of Employment (1) (2) (3) (4)

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" /
"L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE"
Ms Adrijana BAKEVA, Head of the European Integration Department, Ministry of Labour and Social Policy (1) (3)

TURKEY / TURQUIE
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UKRAINE *(20/12/2006 = Ratification)*
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UNITED KINGDOM / ROYAUME-UNI
Mr Stephen RICHARDS, Head of ILO/COE/UN Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills (1)

Mr Robert Tudor ROBERTS, International Negociator, ILO, UN & CoE (Employment) Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills (2) (3) (4)

SOCIAL PARTNERS / PARTENAIRES SOCIAUX

EUROPEAN TRADE UNION CONFEDERATION /
CONFEDERATION EUROPEENNE DES SYNDICATS
Mr Stefan CLAUWAERT, ETUC NETLEX Coordinator, European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS) (1) (2) (3) (4)

M. Henri LOURDELLE, Conseiller, Confédération Européenne des Syndicats (1) (2) (3)

BUSINESSEUROPE
(former UNION OF INDUSTRIAL AND EMPLOYERS' CONFEDERATIONS OF EUROPE /
ex- UNION DES CONFEDERATIONS DE L'INDUSTRIE ET DES EMPLOYEURS D'EUROPE)
– (1) (2) (3) (4)

INTERNATIONAL ORGANISATION OF EMPLOYERS /
ORGANISATION INTERNATIONALE DES EMPLOYEURS
Mrs Lidija HORVATIC, Director of International Relations, Croatian Employers' Association (1) (3) (4)

SIGNATORIES STATES / ETATS SIGNATAIRES

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE
Ms Azra HADŽIBEGIĆ, Expert Adviser for Human Rights, Ministry for Human Rights and Refugees, Department for Human Rights BIH (1) (2) (3) (4)

LIECHTENSTEIN
(Apologised / Excusé) (1) (2) (4)

MONACO
M. Stéphane PALMARI, Secrétaire, Département des Affaires Sociales et de la Santé, Ministère d'Etat (3) (4)

RUSSIAN FEDERATION / FEDERATION DE RUSSIE
Mme Elena VOKACH-BOLDYREVA, Conseillère, Département de la coopération internationale et des relations publiques, Ministère de la Santé et du Développement social (1) (3) (4)

SAN MARINO / SAINT-MARIN
– (1) (2) (3) (4)

SERBIA AND MONTENEGRO / SERBIE-MONTENEGRO [*]
Mrs Vjera SOC, High Advisor for International Cooperation, Ministry of Labour and Social Welfare of the Republic of Montenegro (1)

SERBIA / SERBIE [*]
Ms Jelena NADJ, Head of Department for Harmonisation of Regulation with EU Law, International Relations and Project Management, Ministry of Labour, Employment and Social Policy (1) (2) (3)

Ms Dragana RADOVANOVIC, Head of Unit for Harmonization of Regulations with EU Law and International Relations (4)

[*] Depuis le 3 juin 2006, la République de Serbie continue à assumer la qualité de membre du Conseil de l'Europe jusqu'alors dévolue à l'Union d'Etats de Serbie-Monténégro (Décision du Comité des Ministres du 14 juin 2006).

SWITZERLAND / SUISSE
(Apologised / Excusé) (1) (2) (4)

UKRAINE *(20/12/2006 = Ratification)*
Mrs Natalia POPOVA, Senior Officer, European Integration and International Partnership Division, International Relations Department, Ministry of Labour and Social Policy (1) (2) (3)

Appendix II

CHART OF SIGNATURES AND RATIFICATIONS

Situation at 29 June 2007

MEMBER STATES		SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure
Albania		21/09/98	14/11/02	
Andorra		04/11/00	12/11/04	
Armenia		18/10/01	21/01/04	
Austria		07/05/99	**29/10/69**	
Azerbaïjan		18/10/01	02/09/04	
Belgium		03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina		11/05/04		
Bulgaria		21/09/98	07/06/00	07/06/00
Croatia		**08/03/99**	**26/02/03**	26/02/03
Cyprus		03/05/96	27/09/00	06/08/96
Czech Republic		04/11/00	**03/11/99**	
Denmark	*	03/05/96	**03/03/65**	
Estonia		04/05/98	11/09/00	
Finland		03/05/96	21/06/02	17/07/98 **X**
France		03/05/96	07/05/99	07/05/99
Georgia		30/06/00	22/08/05	
Germany	*	29/06/07	**27/01/65**	
Greece		03/05/96	**06/06/84**	18/06/98
Hungary		07/10/04	**08/07/99**	
Iceland		04/11/98	**15/01/76**	
Ireland		04/11/00	04/11/00	04/11/00
Italy		03/05/96	05/07/99	03/11/97
Latvia		29/05/07	**31/01/02**	
Liechtenstein		**09/10/91**		
Lithuania		08/09/97	29/06/01	
Luxembourg	*	11/02/98	**10/10/91**	
Malta		27/07/05	27/07/05	
Moldova		03/11/98	08/11/01	
Montenegro		22/03/05		
Monaco		05/10/04		
Netherlands		23/01/04	03/05/06	03/05/06
Norway		07/05/01	07/05/01	20/03/97
Poland		25/10/05	**25/06/97**	
Portugal		03/05/96	30/05/02	20/03/98
Romania		14/05/97	07/05/99	
Russian Federation		14/09/00		
San Marino		18/10/01		
Serbia		22/03/05		
Slovak Republic		18/11/99	**22/06/98**	
Slovenia		11/10/97	07/05/99	07/05/99
Spain		23/10/00	**06/05/80**	
Sweden		03/05/96	29/05/98	29/05/98
Switzerland		**06/05/76**		
«the former Yugoslav Republic of Macedonia»		**05/05/98**	**31/03/05**	
Turkey	*	06/10/04	**24/11/89**	
Ukraine		07/05/99	21/12/06	
United Kingdom	*	07/11/97	**11/07/62**	
Number of States	47	**4**+ 43 = 47	**16** + 23 = 39	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

Austria	– Article 12§1
Belgium	– Article 1§3 – Article 13§1
Croatia	– Article 13§1 – Article 16 – Article P1
Czech Repuplic	– Article 1§2 – Article 12§1 – Article 12§4 – Article 13§1
Denmark	– Article 1§2 – Article 12§3 – Article 12§4 – Article 16
Germany	– Article 12§1 – Article 12§3
Greece	– Article 1§1 – Article 16
Hungary	– Article 13§1
Iceland	– Article 1§2 – Article 6§4
Luxembourg	– Article 13§1 – Article 13§4
Malta	– Article 6§1 – Article 12§1 – Article 13§3 – Article 16
Netherlands (Kingdom in Europe)	– Article 12§1 – Article 12§3 – Article 12§4
Netherlands (Aruba)	– Article 16

Poland	– Article 1§2 – Article 5 – Article 13§3
Slovak Republic	– Article 6§4 – Article 13§1 – Article 16
Spain	– Article 6§4 – Article 12§1 – Article 13§1 – Article 13§4
Turkey	– Article 1§2 – Article 12§1 – Article 12§4 – Article 13§3
United Kingdom	– Article 12§1 – Article 16

B. Renewed conclusions of non conformity

Austria	– Article 1§2 – Article 5 – Article 16 – Article 19§6
Belgium	– Article 1§2 – Article 6§4 – Article 12§4
Czech Repuplic	– Article 6§4 – Article 12§4
Denmark	– Article 5 – Article 6§2 – Article 6§4 – Article 12§4 – Article 13§1
Germany	– Article 6§4 – Article 12§4 – Article 13§1 – Article 13§3 – Article 16 – Article 19§4 – Article 19§6 – Article 19§8 – Article 19§10

Greece	– Article 1§2 – Article 12§4 – Article 13§1 – Article 16 – Article 19§6 – Article 19§8 – Article 19§10
Hungary	– Article 1§2 – Article 6§4
Iceland	– Article 5 – Article 12§4 – Article 13§1 – Article 13§4
Luxembourg	– Article 5 – Article 13§1 – Article 19§4 – Article 19§6 – Article 19§7 – Article 19§8 – Article 19§10
Netherlands (Kindgdom in Europe)	– Article 6§4 – Article 19§6 – Article 19§8 – Article 19§10
Netherlands (Aruba)	– Article 1§2
Netherlands (Netherlands Antilles)	– Article 1§1 – Article 1§2 – Article 16
Poland	– Article 1§1 – Article 1§2 – Article 5 – Article 12§1 – Article 12§3 – Article 12§4 – Article 16
Slovak Republic	– Article 1§1 – Article 13§1
Spain	– Article 13§1 – Article 16 – Article 19§6 – Article 19§10

Turkey	– Article 1§1 – Article 1§2 – Article 1§3 – Article 12§4 – Article 13§1 – Article 16 – Article 19§4 – Article 19§6 – Article 19§10
United Kingdom	– Article 5 – Article 6§4 – Article 16 – Article 19§6 – Article 19§8 – Article 19§10

Appendix IV

Warning(s) and Recommendation(s)

Warning(s)[1]

Article 1, paragraph 2

– Turkey
(Certain provisions of the Martial Law No. 1402/1971 as amended by Act No.4045/1994 (Section 2) and Act No. 23935/1983 permit the suspension or transfer of civil servants or local government employees on the grounds that their employment is a danger to security in general, law and order or public safety or that their work is not necessary going beyond that permitted by Article 31 of the Charter.)

Article 13, paragraph 1

– Greece
(Repeated failure to provide the relevant information)

– Luxembourg
(RMG - *revenu minimum garanti* – is subject to an excessive length of residence condition.)

– Spain
(Eligibility for the minimum income is subject to a length of residence requirement in one of the autonomous regions; the majority of regions stipulate 25 as the minimum age for eligibility for the minimum income.)

Non-submission of report(s)

– Luxembourg
(3rd warning for non-submission of the report for the Conclusions XVIII-1)

Recommendation(s)

–

Renewed recommendation(s)

–

[1] If a warning follows a notification of non-conformity ("negative conclusion"), it serves as an indication to the State that, unless it takes measures to comply with its obligations under the Charter, a recommendation will be proposed in the next part of a cycle where this provision is under examination.