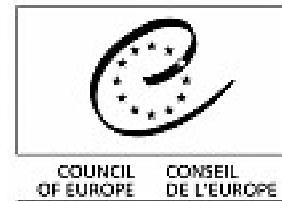

Strasbourg, 30 November 2005

T-SG (2005) 24

GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER

REPORT CONCERNING

CONCLUSIONS XVII-2

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

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[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-eight 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. The Union of Industrial and Employers' Confederations of Europe (UNICE) is also invited but did not participate in meetings in 2005.

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 the Charter, the States Parties are under the obligation to consult the national organisations of employers and the national trade unions on the content of the report. 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 27 of the Charter, the Governmental Committee has examined national reports submitted by Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Latvia, Malta, the Netherlands (Kingdom in Europe, Netherlands Antilles and Aruba), Poland, Portugal, Spain, Turkey and the United Kingdom in application of the European Social Charter. Reports were due on 31 March 2004 at the latest. The Governmental Committee repeats that it attaches a great importance to the respect of the deadline by the States Parties.

Luxembourg did not present a report.

5. Conclusions XVII-2 of the European Committee of Social Rights were adopted in December 2004 for the following States: Denmark, Germany, Hungary, Latvia, Malta, Poland, Portugal, Spain and Turkey, in May 2005 for the following States: Austria, Czech Republic, Greece and the United Kingdom, and in June 2005 for the following States: Belgium, Finland and the Netherlands (Kingdom in Europe, Netherlands Antilles and Aruba),

6. The Governmental Committee held three meetings (17-20 May 2005, 20-23 September 2005 and 18-20 October 2005), which were chaired by Mrs Marie-Paule URBAIN (Belgium).

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[1] List of the States Parties on 1 November 2005 : 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 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 and Montenegro, Ukraine) 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 12 November 2004, Andorra had ratified the European Social Charter (revised);

– on 22 March 2005, Serbia and Montenegro had signed the European Social Charter (revised);

– on 31 March 2005, “the former Yugoslav Republic of Macedonia” had ratified the European Social Charter;

– on 1 June 2005, Hungary had ratified the 1988 Additional Protocol to the Charter and accepted Articles 1, 2 and 3;

– on 27 July 2005, Malta had ratified the European Social Charter (revised);

– on 22 August 2005, Georgia had ratified the European Social Charter (revised);

– on 25 October 2005, Poland had signed the European Social Charter (revised).

9. The state of signatures and ratifications on 1 November 2004 appears in Appendix II to the present report.

II. EXAMINATION OF NATIONAL SITUATIONS ON THE BASIS OF CONCLUSIONS XVII-2 OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

10. The Governmental Committee continues the improvement of its working methods. It also envisaged the adoption of a new reporting system, and will submit proposals to the Committee of Ministers on this matter. 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.

11. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix III to the present report.

12. The Governmental Committee took note of the cases where the conclusion is deferred because of new questions put by the European Committee of Social Rights as they appear in Appendix IV to the present report. It asked governments to reply to the questions in their next reports.

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 V 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 1999-2002 (seventeenth supervision cycle – part II, "non 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]

[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 and the United Kingdom.

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

Having regard to Article 29 of the Charter;

Considering the reports on the European Social Charter submitted by the Governments of Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Latvia, Malta, the Netherlands (Kingdom in Europe, Netherlands Antilles and Aruba), Poland, Portugal, Spain, Turkey and the United Kingdom (concerning period of reference 1999-2002);

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

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

Recommends that governments take account, in an appropriate manner, of all the various observations made in the Conclusions XVII-1 of the European Committee of Social Rights and the report of the Governmental Committee.

EXAMINATION ARTICLE BY ARTICLE

A. CASES OF NON-COMPLIANCE

Article 2§5 – Weekly rest period

CZECH REPUBLIC

15. The Czech delegate stated that Section 92 of the Labour Code only holds a possibility not an obligation to postpone the weekly rest periods. The possibility furthermore does not apply to all workers, but only to agricultural workers. Any use of this possibility is conditional upon its conclusion in collective agreement or individual agreement. The weekly rest period of employees working in agriculture, which are eventually subject to the application of Article 92, paragraph 4, may be shortened up to 24 hours, but the rest of the weekly rest period will be provided at the latest after 3 weeks. The number of agricultural workers in the Czech Republic is very law, i.e. less than 4% of the total number of workers. The delegate stressed that the reason for a different determination of rules of weekly rest period in the agricultural sector is above all the respect for specifics of work in agriculture (agricultural deadlines and weather) and referred to previous case-law based on Article 33 of the Charter, which allowed such arrangements.

16. She stated that a new Labour Code had not been adopted yet and that discussions were being held with social partners. However, she expects that the nature of the situation will not change for agricultural workers.

17. The Secretariat recalled Collective Complaint No. 9/2000 (*Confédération française de l'Encadrement – CGC* v. France, decision on the merits, §40) and stated that Article 33 cannot give rise to a situation in which a large number of persons forming a specific category, *in casu* agricultural workers are deliberately excluded from the scope of a legal provision.

18. The representative of the ETUC asked that a strong message be send to the Czech Government, since there is no intention of changing the law in this area and since the number of agricultural workers is increasing.

19. In reply to the question of the Polish delegate who considered that in order to assess the gravity of the problem, it was necessary to know the situation in practice, in particular as regards the number of persons concerned, the Czech delegate replied that there are no statistical data available, however the Ministry of Labour and Social Affairs will try to provide examples of these cases in the next report.

20. The Committee insisted that the situation be brought into conformity with the Charter. It stressed that since the Labour Code had not yet been adopted, there is still an opportunity to amend the Code bringing the situation into conformity.

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

CZECH REPUBLIC

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

"The given question was considered only from a narrow point of view, which leaded to incorrect conclusions. The question has to be seen in a wider legal context. In the given case not only Article 61 of the Labour Code has to be taken into consideration but also Article 7 of the Labour Code.

According to Article 7, paragraph 3, of the Labour Code an employer cannot victimize his employee or put him at a disadvantage only because the employee lawfully claims rights and entitlements arising from labour relations. According to the Article 7, paragraphs 4-6, of the Labour Code if rights and obligations relating to the fair treatment of man and woman in labour relations are breached, the employee concerned is entitled to demand refraining from such infringement, removal of the consequences of this infringement and appropriate satisfaction. If such employee's dignity or reputation at the workplace is substantially harmed and rectification under paragraph 4 is not sufficient, the employee may claim monetary compensation for this non-material detriment. The amount of compensation shall be determined by the competent court, taking into account the severity of the detriment and the circumstances under which rights and obligations were breached.

By this provision, the Czech labour law meets the requirement of sufficient compensation in cases, where an individual is dismissed as a reprisal for claiming equal pay, concerning non-discrimination between men and women workers with respect to remuneration. Monetary compensation for this non-material detriment will be provided irrespective of whether the employee does or does not wish to be reinstated. Apart from that, Article 61 of the Labour Code makes provision for further claims concerning unlawful termination notice."

22. The representative of the ETUC asked whether the ECSR took into consideration the mentioned article 7 of the Labour Code. If so (and which was confirmed by the Secretariat), the problem might lie in the words "sufficient compensation" whereby it is the courts which decide on the eventual compensation but on which the ECSR might not a clear view. In that sense, it might be useful for the Czech government to add in its next report more information on concrete court decisions regarding these compensations and their amount.

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

24. The Czech delegate stressed that the Czech law provides for pay comparisons; however, pay comparison is possible only within the same employer. The delegate referred to the previous arguments concerning this issue. Finally, the delegate said that the conclusion had been taken into account and the draft Labour Code proposes to replace the term "same employer" by "employer".

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

Article 4§4 – Reasonable notice of termination of employment

CZECH REPUBLIC

26. The Czech delegate said that a notice to an employee can be given only for a definite number of reasons and the length of the notice period differs according to reasons for dismissal (and is either 2 or 3 months); therefore the protection of all employees in case of termination of employment is sufficiently ensured. The delegate also informed the Committee that under the draft Labour Code, employment contracts could stipulate longer periods of notice.

27. Several delegates and the representative of the ETUC did not consider that the change would bring the situation into conformity with Article 4§4.

28. The Committee voted 11 votes for and 7 against, with 12 abstentions, on a warning. The warning proposal was rejected.

29. The Committee invited the Czech Republic to bring the situation into conformity with the Charter.

Article 4§5 – Limitation of deductions from wages

CZECH REPUBLIC

30. The Czech delegate said that the situation might change in the future but that currently she had no precise information on the subject.

31. 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 5 – Right to organise

LATVIA

32. The Latvian delegate provided the following information in writing:

“a) We would like to draw your attention to the wording of Article 3 of the Trade Union Act which states that 50 members OR at least one fourth of the employees of undertaking, organization, profession or industry is necessary for establishment of a trade union.

As according to statistical data 96% of all undertakings in Latvia can be considered as of small size with number of employees below 50, the requirement of one fourth of the employees applies in respect of these undertakings.

Accordingly, the requirement of 50 members is used in cases of establishment of trade unions within the industry.

Consequently, we are of the opinion that following the above-mentioned clarification the requirement prescribed by Article 3 of the Trade Union Act is commensurate and in conformity with the Charter.

b) On 14 April 2005 the amendments to the Police Act were accepted by the Parliament of Latvia providing the right of police officers to form and join trade unions. The amendments will enter into force on 1 January 2006.”

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

Article 6§3 – Conciliation and arbitration

HUNGARY

34. The Hungarian delegate provided the following information in writing:
“An important point to clarify is the distinction between the two main categories of employees within the civil service: the category of public employees and the category of civil servants.

Employees who are employed by the Central Government or local governments, and provide services like teachers, the staff of health and social institutions etc. are considered as public service employees, while those employees who exercise the public authority of the Government like the staff of ministries and other national, regional or local governmental agencies fall into the category of civil servants.

Regarding the issue of conciliation and arbitration, as the ECSR referred to it, the Labour Code provides that in the interest of settlement of collective labour disputes the parties may use the mediating services of independent mediators or arbitrators. The same applies to public service employees. At this point it is necessary to clarify that the Act referred to by ECSR, that is Act No. XXXIII regulates the legal status of public service employees. This Act does not include any special provision on mediation and arbitration because the rules of the Labour Code are applicable to this issue.

As regards civil servants, the rules of the Labour Code on mediation and arbitration are not applicable because the Act on Civil Servants provides special rules for collective labour disputes in the civil service. According to this Act, collective labour disputes in the civil service shall be dealt with by the head of the given agency and the representative of the trade union or other body representing the employees. Experts may be involved into the negotiations which also means the possibility of the co-operation of mediators."

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.

Article 6§4 – Right to collective action

HUNGARY

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

"As the ECSR pointed out, the right to strike can be exercised in civil service according to an agreement concluded between the Government and the civil servants' trade unions in 1994. The content of the Agreement reflects a compromise between these parties. The aim of this Agreement is to maintain to operation of governmental agencies in cases of strikes. The agreement is applicable to civil servants only, which means employees who exercise the authorities of the Government as it was explained under Article 6(3). The total number of civil servants is about 100.000 which number constitutes roughly 3% of all employees in the country. The Agreement is open to all civil service trade unions who intend to join.

Civil servants who fulfil management functions are excluded from the right strike because their role is fundamental in the continuous operation of the governmental agencies. The estimated number of these civil servants can be around 10-15% of all civil servants.

The newest information is that in May 2005 trade union representatives on national level initiated the supervision of the rules applicable to strike, thus negotiations are expected in the near future between the Government and the trade unions."

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.

38. The Hungarian delegate said that the agreement between the Government and trade unions was designed to ensure the continued provision of public services in the event of strikes. The agreement, the result of a compromise between the parties, only concerned public officials in posts of authority, that is only 3% of the workforce. He informed the Committee that the trade unions had recently initiated a review of the rules governing strikes in the public sector and that negotiations on this subject would start shortly. Because this was a recent development, the Government was not yet able to state its position.

39. The Committee invited the Hungarian Government to do everything possible to expedite the review of the rules governing strikes in the public sector and to take account of the ECSR's conclusion.

LATVIA

40. The Latvian delegate provided the following information in writing:

"The proposal for amendments to Article 11 and Article 12 of the Strike Act has been elaborated in co-operation with social partners and will soon be examined by the Government.

The amendments provide for the following conditions of quorum and vote required both by trade unions and by employees in order to exercise the right to strike: decision regarding the declaration of strike shall be taken at a general meeting in which at least half of members of respective trade union or the employees of respective undertaking participate. The decision shall be taken if majority of the members of the relevant trade union or the employees of the relevant undertaking, who are present, have voted in favour of it.

The same conditions apply to a meeting of authorised representatives which is convened in case if it is not possible to hold a general meeting due to the large number of the members of trade union or the employees of the undertaking or the specific nature of the work organisation."

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

Article 7§1 – Minimum age for admission to employment

CZECH REPUBLIC

42. The Czech delegate confirmed that new legislation entered into force in October 2004 introducing a general ban on the employment of children under the age of 15 or subject to compulsory education. According to the Employment Act a child may carry on only artistic, cultural, sports and advertising activity for employer and only on the basis of a permission issued for a certain child and certain activity by competent office. In reply to the Greek delegate, she specified that this ban applies to all sectors of economy.

43. The Committee noted with satisfaction the entry into force of the new legislation. It decided to await the next assessment of the ECSR.

PORTUGAL

44. The Portuguese delegate confirmed the figures on the extent of child labour as established by a study on child employment carried out in 2001. According to the study, 49,000 children were engaged in economic activities in Portugal in 2001 of whom 2.4% were regarded as performing "child labour" endangering their physical and psychological development and of whom 1.2% were regarded as performing dangerous work.

45. The Portuguese delegate gave a comprehensive description of the measures implemented by the Government in order to combat child labour. She referred, *inter alia*, to the implementation of the National Plan for the Elimination of the Exploitation of Child Labour (PEETI), as well as the Integrated Programme for Education and Training (PIEF). She stated that even though the results of the measures implemented are not as good as hoped for, progress has been made and that the combat of child labour remained a priority in Portugal. She informed the Committee that the results of an additional survey carried out on the extent of child labour in Portugal are expected for December 2005 and indicated that the Government intends to carry out a further survey on child employment in cooperation with the ILO in 2006.

46. The Portuguese delegate also drew attention to the activities and working methods of the Labour Inspectorate in monitoring compliance with the rules on the minimum age of admission to employment. She stressed that the number of visits of enterprises carried out by the Labour Inspectorate tripled within the period from 1999 to 2004 and that the number of violations detected decreased over the period from 49.2 per 1,000 visits in 1999 to 0.14 per 1,000 visits in 2004. She went on to explain that prohibition of child labour is regulated in the new Portuguese Labour Code which goes further than previous legislation and includes in its scope of application the employment of children and young persons in cultural, artistic, sports and advertising activities.

47. The representative of the ETUC acknowledged the efforts made by the Government in the fight against child labour but expressed his concern that there was still an indication of children working in dangerous occupations and that many tasks once performed at industrial workplaces are now being performed by children at home and therefore more difficult to monitor and control. He suggested that the

Government's policy should focus on this phenomenon and should aim at strengthening measures to monitor and combat child labour, in partiuclar the shift of child labour to the home sector.

48. The representative of the IOE also acknowledged the efforts made by the Government and put stress on the fact that the problem of child labour has to be taken into consideration and combatted by the entire society.

49. The Portuguese delegate confirmed that there has been a shift of illegal child labour to the home sector, in particular in the shoe and textile industry, as a result of the increasing number of investigations carried out by the Labour Inspectorate at industrial workplaces. She indicated that inspections by the Labour Inspectorate will be intensified in the home sector in the future.

50. Several delegates welcomed the efforts made by the Portuguese Government in fighting child labour (Greece, Iceland, Romania) and encouraged the Portuguese Government to investigate to which extent the aforementioned shift of child labour to the home sector occurs in practice and to intensify the Labour Inspectorate's activities in this respect.

51. The German delegate stated that with respect to work by children at the home grey areas may appear where it is not clear whether children carry out pedagogically meaningful activities or actual child labour and that this may render control by the inspection authorities difficult.

52. The Committee acknowledged the important efforts made by the Portuguese Government in order to combat child labour and noted the fact that it has decreased at industrial workplaces. However, it also noted that there is still a certain number of children carrying out dangerous work and that there has been a shift of child labour from the industrial to the home sector. The Committee encouraged the Portuguese Government to strengthen the supervisory measures in particular with respect to work carried out by children at home and to raise awareness among civil society regarding the extent of this problem. It decided to await the next assessment of the ECSR.

Article 7§3 – Safeguarding the full benefit of compulsory education

CZECH REPUBLIC

53. See Article 7§1.

GERMANY

54. The German delegate confirmed that the situation in Germany which the ECSR has previoulsy held not to be in conformity with Article 7§3 of the Charter remained unchanged.

55. She explained that the annual length of school holidays in Germany amounts to a total of 75 working days and that young persons still subject to compulsory

education may work for a maximum of 20 days during the total holiday period, i.e. that the rest period exceeds half of the period of annual school holidays. She stated that it was not comprehensible for the German Government why, according to the ECSR's case law, the mandatory rest period for young persons still subject to compulsory education must cover half of the summer holiday period. She explained that in Germany pupils have repeated rest periods spread over the year which the German Government finds to be a more efficient way to guarantee that they fully benefit from compulsory education rather than by arranging for a single long rest period during the summer holidays. She considered that the German regulations are in conformity with the Council Directive on the protection of young people at work as well as with the Charter.

56. The Secretariat specified, that there would be a situation of non-conformity in Germany if young persons subject to compulsory education were allowed to work for the entire 20 days' period (i.e. four weeks) during the six weeks of summer holidays and that e.g. a working period of a maximum of 15 days during the summer holidays would be in conformity with the Charter. The German delegate confirmed in this context that young persons are allowed to work for the entire 20 days' period during the long summer school holidays but that no statistics existed showing how many young persons actually do so or how many spread working time over the different holiday periods granted during the year.

57. The Romanian delegate considered it unlikely that young persons work the entire 20 days' period during the summer school holidays whereas the French and Dutch delegates were of a different opinion as summer jobs rather tend to be of a seasonal character and can only be performed during the summer period. The French delegate further pointed out that it was not clear whether the rest periods had to be calculated by days or weeks. If calculated by days, the German summer holiday period amounted to 42 days and the admitted working period of 20 days would thus be less than half of the summer holidays.

58. The German delegate added that it should be taken into account that under German law young persons under the age of 18 may only work with the consent of their parents and that this was an additional safeguard to ensure that children do not perform work depriving them of the full benefit of their education.

59. The representative of the ETUC suggested that the Committee should ask the German Government to provide further information on the extent of work carried out by young persons still subject to compulsory education during the holidays in order to demonstrate that they are not deprived of the full benefit of their education in practice.

60. The Committee asked the German Government to provide data on the extent to which work is performed by young persons still subject to compulsory education during the summer holidays and called on the Government to ensure that they are granted sufficient rest periods enabling them to fully benefit from education after the summer holidays. It decided to await the next assessment of the ECSR.

MALTA

61. The Maltese delegate stated that the situation has been brought into conformity with the Charter by the implementation of Council Directive 94/33/CE of 22 June 1994 on the protection of young people at work in Maltese law. He indicated that detailed information on this issue would be provided in the next report.

62. The Committee noted with satisfaction the legislative amendments which aim at bringing the situation into conformity with the Charter. It decided to await the next assessment of the ECSR.

NETHERLANDS (Kingdom in Europe)

63. In respect of the first ground of non-conformity regarding mandatory rest periods during school holidays, the Dutch delegate stated that under Dutch law children aged 15 and still subject to compulsory education may only engage in paid employment for up to 6 weeks per year, over a maximum of 4 consecutive weeks and that the minimum duration of annual holidays was 12 weeks.

64. The Dutch delegate explained that in practice many schools extend the summer holidays beyond their officially designated start and end dates and that surveys had shown that in fact the summer holidays lasted an average of 8 weeks and 1.5 days rather than the legally prescribed minimum of 7 weeks. She went on to explain that children of the aforementioned age group were only allowed to work for five days a week during holidays. If calculated by days the permitted working period of four weeks (20 days) during the Dutch minimum summer holiday period of 7 weeks (49 days) would be less than half of the summer holidays and the Government therefore considered the situation in the Netherlands to be in conformity with the Charter.

65. The Greek, German and Portuguese delegates encouraged the Dutch Government to provide data on the actual length of school holidays as established within the scope of the aforementioned surveys in the next report in order to enable an assessment whether there is sufficient evidence that children aged 15 and still subject to compulsory education are granted the full benefit of compulsory education.

66. The United Kingdom delegate stated that modern thinking in his country was that more shorter rest periods spread over the year are a more efficient way to guarantee the full benefit of compulsory education rather than a single long rest period during the summer holidays.

67. The Committee insisted that the Netherlands demonstrate that children aged 15 still subject to compulsory education have sufficient rest periods during the holidays to guarantee that they may fully benefit from compulsory education.

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

69. As regards the second ground of non-conformity concerning the delivery of newspapers from 6 a.m. for up to 2 hours per day, 5 days per week before school by

children aged 15 and still subject to compulsory education, the Dutch delegate referred to a study on the impact of the delivery of morning newspapers on the school performance of the concerned age group which was commissioned by the Dutch Government and carried out by the Institute for applied Social Sciences at the Radboud University at Nijmegen in 2003.

70. The Dutch delegate specified that the survey found that the school performance of newspaper boys and girls was no different to pupils within the same age group not doing paper rounds and that therefore the Dutch Government is of the opinion that children aged 15 and still subject to compulsory education doing paper rounds in the morning before school to the extent permitted by Dutch law enjoy the full benefit of such education.

71. The Portuguese and the United Kingdom delegates acknowledged the efforts undertaken by the Dutch Government in order to evaluate the impact of early morning work on school children.

72. The Committee took note of the explications given by the Government and decided to await the next assessment of the ECSR.

TURKEY

73. The Turkish delegate stated that Article 50 of the Turkish Constitution stipulates that no person may be employed in any work not suitable for his/her age, sex or physical status. Children are mentioned among the groups of persons that shall be especially protected with respect to working conditions. He explained that the new Labour Code, which entered into force on 10 June 2003, stipulates in its Article 71 that employment of children who have not completed the age of 15 is in principle prohibited but that the employment of children over the age of 14 in light work is permitted under the condition that they have completed their compulsory education. According to Article 104 of the new Labour Code, any violation of the rule set out in its Article 71 shall be penalized. A Regulation Governing the Principles and Procedures of the Employment of Children and Young Persons which was adopted in accordance with Article 71 of the new Labour Code states, *inter alia*, that employment shall neither hinder a young person's school attendance nor his/her educational success.

74. The Turkish delegate also pointed out that the Board of Inspection of the Ministry of Labour and Social Security closely monitors the implementation of the said Regulation by means of regular inspection programmes as well as within the scope of the various projects established within the framework of the ILO/IPEC programme, such as e.g. the project on the "Elimination of the Worst Forms of Child Labour" in 2003 in some selected economic sectors in the province of Izmir. He further stated that as result of the measures taken by the Government, the total employment of children and young persons in the age group from 12 to 17 has declined from 1,364,000 in 2000 to 615,000 in 2004 and that efforts to eliminate child labour in Turkey continue.

75. The Committee noted the entry into force of the new Labour Code which aims at bringing the situation into conformity with the Charter. It decided to await the next assessment of the ECSR.

UNITED KINGDOM

76. The United Kingdom delegate described the various laws, regulations and practical measures aimed at ensuring that children's education is not adversely affected by any employment they choose to do. Legal constraints apply with respect to the type of work permitted as well as the maximum hours children are allowed to work within term time and during school holidays.

77. He further confirmed that children between the ages of 13 and 16 must have a break of at least two weeks free from school during summer holidays and that the average summer holiday period in the United Kingdom amounts to six weeks. He stressed that the two weeks mandatory rest period is only the statutory minimum fixed at national level. In reply to the representative of the ETUC, he explained that it was up to the local authorities or in some cases schools themselves to decide on their term dates and the length of school holidays (within a framework which prescribed a minimum number of days which schools must be open) and that he was not in a position to indicate any change in the legislation on mandatory rest periods during school holidays.

78. The German delegate, supported by the Dutch, Irish and Icelandic delegates, stressed the pedagogical benefit of holiday work and encouraged the United Kingdom Government to provide data on the extent to which work is performed by young persons still subject to compulsory education during school holidays in order to enable an assessment whether, in combination with further safeguards like e.g. the rules on maximum working hours etc., there is sufficient evidence that they are granted the full benefit of compulsory education. The Dutch delegate further specified that if counted by days the rest period was more than half of a six weeks holiday period.

79. The French delegate, supported by the representative of the ETUC as well as the Portuguese and Greek delegates, expressed its concern that the situation was held not to be in conformity with the Charter since 1987 and that therefore it would be appropriate to adopt a warning.

80. In reply to the President, the United Kingdom delegate explained that no data on the extent of work performed by young persons subject to compulsory education during school holidays was available.

81. The Committee voted on a warning which was rejected by 11 votes in favour, 7 against and 16 abstentions.

82. The Committee insisted that the United Kingdom demonstrates that children over the age of 13 have sufficient rest periods during the holidays to guarantee that they may fully benefit from compulsory education.

Article 7§4 – Length of working time

TURKEY

83. The Turkish delegate stated that pursuant to the new Labour Act, children who have completed their basic education and children who do not attend school may not work more than 7 hours a day and 35 hours a week. However, for children who are 15 years old or more the daily and weekly working hours may be increased up to 8 hours and 40 hours, respectively. Children who attend school may work for a maximum of 2 hours per day and 10 per week, provided that working hours are outside school hours.

84. In reply to a question of the representative of the ETUC, he confirmed that the new Labour Act does not apply to people employed in agriculture other than those working in undertakings with 50 or more employees.

85. The Committee noted the adoption of the new Labour Act and insisted that provisions on reasonable working time be extended to all young workers in all sectors.

Article 7§5 – Fair pay

BELGIUM

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

"I. Vocational training in the SME sector is a matter for the federated Belgian entities.

The amounts of the monthly allowance as laid down in the different sets of regulations are only minima.
The rules currently in force in the French and German Communities provide that if the joint committee sets amounts higher than the monthly allowance, the firm must pay those amounts.
In the Flemish Community the firm must pay the apprentice at least the apprenticeship allowance "without prejudice to any collective bargain applicable".

Apprentices are therefore usually remunerated by a monthly allowance.

The amounts of the allowances are as follows:

a) Walloon Region:

At 1 January 2001	Since 1 January 2005
- 1st year: 192.59€ - 2nd year 256.79€ - 3rd year: 333.84€	- 1st year: 206.81€ - 2nd year: 275.75€ - 3rd year: 358.47€

b) Flemish Community:
Apprenticeship allowances in the Flemish Community are on average 25% higher than in the Walloon Region and are set according to the apprentice's efforts and the firm's investment in apprentice/pupil training.

The apprenticeship allowance at 1 January 2005 came to:

Under age 18:	Over age 18:
- 1st year: 258.85€ - 2nd year: 345.13€ - 3rd year: 431.42€	- 1st year: 345.13€ - 2nd year: 3 488.28€ - 3rd year : 431.42€

c) German Community:
Amount of the minimum allowance:

Year of apprenticeship	Pre-2002	From 2002 on	Since September 2005
- 1st year:	142.74€	180€	186.02€ (increase of 15%)
- 2nd year:	227.81€	320€	330.70€
- 3rd year :	329.38€	409€	422.68€ (increase of 35%)

An increase in the minimum allowances would make it impossible to find firms willing to take on apprentices.
The case of apprentices in the printing sector illustrates the point. The joint committee in that sector lays down special scales for apprentices. At present the allowances come to between 50% and 90% of the adult wage. The printing section of the German Community SME training centre has had to close down for lack of firms willing to take on youngsters at that figure.
In the Walloon Region in 2001 there were five youngsters on apprenticeship contracts in the offset-printing sector.

The risk is that firms will become difficult or even impossible to find.

II. In addition to the apprenticeship allowance an apprentice qualifies for <u>social allowances</u>:

1. Family allowances continue to be granted on certain conditions up to age 25 in the case of apprentices under contract approved by the Federal Department for SME.

The monthly family allowance for a first child aged 15 or over whose parent drawing the allowance is a wage earner comes to 103.82€. The monthly family allowance for a second child aged 15 or over comes to 183.48€.

These figures were never previously supplied.

2. There is an earnings ceiling only as regards payment of allowances. Since 1 August 2005 the amount beyond which family allowance ceases to be grantable to apprentices under contract or to some trainees covered by agreements has changed to 443.89€.

In setting the amounts of the apprenticeship allowance the governments of the federated entities take care that parents do not lose entitlement to family allowances and that youngsters starting an apprenticeship continue to be their parents' responsibility for tax purposes.

If the allowance paid to an apprentice exceeds 443.89€ he/she will cease to have the benefit of family allowance. The apprenticeship allowance will be his/her sole income and he/she will also cost the firm more.

3. Apprentices receive a holiday allowance.
The rules setting the general framework for implementing the legislation on wage earners' annual holidays apply to apprentices.

The holiday allowance comes to 15.34% of the allowances paid during the reference year (which is the previous year).

4. Apprentices are not required to pay contributions.

III. <u>Application in practice/example at October 2005:</u>

The minimum wage of an adult worker aged 21 living with parents who have an income is 984,54€ net per month (this is the guaranteed minimum wage under National Labour Council collective agreement 43).
One-third of that amount equals 328.18€.
Two-thirds of that amount equals 656.36€.

a) German Community:
- A first-year apprentice who is a first child thus draws monthly:
186.02€ (apprenticeship allowance) + 103.82€ (family allowance) = 289.84€
- A third-year apprentice who is a first child draws monthly:
422.68€ (apprenticeship allowance) + 103.82€ (family allowance) + 28.53€ (holiday allowance: 15.34% of 186.02€) = 555.15€.

The one-third and two-third levels are not reached.

b) Flemish Community
- A first-year apprentice aged 15 to 18 who is a first child thus draws monthly: 258.85€ (apprenticeship allowance) + 103.82€ (family allowance) = 362.67€.
He/she thus draws more than one-third of the net minimum wage of an adult employee.

- A first-year apprentice aged over 18 who is a first child draws monthly: 345.13€ (apprenticeship allowance) + 103.82€ (family allowance) = 448.95€.
One-third of the net minimum wage of an adult employee is thus exceeded.

- A third-year apprentice (there is no longer any distinction drawn between apprentices aged under 18 and apprentices aged over 18) who is a first child thus draws monthly: 431.42€ (apprenticeship allowance) + 103.82€ (family allowance) + 52.94€
(holiday allowance: 15.34% of 345.13€) = 588.18€.
This does not exceed two-thirds of the net minimum wage of an adult employee (656.36€).
A third-year apprentice who is a second child thus draws monthly: 431.42€ (apprenticeship allowance) + 183.48€ (family allowance) + 52.94€ (holiday allowance: 15.34% of 345.13€) = 667.84€.
This exceeds two-thirds of the net minimum wage of an adult employee (656.36€).

c) Walloon Region
- A first-year apprentice who is a first child thus draws monthly: 206.81€ (apprenticeship allowance) + 103.82€ (family allowance) = 310.63€
- A first-year apprentice who is a second child thus draws monthly: 206.81€ (apprenticeship allowance) + 183.48€ (family allowance) = 390.29€.
This amount exceeds 328.18€.
- A third-year apprentice who is a first child thus draws monthly: 358.47€ (apprenticeship allowance) + 103.82€ (family allowance) + 31.72€ (holiday allowance: 15.34% of 206.81€) = 494€.
- A third-year apprentice who is a second child thus draws monthly: 358.47€ (apprenticeship allowance) + 183.48€ (family allowance) + 31.72€ (holiday allowance: 15.34% of 206.81€) = 573.67€.
This amount exceeds 656.36€.

If we add together the allowance paid to an apprentice, the family allowances and the proportion of the holiday allowance which he or she is entitled to, the amount exceeds one-third of the starting wage of an adult worker in two of the three federated entities and is very close to that amount in the third federated entity. The one-third of that amount is 328.18€.

IV. Conclusion

In conclusion, apprentices' allowances have risen.
Apprentices also draw family allowances and a holiday allowance.
They do not pay any contributions.
When we take social allowances into account, the amount which the apprentice receives reaches the one-third required by the ECSR in two of the three above-mentioned federated entities.
If allowances were further increased significantly, it is probable that apprentices would no longer be able to find firms which would take them."

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

GERMANY

88. The German delegate explained that the amount of allowances to be paid to apprentices in Germany is determined by collective bargaining. She stressed that the

amount of these allowances influences the offer of apprenticeship training positions on the labour market.

She further stated that even in the final stage of the apprenticeship, an employer has to grant leave to the apprentice for two days per week in order to attend vocational school and according to some rules on vocational training he has to grant additional leave for an average period of two months per year for further formation carried out on an inter-company level. Due to the amount of time spent on education, the amount of allowances paid to apprentices at the end of their apprenticeship is considered to be justified by the German Government.

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

GREECE

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

"As she indicated under Article 4§1 (detailed report of the Governmental Committee concerning Conclusions XVI-2, §144), the data provided in the report are not comparable and should not be compared because:

- the national average wage included in the last Greek report is a gross amount. It includes employers' contributions, overtime, special allowances as well as all other expenditure burdening the employer which however does not constitute an income for the worker;
- on the contrary, the minimum monthly wage, the statutory wage, is the minimum remuneration that a young worker receives and does not contain any of the aforementioned financial elements. It is a net amount.

She underlined that the ECSR case-law under Article 4§1 requires specifically a comparison between the net average national wage and the net statutory minimum wage. Greece provided in the report data on the gross average national wage and the net statutory minimum wage. Due to this comparison of non-comparable figures, there is a misunderstanding. All necessary information will be provided in the next report."

91. 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.

NETHERLANDS (Kingdom in Europe)

92. The Dutch delegate provided the following information in writing:

"According to the Government, three arguments are very important in assessing the Dutch minimum wage system for young people:

1) providing a decent standard of living
2) it has to allow for sufficient employment opportunities, and
3) it must stimulate young workers to complete their education.

1) Provision of a decent standard of living

From an economic viewpoint, the aim of guaranteeing a minimum wage for young people is not to ensure a sufficient income to support a family by a single income. The minimum wage for young people is meant to be a reasonable reward for the productivity of young people and in general one can say that the productivity of younger employees is lower than the productivity of employees with more experience. This justifies the lower minimum wage for young people.

In the overwhelming majority of cases, those working at the age of below 23 don't have to support a family by a single income. If they have to do so, additional income support is provided through the social assistance scheme, up to the general level that applies above the age of 22. Dutch welfare levels are high in international comparison. In addition, in the Netherlands parents have full financial responsibility for their children up to the age of 21. Besides the social assistance scheme there are various income dependent benefits that provide additional income assistance to the minimum incomes such as the rent subsidy and the subsidy for health costs.

2) Safeguarding sufficient employment opportunities

International economic research has established a clear link between minimum wage levels and employment, especially for young workers. Evaluations of Dutch minimum wage policy in the 1980's show that the lowering of youth minimum wages has clearly improved employment opportunities for young workers. It also lowered the dropout rate from school significantly. Experience from the early 1980's show that high minimum (youth) wages rapidly destroy opportunities especially for young people. We believe on the basis of international economic literature that these results are still valid (see Neumark and Wascher, 2004), especially if one bears in mind that the Netherlands has one of the highest minimum wages in the European Union. According to data of Eurostat the Netherlands has after Luxembourg the highest minimum wage in the European Union (see table 1).

The minimum wage is in the Netherlands an effective floor in the labour market. The lowest wages agreed in collective bargaining agreements between employers and labour unions are usually higher than the minimum wage.
The data of Eurostat also show that the percentage of full-time employees in the Netherlands with earnings at the minimum wage level is one of lowest in Europe (see table 2). Especially young people and women in part time jobs work against the minimum wage level. The rest of the employees earn wages that are set above the minimum wage level in collective bargaining agreements. This is an indication that the employment opportunities of young persons are improved by the Dutch minimum wage system.
The Government is of the opinion that the Dutch minimum wage system for young people is one of the reasons why the Netherlands has one of the lowest unemployment levels for young people in Europe (see figure 1).

3) Stimulating young persons to complete their education

A relatively high minimum wage makes it attractive for young people to leave school and accept a job. This is for the Netherlands an important argument to have lower minimum wages for young people, because lower education levels lead to higher unemployment levels. This is also clear if we look at the unemployment figures according to education levels in the Netherlands (see table 3).

The unemployment level is especially relevant if we look at the drop out rates in the Netherlands, which are higher than in neighbouring countries. The percentage of drop outs in the age category of 18-24 years is lower then the EU-25 average but it is high in comparison with the Scandinavian countries, Belgium and Germany. A higher minimum wage for the youth will in our view result in higher drop out rates and the employment opportunities of the youth will deteriorate.

To sum up:
From the perspectives of providing a decent standard of living, providing employment opportunities and preventing drop out from school the Dutch government is of the opinion that the Dutch youth minimum wage system is adequate."

Table 1: Top 5 of minimum wages in EU Member States and Candidate Countries, January 2004 in euros
1

	2003	2004	2005
Luxembourg	1369	1403	1467
Netherlands	1249	1265	1265
Belgium	1163	1186	1210
UK	1106	1083	1197
France	1154	1173	1197

Source: Eurostat

Table 2: Top 5 of the lowest proportion of full-time employees earning the minimum wage in the European Union, Candidate Countries and the US, 2002

	total	male	female
Estonia	0.8	0.7	1
UK	1.9	1.4	2.7
Czech Republic	2	1.1	2.8
Ireland	2.1	1.6	3
Netherlands	2.3	1.8	4.2

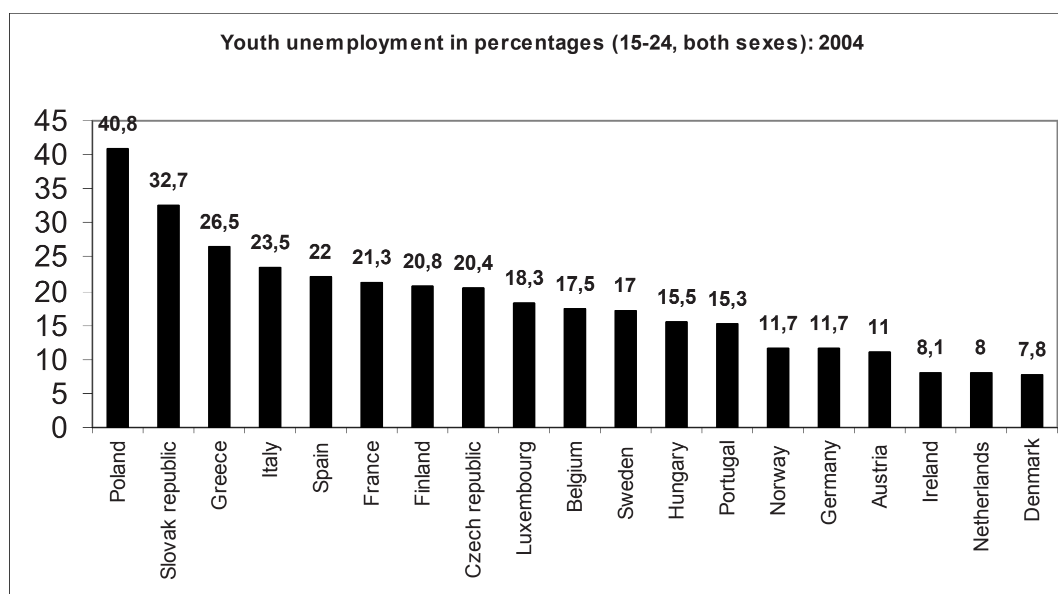
Source: Eurostat

Table 3: Unemployment levels according to education in percentages in the Netherlands, 2002

Level of Education		
Low	Basis	7.7
	MAVO	7.2
	VBO	4.8
Intermediate	HAVO/VWO	5.7
	MBO	3
High	HBO	3
	WO	3.7
Total		4.1

Source: CBS (Enquête beroepsbevolking)

Figure1: Youth unemployment in various European countries



Source: OECD, Employment outlook 2005. “

93. The representative of the IOE, supported by the Irish delegate, said that the arguments put forward by the Netherlands were perfectly valid, especially in view of the fact that, where apprentices were concerned, the cost of their work comprised two components: pay and training.

94. The representative of the ETUC said that the Netherlands clearly had no intention of improving the situation and that the Committee should send out a strong message to the Netherlands authorities.

95. The Maltese, Cypriot and Danish delegates thought it was dangerous to argue that a low wage policy encouraged young people to stay on at school because it was indecent to leave some young people without protection so that the others could stay

on at school. However, the Danish delegate stressed that, in practice, the figures supplied by the Netherlands were perfectly convincing.

96. In reply to a request from the French delegate, the Secretariat explained the links between the conclusions on Articles 7§5 and 4§1 in respect of the Netherlands.

97. The Netherlands delegate said that, in his opinion, there was a mistake in the calculations used by the ECSR because apprentices' pay was calculated in relation to the minimum wage for adult workers over 23 years of age, and not that of young workers aged 18.

98. 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.

99. Reference is made to the observations and Committee discussion set out above under the first ground of non-conformity.

100. The Committee rejected by 22 votes against, 0 in favour and 6 abstentions the proposal to issue a warning to the Netherlands.

SPAIN

101. The Spanish delegate confirmed that young workers are now entitled to the full rate of the national minimum wage but that unfortunately this rate remains to low. He informed the Committee that the Spanish Government intended to raise the statutory minimum wage to a level at least equal to 60% of the national average wage, in line with the conclusion of the ECSR, before 2008. He pointed out that the minimum wage was already close to that level.

102. The Committee noted the intention of the Government to increase the national minimum wage and decided to await the next assessment of the ECSR.

TURKEY

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

"In the Apprenticeship and Vocational Training Act No. 3308, under the heading of "Wages and Social Security", it is stipulated that the wages to be paid to candidate apprentices, apprentices and pupils receiving vocational training in business undertakings and the increases to be made in such wages, shall be determined between school director or owner of the undertaking and the apprentice himself, if he/she is majority, or between the former and the guardian or natural parent of the apprentice if he/she has not reached the age of majority. It is further stipulated that the pupil, candidate apprentice or the apprentice shall not be paid a wage below 30% of the statutory minimum wage and that the wage in question shall be exempted from all types of taxes.

The statutory minimum wage fixed by the Minimum Wage Fixing Board is currently 415,80 New Turkish Liras (NTL) (251€) gross for young workers below the age of 16 and 488,70NTL (295€) gross for workers over the age of 16, as from 1 January

2005. Respectively, the net amounts of these figures are 297,92NTL (180€) and 350,15NTL (211€).

In 2003, the net statutory minimum wage was 190,53NTL (115€) for young workers below the age of 16 and 226,00NTL (136€) net for workers over the age of 16. In the same year, net average wage of adult workers in private sector was 864,554NTL (522€).

Any violations of the Act No. 4857 and of the pertinent Regulations are inspected by the inspectors of the Ministry of Labour and Social Security, of the Ministry of Finance and of the local authorities, and respective fines are imposed upon the verification of the violation."

104. The Committee invited Turkey to bring the situation into conformity with the Charter.

UNITED KINGDOM

105. The United Kingdom delegate stated that in October 2004, i.e. outside the reference period, the Government introduced a minimum wage for 16-17 year old workers. The rate was set at £3.00 an hour which was 73% of the rate set for 18 year olds which was itself 84.5% of the adult rate. The adult minimum rate is set to rise by 4.2% in 2005.

106. The Committee noted with satisfaction the positive development regarding the rise of minimum wages and decided to await the next assessment of the ECSR.

Article 7§6 – Time spent on vocational training

NETHERLANDS (Kingdom in Europe)

107. The Dutch delegate stressed that the Dutch Government recognises the necessity to establish whether the vast majority of young workers have a right to remuneration for time spent on vocational training with the consent of the employer. She explained that in the Netherlands young workers concerned by this issue are those who are leaving their jobs in order to return to education to obtain qualifications and those who are about to enter programmes combining work and study in the context of vocational education, referred to as block or day release programmes (BBL-programmes) .

108. The Dutch delegate went on to explain that young workers integrated in a BBL-programme do not receive a grant for the one day of their five-days working week they spent on education but are paid a salary under their employment contract and are covered by the collective employment contract applicable to the enterprise where they are working.

109. The Dutch delegate announced that in order to establish whether the vast majority of young workers have a right to remuneration for time spent on vocational training, a study will shortly be launched by the Ministry of Social Affairs and

Employment. On the basis of the results of this study the Ministry will consider whether the situation is in conformity with the Charter and whether measures will have to be implemented in this respect.

110. The Committee took note of the Government's intention to carry out a study with the aim to determine what is the proportion of young workers having a right to remuneration for time spent on vocational training and to take the appropriate steps to react to the outcome of such study.

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

TURKEY

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

"In the Regulation Governing the Principles and Procedures of the Employment of Children and Young Persons, issued according to the new Labour Act No. 4857, in Article 7 of the regulation, the following periods are deemed to have been counted as working time:

a) the periods spent during the training which the employer must provide;
b) periods spent during the courses and meetings organised by the employer outside the business undertaking and periods spent during the vocational training programmes organised by the authorised institutions and organizations;
c) the children and young persons participating as representatives in conferences, committees and meetings organised for children and young persons by national and international organisations.

Moreover, in Article 20 of the Apprenticeship and Vocational Training Act No. 3308, it is prescribed that "the theoretical training of the pupils undergoing skill acquisition training in business undertakings shall be carried out in the vocational and technical training centers and schools or in the training units of the business establishments. The theoretical training to be received during working hours shall not be less than 12 hours weekly. Such training may also be given in an intensified manner. Pupils and apprentices shall be considered to be on leave during the days on which theoretical training is given."

Within the framework of the ILO/IPEC Programme, and in the context of the "Project Involving the Elimination of the Worst Forms of Child Labour in the Selected Sectors in Izmir Before the end of 2023", which was implemented between 15 September 2000 and 31 May 2004, some 4,892 enterprises were inspected during which the working conditions of some 1,163 apprentices receiving vocational training had been investigated. It was concluded that the time spent during their vocational training was counted as the time worked and that their wages were paid in full. In addition, the wages of the 6,079 children and young persons, who had participated in the various supplementary courses and other training and rehabilitation programmes within the framework of the project, were paid in full by the employers by taking into

consideration that the time spent in these courses and programmes had been deemed by the employers as the time spent during working hours.

It was also determined by the labour inspectors during their general and control inspections that the period spent in training had been regarded as the time spent in working time and had been remunerated accordingly."

113. The Committee invited Turkey to bring the situation into conformity with the Charter.

Article 7§8 – Prohibition of night work

BELGIUM

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

"A distinction must be drawn between young persons still of compulsory school age and older ones.

1. Young workers

Section 2 of the Employment Act of 16 March 1971 defines "young workers" as ones who are aged 15 or over and who are no longer required to attend school full time.

This is also the group covered by Section 34b of the Act.

Adjustments are planned to the ban on night work for young workers aged over 16 employed on a continuous or rotating shift work basis. In such cases, the limits of 8 pm and 6 am (the general definition of night work) are altered to 10 pm and 6 am or 11 pm and 7 am.

The same section authorises the employment of young workers aged over 16 on one of the grounds cited in Section 26, so long as the employer reports this to the employment legislation inspectorate of the federal employment, labour and social dialogue department. Such cases are very rare (Section 26 is concerned with cases of *force majeure*) and are not identified separately in the employment legislation inspectorate's statistics.

2. Young persons still required to attend school full time

There is a general ban on all work for young persons aged 15 or under or who are still subject to full-time compulsory schooling (which ends at the age of 16), other than in the following two cases:

- activities forming part of the children's education or training;
- certain activities outside the scope of the previous condition and exhaustively listed in the legislation (activities of an artistic or cultural nature, audiovisual recordings, whether or not for advertising purposes,

photographic sessions and fashion parades): all these activities are authorised, subject to the prior issuing of a written exemption.

Prior written exemptions are issued by the Director General of the aforementioned employment legislation inspectorate, in response to written requests from the organisers, if the parents of the children concerned give their written consent.
The Director General can only issue an exemption if the request satisfies all the legal requirements.

In the case of night work, the following legal conditions must be complied with to the letter:

For children aged 6 or below, individual exemptions are only issued when the activities take place between 8 am and 7 pm.
For children aged between 7 and 11, individual exemptions are only issued when the activities take place between 8 am and 10 pm.
For children aged between 12 and 15 who are still subject to full-time compulsory schooling, individual exemptions are only issued when the activities take place between 8 am and 11 pm.

There is also a general ban in the legislation on making children take part, or allowing them to take part, in activities that might adversely affect their educational, intellectual or social development, pose a threat to their physical, psychological or moral integrity or threaten any aspect of their well-being.
The Director General has general discretionary powers not to authorise work at times considered to be excessively late, even if within the above limits, if this is justified in children's interests (particularly, the interests of their schooling).

The exemptions issued, which mainly concern activities up to 10 or 11 pm, according to age, all relate to children's participation in artistic or cultural events, mainly evening performances of plays, opera, ballet or choirs.

There were 124 such exemptions in 2004 out of a total of 428 authorisations issued for all categories, representing 29% of the total.
In total, 981 children were concerned in these evening artistic activities (of whom 52 were aged 7 to 11 and 429 were aged 12 to 15 or 16).

This represents 30% of all the children (3209) who received such an authorisation in 2004."

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

CZECH REPUBLIC

116. The Czech delegate provided the following information in practice:

"The situation concerning this conclusion of non conformity will have to be further analyzed and consequently appropriate steps will be decided on. For the time being the situation remains unchanged."

117. 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.

TURKEY

118. The Turkish delegate confirmed that the new Labour Act does not apply to people employed in agriculture, other than those working in undertakings with 50 or more employees, as well as in trade.

119. In reply to a question from the representative of the ETUC, he stated that although there is no legal provision prohibiting night work of young people employed in trade, in practice there was no night work in the trading sector because, pursuant to the Municipalities Act, shops cannot operate after midnight. This information was confirmed by the Secretariat.

120. The Romanian delegate asked why the prohibition of night work was not extended to all sectors as it was stated on the previous occasion.

121. The Turkish delegate stated that the Government is willing to amend the legislation to this effect but that the procedures are rather long.

122. The representative of the ETUC insisted that there was a persisting problem with regard to young workers employed in agriculture undertakings and asked how many of those undertakings had more that 50 employee.

123. The Turkish delegate did not have any figures in this respect.

124. By 22 votes in favour, 2 against and 7 abstentions, the Committee adopted a warning against Turkey requesting that all measures be taken in order to prohibit night work in all sectors as required by the Charter.

Article 7§9 – Regular medical examination

CZECH REPUBLIC

125. The Czech delegate provided the following information in practice:

"According Article 137 of the Labour Code not only employees, but other categories of persons are covered by provisions of Part Two, Chapter V. Article 137 of the Labour Code, according to which provisions of Part Two, Chapter V (safety and protection of health at work), shall apply accordingly to:

(a) employers who are individuals and who work themselves;
(b) individuals who run a business under other statutory provisions (e.g. Trade Act) and do not employ others;
(c) spouses or children of one of the persons referred to in letters (a) or (b) who work with that person.

The above mentioned part of the Labour Code also states obligation to inform employees of the preventive medical examinations that they must undergo in connection with the performance of their work, in the extent prescribed by the special statutory provisions. The individuals who do not have an employer are also subjects of the obligation to undergo the preventive medical examinations."

126. 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.

TURKEY

127. The Turkish delegate explained that under the new legislation young workers between 14 and 18 years of age must undergo regular medical examinations every 6 months. The examinations take place at the workplace.

128. The representative of the ETUC points out that this legislation does not apply to young workers employed in agricultural undertakings with less than 50 employees.

129. In reply to a question from the German delegate, the Secretariat confirms that Article 7§9 applies to all sectors and that it is not subject to the Article 33 great majority rule.

130. By 19 votes in favour, 1 against and 10 abstentions, the Committee adopted a warning against Turkey requesting that all measures be taken in order to extend compulsory regular medical examinations to all sectors as required by the Charter.

Article 7§10 – Protection against physical and moral dangers

CZECH REPUBLIC

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

"There is a draft amendment, which should remedy the situation. The amended version of the Criminal Code defines as a crime not only various kinds of distributions but also possession of child pornography.

The amendment of the Criminal Code (which was supposed to come into force by 1 January 2005) has not yet been approved. At the moment the amended Criminal Code is expected to come into force by 1 January 2006."

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

POLAND

133. The Polish delegate stated that on the 18 March 2004 the Penal Code was amended and that the protection of young persons was reinforced in the sense required by the ECSR. In December 2002 the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child

Pornography was ratified and Polish legislation is now in conformity with this. Genuine progress has been made in protecting children from sexual exploitation. The next report will provide all relevant information.

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

PORTUGAL

135. The Portuguese delegate provided the following information in writing:

"The last report did not mentioned the enter into force of the Law nº 99/2001 which modified Article 172º of the Penal Code in order to punish the possession of pornographic pictures, films or tapes using children under 14, with the intention of exhibit or distribute it. This crime is regulated in Article 172º, nº 3, al, c) and e) and it is punished with imprisonment up to 3 years.

Moreover, the Portuguese legislation is in conformity with other international instruments adopted in this field and Portugal ratified in March 2003 the Optional Protocol of the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography."

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

Article 8§1 – Maternity leave

DENMARK

137. The Danish delegate explained the system of maternity leave and parental leave in Denmark. All women who meet the employment requirements in the maternity Act are entitled to 4 weeks pregnancy leave and 14 weeks leave after birth. In addition fathers are entitled to 2 weeks fathers leave after birth. Parental leave of 32 weeks is subsequently available to either parent or may be shared.

138. Women on maternity leave are entitled either to their wages or benefits during maternity leave, 70% are entitled to their wages. Hence there is little economic incentive to return to work before the end of maternity leave. Women are protected against dismissal during their pregnancy and maternity leave.

139. No group has ever demanded that post natal leave be made compulsory beyond two weeks, the income protection and protection against dismissal ensure that women are not forced to return to work before the end of their leave, and in practice 95% of women take at least 14 weeks leave 98% of women take at least 8 weeks post natal leave. The debate in Denmark has been about making the period of leave longer and more flexible, and promoting more men to take leave.

140. The Committee noted once again that the absence of a six week compulsory period of leave does not pose a problem for the protection of women's rights in

Denmark, there is strong economic protection and protection against unfair dismissal. In practice 95% of women take at least 14 weeks leave. There is no real limitations to a woman access to use their rights to take leave.

141. Although there may be indeed only in a few cases women might take less than 6 weeks postnatal leave, the representative of the ETUC invited the Danish Government nevertheless to evaluate and analyse these cases to ensure that the reason for taking shorter leave is not for economic reasons. Information on the analysis should be submitted in the next report.

142. The Committee decided to await the next assessment of the ECSR.

GREECE

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

"The summing-up of the conclusion of the ECSR under Article 8§1 contains the expression "maternity leave", a fact that is most probably due to a misprint considering that:

(1) all throughout the main text the ECSR focuses on maternity benefits;
(2) none of the criticized conditions apply for the granting of maternity leave under the Greek Legislation.

So, the issue is maternity benefits and the core of the criticism is the fact that the unemployment period in Greece is not regarded as an employment period when the entitlement to the benefit is examined.

It is however worth stating that in the case that an employee does not fulfill the requirements for the granting of a maternity benefit then she receives a subsidiary social welfare benefit for the same purpose (a positive practice according to the case-law of the ECSR). This information was contained in the report but Greece still received a negative conclusion on the basis of the reason already described.

It must be noted that Greece has been applying the terms of provisions of Article 8§1 and of the 103 ILO Convention "On the protection of maternity" for more than 20 years and that, in the opinion of the Greek Government, the legislation complies fully with these provisions.

It is expected that the ECSR will reexamine this first time negative conclusion after the submission of additional information in the next report, information that will explain the structure and the philosophy of the Greek social security system.

The Greek system is a contributory-redistributive one and the time precondition required for the employee to establish her entitlement to the maternity benefit (i.e. 200 days) are days of insurance and not only of employment. In other terms, for the employment days the equivalent social security contributions must have been paid. During the unemployment period no contributions are paid to the social security organizations, contributions that are necessary for the granting of maternity benefits. All this information will be contained analytically in the Greek next report."

144. The Committee invited Greece to bring the situation into conformity with the Charter.

LATVIA

145. The Latvian delegate provided the following information in writing:

"The situation is being analysed by the Government at the moment, since even though the Labour Law expressly prohibits to employ women during two weeks after childbirth, according to statistical data the average number of days of postnatal leave used by women is 61,3 days (more than 8 weeks). Thus in practice most Latvian women are not working during at least 8 weeks after the birth of the child.

146. The representative of the ETUC stressed that the fact that in practice most women take more than 6 weeks postnatal leave is not sufficient as it might mean that there exist (or can occur in the future) situations whereby women are put under pressure to not take up their leave. The Latvian Government should thus be urged to bring the situation in conformity thereby reminding that this article does not only consist of a protection regarding equal opportunities but in first instance a protection of the health and safety of both mother and child."

147. The Committee invited Latvia to bring the situation into conformity with the Charter.

MALTA

148. The Maltese delegate stated that the situation had been amended, the ECSR had noted this in its conclusion. The next report will provide all relevant details of the changes.

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

UNITED KINGDOM

150. As regards the first ground of non conformity the United Kingdom delegate stated that there is no period of compulsory post natal leave beyond two weeks in the United Kingdom. It was the position of the Government it is a woman's right to make her own choice, in consultation with her medical advisers, as to when to return to work. Official figures demonstrate that in 2002 over 99% of women took at least 6 weeks of leave.

151. As regard the second ground of non conformity, as the ECSR noted, there have been changes to the rates of SMP albeit outside the reference period. SMP increased by more than 70% between 2001 and 2005, further the duration of leave was extended from 18 weeks to 26 weeks and it is planned to further extend this leave.

152. Certain delegates noted that the situation in the United Kingdom as regards the first ground of non conformity was similar to that in other States and supported the view that leave was a right and should not be an obligation, further it was highlighted that over 99% of women take such leave.

153. The representative of the ETUC referred firstly to the very long period of non-compliance (since Conclusions II) and secondly to the fact that taking sufficient time off after giving birth has not only to be seen as a protection for the mother but also, and even in particular, for the new born child. As to the 1% of women in the United Kingdom who do not take in practice at least 6 weeks of leave, he wondered how many women in number this exactly concerns and how many out of them do this due to economic reasons/pressure.

154. The Committee noted that in practice 99% of women take at least six weeks maternity leave it and asked whether there were any economic reasons which would force a women to return to work earlier.

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

Article 8§2 – Illegality of dismissal during maternity leave

BELGIUM

156. The Belgian delegate stated that provisions for the protection of maternity –- Employment Act of 16 March 1971 – did not provide a specific provisions providing for the reinstatement of a women unlawfully dismissed for reasons related to pregnancy or maternity.

157. However legislation from 25 February 2003 on non discrimination (M.B. 17-03-2003) provides for the possibility of reintegration in certain cases. Where reintegration does not take place a worker may receive either compensation equal to her gross remuneration for six moths or compensation for the actual damage suffered.

158. 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.

CZECH REPUBLIC

159. The Czech delegate recalled previous discussion in the Committee and stated that relevant interpretation of the legislation (concerning prevention from misuse of Article 46, paragraph 1 b)) had been omitted from the last report and that in fact dismissal in such cases would not be lawful. The situation has to be seen in the context of Article 242 of the Labour Code. All relevant information would be provided in the next report.

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

FINLAND

161. Reference is made to the observations and Committee discussion set out above under Article 1 of the Additional Protocol.

MALTA

162. The Maltese delegate stated that the situation has been amended, he confirmed that part time employees and employees related to their employer cannot be dismissed on grounds of pregnancy or maternity. The ECSR had noted this in their conclusion. The next report will provide all relevant details of the changes.

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

POLAND

164. The Polish delegate stated that new legislation had now entered into force, the Act on Conditions for Dissolution of Employment Relationships 2004 which amended the rules relating to dismissal and also applies to those on maternity/parental leave. Further information on this legislation will be provided in the next Polish report.

165. The Committee noted the entry into force of the new legislation and decided to await the next assessment of the ECSR.

SPAIN

166. As regards the situation of domestic workers the Spanish delegate highlighted the special nature of the employment relationship of domestic workers, he stated that nonetheless the legislation governing the employment of domestic workers was somewhat dated and the Government intends to update it in order to align conditions with the Charter and ILO standards.

167. As regards the issue that the dismissal of women during the protected period, Spanish legislation does allow for their dismissal as part of a collective redundancy. In fact it is very rare. Legislation on collective redundancies provides for consultation between the employer and unions/worker representatives in order to define the criteria to be used for redundancies, women on maternity leave would usually be excluded . However a dialogue on amendments to the Workers' Statute has begun in Spain and this problem may be examined during this process.

168. The Committee noted the intention of the Spanish Government to examines both issues, but urged the Government to bring the situation into conformity with the Charter.

Article 8§3 – Time off for nursing mothers

SPAIN

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

"Article 7 of Royal Decree 1424/85 of 1 August 1985, which regulates the special employment situation of domestic workers, does not say anything about the working time of such employees with respect to time off for breastfeeding, which is established as a general rule in Article 37.4 of the Workers' Statute.

The Additional Provision of the Royal Decree states that the ordinary labour laws are applicable if no special case is mentioned, and when such laws are compatible with the special circumstances of the job.

The special circumstances of domestic workers do not appear to be incompatible with recognition of their right to time off for reasons of breastfeeding, under Article 37.4 of the Workers' Statute. Thus it is considered that they have this right."

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

Article 8§4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women workers

PORTUGAL

171. The Portuguese delegate provided the following information in writing:

"Portugal ratified the European Social Charter (revised) in July 2001, as well as the ILO Convention nº 176 on security and health on mining and it is not bound anymore by the obligation of prohibiting, in general, the employment of women in underground mining.

It was pointed out that the ILO invited the Portuguese authorities to denounce the ILO Convention nº 45 and to ratify the nº 176 since this one has a wider scope of application and updates the previous legislation.

According to the Portuguese constitutional and ordinary law the principle of equal treatment prohibits the discrimination based on sex in the access to employment and the article 8§4 of the Charter of 1961 could raise problems of conformity with national and community law (Directives 76/207/EEC, 92/85/EEC, 92/104/EEC and 2002/73/EC)."

172. The Committee considered that as a result of ratification of the revised Charter by Portugal the issue of the prohibition of the employment of women in underground mining will no longer pose a problem.

Article 11§1 – Removal of the causes of ill-health

POLAND

173. The Polish delegate said that the Act of 23 January 2003 referred to in the conclusion had been replaced by that of 27 August 2004 on publicly financed health benefits. The latter included provisions to ensure better management of waiting lists and their transparency. Health establishments were required to maintain registers of patients awaiting treatment. Information on the number of patients concerned and average waiting times for hospital and other specialist treatment were submitted each month to the national health insurance fund offices in each region. This information could also be consulted on the Internet and by telephone (on a free number). Existing national lists could also be consulted on the Internet. She also told the Committee that management groups had been set up in each health care establishment. These groups were responsible for ensuring that lists were properly managed, for monitoring waiting times and for deciding whether changes in priority on the list were justified.

174. The representative of the ETUC stressed the importance of the detailed information supplied by the Polish delegate. He also asked for information on excessively long waiting times, which should be provided as detailed as possible in the next report.

175. The Committee noted the changes to the law and invited the Government to present detailed information in its next report.

TURKEY

176. In connection with the high rate of infant mortality, the Turkish delegate said that the figure had declined from 43 deaths per 1 000 live births in 2002 to 29 in 2003. Regarding the inadequate budget for health care and equipment and health personnel, he said that health spending had represented 9.3% of public expenditure in 2000. The figure was estimated to be 15% in 2004. He also pointed out that the health ministry was not the only one with health responsibilities. There were also hospitals supervised by the Ministry of Labour and Social Security and ones run by universities.

177. The Committee noted these improvements, invited the Government to include all this information in the next report, and decided to await the next assessment of the ECSR.

Article 11§2 – Advisory and educational facilities

TURKEY

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

“a) Health education in schools

The Ministry of Health published a Circular dated 01.02.2005, No. 2005/15, with a view to reorganize health education in schools and put it into operation in an effective manner. In the said Circular, instructions have been issued to all schools to carry out screening operations for general treatment and common illnesses (such as visual, auditory diseases and infectious diseases, parasiter diseases, growth impotency, disabilities, coroner diseases, dental diseases etc.) for all students, by taking into account the regional characteristics. The Circular in question also envisages the provision of health training of the teachers, school employees and if necessary, the guardians of the students, too.

On the other hand, a “Nutrition Training Programme” has been initiated by the Directorate General of Basic Health Services of the Ministry of Health, in cooperation with the Ministry of National Education as a pilot project to be implemented in Ankara, covering some 100 primary schools and approximately 50.000 students. As an initial step, the Sincan Taylan Araslı Primary School was selected in 2004 where the said training was given by nutrition experts. Up to the present time some 19.000 students have been reached in 33 schools of primary education.

The details of the said Programme will be given in the next Government Report.

Moreover, between the Ministry of Health and the Directorate General of Youth and Sports, a joint programme was started in the sports training centers in the selected 27 provinces in Turkey with the objective of developing the health and nutrition habits of the students of sport. Within the framework of this programme an in-service training was given in Ankara in which some 54 health personnel including dieticians and branch directors received the respective training in the field. It has been planned that some 1000 students and 500 physical trainers shall be reached at the end of the said programme. A book entitled, “Sportsman’s Nutrition”, prepared by the Nutrition and Diatetic Department of the University of Hacettepe in Ankara, has been disseminated to the related provinces in 5000 copies. After the follow-up and monitoring activities, it is planned that the programme in question will be extended to all the 81 provinces in Turkey.

The HIV/AIDS prevention courses have also been introduced in some schools which will be extended to cover all the establishments of education in the future.

The following table indicates the Distribution of AIDS Cases and Carriers by age group and sex:

1 October 1985 – 31 December 2003

Age Group	Male	Female	Total
0	8	1	9
1 – 4	3	6	9
5 – 9	3	7	10
10 – 12	3	1	4
13 – 14	1	1	2
15 – 19	15	29	44
20 – 24	113	130	243
25 – 29	178	86	264
30 – 34	238	69	307
35 – 39	168	36	204
40 – 49	178	49	227
50 – 59	93	42	135
60 +	45	17	62
Unknown	130	62	192
	1176	536	1712

As it can be seen from the Table covering the period from 1 October 1985 to 31 December 2003, the total AIDS cases was 1712 of which the male portion was 1176 and the female portion was 536.

The details of the measures taken with respect to the prevention of AIDS will be provided in the next Government Report.

b) Public information and awareness-raising

The next Government report will include the campaigns and programmes to raise awareness of the major public health problems paving the way towards high mortality rates.

In the following, some of the major awareness raising campaigns which are currently being carried out are cited:

- a "Community Nutrition Training Programme" is being implemented in all the 81 provinces. In this programme 5 different posters, 10 different brochures and 1 book were prepared for wide-spread distribution;

- the "Project of Protecting Our Hearts" was launched and, as an initial step, a survey was carried out in the selected 7 provinces, covering some 15,468 individuals;

- in the National Food and Nutrition Action Plan (March 2003), prepared by the State Planning Organisation, a survey will be carried out in the field of national nutrition, food and health. With this survey, it is planned that the developments recorded in the field of general health during the last 31 years

> and the developments recorded in the field nutrition in the last 21 years will be determined and assessed."

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

Article 11§3 – Prevention of diseases

TURKEY

180. The Turkish delegate present updated figures on immunisation coverage. The rate for poliomyelitis coverage in 2001 had been 89% (polio 1), 85% (polio 2) and 82% (polio 3); for diphtheria, tetanus and whooping cough (DTWP), the rates were 90% (DTwP-1), 86% (DTwP-2), 83% (DTwP-3). A programme had also been launched to eliminate measles among children under 15. As part of the "measles vaccination days" programme, it was planned to vaccinate 11.5 million children between 15 April and 25 May 2005.

181. The Committee noted these improvements and invited the Government to include up-to-date and detailed information on immunisation coverage in the next report.

Article 13§1 – Adequate assistance for every person in need

LATVIA

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

"The provision of social assistance in Latvia is within the competence of the municipalities and is financed only from their budgets which are influenced by the overall economic situation of Latvia as well as differential economic situation among municipalities. Therefore the maximum level of the allowance of guaranteed minimum income (GMI) is determined taking into account financial situation of municipalities. Budgets of municipalities rise gradually and maximum GMI allowance is increased every year. In 2004, it was 18LVL (26€) per month per single person, in 2005 - 21LVL (30€) per month. If GMI allowance would scale up to the level stated by the Committee, Latvia would face the risk of financial inability to carry out the assumed obligations.

In addition, Latvia would like to give correction about the information concerning the maximum amount of GMI allowance per family (household). GMI allowance is not restricted to 90LVL (130€) for families with children. For a family with children which has no income from work, social insurance or state allowances, maximum GMI benefit is calculated as follows: amount of GMI allowance x N, where N = number of family members. No taxes are deducted from social assistance allowances in Latvia."

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.

Article 13§4 – Specific emergency assistance for non-residents

HUNGARY

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

"The scope of the Health Act covers all persons within the territory of Hungary without respect to nationality. According to this Act emergency treatment must be provided to everyone with no respect to the health insurance or financial means of the patient. Those persons who are not insured are required to pay the charge after the treatment. The structure of the Hungarian health insurance system is such that practically every resident is insured. Those who are not insured on any basis are entitled to health insurance on a social assistance basis.

The problem of financing the treatment occurs in cases of foreign citizens present in Hungary who were not insured and do not have the necessary financial means, and receive emergency treatment. In order to solve this problem the Health Insurance Act was amended in 2004. According to the amendment, in cases of persons falling under the scope of an international agreement, this agreement shall apply. Thus, in cases of citizens of the Contracting Parties of the Charter, the provisions of the Charter shall be applicable. Further measures are foreseen to put this legislation into practice, for this purpose the Government is considering the adoption of implementing legislation."

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

LATVIA

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

"The situation is being analysed by the Latvian Government at the moment. The respective amendments to law will be proposed afterwards.

187. As the Latvian delegate could not provide any clarification on the eventual time calendar envisaged for bringing forward respective amendments, the representative of the ETUC urged to the Latvian Government to ensure the conformity as soon as possible."

188. 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 14§1 – Provision or promotion of social services

POLAND

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

“The relevant sections of the Ministry of Social Policy have been informed of the negative conclusion. The matter is under examination.

It has to be seen in the broader context of national policy on the integration of foreign nationals.

The new integration policy is currently being drawn up by the Ministry of Social Policy. The Council of Ministers has approved a report on proposals for a comprehensive policy on the integration of foreign nationals. A working group was set up in March 2005 to implement these proposals.

The new policy will include a series of political, administrative and institutional measures. New legislation is required or existing laws will have to be amended in such areas as migration, asylum, equal treatment, health, employment and education.

The issue of access to social services will be examined as part of this review, with a view to finding an appropriate response.”

190. 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.

TURKEY

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

“Provision of social welfare services concerns everybody lacking the ability to cope, in particular vulnerable groups who have social problems. Vulnerable groups consist of children, the family, the elderly, people with disabilities, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers and so on.

In Turkey, social services are provided generally by the state i.e. the General Directorate for Social Services and Protection of Children Institution (SHÇEK), the Social Assistance and Solidarity Encouragement Fund (SYDTF), and the Presidency of the Handicapped Persons (Özürlüler İdaresi Başkanlığı), and also by non-state providers such as the Directorate General of Foundations (Vakıflar Genel Müdürlüğü), by district and municipal authorities and by voluntary associations such as the Turkish Red Crescent. There is generally no system of coordination between these institutions and the quality and quantity of the social assistance and social services provided and delivered by these institutions vary according to each institution.

Because of the fact that social assistance and benefits provided by these institutions differentiate from each other, the system seems to be a complex one. There is not a central data bank. It is not every time possible to determine whether a person receiving a social benefit from one of these institutions receives a similar such benefit from another social assistance institution. It is not also possible to determine periodically and systematically whether there has been any change in the status of the beneficiary in the course of time, under the existing system.

Moreover, there is not a set standard establishing who are entitled to such benefits and at what rate. In order to reach the set targets in the provision of social assistance and social services, it is necessary to allocate the existing resources to the right beneficiaries within the framework of objective criteria.

The following Table indicates the amounts of Social assistance and social services expenditures of the various public institutions of social assistance and social services in 2003.

TABLE-1 – Expenditures of Social Assistance and Social Services, 2003

Institution	Expenditures in 2003 (million TL)	Number of Persons
1. Social Assistance and Solidarity Encouragement Fund (SYDTF)	651,994,512	10,027,193
2. Social Services and Protection of Children Institution (SHÇEK)	240,260,000	38,253
3. Retirement Fund of the Republic of Turkey (Emekli Sandığı)	831,042,486	1,100,000
4. Social Assistance Expenditures of the Ministry of Health	740,900,000	13,396,000
5. Directorate General of Foundations (Vakıflar Genel Müdürlüğü)	8,185,000	42,500
6. Directorate General of Social Insurance Institution (SSK)	67,132,000	25,167
TOTAL	2,539,513,998	–

Source: Proposal of Reform in the Social Security System Made by the Ministry of Labour and Social Security, 29 July 2004 (Page 17)

In the light of the above realities, the Ministry of Labour and Social Security prepared a bill on the Reform in the Social Security System in July 2004, which is currently debated in the related committees of the Turkish Grand National Assembly for enactment.

The fundamental objective of the social security reform is to establish a social protection system in Turkey which is just, easily accessible, providing more effective protection against poverty and financially sustainable.

The Social Security Reform shall consist of 4 main components complementing each other:

First Component: Universal Health Insurance
With this, it is aimed at establishing a universal health insurance which will cover the entire population and will provide a just, equal and a protective quality health service.

Second Component: Social Assistance and Social Services
Here, the main objective is to establish an equitable and easily accessible system which will enable the utilization of the public resources in this field by means of linking such assistance and services with the established objective criteria.

Entitlement to social assistance shall be poverty-tested. At the beginning, the level of minimum living standard shall be determined according to the expenditure made per head, which shall be one third (1/3) of the net statutory minimum wages.

Third Component: Pension Insurance
With this component it is envisaged that the existing five different pension regimes covering civil servants (Retirement Fund), wage-workers employed with a contract of employment (Social Insurance Institution – SSK), wage-workers employed in agriculture, and self- employed persons, craftsmen and artisans (BAĞ-KUR) and so on, shall be converted into a single pension regime in which rights and obligations shall be equal in actuarial terms.

Fourth Component: Institutional Structuring
In order to enable the harmonious and effective functioning of the three components of the social protection system, it is targeted to establish a new and a single institutional structure where all related services will be rendered in an integrated manner.

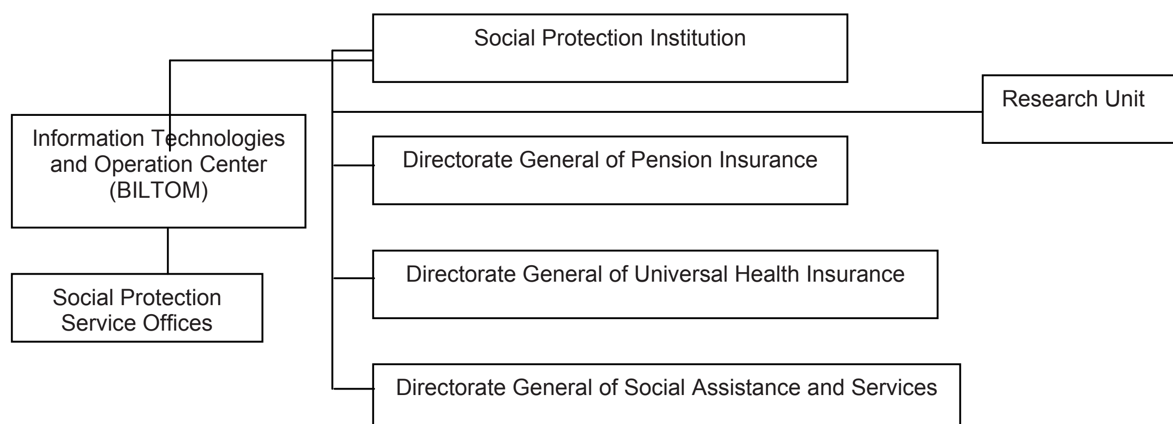
In the new system, pension insurance, health insurance and social assistance and social services shall be carried out through the Social Protection Institution Service Centres, which will be organised in small but extensively wide-spread units, supported by automation.

The new institutional structure is envisaged to be fully operative after a transitional period of three years.

The types of social assistance to be provided shall include family allowance, invalidity benefits, poverty benefits, temporary social assistance, health assistance, compensatory social assistance and so on.

The organisational chart of the Social Protection Institution as proposed would be as follows:

TABLE-2 – Organisation Chart of the Social Protection Institution



Source: Social Security Reform Proposal, July 2004 (page 56)."

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

Article 16 – Right of the family to social, legal and economic protection

LATVIA

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

"First ground of non conformity

Amendments to State Social Benefits Act have been elaborated in order to increase the amount of family state benefit for the first child in family up to 8,00LVL (11,5€) per month from 1 January 2006. As a result there will be a corresponding increase in the amount of family state benefit for the further children: up to 9,60LVL (13,80€) for the second child, up to 12,80LVL (18,40€) for the third child and up to 14,40LVL (20,70€) for the fourth and further children in the family per month.

Second ground of non conformity

The situation is being analysed by the Latvian Government at the moment. The respective amendments to law will be proposed afterwards."

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

Article 17 – Right of mothers and children to social and economic protection

BELGIUM

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

“1. For several years, Belgium has made strenuous efforts to combat all forms of child abuse. In particular, the Criminal Protection of Young Persons Act of 28 November 2000 increased the penalties for assault on and/or other forms of violence towards young persons. The penalties are still higher for offences of violence committed by fathers, mothers or other ascendants of young persons, or by any other persons exercising authority or guardianship over them or regularly or occasionally sharing the same household. Civil protection of young persons, including protection against ill-treatment, has also been increased. The law on parental authority now places an explicit duty on parents to protect and respect their children's persons and best interests.

Alongside these changes in legislation, the new Article 22b on the Belgian Constitution most clearly reflects the country's increased concern to protect its children against all forms of abuse.
The Constitution now provides explicitly for every child's right to respect for his or her moral, physical, psychological and sexual integrity, thus clearly acknowledging that children's inherent vulnerability increases their need for protection. In doing so, it sent out a clear message to the entire Belgian population about the need to respect children's integrity and dignity, on the 10th anniversary of the 1989 United Nations Convention on the Rights of the Child.

The absence of legislation explicitly banning corporal punishment of children does not mean that it is authorised in Belgian law (which has never been the case) or is not taken into account.
In practice, as the Belgian courts have clearly demonstrated, current legislation undoubtedly applies to corporal punishment.

In recent years, the relevant authorities have made great efforts to increase protection for children. In particular, a number of campaigns have sought to increase public awareness of the problem of child abuse.

2. On 23 September 2003, the World Organisation Against Torture (OMCT) lodged a collective complaint against Belgium.
The OMCT criticised Belgium for its failure to impose an explicit ban on corporal punishment of children by parents and "other persons", including corporal punishment for educational purposes.
The ECSR decided that the complaint was admissible and that Belgium was in breach of Article 17 of the Charter.

In its Resolution ResChs(2005)10, the Committee of Ministers took note of the report of the ECSR. Moreover, the Committee of Ministers has not recommended Belgium to take any specific steps to bring the situation into compliance with the Charter.”

196. The French delegate stressed that it would be difficult for the Governmental Committee to propose that the Committee of Ministers adopt a recommendation against Belgium as it had not done so in the OMCT v Belgium case.

197. The Secretariat stressed that the position adopted by the Committee of Ministers in taking note of the ECSR's report was politically neutral and did not call into question the ECSR's decision.

198. In reply to a question from the Secretariat, the Belgian delegate said that the next report would supply further information on Belgian case-law offering an unequivocal illustration of the prohibition of corporal punishment of children.

199. 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.

CZECH REPUBLIC

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

"Any form of violence on children (as well as other people) is unacceptable and is therefore strictly penalized by Czech law.

The prohibition of corporal punishment is ensured by the Czech legal regulations, including the Charter of Rights and Freedoms which is part of the constitutional order and which states (in the Article 7) that no one can be put through torment or cruel, inhumane or degrading handling or punishment.

All legal regulations regulating the prohibition of corporal punishment in the home, in schools and in other institutions (Family Act, Education Act, Criminal Code and other relevant legislation) are based on the Convention on children's rights and other documents regulating to the rights of children. The Family Act states that the parents are responsible for the health of their child, his physical, emotional, intellectual and moral development. They are obliged to thoroughly protect the interests of the child, control his behaviour and practise guidance upon him according to the level of his development. Furthermore, parents have the right to use reasonable correctional means that do not affect the child's dignity or endanger the child's health, or his physical, emotional, intellectual, and moral development. From the logic of the statement, it is clear that "reasonable correctional means" do not include corporal punishment (corporal punishment would affect the child's dignity or endanger the child's health, or his physical, emotional, intellectual, and moral development).

The Act (no. 359/1999) on social and legal protection of children, determines the range of children, to which social workers have to pay attention to. Furthermore, according to this Act, other subjects, such as doctors, teachers etc. dealing with children, have an obligation to inform the competent offices of social protection of children on any suspicion of child abuse (a breach of such an obligation is a criminal offence according to Article 168 of the Criminal Code). Several subjects have the right of supervision upon institutional care for children (e.g. offices of social protection, prosecuting attorney's office, promoter of the institution etc.). Children

themselves have the right to take recourse to the ombudsman or to other institutions of legal protection.

Specific areas of protection against violence in educational institutions are covered by the Education Act. Article 29 (1) of the Education Act explicitly imposes obligation of schools and other educational institutions to respect the essential physiological needs of children and students and to create conditions for their healthy development and to prevent formation of socially pathological phenomena. Schools and other educational institutions, according to Article 29 (2) of the Education Act, ensure safety and protection of health for children and students during education and related activities and provide students with necessary safety information. Implementing regulation to this Act further specifies the scope of the educational measures (lecture, reproof).

Amendment of the Act (no. 109/2002) on institutional care signed by the President on 2 September 2005 states exactly the extent of correctional means, which can be used. It is evident that corporal punishment is not among them and therefore it can likewise not be used in these institutions.

This information (concerning the regulation in the Education Act and Act on institutional care) was not included in latter report since this legislation came in force only in January 2005. It will be included in the forthcoming report."

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

GREECE

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

"This conclusion of non conformity of the ECSR has been the main subject of the Collective Complaint 17/2003 filed against Greece by the International NGO "World Organization against Torture". The collective complaints procedure, parallel to the one of the Charter, was completed in June with the Resolution of the Committee of Ministers that took note of all the measures and reforms that Greece has undertaken in order to bring the situation in conformity with the Charter.

The relevant measures are all included in the conclusion of the ECSR. They are all very important steps taken by the competent Ministries. It is noted that they were taken outside the reference period of the last Greek report.

The follow-up to the measures taken will be described analytically in the next report."

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

HUNGARY

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

"An important issue to add is that pre-trial detention is under judicial control. It can be ordered by the court and it is reconsidered every two months in the first year of the procedure, while every three months in the second year. Each time the pre-trial detention can be prolonged under judicial decision.

The Government of Hungary is committed to reducing the length of criminal procedures. An important step within the series of measures was the amendment of the Criminal Procedure Act in the 2003 which fixed the maximum length of the pre-trial detention of minors (aged between 14 and 18) in two years. The next step foreseen is to adopt new rules aimed at reducing the overall length of criminal procedures. These measures are also expected to make the average period of pre-trial detention shorter.

As regards corporal punishment within the family, we have a legislative amendment to announce: the Act on the Protection of Children as amended with an effect of 1 January 2005 prohibits all kinds of corporal punishment which also covers families. Judicial practice will probably change accordingly, and it will be possible to report on it within one or two years."

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

MALTA

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

"a) Corporal punishment in the home is not prohibited.

A Bill has been published with the intention of amending the Penal Code in connection with Domestic Violence. For the purposes of this amending Act children will be considered as part of household and therefore they will be offered protection."

207. The Committee took note of the positive developments which have taken place concerning Malta and, as regards the other grounds of non conformity, it invited Malta to bring the situation into conformity.

"b) Age of criminal responsibility

The Civil Code has been amended. Age of criminal responsibility has been raised to fourteen (14) years. Changes have also been effected as regards the punishment allowed, which in this case has to be reduced by two degrees.

More information and copies of the new legislation will be provided in the next report."

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

209. The Maltese delegate stated that the Civil Code has been changed, which has brought the whole situation into conformity with the Charter.

210. The Committee noted with satisfaction that a new law would be adopted and decided to await the next assessment of the ECSR.

NETHERLANDS (Kingdom in Europe)

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

"The ECSR concluded that, in the Netherlands, not all forms of "corporal punishment of children" are prohibited, based on a notification in our report that a Bill to amend the Dutch Civil Code is being prepared in which this form of abuse will be banned. The Dutch government feels that this conclusion is not justified, given that it focuses on what is simply a Bill to amend the Dutch Civil Code and therefore does not take into account other existing legislation.

The Dutch parliament is currently debating a Bill which states that parents may not use violence in the care and rearing of their children. The Bill prohibits all forms of violence in child-rearing. This therefore includes not just corporal punishment but also the use of mental cruelty or degrading treatment.
The Bill proposes an amendment of Article 247 of the Dutch Civil Code, pertaining to parental rights and obligations. The Bill seeks to help prevent child abuse. It does not seek to institute a criminal ban, since no separate criminal penalty has been prescribed. Obviously, child abuse is and will remain a criminal offence. The Bill will probably become law some time during 2007.

Child abuse is already a criminal offence under Articles 300 et seq of the Dutch Penal Code. This applies to any abuser: professionals, parents, neighbours, etc. If the abuse takes place in a family context, this can lead to additional penalties (Article 304 of the Dutch Penal Code).

Furthermore, similar provisions are established in Article 21 of the Youth Care Act. If a social worker is (suspected of being) guilty of child abuse, his or her employer is obliged to notify the Advice and Reporting Centre for Child Abuse and Neglect (AMK). For professionals working in the youth care sector, the Youth Care Act therefore provides for a another, different procedure for dealing with child abuse, supplementary to that laid down in the Dutch Penal Code.

Education law has a similar procedure for child abuse in the educational sphere.

Child abuse is therefore already a criminal offence under the Dutch Penal Code. There is also additional legislation over and above criminal law which prohibits violence against children in the youth care sector and in the sphere of education. The aforesaid Bill will add a special procedure in the Dutch Civil Code to ban child abuse in the family circle.

The current legal situation will be clarified in the next report."

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

POLAND

First ground of non conformity

213. The Polish delegate said that it was not clear from the conclusions and the collective complaints how the ECSR defined "violence against children". If it was concerned to prohibit corporal punishment that threatened the child's integrity then Poland had sufficient legislation on the subject, in the form of articles 40 and 72 of the Constitution as well as all the series of the provisions of the Penal Code. However, if it thought that Article 17 extended to all forms of corporal punishment, even those with educational value or of a symbolic nature, Poland maintained it reservations concerning such an interpretation. On 28 December 2004, the Council of Ministers had approved draft legislation to combat violence in the family and parliamentary consideration of the proposals was now well advanced.

214. The Committee invited the Government to include all this information on Polish legislation in the next report and decided to await the next assessment of the ECSR.

Second ground of non conformity

215. The Polish delegate said that as a general rule custody pending trial could only be ordered by a criminal court for persons aged 17 or over. Detention on remand could only be ordered for 15 or 16 year olds in exceptional and serious circumstances laid down in the Criminal Code. Such cases were rare. In 2004, only 27 persons aged between 15 and 17 had committed such offences, 18 of whom had been remanded in custody.

216. The Committee invited the Government to include all this information, including the statistics, in the next report and decided to await the next assessment of the ECSR.

Third ground of non conformity

217. The Polish delegate thought that the ECSR conclusion was unjustified, since the Polish report had explained that, under the 1982 legislation on proceedings concerning young offenders, "demoralisation" by itself was not sufficient to justify placing young persons in supervised educational establishments, or reformatories.

218. The Deputy Executive Secretary of the European Social Charter *ad interim* said that the Polish report had not clarified the notion of "demoralisation".

219. The Greek delegate thought that such clarification should be included in the next report.

220. The Committee invited the Government to include precise information in the next report to enable the ECSR to assess the situation.

SPAIN

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

"Article 154 of the Civil Code establishes the right of parents to "correct their children within reason and with moderation."

In the original text, the Civil Code allowed parents to "correct and punish their children within moderation." This text was modified in the reform of the Civil Code in 1981, in order to make clear that acts of physical violence against children were not permitted. Such acts may even be classified as bodily harm under the Penal Code, and lead to loss of paternal authority under law.

Later, Spain ratified Convention 182 of the ILO and passed Organic Law 1/1996 of 15 January 1996, the Legal Protection of Minors Act, which established the fundamental right of minors to dignity and personal integrity. In order to adapt the Civil Code to this law, the Government has announced that it is studying a modification of Article 154 of the Code in order to add a second paragraph which would read as follows: "the exercise of parental authority shall be carried out with complete respect for the dignity and personal integrity of the child."

This reform is planned to be implemented by the end of the present legislature, in March 2008."

222. The Committee invited Spain to bring the situation into conformity with the Charter.

TURKEY

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

"Protection of children against ill treatment and abuse

Act No. 4320 on the Protection of the Family was put into effect on 17 January 1998.

In accordance with the related provisions of the said act, if one of the spouses or children in the family applies to the Office of the Public Prosecutor claiming that any member of the family has been subjected to violence in the family, the Court shall, depending upon the circumstances, decide to apply one or more of the measures as indicated in the law or the judge may decide on some other measures, at his discretion.

The measures indicated in the act consist of the following:

a. an injunction by the court so as to prevent the spouse at fault from inflicting violence or fear on the other spouse or children or other family members living under the same roof;

b. instructing the person at fault to abandon the common dwelling and allocation of the said dwelling to the other spouse and children, if any;

c. prevention of the spouse at fault from causing damage to the property of the other spouse, children and of the other members of the family living under the same roof;

d. delivery by the spouse at fault of his/her guns and similar weapon, if any, to the police;

e. prevention of the spouse at fault from coming or visiting the jointly shared dwelling in a state of drunkness or having taken a narcotic substance.

The implementation period of the above-mentioned measures may not exceed 6 months and, in case of violation of the measures as prescribed in the decision of the Court; the spouse at fault shall be cautioned that he/she will be subjected to a punishment of imprisonment.

The Turkish Penal Code was replaced by the new Turkish Penal Code No. 5237, which will be put into effect on 1 June, 2005.

Under Article 232, paragraph 1, of the new Code, under the heading “Unfair Treatment”, it is stipulated that any person mistreating any of the persons living in the same dwelling with him/her, shall be sentenced to a term of imprisonment ranging from two months to one year. This article, with no doubt, covers also the children in the home.

In Article 232, paragraph 2, of the Code, it is stipulated that “A person who misuses his/her power of discipline on a person who is under his/her authority or who has been held responsible for the purpose of his raising; protecting or teaching him a profession or an art, shall be held liable for a term of imprisonment up to one year.” This regulation shows the limits of his/her disciplinary authority and is of the nature of prohibiting corporal punishment in the home.

Children and the law – Young offenders

In the new Turkish Criminal Code No. 5237, to be put into effect on 1 June 2005, the definition of a child is prescribed as a child below the age of 18. In order to hold the child criminally responsible, he/she should fill the age of 12. Previously the age limit was 11.

In Article 31, paragraph 2 of the new Code, no sentence can be given to minors who at the time of the crime being committed, were under 12 years. If the child, who completed his 12 years of age but not completed the age of 15, has the ability of perception about the action which he had committed, and in the case of the existence of ability of directing of his behaviour in relation with this offense, he/she shall be penalized with a term of imprisonment from 9 to 12 years, when the said offense necessitates the punishment with an aggravated heavy life sentence; and from seven to nine years when the said offence necessitates the punishment with a heavy life

sentence. Other punishments shall be reduced by two thirds (2/3) and, in such a situation, the term of imprisonment for each wrongful act shall not exceed six years.

In the third paragraph of the same article of the new Penal Code, with respect to persons between 15 and 18 years of age, if the offence necessitates the punishment with an aggravated heavy life sentence, such persons shall be imprisoned from 14 to 20 years, and, if the offense necessitates the punishment with a heavy life sentence, they shall be imprisoned from 9 to 12 years. Other punishments shall be reduced by half, and in such a situation, the term of imprisonment for each wrongful act shall not exceed 8 years.

As it can be seen from above, there have been significant reductions introduced with respect to the terms of prison sentences.

The Committee asked to be informed on the number of young offenders sentenced to imprisonment.

As of March 2005, the number of young offenders, convicted as detainees in the 21 Execution Centres, convicted with charges of committing offenses against persons and property, and for sexual and other offenses, is indicated as follows:

Number of persons	Age
171	11(*) to 14
1099	15 to 17

(*) Chidren who have not completed the age of 12. With the new Code the age limit will be 12."

The Committee wished to be informed of the possibilities for education of young offenders and how this is applied in practice.

Young persons who have been detained as convicts in the closed prison houses benefit from the First and Second stage reading – writing courses, and have also the full benefit of utilising the opportunities provided with respect to open primary schools, supplementary courses, university entrance examinations, open university and vocational training courses.

At the end of their trial, children, if sentenced to imprisonment, are placed in one of the Children Education Houses in Ankara, Elazığ and Izmir, depending upon the vicinity of their place of residence. The education given in the closed institutions is also provided in these houses.

Children of appropriate age and meeting the necessary requirements have the opportunity of attending school and also of participating in such courses as foreign language, computer, university preparation and vocational training, as well as of enjoying such social activities like theatre, cinema, concerts and sports tournaments."

224. In answer to a question put by the ETUC, the Turkish delegate explained that Law 1702 is indeed the exact law which prohibits the corporal punishment of children in schools. He states that it was unclear what the ECSR asks in its conclusion. The

Secretariat explained that the ECSR requested for clarification as to which law prohibits the corporal punishment of children in schools and institutions, first since the report was unclear about this and second since corporal punishment is still used in schools and institutions.

225. The representative of the ETUC pointed out that the next Turkish report should include information on measures taken to prevent the occurrence of corporal punishment in schools and institutions.

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

227. The Turkish delegate said that under the new 2005 Criminal Code, sentences had been reduced. For example, young persons aged 9 to 12 who had previously been liable to a life sentence were now punishable by 7 to 9 years' imprisonment. In the case of 15 to 18 year olds, life sentences had been replaced by 14 to 20 years' imprisonment.

228. The Netherlands delegate said that the new Code still authorised a maximum sentence of 20 years' imprisonment. The report should specify the number of occasions on which maximum and minimum sentences were actually handed down.

229. The Committee noted the improvements in the new Criminal Code regarding reduced sentences. It asked the Government to present these changes and statistics on how they were applied in practice to enable the ECSR to assess the situation.

UNITED KINGDOM

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

"Corporal punishment

Corporal punishment of any kind is completely outlawed in all United Kingdom schools (independent and maintained) and other formal child care settings. Outside of school, a parent striking a child may be charged with a criminal offence at common law, or under statute, the same as if the alleged victim were an adult. There are also offences of cruelty under the Children and Young Persons Act 1933.

While domestic law provides a defence to an alleged crime of violence against a child if the person against whom the allegation is made is a parent administering physical punishment, this applies only if it is deemed to be 'reasonable' in manner. This defence, termed "reasonable punishment", has been restricted by Section 58 of the Children Act 2004, now in force, to the least serious category of assault. The defence is not absolute, and may be accepted or rejected by a jury.

Revised guidance to prosecutors by the Director of Public Prosecutions has clarified the kind of action that may be construed as an assault, and in effect, only a mild smack is likely to be excluded.

The law protects children both inside and outside the home. For example, in December of 2004 a father was seen by a police officer giving a single smack to the bottom of his three year old son. Manchester magistrates found him guilty of common assault.

The United Kingdom Government supports human rights, and “positive” parenting. It does not tolerate criminal violence against children or child abuse, and has taken steps to strengthen its child protection mechanisms across a range of policy areas.

Criminal responsibility

The United Kingdom Government believes that most young people are mature enough at the age of 10 to know the difference between right and wrong; and that they have the moral reasoning and emotional capacity to cope with the process of criminal law. The age of criminal responsibility is set at 10 to allow for interventions to address offending behaviour at an early stage and to help young people develop a sense of personal responsibility for their behaviour.

In practice most young offenders are provided with support through local multi-agency Youth Offending Teams, which include social services and health professionals. Such professionals can identify needs which cannot be met by the criminal justice system alone, and can refer the child on to other statutory services for further investigation and support if appropriate, for example, child welfare departments or Child and Adolescent Mental Health Services.

The youth justice system is therefore based on a holistic approach to tackling offending behaviour. Children of 10 and 11, (or older) are not prosecuted when an alternative can be found. Instead, Reprimands and Final Warnings are the most likely response to offending by this age group, both of which may include interventions to tackle offending behaviour and underlying problems.

The United Kingdom Government believes that focussing on this period of children’s development – when they undergo a significant period of transition from childhood to adolescence, and transfer from primary to secondary school, which may in turn raise attainment and attendance issues – is crucial because with careful, sensitive and targeted, interventions and support for children in this age group, issues can be addressed at an early stage, before problems escalate.”

231. 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 18§1 – Applying existing regulations in a spirit of liberality

BELGIUM

232. The Belgian delegate referred to the following information provided in writing on work permits:

- *for the Walloon Region*, the figures are for the years 1999 to 2002. They concern applications for a first permit and for renewals by nationals of non-European Union parties to the revised Charter or the Charter;

- *for the German-speaking Community*, the statistics concern refusals to issue work permits in 2004, by country and category of permit;

- *for the Flemish Region*, the figures relate to the period 2000-2004 and concern refusals to issue work permits to parties to the Revised Charter or the Charter that are not members of the European Union or parties to the Agreement on the European Economic Area;

- *for the Brussels-Capital Region*, the statistics concern the number of refusals to issue work permits in 2003 and 2004, by workers' nationality and sex.

233. The Belgian delegate stated that updated information will be provided in the next report.

234. 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 18§2 – Simplifying existing formalities and reducing dues and taxes

GERMANY

235. The German delegate stated that a new immigration law entered into force on 1 January 2005. Under this text, a so-called "One-stop-government" was introduced replacing the dual application procedure for work and residence permits by an internal approval procedure. Work and residence permits are granted together in a single act by the aliens authorities following approval by the labour administration. Foreigners submit the necessary documents to the aliens authorities and have to deal with this one authority only.

236. She further explained that the One-stop-government procedure will also have an impact on the length of the procedure for the granting of work and residence permits but that statistics in this respect were not yet available. She also confirmed that no dues and charges will be levied for the granting of work permits. She announced that the next report will contain detailed information on the new legislation.

237. The Committee noted the entry into force of the new immigration law. It decided to await the next assessment of the ECSR.

GREECE

238. The Greek delegate stated that Greece has recently adopted a new Act 3386/23-08-2005 concerning the entrance, stay and social integration of the third country nationals residing in Greece. The new Act will enter into force as from 1 January 2006 and as a result the provisions which are not in conformity will cease

to apply. The new Act will be submitted with the next report on Article 19 of the Charter. In the opinion of the Greek Government, the new Act will resolve the existing problems of compliance with this provision of the Charter. As an example, one of the most important changes brought about by this new Act is the unification of the work and residence permits into a single permit (the duplication of the relevant procedures has been a ground of non conformity for a long period of time).

239. The Committee welcomed the adoption of the new legislation and decided to await the next assessment of the ECSR.

TURKEY

240. The Turkish delegate explained that pursuant to Article 12 of the new Act No. 4817 regarding work permits for foreigners in Turkey which entered into force on 6 September 2003, a foreign worker who has obtained a work permit from the Ministry of Labour and Social Security has to apply for the granting of a residence permit with the Ministry of the Interior Affairs.

241. He went on to explain that the residence permit for work purposes is granted by the competent local security authorities without further instruction within the shortest possible time and that the various problems in obtaining the residence permit encountered under the previously applicable legislation have now been eliminated, due to the effective cooperation between the ministries involved.

242. The Committee noted the entry into force of the new legislation and decided to await the next assessment of the ECSR.

Article 18§3 – Liberalising regulations

DENMARK

243. The Danish delegate stated that the Government is considering to liberalise access to the Danish labour market for particularly qualified foreign labour force and indicated that new initiatives in this respect are planned for the near future. In this context he referred to a new practice to be introduced on the near future giving foreign students within certain fields a possibility to stay in Denmark for a short period in order to search for employment.

244. He explained that the principal reason for the present restrictions on the access of foreigners to the national labour market is the effort made by the Government to increase the rate of national employment. This also concerned foreigners already resident in Denmark comprising, *inter alia*, refugees and immigrants, in an attempt to foster their integration into the labour market and the society. In this context he also stated that the recruitment of highly qualified foreign labour aims at generating employment for the national labour force.

245. The Danish delegate further made reference to Article 1§1 of the Charter requiring Contracting Parties to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of

employment as possible, with a view to full employment. He also referred to Article 31§1 of the Charter stipulating that the rights and principles set forth in the Charter may be subject to restrictions or limitations, if these are prescribed by law and are necessary in a democratic society for the protection of, *inter alia,* public interest. He stated that in the opinion of the Danish Government the present situation was in conformity with the Charter since the restrictions on the access to the national labour market were necessary to improve the national employment rate and therefore in the public interest.

246. The Danish delegate went on to describe measures implemented in Denmark with a view to liberalise the access of foreigners to the national labour market such as the so-called Job Card Scheme for certain professional fields currently experiencing a shortage of qualified manpower as well as a rule introduced in 2002 making it easier for foreigners who have been admitted to Denmark on the basis of family reunification to get a new residence permit. He announced that details on these liberalisation measures would be provided in the next report.

247. He stressed that since the year 2000 there has been a significant increase in the number of residence permits with reference to occupation granted to foreign workers. Whereas in 2001 the number of these permits granted was 1,813 the number amounted to 4,300 in 2004.

248. The Danish delegate specified that a residence permit with reference to occupation is granted for a specific job with a specific employer and that an appeal of the worker against dismissal by the employer is no ground for extension of the permit. The Danish delegate indicated that the Danish Government is considering to adjust this rule.

249. The Greek delegate acknowledged the validity of the arguments of the Danish delegate and stressed that the linkage made between articles 1§1 and 31 of the Charter should be presented in the next Danish report.

250. The Committee noted the economic reasons mentioned by the Danish delegate for the existing restrictions on the access to the national labour market and further noted that there have recently been indications for a more liberal practice regarding the granting of work permits to foreign workers. It also understood that further liberalisation measures in this respect are planned by the Danish Government in the near future. The Committee therefore decided to await the next assessment of the ECSR.

NETHERLANDS (Kingdom in Europe)

251. The Dutch delegated stated that the aims of the Netherlands' labour immigration policy are to increase prosperity by facilitating the admission of high skilled foreign workers to the country on the one hand and by regulating the immigration of low-skilled workers on the other hand. It had, *inter alia*, to be ensured that foreign workers are prevented from taking jobs for which there is a strong supply of domestic manpower and that unfair competition and illegal employment could not develop. Since 2001, the Netherlands had been faced with growing unemployment making the protection of the national labour market a necessity.

252. The Dutch delegate provided further details on the grounds stipulated in the Foreign Nationals (Employment) Act on the basis of which the Centre for Work and Income (CWI) may refuse a foreign worker's application for the granting of a work permit. In 2004, the CWI refused over 10% of applications from labour immigrants and in nearly 80% of these cases the application was refused due to the availability of suitable domestic manpower.

253. The Dutch delegate pointed out that in view of the above explanations the Government is of the opinion that its migration policy is justified by adequate policy-led arguments. Moreover, since 1 October 2004 a new "Knowledge migrants scheme" was in place liberalising access to the national labour market for migrant workers with an annual income of at least 45,000€.

254. The Greek delegate agreed with the Dutch delegate's reasoning that the priority aim of national labour market policy has to be the protection of national employment. He expressed his opinion that Article 18§3 required liberalisation of the regulations governing the employment of foreign workers and not their abolition.

255. The Committee took note of the information provided by the Dutch delegate on the introduction of further liberalisation measures for high-skilled foreign workers. It invited the Government to provide all relevant information in its next report and decided to await the next assessment of the ESCR.

SPAIN

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

"The ECSR thinks that the situation in Spain is not in conformity with Article 18§3 of the Charter on the grounds that foreign workers who have lost their job do not have the right to a prolongation of the residence licence that grants a sufficient term to them to look for a new employment

This question is regulated in Article 54, paragraphs 1, 4 and 5 of the new Regulation of Organic Law 4/2000 on rights and freedoms of foreigners in Spain, approved by Royal Decree 2393/2004, of 30 December 2003.

From the wording of Article 54 of the said Regulation, it is clear that a foreign worker who has lost his employment might renew his authorization of residence and of work if he is receiving a contribution for unemployment or if he is a beneficiary of an economic welfare contribution of public character destined for achieving his labour or social insertion.

If the foreign worker does not have the right to any type of contribution for unemployment or to the subsidy of unemployment, he would have the right, as soon as his authorization of residence and of work expires, to look for a new employment for a minimum period of three months and to obtain a contract of work that allows him to obtain renewal of his authorization of residence.

This term may be prolonged if the worker has sufficient means to cover his expenses of subsistence and stay, including those of his family, since he might choose to request an authorization for temporary residence."

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

TURKEY

258. The Turkish delegate referred to the new Act No. 4817 which entered into force on 6 September 2003 and informed the Committee that Article 35 of the said Act abolished Act No. 2007 of 1932 regarding Jobs and Professions Allocated to Turkish Citizens thereby liberalising the access of foreign workers to many professions and jobs which were previously reserved for Turkish citizens.

259. The Committee noted the entry into force of the new legislation and decided to await the next assessment of the ECSR.

Article 1 of the Additional Protocol – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

CZECH REPUBLIC

260. See Article 4§3.

FINLAND

261. The Finnish delegate provided the following information in writing:

"In regard to the reinstatement provision the legislation has not changed. The present Employments Contracts Act does not provide for reinstatement. Instead the employer has to pay compensation which by nature is a sanction directed to the employer. The amount varies between 3 and 24 months' pay depending on case (in case of shop steward 30 months pay). In addition to the compensation the victim is entitled to unemployment benefit security if he/she cannot find another job.

However, in cases of illegal dismissal based on gender as is the case with grounds relating to pregnancy, maternity or paternity, the compensation has no ceiling. The reformed Act on Equality between Women and Men (232/2005) effective 1 July 2005 provides compensation for which no maximum limit has been determined except in recruitment situations. The period of instituting proceedings to claim compensation is extended to two years, except in recruitment situations where it is one year.

The new Act that transposed the so-called working life equality Directive of the European Union into Finnish legislation imposes a general obligation to promote equality between the sexes in the activities of the society and in working life, in particular when determining pay and other terms of an employment contract pursuant to the specific regulations of the law.

The reformed Act contains the definitions of direct and indirect discrimination based on gender. An order or instruction to engage in discrimination based on gender directed to a person or persons is defined as discrimination. Consequently the Act also provides for the division of the burden of proof when a case of discrimination is being heard by a court of law.

The supervision of the reformed Equality Act rests on the Ombudsman for Equality and the Equality Committee and on occupational safety and health authorities as it comes to terms of an employment contract.

The details of the Act will be included to the next report."

262. The Polish delegate stressed that reinstatement was provided for under Polish legislation as a basic principle and that this possibility was very useful in the context of protection against dismissal during maternity.

263. In reply to comments by the Greek and Italian delegates, the Finnish delegate said that she did not yet have any figures on practice with regard to illegal dismissal following the enactment of the new legislation as it had only come into force in July 2005.

264. The Maltese delegate, supported by the representative of the ETUC, stressed that this situation was all the more serious in that, after accepting Articles 8§2 of the Charter and 1 of the Additional Protocol, Finland had enacted legislation that was inconsistent with those provisions.

265. The representative of the IOE pointed out that the social partners had accepted this legislation and that it would be inappropriate for the Governmental Committee to ask the Government to amend it.

266. The Committee invited Finland to bring the situation into conformity with the Charter.

NETHERLANDS (Kingdom in Europe)

267. The Dutch delegate provided the following information in writing:

"As indicated in the 16th detailed report of the Governmental Committee (II) (§ 243), the conclusion with respect to Article 4§3 was clearly based on a misunderstanding. It was explained that on 10 March 1997, the so-called "Barber Directive" (96/97/EC of the Council of the European Union) entered into force, amending Directive 86/378/EEC of the Council of the European Communities of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes. The aim of the Barber Directive is to achieve equal treatment for men and women in schemes that provide more than the statutory minimum requirements.

To implement this Directive, Dutch legislation on equal treatment was amended in March 1998. A new chapter on pension provision was added to the Equal

Opportunities Act. Article 12b of this chapter prohibits discrimination between men and women in three areas: the categories of persons eligible for pension provision, the details of such provision, and the implementation of pension schemes.

Furthermore, Article 646 of book 7 of the Civil Code was also amended. This article prohibits employers from discriminating between men and women with regard to entering into employment contracts, training, terms of employment, promotion, and the termination of employment contracts. Payments and entitlements under pension schemes are now also regarded as "terms of employment".

The Dutch Government ensures the Governmental Committee that in the Netherlands the principle of equal treatment does apply to benefits and rights linked to a pension scheme.

Finally the Dutch delegate points out that this information was already provided in the report submitted in 2000, and because the ECSR had explicitly noted this information in its 2001 conclusions, this information was not repeated in the last report. Therefore the next report will only confirm what was already stated in the 2000 report."

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

NETHERLANDS (Netherlands Antilles)

269. The Dutch delegate provided the following information in writing:

"First of all, Netherlands Antilles are a very small country with a population of approximately 150 thousand persons. Macro-economic indicators show that the development of the Antillean economy, measured from the growth of the real GDP, is very troublesome. Compared to the Caribbean and Latin America and the world trend we score poorly. The small growth is explained by increasing consumption, declining investments and an unfavourable development of the present productive capital. Remarkable is that for example economic growth on Curaçao, which has the major share in the Antillean GDP (75%) is just 0.2% in 2003 and 0.4% in 2004. The weak economic situation however, caused all available resources to be allocated in tackling this problem. Being small implicates that also our civil service is small. This makes it difficult to tackle all kinds of problems simultaneously.

First ground of non conformity
As regards the first point of criticism of the ECSR that the legal measures prohibiting employment discrimination are inadequate, in January of this year the Council of Ministers, the highest ruling organ of the Government, approved anti-discrimination legislation to be introduced. In this same decision the Council of Ministers gave its approval to the reception of more technical Dutch assistance.
The Directorate of Labor (the very small central government Directorate of Labor, employing only 6 persons) has attracted for the period of one year a senior technical assistant: Mr Willem van de Ree, former representative of the Kingdom of the Netherlands before your committee AND former chairman of your committee. He will assist in counselling the Government in ESC related issues. This includes a study about the implications of these norms on our legal system. In addition, two local

policy officers were recently appointed to develop the necessary government policies on social and labour issues. The new policies to be initiated, include legal provisions to ban sex discrimination.
Information learned that the best scheme of action is to integrate the whole anti-discrimination legislation into one legal instrument. To start with, a so called built-on-legislation will be constructed, in which gradually the different grounds of discrimination will be incorporated. The section about gender equality in the area of labour will get priority. Later on the regulation will be extended to other grounds of discrimination and other terrains than only labour. Because of the small-scaleness of the Netherlands Antilles the government did not yet make any statement about the set up of a specialized anti-discrimination body. Initially, complaints about violation of the anti-discrimination legislation will have to be addressed to the Common Court of Justice of the Netherlands Antilles.

Second ground of non-conformity

As regard the second point of criticism the Government agrees with the comments made by the ECSR. Because of the strikingly high unemployment rate among juveniles (33.3%), this is 1 in every 3 youngsters, the Government puts its scarce resources and efforts into tackling youth unemployment in the first place. Together with the social partners the Government has taken actions resulting in the Social Formation Ordinance and Program. Juveniles that have not been registered as a student nor are engaged in paid employment and who are not fulfilling compulsory military service are given a second educational opportunity. They participate in a program aiming at developing their intellectual capacity at a minimum level. This piece of law aims at preventing the social exclusion of this group.
As regard to the position of women in the community, for some years already women conquered a well deserved position in political life. Not only have the Netherlands Antilles known four female prime ministers for a few consecutive years. The present cabinet consists of three female ministers: the minister of Aviation and Telecommunication, the minister of Finance and minister of Public Health. All these women appointed in these key positions are nominated because of their expertise. Not only in political life women have proven their professionalism, but in commercial and community life as well.
The Foundation Female Networking (*Stichting Vrouwennetwerk*) is founded to support women who hold responsible positions in the community, to encourage them to reach higher professional levels thus resulting in an increased participation of women in decision making. The foundation dedicated an award to the organization which pursued the most woman friendly policy. From the 10 organizations which competed for the award a selection of three was made: a consultancy, a bank and a private clinic. The awarding committee of the Foundation held interviews with the staff and personnel of these competing companies. All three companies were nominated because of the excellent opportunities given to their female workers to combine their career with their family life. In the end the local bank won the FFN-award. Not only because the participation of women in this local bank is the largest by far (520 woman and 280 men) but also because of their fringe benefits included in their collective agreement.

This trend has its repercussions on another terrain as well. The participation grade of women in higher education is in the Netherlands Antilles twice as much as the participation grade of men. There is no need to say, that statistics show that within a

few years our labour market will be over flooded by capable, academically skilled women.
In the next reports the government of the Netherlands Antilles will elaborate on the progress of these issues."

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

NETHERLANDS (Aruba)

271. The Dutch delegate provided the following information in writing:

"The Government informs the Governmental Committee that no changes in the labour legislation have been introduced since its First Report (2003). The Government opted not to undertake such an important task alone and installed a tripartite committee for the modernisation of the labour legislation (CMLL) per State Decree as per 8 July 2004 to review and make recommendations for adaptation of the Labour Ordinance and other labour-related ordinances and decrees. The Government expects the CMLL to complete its work in December 2005 at which time the Government is able to submit to the ECSR the final report with all the recommendations. Because the CMLL was specifically installed by the Government, the intention of the Government is to follow the CMLL's recommendations when the process of making changes to the legislation starts, which is expected in 2006. Thus far, the Government can communicate to the Governmental Committee that the CMLL recommends the following changes:

<u>First ground of non-conformity</u>
Equal rights:
In lieu of the Government's obligations to comply with Conventions of the International Labour Organisation and the European Social Charter, the CMLL recommends a change to explicitly prohibit discrimination in employment; this includes the prohibition of discrimination during both recruitment and termination of the labour relation, as well as during the employment as it regards training and promotion. In addition, the Government submitted to the CMLL a petition to consider adding discrimination to article 1615s sub 2 as apparently unreasonable ground for termination. This issue will be brought to the table for evaluation when meetings resume after the summer vacation period 2005.

<u>Second ground of non-conformity</u>
Specific protection measures
The Government agrees with the comments made by the ECSR as it regards the exceptions to the equality principle on behalf of women that need to be objectively justified by their particular needs, which is not the case of night work. As the Government previously communicated to the ECSR, the Government considers the protection of women from night work to be a form a discrimination, reason why article 17 of the Labour Ordinance has not been applicable for over 10 years. The fact that article 17 has not been removed from the text of the law in no way reflects a non-commitment or an inconsistency in the Government's statements to abolish discriminatory regulations against women or any other groups. Article 17 was declared non-applicable but not deleted from the law text due to limited financial

resources and the lack of legal experts to work on the changes; however, it was a first-step towards eliminating the discrimination against women in practice, awaiting the opportunity to make it lawfully permanent, though of no consequence since custom and practice paired with international conventions make decisive arguments in front of the courts. There have been no decisions by the courts regarding discrimination during the reporting period.

The Government now has the resources at its disposition and a panel of experts to attend to like changes in the labour legislation, which allows for the permanent removal of the discriminatory stipulations.

As it regards dangerous occupations, the Government informs the Committee that the decree listing hazardous occupations as referred to in article 17 of the Labour Ordinance has never been created. The CMLL's recommendation for this article is to limit the prohibition of hazardous labour to juveniles only. With the changes to be brought to the Labour Ordinance the decree, as referred to in article 17, will be created, taking into account the occupations considered hazardous by the International Labour Organisation.

Women will no longer be prohibited from performing hazardous labour. In addition, the Government informs the Committee that women do not enjoy any additional protection (except for during maternity, as stated previously) and are not excluded from occupying any occupations.

Third ground of non-conformity

Women's position in training and employment

The current participation in the labour market (as of June 2005) is at 53% for men and 47% for women, a slight increase for women's participation in the labour market since the Government's First Report. Of the available female workforce, 54% participate in the labour market, as opposed to 68% of all men who participate. The difference can be partially attributed to the choice of the women to stay at home and care for their children; this despite the fact that the level of education of women is increasing. In general, a meager 58% of the available workforce actively participate in the labour market. In other words, the Government intends to work on improving the participation of both men and women in the labour market.

To this end, the Government initiated a re-integration pilot project in 2003 (a project initiated by the Department of Social Affairs and in collaboration with the Labour Department), including but not limited to women, for persons who are difficult to place in employment, for example men and women on welfare and/or who have been unemployed for extended periods, ex-convicts, substance abusers etc. The Government kindly refers the Committee to the Government's 2005 report for more detailed information on this project.

This year the Government launched a third re-integration campaign covering 60 participants whose unemployment duration varied from one to fifteen years. The Government will submit to the ECSR a final report with the details of the project in a subsequent report. With this information, the Government hopes to be able to formulate a better policy and plan of action to attend to this group of potential workers.

Measures to encourage equal opportunities
The Government at the moment does not have any programs in line specifically to encourage or promote the participation of women in the labour market. With the recently attained data of market participation showing a high percentage of the workforce not participating, the Government considers this a higher priority at this time and will concentrate on encouraging participation in general. While the main focus will be increasing the general participation in the workforce, the Government is committed to and will include vulnerable groups, such as women, in its policy."

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

DEFERRED CASES FOR REPEATED LACK OF INFORMATION

273. As a preliminary general remark, the representative of the ETUC called on the States Parties to be as comprehensive and precise as possible in their reporting, in particular in replying to questions raised by the ECSR. He recalled that the reference period for the provisions under consideration was four years and it could therefore take up to 12 years to reach a conclusion on a given point. If the ECSR felt obliged to repeatedly defer a decision for lack of information such a situation called the supervisory system of the Charter generally in question and therefore was not acceptable.

274. The representative of the ETUC referred to previous statements on the problem of deferrals and urged States Parties to be comprehensive and precise in their reporting. He reiterated that if the ECSR had to defer decisions for a repeated lack of information, this in fact called the entire supervisory system into question.

AUSTRIA 18§1

275. The Austrian delegate confirmed that data on the number of applications for work permits filed by and granted to nationals of Contracting Parties not being members of the European Union or European Economic Area as well as detailed information on the applicable quota system would be provided in the next report.

CZECH REPUBLIC 2§4

276. The Czech delegate said that no central records were kept on working time reductions or additional holidays provided for by collective agreement, but the Government would seek to obtain the information (i.e. examples of such provisions) from the social partners in view of the next report.

DENMARK 11§1, 11§2 and P1

277. The Danish delegate indicated that the requested information would be contained in the next report.

GERMANY 11§3

278. The German delegate said that he considered that the relevant information had been included in the appendices to the German report, notably on the action plan on drugs and addiction, and he had difficulty seeing what additional information could be necessary.

279. The Secretariat pointed out that with regard to the information on smoking and alcoholism (Article 11§3), the ECSR examined the report, including the appendix on "the action plan on drugs and addiction" which had been adopted on 25 July 2003 (outside the reference period). In particular regarding smoking, the ECSR noted that legislation on the protection of young persons which came into force on 1 April 2003 bans the sale of cigarettes to those aged under 16. It also referred to the workplaces ordinance that came into force on 3 October 2002 obliging employers to take necessary steps to protect non-smoking employees. It noted that alcoholism is one of the main causes of death through suicide (this information was mentioned in the introduction to the appendix). Nevertheless, since the report and the appendix did not provide sufficient and precise information on the previous questions asked by the ECSR (Addendum to Conclusions XV-2, p. 52-53) on the regulation of the supply of tobacco (regulation of advertising, regulations to limit passive smoking, health warnings) and on their enforcement and on the relevant regulations on alcoholism and their implementation, the ECSR repeated these questions.

HUNGARY 2§1, 2§4, 3§1, 8§4, 13§2 and 13§3

280. The Hungarian delegate indicated that the requested information would be contained in the next report.

MALTA 7§8

281. The Maltese delegate stated that legislation had changed in 2005, which brought the situation into conformity with the Charter.

MALTA 11§1

282. The Maltese delegate stated that the mortality rate is ‘zero-point-something’ on 1000. More information would be provided in the next report.

MALTA 11§2

283. The Maltese delegate stated that more information on health education and methods used in schools would be provided in the next report.

MALTA 11§3

284. The Maltese delegate stated that new legal notices are issued under the Health Authority Act regarding dangerous material. More information on health education and methods used in schools would be provided in the next report.

PORTUGAL 7§5 and 18§2

285. The Portuguese delegate indicated that the requested information would be contained in the next report. The exact nature of the statistical data would however depend on a new statistical system currently being put in place.

SPAIN 14§1 and P4

286. The Spanish delegate indicated that the requested information would be contained in the next report. As regards Article 14§1, he confirmed that social services are available to everybody in need and not only to those who lack material resources.

Appendix I

LIST OF PARTICIPANTS

1. 109th meeting: 17-20 May 2005
2. 110th meeting: 20-23 September 2005
3. 111th meeting: 18-20 October 2005

STATES PARTIES / ETATS PARTIES

ALBANIA / ALBANIE

Mrs Albana SHTYLLA, Director of the Legal Department, Ministry of Labour and Social Affairs (1, 2, 3)

ANDORRA / ANDORRE

Melle Iolanda SOLÀ RUIZ, Coordinatrice pour la Charte sociale, Avocate, Carrer Prat de la Creu (1)

ARMENIA / ARMENIE

M. Tigran SAHAKYAN, Chef du Département des Relations Internationales, Ministère du Travail et des Questions Sociales (1, 2, 3)

AUSTRIA / AUTRICHE

Mrs Elisabeth FLORUS, Federal Ministry of Economic Affairs and Labour (1, 2, 3)

AZERBAIJAN / AZERBAÏDJAN

Mr Khalig ILYASOV, Senior Adviser of the International Cooperation Department of the Ministry of Labor and Social Protection of Population (1, 2)

BELGIUM / BELGIQUE

Mme Marie-Paule URBAIN **(President / Présidente)**, Conseillère, SPF Emploi, Travail et Concertation sociale, Services du Président, Division des Etudes (1, 2, 3)

Mme Murielle FABROT, SPF 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)

CROATIA / CROATIE

Ms Gordana DRAGICEVIC, Senior Adviser in the Directorate for Labour and Labour Market, Ministry of Economy, Labour and Entrepreneurship (1, 2, 3)

CYPRUS / CHYPRE

Mr Stavros CHRISTOFI, Administrative Officer, Ministry of Labour and Social Insurance (1, 2, 3)

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Ms Zuzana SMOLÍKOVÁ, Head of the Unit for Integration of Foreigners, Ministry of Labour and Social Affairs (1, 2, 3)

DENMARK / DANEMARK

Mr Michael DELROY, Ministry of Social Affairs (1, 2, 3)

Mr Jonas Gramkow BARLYNG, Head of Section, Ministry of Integration, Legal Office (1)

Ms Hélène URTH, Head of Section, Ministry of Integration (1)

Mrs Marianne KRISTENSEN, Danish Health Authority (3)

ESTONIA / ESTONIE

Mrs Merle MALVET, Head of Social Security Department, Ministry of Social Affairs (1, 2, 3)

Ms Kristiina RÄÄK, Assistant Adviser to the Deputy Secretary General on Social Policy, Ministry of Social Affairs (3)

FINLAND / FINLANDE

Mrs Riitta-Maija JOUTTIMÄKI, Ministerial Councellor, Ministry of Social Affairs and Health (1, 2, 3)

Mrs Liisa SAASTAMOINEN, Legal Officer, Ministry of Labour (1, 2, 3)

FRANCE

Mme Jacqueline MARECHAL, Chargée de mission au Bureau des Relations européennes, Ministère de l'Emploi, du Travail et de la Cohésion sociale (1, 2, 3)

GEORGIA / GEORGIE

Mr Lasha TCHIGLADZE, Head of the Division of Multilateral Treaty, International Law Department, Ministry of Foreign Affairs (3)

GERMANY / ALLEMAGNE

Mr Holger MAUER, Deputy Head of Division, Federal Ministry of Economics and Labour (1, 2, 3)

Ms Christiane KOENIG, Oberregierungsrätin, Federal Ministry of Economics and Labour (1)

Ms Iris KROENING, Head of Division, Federal Ministry of Economics and Labour (2)

GREECE / GRECE

Mr Grigoris GEORGANES-KLAMPATSEAS, Official, Department of International Relations, Ministry of Employment and Social Protection (1, 2, 3)

Ms Paraskevi KAKARA, Official, Department of International Relations, Ministry of Employment and Social Protection (1, 2, 3)

HUNGARY / HONGRIE

Mr László BENCZE, Legal Expert, Ministry of Youth, Family, Social Affairs and Equal Opportunities (1, 2)

Mr Gyorgy KONCZEI, Advisor, Office of the Minister, Ministry of Employment and Labour (3)

ICELAND / ISLANDE

Mrs Hanna Sigrídur GUNNSTEINSDÓTTIR, Director, Ministry of Social Affairs (1, 2, 3)

IRELAND / IRLANDE

Mr John B. McDONNELL, International Officer, Employment Rights' Section, Department of Enterprise, Trade and Employment (1, 2, 3)

ITALY / ITALIE

Mme Giorgia DESSI, Ministero del Lavoro e delle Politiche Sociali, D.G. Tutela delle Condizioni di Lavoro, Divisione II - Affari Internazionali (1, 2, 3)

LATVIA / LETTONIE

Mr Ingus ALLIKS, Deputy State Secretary, Ministry of Welfare (1, 2)

LITHUANIA / LITUANIE

Mr Povilas-Vytautas ZIUKAS, Deputy Director, Department of the Social Policy Analysis and Forecasting, Ministry of Social Security and Labour (1, 2, 3)

LUXEMBOURG

M. Joseph FABER, Conseiller de Direction première classe, Ministère du Travail et de l'Emploi (2, 3)

MALTA / MALTE

Mr Edward GATT, Director General, E.U. and International Affairs, Ministry for the Family and Social Solidarity (2, 3)

MOLDOVA

Mrs Ala LIPCIU, Head of Foreign Relations Department, Ministry of Labour and Social Protection (1)

Mme Lilia CURAJOS, Chef adjoint, Direction des relations internationales et de l'intégration européenne, Ministère de la Santé et de la Protection sociale (2, 3)

NETHERLANDS / PAYS-BAS

Mrs Claudia J. STAAL, Senior Policy Adviser, Directorate for International Affairs, Ministry of Social Affairs and Employment (1, 2, 3)

Mr R. MOREE, Senior Policy Adviser, Ministry of Social Affairs and Employment (3)

Mr B. TANER, Policy Adviser, Ministry of Social Affairs and Employment (3)

Professor Dr H.D.C. ROSCAM ABBING, Legal Counsellor Health Law, Ministry of Health Welfare and Sport (3)

Ms V. ELS, Policy Adviser, Ministry of Economic and Labour Affairs, Directorate for Labour Affairs, The Netherlands Antilles (3)

NORWAY / NORVEGE

Ms Else Pernille TORSVIK, Adviser, Labour Market Department, Ministry of Labour and Social Affairs (1, 2)

POLAND / POLOGNE

Mme Joanna MACIEJEWSKA, Conseillère du Ministre, Département des Analyses Economiques et Prévisions, Ministère de la Politique Sociale (1), 2, 3)

PORTUGAL

Ms Maria Alexandra PIMENTA, Legal Adviser of the Secretary of State Adjunct and for the Rehabilitation (1, 2, 3)

ROMANIA / ROUMANIE

Ms Cristina ZORLIN, Expert, Directorate for External Relations and International Organisations, Ministry of Labour, Social Solidarity and Family (1)

Ms. Magda FILIP, Director, Directorate for External Relations and International Organisations, Ministry of Labour, Social Solidarity and Family (2)

Ms Claudia Roxana POPESCU, Expert, Directorate for External Relations and International Organisations, Ministry of Labour, Social Solidarity and Family (3)

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Mrs Zora BAROCHOVA, State Councellor, Department of EU Affairs and International Relations, Ministry of Labour, Social Affairs and Family (1, 2, 3)

SLOVENIA / SLOVENIE

Mrs Natasa SAX, Adviser, International Cooperation and European Affairs Department, Ministry of Labour, Family and Social Affairs (1, 2, 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)

SWEDEN / SUEDE

Ms Petra HERZFELD-OLSSON, Head of Section, Division for Labour Law and Work Environment, Ministry of Industry, Employment and Communications (1, 2, 3)

Ms Emma BOMAN LINDBERG, Head of Section, Division for Labour Law and Work Environment, Ministry of Industry, Employment and Communications (1)

"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, 2, 3)

TURKEY / TURQUIE

Mr Levent GENÇ, Deputy Director General, Ministry of Labour and Social Security (1, 2)

Ms Selmin SENEL, Expert, Directorate General for External Relations and Services for Workers Abroad, Ministry of Labour and Social Security (3)

UNITED KINGDOM / ROYAUME-UNI

Mr Tudor ROBERTS, ILO, UN & CoE (Employment) Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills (1, 2, 3)

Mr Stephen RICHARDS, ILO, UN & CoE (Employment) Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills (2)

Mr John SUETT, ILO, UN & CoE (Employment) Team, Dept for Work and Pensions, International Relations Division (3)

SOCIAL PARTNERS / PARTENAIRES SOCIAUX

EUROPEAN TRADE UNION CONFEDERATION / CONFEDERATION EUROPEENNE DES SYNDICATS

Mr Klaus LÖRCHER, ETUC Legal Adviser, Head of Department for European and International Legal Affairs, Vereinte Dienstleistungsgewerkschaft – Verdi, Bundesvorstand – Ressort 5 – Recht (1, 2)

Mr Stefan CLAUWAERT, ETUC NETLEX Coordinator, European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS (1, 2, 3)

M. Henry LOURDELLE, Conseiller, Confédération Européenne des Syndicats (3)

UNION OF INDUSTRIAL AND EMPLOYERS' CONFEDERATIONS OF EUROPE / UNION DES CONFEDERATIONS DE L'INDUSTRIE ET DES EMPLOYEURS D'EUROPE

Apologised / Excusé

INTERNATIONAL ORGANISATION OF EMPLOYERS / ORGANISATION INTERNATIONALE DES EMPLOYEURS

Dr Lucia SASSO-MAZZUFFERI, Avocat, Conseillère pour les Affaires internationales (1, 3)

SIGNATORIES STATES / ETATS SIGNATAIRES

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Ms Azra HADŽIBEGIĆ, Expert for Human Rights, Ministry for Human Rights and Refugees (1, 2, 3)

GEORGIA / GEORGIE

Mr Lasha TCHIGLADZE, Head of the Division of Multilateral Treaty, International Law Department, Ministry of Foreign Affairs (1, 2)

LIECHTENSTEIN

Apologised / Excusé

MONACO

M. Thierry PICCO, Directeur Général du Département des Affaires Sociales et de la Santé, Ministère d'Etat (3)

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Ivan DUBOV, Deputy Director, Department of Legal and International Activities, Federal Service of Labour and Employment, Ministry of Health and Social Development (1, 2)

Mme Elena VOKACH-BOLDYREVA, Consultante, Département de la coopération internationale et des relations publiques, Ministère de la Santé et du Développement social (3)

SAN MARINO / SAINT-MARIN

Apologised / Excusé

SERBIA AND MONTENEGRO / SERBIE-MONTENEGRO

Mrs Ivana VJESTICA, Senior Associate, Ministry of Labor, Employment and Social Policy of the Republic of Serbia (1)

Ms Jasmina PETROVIC, Head of Harmonization with EU Law Department, Ministry of Labor, Employment and Social Policy of the Republic of Serbia (2, 3)

SWITZERLAND / SUISSE

Apologised / Excusé

UKRAINE

Mrs Natalija SAPON, Head of International Relations Department, Ministry of Labour and Social Policy (1)

Mrs Natalia POPOVA, Head of European Integration Sector, International Relations Department, Ministry of Labour and Social Policy (2, 3)

Appendix II

CHART OF SIGNATURES AND RATIFICATIONS

Situation at 1 November 2005

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	*	**18/10/61**	**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		**29/05/97**	**31/01/02**		
Liechtenstein		**09/10/91**			
Lithuania		08/09/97	29/06/01		
Luxembourg	*	11/02/98	**10/10/91**		
Malta		27/07/05	27/07/05		
Moldova		03/11/98	08/11/01		
Monaco		05/10/04			
Netherlands		23/01/04	**22/04/80**		
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 and Montenegro		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			
United Kingdom	*	07/11/97	**11/07/62**		
Number of States	46	**6** + 40 = 46	**17** + 21 = 38	13	

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

Belgium	– Article 7§5 – Article 7§8 – Article 17 – Article 18§1
Czech Republic	– Article 4§3 – Article 7§8 – Article 7§9 – Article 7§10 – Article 17 – Article 1 P
Finland	– Article 1P
Germany	– Article 7§5
Greece	– Article 7§5 – Article 8§1 – Article 17
Hungary	– Article 6§3 – Article 6§4 – Article 13§4 – Article 17
Latvia	– Article 5 – Article 6§4 – Article 8§1 – Article 13§1 – Article 13§4 – Article 16
Malta	– Article 17
Netherlands (Kindgom in Europe)	– Article 7§5 – Article 17 – Article 1 P
Netherlands (Netherlands Antilles)	– Article 1 P

Netherlands (Aruba)	– Article 1 P
Poland	– Article 14§1
Portugal	– Article 7§10 – Article 8§4
Spain	– Article 8§3 – Article 17 – Article 18§3
Turkey	– Article 7§5 – Article 7§6 – Article 11§2 – Article 14§1 – Article 17
United Kingdom	– Article 17

B. Renewed conclusions of non conformity

Belgium	– Article 7§5 – Article 8§2
Czech Republic	– Article 2§5 – Article 4§3 – Article 4§4 – Article 4§5 – Article 7§1 – Article 7§3 – Article 8§2
Denmark	– Article 8§1 – Article 18§3
Finland	– Article 8§2
Germany	– Article 7§3 – Article 18§2
Greece	– Article 18§2
Hungary	– Article 6§4
Malta	– Article 7§3 – Article 8§1 – Article 8§2 – Article 17

Netherlands (Kingdom in Europe)	– Article 7§3 – Article 7§5 – Article 7§6 – Article 18§3
Poland	– Article 7§10 – Article 8§2 – Article 11§1 – Article 17
Portugal	– Article 7§1
Spain	– Article 7§5 – Article 8§2
Turkey	– Article 7§3 – Article 7§4 – Article 7§8 – Article 7§9 – Article 11§1 – Article 11§3 – Article 17 – Article 18§2 – Article 18§3
United Kingdom	– Article 7§3 – Article 7§5 – Article 8§1

Appendix IV

LIST OF DEFERRED CONCLUSIONS BECAUSE OF A QUESTION ASKED FOR THE FIRST TIME OR ADDITIONAL QUESTIONS

Austria	– Article 18§1
Czech Republic	– Article 2§4
Denmark	– Article 11§1 – Article 11§2 – Article 1 P
Germany	– Article 11§3
Hungary	– Article 2§1 – Article 2§4 – Article 3§1 – Article 8§4 – Article 13§2 – Article 13§3
Malta	– Article 7§8 – Article 11§1 – Article 11§2 – Article 11§3
Portugal	– Article 7§5 – Article 18§2
Spain	– Article 14§1 – Article 4 P

Appendix V

WARNING(S) AND RECOMMENDATION(S)

Warnings[1]

Article 7, paragraph 8

– **Turkey**
(The new Labour Act does not apply to people employed in agriculture, other than those working in undertakings with 50 or more employees, as well as in trade.)

Article 7, paragraph 9

– **Turkey**
(Compulsory regular medical examinations do not apply to all sectors as required by the Charter.)

– **Luxembourg**
(2nd warning for non-submission of the report.)

Recommendation(s)

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Renewed Recommendation(s)

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[1] If a warning follows a notification of non-conformity ("negative conclusion"), it serves as an indication to the State that, unless it takes measures to comply with its obligations under the Charter, a recommendation will be proposed in the next part of a cycle where this provision is under examination.