

COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME (CDDH)

Réponses au questionnaire relatif aux bonnes pratiques sur la mise en œuvre des droits sociaux au niveau national préparé par le Groupe de rédaction sur les droits sociaux (CDDH-SOC)

Introduction

1. Le mandat reçu par le CDDH du Comité des Ministres lui demande en particulier d'« identifier les bonnes pratiques et formuler, le cas échéant, des propositions visant à améliorer la mise en œuvre des droits sociaux et à faciliter notamment l'articulation entre les différents instruments européens de protection des droits sociaux ».
2. Lors de sa 87^e réunion (6-9 juin 2017), le CDDH a pris note du questionnaire élaboré par son Groupe de rédaction sur les droits sociaux (CDDH-SOC), en vue de relever les bonnes pratiques et les difficultés rencontrées dans les Etats membres ainsi que leurs suggestions pour améliorer le système de protection des droits sociaux. Le CDDH a fait sienne la suggestion du Groupe visant à ce que ce questionnaire s'adresse non pas aux membres du CDDH, mais à ceux du Comité gouvernemental de la Charte sociale européenne (délai de réponse fixé : vendredi, 1^{er} septembre 2017).
3. Le présent document compile les 30 réponses telles qu'elles ont été reçues par le Secrétariat.¹ Une présentation plus élaborée selon un format permettant de mieux comparer les informations reçues, ainsi qu'un projet d'Analyse, seront préparés par le Secrétariat en vue de la réunion du CDDH-SOC en mars 2018.

¹ Albanie, Arménie, Autriche, Azerbaïdjan, Belgique, Bulgarie, Croatie, République tchèque, Danemark, Estonie, Finlande, France, Géorgie, Grèce (annoncée), Islande, Irlande, Italie, Lettonie, Lituanie, Pays-Bas, Norvège, Pologne, Portugal, République de Moldova, République de Slovénie, Espagne, Suisse, Ex-République yougoslave de Macédoine, Turquie, Ukraine.

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² Par exemple : partenaires sociaux, institutions nationales des droits de l'homme, médiateurs, participation de la société civile ... en particulier chargés du suivi des décisions et/ou conclusions du CEDS. Si ces institutions ou mécanismes sont de nature régionale/locale, vous pouvez apporter une réponse générale.

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- b) pour accepter de nouvelles dispositions de la Charte sociale européenne ;
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A.1. Institutions spécifiques chargées du suivi des droits sociaux

Des mécanismes ou institutions spécifiques tant gouvernementales qu'indépendantes³ sont-ils chargés de contrôler le suivi de la mise en œuvre des droits sociaux dans votre pays ?

Oui ?

Non ?

Si oui, pourriez-vous brièvement les décrire ?

Si non, pour quelles raisons ?

Autres remarques :

**Albanie**

The government mechanisms / institutions that monitor the implementation of social rights in Albania are: the State Labor Inspectorate and Social Services, the State Social Service, the local government bodies; furthermore, the Ombudsman of the Republic, the Commissioner for the Protection from Discrimination.

The State Inspectorate of Labor and Social Services is an institution which through its monitoring task, also exercises control over the implementation of the law. This institution accomplishes this mission at the central and regional level.

The field of activity of the State Social Service is the implementation of policies of the Ministry of Labor and Social Affairs in the field of social welfare and services for: a) programming and controlling the use of the State Budget funds for economic assistance, disability allowance and social care services; B) monitoring of service standards and proposal for the approval of new services; C) administers social services for individuals at the national level; D) establishes and administers the national electronic register, which includes the applicants and beneficiaries of economic, disability social care services; E) controlling the activity and implementation of legislation in structures and institutions under its authority and local government, for the solicitation of social welfare and services; and F) drafts the annual report on the needs assessment for social care services and the capacity of public and non-public services.

**Arménie**

Yes.

On 25 January 2001 Armenia became a full-fledged member of the Council of Europe and assumed relevant commitments to amend the legal system of the country and to adopt European values for human rights protection.

As a member state to the UN, CoE and OSCE, Armenia has a wide range of obligations aimed at ensuring human rights and fundamental freedoms. A number of State structures and substructures have been created, which aim to keep spotlight on issues concerning protection of human rights.

On national level **human rights, including social rights, protection mechanisms** include: RA Human Rights Defender, the RA Courts, Standing Committee on State and Legal Affairs and Protection of Human Rights of the RA National Assembly, the RA Public Council, Council on Affairs of Ensuring Equal Rights and Equal Opportunities between Men and Women, Confederation of Trade Unions of Armenia (CTUA), Republican Union of Employers of Armenia (RUEA), public monitoring groups and civil society organizations (human rights organisations, NGOs, non-formal groups and initiatives, activists, journalists etc.). The mentioned structures in one way or another address the issue of monitoring the implementation of social rights in Armenia.

Information below gives basic particulars on some of the human (including social) rights protection mechanisms in Armenia.

³ Par exemple : partenaires sociaux, institutions nationales des droits de l'homme, médiateurs, participation de la société civile ... en particulier chargés du suivi des décisions et/ou conclusions du CEDS. Si ces institutions ou mécanismes sont de nature régionale/locale, vous pouvez apporter une réponse générale.

According to the Article 52 of the Constitution of RA everyone shall have the right to receive the assistance of the Human Rights Defender in the event of violation of his or her rights and freedoms, enshrined by the Constitution and laws, on the part of state and local self-government bodies and officials, whereas in the cases prescribed by the Law on the Human Rights Defender — also on the part of organisations. Details shall be prescribed by law. In accordance with the Article 191 of the Constitution of RA the Human Rights Defender shall be an independent official who observes the maintenance of human rights and freedoms on the part of state and local self-government bodies and officials, whereas in the cases prescribed by the Law on the Human Rights Defender — also on the part of organisations, as well as contributes to the restoration of violated rights and freedoms and improvement of the regulatory legal acts related to human rights and freedoms.

In compliance with the provisions of the Constitution of RA on 16 December 2016 the National Assembly of RA adopted the Constitutional Law on Human Rights Defender. This Constitutional Law shall prescribe the powers, procedure and guarantees for the activities of the Human Rights Defender of the Republic of Armenia, the procedure for election and termination of powers of the Defender, peculiarities of the legal status of persons holding state service positions within the Staff of the Defender, of appointing them to and dismissing from position, conferring class ranks, organising and managing the state service, as well as other relations pertaining thereto.

The Department for the Protection of Civil, Socio-Economic and Cultural Rights of the Human Rights Defender, *inter alia*:

- ensures the proper and effective implementation of the powers of the Human Rights Defender in the sphere of protection of civil, socio-economic and cultural rights,
- provides legal advice to citizens on their rights and freedoms, as well as on the legal measures and procedures for the effective protection of those rights and freedoms,
- ensures the procedure of studying and handling the complaints on the violations of civil, socio-economic and cultural rights,
- reveals and analyzes legislative problems and gaps in the domestic legal acts in the sphere of protection of civil, socio-economic and cultural rights,
- studies the international experience in the field of protection of civil, socio-economic and cultural rights, ECHR precedent decisions and other international documents,
- organizes visits to places where there are alleged or factual violations of civil, socio-economic and cultural rights and freedoms.

Standing Committee on State and Legal Affairs and Protection of Human Rights carries out an effective activity in the RA National Assembly by keeping the attention of the legislative power of the Republic of Armenia on the problems concerning human rights in Armenia by organizing parliamentary hearings and discussions. Along with other functions, the core task of the Committee shall be the discussion and provision of opinions on adoption of legislative initiatives and ratification of international treaties with regard to human rights.

The RA Public Council was established by the decree of the President of the Republic of Armenia in 2008, which also focuses its attention on issues concerning human rights. The Council's Committees on Civil Society Development, on National Minorities, on Demographic and Gender Affairs, as well as on Religion, Diaspora and International Integration Affairs address the issues relating to human rights in Armenia. The Public Council has a status of an advisory body.

The Council on Affairs of Ensuring Equal Rights and Equal Opportunities between Men and Women in the Republic of Armenia was established by the Prime Minister's decree of 19 November 2014 as a national mechanism for coordinating and ensuring equal rights and equal opportunities for men and women in all aspects of public life. The Council has the task of coordinating any such processes as may be related to the implementation of strategic and short-term programs dealing with gender equality, as well as sex-based discrimination and violence-related issues in the Republic of Armenia in all fields of public policy and at all levels of public governance. The Council is composed of the most prominent figures representing the executive, legislative and judicial authorities. Secretariat activities are coordinated by the Government Staff's Department of Social Affairs.

According to the Constitution of the **Confederation of Trade Unions of Armenia**, CTUA shall consider labour and related professional, economic and social rights and interests of workers, their representation and protection in the relationship with the Government of the RA, with the Republican Union of Employers of Armenia to be the essential part of its activity. In its activities the CTUA is guided by the principle that availability of decent work is an important condition for the stable development of the country.

Republican Union of Employers of Armenia established on 15 November 2007 is a self-financing, self-governing, non-profit organization. The mission of RUEA is to be a powerful and influential structure assuring improvement of business environment and advocacy of business community in Armenia.

A renewed tripartite **social partnership** agreement (National Collective Agreement) was signed between the RA Government, CTUA and RUEA on 1st August 2015 aiming at the improvement of social-labour relations in the country. Under the tripartite agreement, a National Tripartite Committee was re-established in September 2015, which sessions are held upon request but at least once every three months. Different joint projects between 3 parties have been implemented since 2009 in the framework of Decent Work Country Program, employment, migration and trafficking, occupational safety and health. The main legislative initiatives and programmes in the sphere of labour and social protection as well as the issues related to the application and implementation in practice are regularly discussed during the sessions.

NGOs have been significantly active in the recent decades, with the opportunity to operate freely provided for by the legislation of the Republic of Armenia. NGOs directly promote the dissemination of human rights values and have a major contribution to the protection of these rights. Particularly, they are actively engaged in the issues concerning children, women, national minorities, young people, pensioners, disabled people, refugees and detainees. Many NGOs regularly carry out studies in the sphere of human rights protection, develop various preventive and public awareness programmes. At the same time, State structures of the Republic of Armenia actively cooperate with representatives of the civil society and NGOs by engaging them in the activities of different advisory bodies, as well as organising joint discussions of different formats.

The Ministry of Labour and Social Affairs of the Republic of Armenia, guided by the principles of partnership equality and mutual trust, in 2016 has come forward with an initiative on unification around the **National Agreement on Social Co-operation**. It is a new model of cooperation which will give an opportunity to put the traditional relationships of social partnership on the new institutional dimension and expand the scope of partners. The basic principle in the core of the Agreement is support of socially vulnerable people, the effectiveness of which is realistic only by developing and strengthening the social partnership culture. The main objectives of this mechanism include, *inter alia*, ensuring the participation of social partners in the development, implementation and monitoring of public policy in social protection field. Up to date, 47 organisations have joined the Agreement which membership is open to all those concerned.

The main state body responsible for elaboration and implementation of social protection policy in Armenia is the **RA Ministry of Labour and Social Affairs**. The Ministry in cooperation with international organizations and based on best international practices has introduced new monitoring and evaluation system and conducts monitoring and evaluation of state programmes and services provided to population in social protection field. The Ministry is also responsible for ensuring the implementation of commitments in labour and social protection fields stemming from the membership to international organisations and international legal instruments (including European Social Charter). There is also **Public Council** functioning under the Ministry of Labour and Social Affairs which is an advisory body that aims to promote more effective implementation of social protection policies pursued by the Ministry. The Chairman of the Council is RA Minister of Labour and Social Affairs. The Council's Board members are representatives of non-governmental organizations, mass media, national minorities, as well as interested parties, the nature, aims and functions of which coincide with the main policy directions of the Ministry.

Another way of monitoring of social rights is the monitoring mechanism set by RA Human Rights Protection 2017-2019 Action Plan adopted on May 4, 2017 by the Government Decision 483-N, where about 30 points out of 96 are related to social rights. The format of Coordinating Council

was formed within the Program, which consists of deputy ministers and heads of relevant state authorities. The Council will held meetings once in 3 months and report about already implemented activities. Another monitoring mechanism within the Program is the format of public consultations with participation of representatives of relevant civil society organizations. This kind of mechanisms can be regarded as one of the main platforms for monitoring activities.



Autriche

There is no specific legal obligation to monitor social rights. The Trade Unions and the Federal Chamber of Labour are representing the interests of workers and therefore also involved in “monitoring” social rights. The Trade Unions are the negotiating partner of collective agreements and like the Federal Chamber of Labour involved in negotiating law at ministerial level. There are also NGOs in the social field like Caritas, Volkshilfe, Armutskonferenz (and several more) which are dealing with social rights.



Azerbaïjan

Yes, The Commissioner for Human Rights of the Republic of Azerbaijan monitors the implementation of social rights in Azerbaijan. This body also monitors not only social rights but also complex, all rights of people



Belgique

Oui.

Outre le reportage lié à l'adhésion de la Belgique aux organisations internationales (OIT, ONU, Conseil des droits de l'homme, qui repose sur une coordination avec les entités fédérées et communautaires et généralement sur une consultation avec le Conseil national du travail, deux institutions veillent au suivi et à la mise en œuvre des droits sociaux :

- Unia est une institution publique indépendante qui lutte contre la discrimination et défend l'égalité des chances. Sa compétence est interfédérale. Cela veut dire qu'elle est habilitée à agir en Belgique tant au niveau fédéral qu'au niveau des Régions et des Communautés. Unia est compétente pour les critères de discrimination suivants: racisme, convictions philosophiques ou religieuses, âge ou orientation sexuelle.

- l'Institut pour l'Egalité des Femmes et des Hommes qui en tant qu'institution publique fédérale, il protège et promeut l'égalité des femmes et des hommes.



Bulgarie

Yes .

National Human Rights Coordination Mechanism /incl. social rights/. Its task- to contribute for the better application of national commitments in respect of international monitoring and control bodies, as well as for enhancement of the situation with human rights in Bulgaria as a whole.

In parallel to the respective coordination in respect to the monitoring and control bodies on human rights, discussions are being carried out with the National mechanism in respect to the necessity/possibility of adhering of Bulgaria to international human rights treaties, as well as on the necessary amendments of the national legislation which tackles human rights issues.

Chaired by the Minister of Foreign Affairs; members at the highest political level- ministers and heads of state/executive agencies and heads/secretaries of national councils.

Ombudsman, Commission for Protection against Discrimination, national councils on employment and social issues at the Council of Ministers /on integration of people with disabilities; social inclusion; labour conditions; employment promotion; migration and integration of migrants; ethnic and integration issues; demographic policy; equality between women and men; and child

protection/, many ministries and other institutions, fulfil functions on the application of human/social rights.

Description of some of them

Commission for Protection against Discrimination - a permanent independent collective body of nine members.

Its main functions are to:

- find violations of the Law on Protection against Discrimination or other legal acts governing equal treatment, find the perpetrator of the violation and the person concerned;
- establish measures for prevention and ending the violation and restoration of the initial situation;
- impose the sanctions envisaged and apply administrative enforcement measures;
- provide mandatory prescripts with a view to the compliance with this and other laws governing equal treatment;
- appeal administrative acts rendered in violation of this or other laws governing equal treatment, bring actions before the court and intervene as an interested party in cases brought under this or other laws governing equal treatment;
- make suggestions and recommendations to state and municipal authorities for stopping discriminatory practices and for repealing their acts issued in violation of this or other laws governing equal treatment;
- maintain a public register of the decisions and mandatory prescripts issued and enforced by it;
- give opinions on draft legislative acts about their compliance with the legislation on prevention of discrimination, as well as recommendations on the adoption, repeal, amendment and supplement of normative acts;
- provide independent assistance to victims of discrimination in submitting complaints for discrimination;
- conduct independent surveys on discrimination;
- publish independent reports and make recommendations on all issues related to discrimination.

National Council for Cooperation on Ethnic and Integration Issues at the Council of Ministers

The National Council for Cooperation on Ethnic and Integration Issues (NCCEII) at the Council of Ministers is a co-ordinating and consultative body that assists the Council of Ministers in the development and implementation of the state policy on ethnic and integration issues.

The National Council shall assist the co-operation, perform the coordination and conduct public consultations between state bodies and non-profit legal entities of Bulgarian citizens belonging to ethnic minorities and other non-profit legal entities registered under the Non-Profit Legal Persons Act, working in the field of inter-ethnic relations and protection of human rights.

The NCCEII coordinates the implementation and performs ongoing monitoring of the National Strategy of the Republic of Bulgaria on Roma Integration (2012-2020) and other program documents of state bodies in the field of inter-ethnic relations and protection of the rights of the Bulgarian citizens belonging to ethnic minorities.

The work of the NCCEII for creation, implementation and monitoring of the fulfilment of the state policy on equal integration of Roma in the Bulgarian society is assisted by the Commission for the implementation of the National Strategy of the Republic of Bulgaria on Roma Integration (2012-2020).

National courts

According to an Interpretative Decree of the General Assembly of the Judges of the Civil Division at the Supreme Court of Cassation (SCC), First and Second Division of the Supreme Administrative Court (SAC) of 19 May 2015 on Interpretative Case No. 2/2014, the cases on damages from violations of civil rights relating to equal treatment caused by unlawful acts, actions or omissions of state bodies and officials are under the jurisdiction of the administrative courts.

The Interpretative Decree is necessary as contradictory court practice has been established and will answer the question under the jurisdiction of which court are the cases initiated on claims under Art. 71, para. 1, item 1 and item 2 of the Law on Protection against Discrimination, for

establishing the violation under this Act, respectively for convicting the defendant to end the violation and to restore the situation before the violation, and to refrain from further violations in the future.

According to one of the opinions supported in practice, jurisdiction in general terms lies with the district court, in so far as that the administrative court covers only actions expressly listed in the law and, in particular, for declaratory actions, the administrative court has jurisdiction only in the absence of another defence according to Art. 128, para. 2 of the Administrative Procedure Code.

According to another opinion, the competent court is determined by the authority which has carried out the discriminatory conduct and, accordingly, the jurisdiction is of the district court where that entity is equal to the plaintiff and of the administrative court where the discrimination has been committed in the course of or in connection with an administrative activity.

The decision on Interpretative Case No 2/2014 relates only to actions for damages from violation of civil rights related to equality of treatment, caused by unlawful acts, actions or omissions of state bodies and officials, that is, only to actions under Art. 71, para. 1, item 3 /indemnification for damages / of the Law on Protection against Discrimination, and not to those under Art. 71, para. 1, item 1 and item 2 of the same law.



Croatie

Yes.

In the Republic of Croatia there are numerous governmental and independent institutions monitoring the implementation of social rights. We have Government office for gender equality and for human rights and rights of national minorities, Ombudsmen, Ombudsmen for children, Ombudsmen for gender equality and Ombudsmen for disabled person. Also there are many civil society associations, most of which are to varying degrees funded by the Government, and which are aimed at enabling the implementation of social rights. Furthermore, social partners are, through social dialogue, involved in decision and law making process.



République tchèque

1. Governmental Institutions:

Advisory and working bodies of Office of the Government of the Czech Republic

- bodies composed of representatives of institutions and civil societies
- Minister for the Human Rights, Equal Opportunities and Legislation
- politic-level post supervising protection of human rights

Ministry of Labour and Social Affairs

- central governmental authority for responsible social rights and European Social Charter obligations

2. Independent Institution

Public Defender of Rights



Danemark

Yes.

Danish authorities responsible for providing and securing social rights

- Ministry for Children and Social Affairs, Ministry of Employment and Ministry of Education, including underlying agencies (also responsible for reporting under the European Social Charter)
- All municipalities

Independent agencies monitoring the implementation, including providing guidance and recommendations

- The Danish Parliamentary Ombudsman
- Danish Institute for Human Rights
- Social partners



Estonie

Yes.

In case of proceedings on the protection of fundamental rights or the ombudsman proceedings, the Chancellor of Justice shall ensure that the authorities and officials performing public duties do not violate persons' constitutional rights and freedoms, laws and other legislation of general application, as well as that the practice of good administration is followed.

If the Chancellor of Justice finds that the activity of an authority performing public duties is unlawful, he/she shall issue a statement that includes the description of how the authority has violated person's rights. If necessary, he/she makes a recommendation to the authority to comply with the legislation and/or practise of good administration or makes a suggestion to eliminate the violation. In both cases, he/she shall assess whether the authority has complied with the law and whether communication with the person in question has been in conformity with the practice of good administration.

The Chancellor of Justice is authorised to make an inquiry to the authorities under inspection to receive information on how his/her statement has been taken into consideration. If the Chancellor of Justice's proposal is not fulfilled or his/her inquiry is not responded to, he/she may submit a report to the supervisory authority of the agency in question, the Government of the Republic and the Riigikogu (Estonian Parliament).

Since March 19, 2011, the Chancellor of Justice performs also the functions of the Ombudsman for Children in Estonia. According to the Chancellor of Justice Act and Article 4 of the Convention on the Rights of the Child, the Chancellor of Justice is responsible for protection and promotion of children's rights. To fulfil these tasks, the Office of the Chancellor of Justice has special department ("The Children's and Youths' Rights Department"), employing five persons.

In addition, as Estonia is a party to the UN Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Estonia has designated the Chancellor of Justice as an independent national preventive mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, as foreseen by the Optional Protocol.

The Ministry of Social Affairs likewise conducts regular surveys on specific topics that, among others, include social rights.



Finlande

Yes.

- Parliamentary Ombudsman
- Chancellor of Justice of the Government
- The National Human Rights Institution of Finland
- Non-Discrimination Ombudsman
- Ombudsman for Equality
- National Non-Discrimination and Equality Tribunal
- Cooperation Ombudsman
- Ombudsman for Children
- Occupational safety and health authorities
- National Supervisory Authority for Welfare and Health
- Regional State Administrative Agencies.

The Chancellor of Justice of the Government and the Parliamentary Ombudsman are the supreme overseers of legality in Finland. In the performance of their duties, they monitor the implementation of basic rights and liberties and human rights, including social rights.

The National Human Rights Institution of Finland is formed by the Parliamentary Ombudsman, the Human Rights Centre and the Human Rights Delegation. The Ombudsman, the Human Rights Centre and the Human Rights Delegation monitor and promote social rights according to their individual mandates and statutory duties. The Non-Discrimination Ombudsman is an independent and autonomous authority that promotes non-discrimination according to the Non-Discrimination Act, which covers discrimination based on age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics.

The Ombudsman for Equality is an independent and autonomous authority whose main duty is to supervise compliance with the Act on Equality between Women and Men. The Ombudsman has powers on matters related to gender and gender minorities.

The National Non-Discrimination and Equality Tribunal is an impartial and independent judicial body appointed by the Government. The Tribunal supervises compliance with the Non-Discrimination Act and the Act on Equality between Women and Men both in private activities and in public administrative and commercial activities.

The Cooperation Ombudsman exists in conjunction with the Ministry of Economic Affairs and Employment to oversee compliance with the Act on Cooperation within Enterprises, the Act on Cooperation within Finnish and Community-wide Groups of Enterprises, the Act on Personnel Representation in the Administration of Enterprises, the Act on Employee Involvement in European Companies (SE) and European Cooperative Societies (SCE), and the Act on Personnel Funds. According to the Act on the Cooperation Ombudsman, apart from the supervision of compliance with the above acts, the Cooperation Ombudsman has, among others, the following duties: to make initiatives and issue guidelines for promoting and improving cooperation between employers and employees and the implementation of other employee involvement systems; to monitor how well the objectives of the acts listed above are achieved; and to advise on implementation of these acts.

The Ombudsman for Children monitors the welfare of children and youth and the implementation of their rights.

Other remarks:

The Ministry of Social Affairs and Health and the Ministry of Economic Affairs and Employment participate in the Intergovernmental Committee's work for their own sector and from their own perspective.

For their own part, labour market organisations monitor the implementation of social rights in working life.



France

Oui, deux institutions sont notamment chargées de contrôler le suivi de la mise en œuvre des droits sociaux en France : le Défenseur des droits et l'inspection du travail

➤ **Le Défenseur des droits**

Institué par la loi organique n° 2011-333 du 29 mars 2011 relative au Défenseur des droits et la loi ordinaire n° 2011-334 du 29 mars 2011, le Défenseur des droits est une autorité constitutionnelle indépendante qui est chargée de veiller à la protection des droits et des libertés et de promouvoir l'égalité (article 71-1 de la Constitution). Le Défenseur des droits est nommé par le Président de la République pour un mandat de 6 ans non renouvelable et non révocable. Sa nomination est soumise au vote de l'Assemblée nationale et du Sénat.

Le Défenseur des droits remplit quatre missions :

- il défend les droits et libertés individuels dans le cadre des relations avec les administrations ;
- il défend et promeut l'intérêt supérieur et les droits de l'enfant ;
- il lutte contre les discriminations prohibées par la loi et promeut l'égalité ;
- il veille au respect de la déontologie par les personnes exerçant des activités de sécurité.

Il peut être saisi par toute personne :

- s'estimant lésée par le fonctionnement d'une administration ou d'un service public ;
- s'estimant victime d'une discrimination, directe ou indirecte, que l'auteur présumé de cette discrimination soit une personne privée ou publique ;
- s'estimant victime ou témoin de faits qui constituent un manquement à la déontologie par des personnes exerçant des activités de sécurité ;
- considérant que les droits fondamentaux d'un enfant ne sont pas respectés, ou qu'une situation met en cause son intérêt.

Le Défenseur des droits rend compte de son activité au Président de la République et au Parlement.

➤ **L'inspection du travail**

L'inspection du travail est un corps interministériel chargé de contrôler l'application du droit du travail (code du travail et conventions collectives) dans les entreprises. Les inspecteurs du travail ont aussi pour missions d'informer et de conseiller les employeurs, les employés ainsi que les représentants du personnel sur leurs obligations et leurs droits.

L'inspection du travail est composée d'agents de contrôle (inspecteurs ou contrôleurs du travail) qui se déplacent dans les entreprises ou sur les chantiers pour exercer leur mission de contrôle. Ces interventions sur les lieux du travail se réalisent le plus souvent dans le cadre de plans d'action définis au plan national ou territorial.

Les agents de contrôle de l'inspection du travail :

- contrôlent l'application du droit du travail (code du travail, conventions et accords collectifs) dans tous ses aspects : santé et sécurité, fonctionnement des institutions représentatives du personnel (comité d'entreprise, délégués du personnel, ...), durée du travail, contrat de travail, travail illégal. ... ;
- conseillent et informent les employeurs, les salariés et les représentants du personnel sur leurs droits et obligations ;
- facilitent la conciliation amiable entre les parties, notamment lors des conflits collectifs.

Les agents de contrôle de l'inspection du travail bénéficient du droit à :

- l'indépendance à l'égard de toute influence extérieure dans l'exercice de leurs missions ;
- la libre décision (libre appréciation par rapport à la hiérarchie, des suites données aux contrôles) ;
- la protection dans l'exercice de leurs missions.



Géorgie

Recognizing the significant importance of enjoyment of social rights, Georgia provides the following mechanisms in terms of monitoring their implementation:

- **Ministry of Labor, Health and Social Affairs of Georgia** represents a governmental agency which is in charge of regulating, *inter alia*, the healthcare system, labor issues and social security system of the country. Mandate of the Ministry cover promotion of healthy working and living environments, ensuring sufficient social and health services, providing targeted social assistance to the population, protection of the rights and interests of a child, *etc.* Hence, in conjunction with other objectives, it implements state governance and state policy in the fields of labor and social affairs and monitors to what extent the social rights are implemented at the domestic level.

It is noteworthy, that for the protection of social rights the aforementioned Ministry together with Social Partners and International Labor Organization (ILO), has developed a state program for monitoring the labor and health conditions of workers in Georgia. Moreover, the Department of Labor Conditions Inspection was established, which carries out the abovementioned state program.

- **Social Service Agency** is a legal entity of public law which aims to implement the state policy in the field of labor, health and social protection of the population and promote its

implementation. It administers dozens of state social and health protection programs. The Agency disposes a multi-million expenses targeting to provide beneficiaries with a wide range of services, encompassing state health and social programs, social disbursements, social programs for the persons with disabilities, guardianship and custody of children deprived of care, etc

- **Healthcare and Social Issues Committee** of the Parliament of Georgia **constitutes** one of the most important Committees in terms of supporting the implementation of parliamentary activities in regard with social rights. Within its competence, the Committee undertakes lawmaking functions and has the right to carry out legislative initiatives in that regard.
- **Healthcare and Social Issues Commissions** of the City/Municipality Assemblies of Georgia, aiming at supporting the better implementation of the social rights, submitting the drafts, proposals and conclusions of the legal acts in the field of health care, medicine, social protection, child protection, labor relations, demography and veterans issues.
- **The office of the Public Defender of Georgia (i.e. the Ombudsman)** includes the Department of Protection of Civil, Political, Economic, Social and Cultural Rights, which is responsible for surveying the applications on the subject of, *inter alia*, the social rights guaranteed by the Constitution of Georgia. The Department assists the Public Defender in implementation of his powers in this field. As an outcome, the Ombudsman reflects the situation regarding social rights in his reports and drafts relevant recommendations.
- **National non-governmental organizations** in Georgia are actively involved in the process of monitoring the implementation of social rights. Particularly, significant number of the NGOs are orientated on carrying out the relevant projects in order to support the members of the civil society to further understand social rights and enjoy them to the fullest extent. Moreover, the NGOs draft the reports concerning the implementation of the social rights in the country and establish strategies to offer to the official bodies for the aim to improve the overall situation in this field.

Other remarks:

The Government of Georgia developed National Strategy and Action Plans for the protection of human rights which define long-term priorities and tasks of the Government in the field of human rights, including in respect of social rights.

In particular, the state agencies, international and non-governmental organizations were actively involved in development of the National Strategy for the Protection of Human Rights which was drafted by the Inter-Agency Council and is applicable for the timeframe of 2014-2020. Progressive realization of the measures to be taken by a state, to ensure economic and social rights, within existing resources, is defined as one of the main dimensions of the Strategy.

Moreover, the aforementioned Action Plans for the Protection of Human Rights, drafted for the years of 2014-2015 and 2016-2017, aim to outline main dimensions in order to fully implement human rights, *inter alia*, the social rights, further ensure responsibilities of the Government. The Human Rights Secretariat of the Administration of the Government of Georgia is in charge of analyzing and monitoring of situation in terms of human rights in the country and of the progress reports in regard with the Action Plans, herewith, drafting amendments for the effective implementation of the plans and coordinating their fulfillment.

Furthermore, in 2014 Georgia adopted the Law of Georgia on Elimination of All Forms of Discrimination. Article 1 of the Law prohibits all forms of discrimination, including based on the social affiliation. The law shall be considered as a progressive step to the establishment of a state in which everyone is entitled without any discrimination to equal protection of the law without any discrimination, *inter alia*, on social status/affiliation. According to Article 6 of the Law, the Public Defender of Georgia shall monitor issues regarding elimination of discrimination and ensuring equality.



Islande

Yes. In addition to the domestic courts, entities within the administrative system monitor the implementation of social rights in Iceland, namely the Ministry of Welfare, which rules on appeals lodged in connection with administrative decisions regarding various social rights, such as foreign nationals' work permits, financial assistance for bankruptcy proceedings, occupational health and safety, wage guarantee from the Wage Guarantee Fund (for claims for outstanding wages etc.), child protection services, equality and non-discrimination, child support [...] and the Welfare Appeals Committee, which rules on appeals lodged in connection with administrative decisions regarding social security, unemployment benefits, child protection services, social services and social housing, housing benefits, maternity/paternity leave and maternity/paternity payments and debt mitigation. Furthermore, the local authorities have monitoring responsibilities in connection with the implementation of social rights, for example in the field of child protection. Moreover, the Office of the Althing Ombudsman has the role of monitoring the administration of the state and local authorities in general, as well as private bodies insofar as they have been by law vested with the authority to decide as to individuals' rights and obligations. Other governmental entities, such as the Office of the Ombudsman for Children may also be mentioned in this respect. The role of the Office of the Ombudsman for Children is to further the wellbeing of children and to look after their interests, rights and needs vis-à-vis public as well as private parties. Furthermore, the Administration of Occupational Safety and Health has monitoring responsibilities regarding occupational health and safety. The Icelandic Human Rights Centre, a private entity, has the purpose and aim to promote human rights by collecting information on and raising awareness of human rights issues in Iceland and abroad. It has inter alia taken on a monitoring role, having commented on bills of law and public policy and provided information to international monitoring bodies on the state of human rights in Iceland. Other private entities, concerned with the monitoring of the implementation of social rights, which can be named in this respect, are the social partners.



Irlande

No one specific body or institution is responsible for monitoring the implementation of social rights in Ireland. However bodies such as the Irish Human Rights and Equality Commission (IHREC), which was established under statute on 1st of November 2014 to protect and promote human rights and equality in Ireland, play an active part in monitoring the implementation of social rights, including commenting on National Reports on Implementation of the European Social Charter.



Italie

Oui.

Le système italien se caractérise par une pluralité d'institutions/autorités/sujets publiques légitimement chargés de protéger les droits sociaux. Selon le droit spécifique concerné, l'organisme compétent est impliqué.

Voici quelques exemples :

UNAR – Bureau pour la promotion de l'égalité de traitement et l'élimination des discriminations fondées sur la race ou l'origine ethnique, crée auprès de la Présidence du Conseil des Ministres, Département pour l'égalité des chances.

Conseillère pour l'égalité chances, créée dans le but de promouvoir et contrôler la mise en œuvre des principes d'égalité des chances et de non-discrimination entre hommes et femmes dans le monde du travail.

Organismes d'inspection (par exemple : ASL, INL-Inspectorat national du travail) visés à la protection de la santé et de la sécurité des travailleurs.



Lettonie

The Ombudsman of the Republic of Latvia is independent institution which responsibility is also monitor the implementation of social rights in Latvia.



Lituanie

Yes. The national system of human rights (including social rights) protection consists of public authorities and non-governmental organisations. National protection of human rights is carried out by courts, institutions of control, law enforcement and other institutions.

Article 73 of the Constitution of the Republic of Lithuania provides that complaints of citizens about the abuse of authority and bureaucratic intransigence by state and municipal officials (with the exception of judges) shall be examined by the Seimas (i.e. Parliament of the Republic of Lithuania) Ombudsmen. Paragraph 3 of the abovementioned article of the Constitution stipulates that the Seimas shall also establish, when necessary, other institutions of control, the system and powers whereof shall be established by law.

The Law on the Seimas Ombudsmen establishes the legal principles of activities of the Seimas Ombudsmen as well as the organisational structure and powers of the Seimas Ombudsmen's Office of the Republic of Lithuania. The Seimas Ombudsmen investigate citizen's complaints concerning the abuse of office and bureaucracy of officers of state government and administration institutions, local government institutions, military institutions and institutions ranking as such. The activities of the President of the Republic, members of the Seimas, the Prime Minister, the Government (as a collegial institution), the Auditor General of the State and judges of the Constitutional Court and other courts, municipal councils (as collegial institutions), also the legality and validity of procedural decisions of the prosecutors, investigators and officers conducting the inquiry are outside the Seimas Ombudsman's powers of investigation. The Seimas Ombudsmen do not investigate complaints arising from the labour legal relations, complaints that are subject to court investigation, also complaints about the legality and validity of court decisions, judgments and rulings.

The competence of the Seimas Ombudsmen is indicated specifically in Article 73 of the Constitution, i.e. it is not broad enough to cover human rights violations in other areas. Therefore, two more institutions of control have been established: the Office of the Equal Opportunities Ombudsperson and the Institution of the Ombudsman for Children Rights. Their competence in these specific areas is much broader and covers more than just the relationship arising due to improper fulfilment of functions.

The implementation of the Law on Equal Treatment is supervised by the Equal Opportunities Ombudsperson. The Office of the Equal Opportunities Ombudsperson of the Republic of Lithuania has been established to ensure the Equal Opportunities Ombudsperson's work. The Equal Opportunities Ombudsperson investigates complaints and carries out investigations at his own initiative; carries out independent investigations related to cases of discrimination, and conducts independent surveys of the situation of discrimination, submits conclusions and recommendations on any issues related to discrimination; carries out preventive and educational activities as well as dissemination of ensuring equal opportunities; controls the implementation of the provisions of the United Nations Convention on the Rights of Persons with Disabilities related to ensuring equal opportunities; exchanges available information with other Lithuanian and foreign institutions and agencies, as well as international organisations.

The Law on Equal Treatment establishes 14 grounds of prohibition of discrimination, i.e. gender, race, nationality, citizenship, language, origin, social status, belief, convictions or views, sexual orientation, disability, ethnic origin, religion, in five areas: labour relations, state and municipal institutions and agencies, educational establishments, other education providers as well as research and education establishments, sellers or producers of goods, service providers, organisations of employees or employers or other organisations (associations) whose members carry on a particular profession.

The Institution of the Ombudsman for Children Rights is an independent state institution that monitors and controls observance of the rights of the child and is established to ensure the work of the Ombudsman for Children Rights. The Ombudsman for Children Rights heads the Institution of the Ombudsman for Children Rights and is responsible for the activities of the institution. The Ombudsman's task is to control the activities of state, municipal non-state institutions and organisations as well as private persons, which may cause violation of the child's rights and legitimate interests. The assigned control function is fulfilled through implementation of provisions of international legislation related to the protection of the rights of the child in Lithuania, monitoring of implementation of national legal norms aimed at the protection of the rights of the child, evaluation of the legislative process as well as exerting influence on this process. While examining the requests of private persons or carrying out surveys upon its own initiative as well as fulfilling other functions, the Institution of the Ombudsman provides recommendations to responsible authorities. This institution has not been entitled to directly participate in the activities of judicial authorities, executive bodies or local authorities and specific decision-making.

The State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour ensures implementation of safeguards for children's rights, produces surveys addressing the issues related to the protection of the rights of the child and forms uniform practice of the activities of child rights protection offices, organises adoption for the citizens of the Republic of Lithuania and foreigners in Lithuania, represents the child's rights and legitimate interests in courts, etc. The Service is also authorised to fulfil functions assigned to the central authority in the area of protection of the child's rights and legitimate interests, regulated by the EU and other international legal acts.

Child rights protection in municipalities is respectively ensured by municipal institutions, child rights protection offices, juvenile affairs police officers, also schools and other institutions which develop and implement measures of child rights protection and prevention of violations of the rights of the child.

Public protection of the rights of the child is carried out by public (non-governmental) organisations in cooperation with state and local authorities. Municipal community child rights protection councils and non-governmental organisations whose activities are related to the protection of the rights of the child have a considerable influence on shaping the child's welfare policy.

The State Labour Inspectorate is a state control institution functioning under the Ministry of Social Security and Labour. The task of the Inspectorate is to carry out prevention of violations of legal acts governing occupational safety and health as well as labour relations in enterprises by monitoring compliance with these legal acts and consulting both employees and employers. The Republic of Lithuania Law on the State Labour Inspectorate establishes the objectives, functions, structure of the State Labour Inspectorate of the Republic of Lithuania as well as the rights, duties, responsibilities of inspectors of the State Labour Inspectorate and the procedure of inspection.



République de Moldova

No.

We mention that there are no specific governmental or independent mechanisms that monitor the implementation of social rights in the Republic of Moldova. Each central public authority responsible for promoting social rights (education and vocational training, health care, legal and economic protection, migrants' rights to protection and assistance, etc.) has its own mechanism of promoting policies in the field and monitoring their implementation.



Pays-Bas

The Netherlands Institute for Human Rights produces reports and makes recommendations in the field of human rights, including an annual report on the situation in the Netherlands. The Institute protects, monitors, explains and promotes human rights through research, advice and awareness

raising. It also deals with complaints about discrimination in relation (e.g.) schools, housing, employment and sports.

The Inspectorate SZW is responsible for the protection of employees at work and a properly functioning of the social system. The Inspectorate works for fair, healthy and safe working conditions and socio-economic security in the Netherlands through inspections, investigations and compliance communication.

The Netherlands Ombudsman deals with complaints about government and monitors government's compliance with human rights.

The Netherlands Children Ombudsman deals with complaints related to children's rights (they may be about government, healthcare, youth care and education).

The Social Partners have annually the opportunity to provide feedback on the draft version of the Netherlands' normal or simplified report on the application of the ESC that needs to be presented on 31 October of each year.



Norvège

Norwegian National Human Rights Institution was established by law in 2015. Its primary function is to promote and protect human rights in accordance with the Constitution, the Human Rights Act and other legislation, international treaties and other international law. The national institution shall contribute to strengthening the implementation of human rights. More information is to be found at:

<http://www.nhri.no/about-us/category1773.html>



Pologne

Institutions spécifiques chargées du suivi des droits sociaux

Liste:

- ministères
- autres institutions faisant partie de l'administration publique,
- organisations syndicales et patronales,
- cours et tribunaux, la Cour suprême, le Tribunal constitutionnel, la Cour administrative suprême,
- le Commissaire pour les droits de l'homme, le Commissaire pour les droits de l'enfant, le Commissaire pour les droits des patients,
- organes consultatifs tels que le Conseil du dialogue social, la Commission mixte du Gouvernement et des collectivités territoriales, le Conseil national des personnes handicapées, le Conseil de lutte contre la violence en famille, le Conseil pour la santé publique, le Conseil pour la santé psychique.

Description

- Ministères, notamment responsables pour la santé, l'intérieur, la famille, le travail et la politique sociale, l'éducation nationale, la justice: ils sont responsables pour la mise en œuvre des conventions, en fonction de leurs compétences. Le ministère dans le domaine duquel reste l'objet de la convention donnée ou la majorité de ses dispositions est responsable pour la coordination de la mise en œuvre de cette convention (établissement des rapports nationaux, le cas échéant, prise de positions, procédures en relation avec la convention: ratification, dénonciation, réserves etc.). C'est ainsi que le Ministère de la famille, du travail et de la politique sociale est responsable de la coordination de la mise en œuvre de la Charte sociale européenne, des conventions de l'OIT, de quelques conventions des Nations Unies (Pacte international des droits économiques, sociaux et culturels, Convention relative aux droits de l'enfant, Convention relative aux droits des personnes handicapées).

On a créé en 2012 un groupe pour la mise en œuvre de la Convention relative aux droits des personnes handicapées. Ses membres sont des représentants de différents ministères. Des organisations non-gouvernementales participent aux réunions en tant qu'observateurs. La mission du groupe est l'échange d'informations (législation, programmes, actions - en vigueur, projets) ce qui permet d'avoir une image à jour de la mise en œuvre de la Convention (et parfois inciter à la prise des décisions).

Le groupe interministériel pour la Cour des droits de l'homme évalue la mise en œuvre des arrêts de la Cour dans des affaires concernant la Pologne. Les membres du groupe sont des représentants des ministères et d'autres institutions gouvernementales. Des représentants du Commissaire pour les droits de l'homme, de la Cour suprême, du Tribunal constitutionnel, de la Cour administrative suprême, des organisations non gouvernementales, participent aux réunions. Le groupe peut, à la demande de son membre (représentant du ministère), discuter autres questions relatives aux droits de l'homme, en particulier les décisions prises dans le cadre des procédures des plaintes individuelles que des traités relatifs aux droits de l'homme sont entourées (faculté jamais utilisée). Chaque année on organise des consultations avec la société civile et les organisations non gouvernementales. Dans ce cadre des propositions quant à l'exécution des arrêts et la mise en œuvre de la Convention en général sont présentées.

Le Plénipotentiaire pour l'égalité de traitement met en œuvre la politique du Gouvernement en matière d'égalité de traitement et de lutte contre la discrimination. Il est responsable pour la mise en œuvre du Programme national pour l'égalité de traitement. Il est aidé par un groupe de suivi du Programme.

- Autres institutions faisant partie de l'administration publique: l'Inspection nationale du travail (organe indépendant du gouvernement, l'Inspecteur national du travail est élu par la Diète), l'Inspection nationale sanitaire, l'Inspection nationale de la protection de l'environnement, l'Inspecteur général de protection des données personnelles.
- Le Commissaire pour les droits de l'homme – organe indépendant, répondant aux Principes de Paris. Le Commissaire protège les droits et libertés spécifiés dans la Constitution et des lois. Le commissaire agit conformément à la Constitution de la République de la Pologne et à la loi du 15 juillet 1987 sur le Commissaire pour les droits de l'homme. Le commissaire est nommé par la Diète. Le Commissaire est le mécanisme national de prévention tel que prévu par le protocole à la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants.

Le Commissaire pour les droits de l'enfant est un organe indépendant, instauré par la Constitution. Il agit conformément à la loi du 6 janvier 2000 sur le Commissaire pour les droits de l'enfant. Les interlocuteurs du Commissaire sont toutes les autorités publiques (entre autres: Diète, Président de la République, Conseil des ministres, ministres, cours et tribunaux), ainsi que les collectivités locales, organisations non gouvernementales, auxquels le médiateur peut demander aux institutions de:

- fournir des informations, d'ouvrir l'accès aux documents, y compris ceux contenant des données personnelles,
- prendre des mesures envers l'enfant, conformément à la portée de leur compétence.

Le Commissaire participer aux procédures judiciaires, il peut proposer au ministre compétent ou aux députés de prendre une initiative législative.

Le Commissaire pour les droits des patients protège les droits des patients prévus par la loi du 6 novembre 2008 sur les droits des patients et le Commissaire pour les droits des patients.

- Des organes consultatifs participent à l'élaboration de la politique nationale dans un domaine donné, ainsi que sont consultés au sujet des projets des lois et participent au suivi de la législation et politique nationales. Le Conseil du dialogue social, un organe tripartite, a des compétences plus étendues.

La description d'autres institutions/mécanismes est omise comme leurs missions ne nécessitent pas d'explication particulière.



Portugal

Yes.

a) The Portuguese Parliament

The Portuguese Parliament is one of the main bodies monitoring the implementation of social rights in Portugal. It approves international conventions on matters falling within its competence, treaties involving Portugal's participation in international organizations, treaties of friendship, peace treaties, defence treaties, and any other treaties that the Government submits to it (article 164 of

the Constitution of the Portuguese Republic). It watches over observance of the Constitution and of the laws and the acts of the Government and the Public Administration. It scrutinizes the decree-laws and may refuse ratification. It also examines the accounts of the State and other public bodies (article 165 of the CPR).

b) National Institute for Rehabilitation⁴

The National Institute for Rehabilitation (INR) is a public body under the dependency of the Ministry of Labour, Solidarity and Social Security. Its main aim is ensuring the planning, execution and co-ordination of national policies by promoting the rights of persons with disabilities.

The INR's main guidelines are based on the principles of non-discrimination, inclusion and participation of persons with disabilities, with the fundamental objectives of raising the awareness about the rights of persons with disabilities; ensuring protection against discrimination; and the full realisation of their human rights through necessary measures for their effective inclusion in all domains of social life.

Its role and competences were substantially reinforced by Law No. 46/2006, of 28 August, which prohibits and punishes discrimination based on disability and existence of risk aggravated by health conditions. Under this law, discrimination is prohibited in the enjoyment of goods or services, access into education or training systems, access to public spaces, access to an employment and also lack of communication accessibility. This law contemplates a penalty regime. INR receives complaints, sends them to the competent authorities and prepares a consolidated annual report on the application of the law.

In addition, it also provides that all Disability NGO have the right to intervene in support of the complainant.

INR is responsible for monitoring of the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in Portugal.

c) The National Commission for the Promotion of Rights and Protection of Children and Young Persons⁵

The National Commission for the Promotion of Rights and Protection of Children and Young Persons (CNPDPJC) is under the dependency of the Ministry of Labour, Solidarity and Social Security, and its mission (National Commission)⁶ is to contribute to the co-ordination, follow-up, and assessment of the activities of public bodies and community agencies involved in the promotion and protection of the rights of children and young persons.

The National Commission is composed by the president, who shall be appointed from among prominent individuals of recognised merit by order of the Prime Minister upon a proposal from the member of the government with responsibility for the solidarity and social security area; the National Council (core and extended format), who in its extended format includes the president and the commissioners (representatives appointed by the members of the government with responsibility for the areas of council of ministers, youth, justice, social security, health, education, home affairs), the two Regional Governments (Azores and Madeira), the Attorney-General, the Ombudsman, and representatives of the civil society organizations. Regional Coordination Teams are the executive bodies of the National Commission, and have the competence and responsibility in each five territorial areas to support the National Commission in the implementation of the activity plan, namely with regard to: representing it, training, monitoring / supervising the Commissions for the Protection of Children and Young Persons (CPCJ) in the respective territorial area.

The CNPDPCJ also follows up, supports and monitors the activity of the CPCJ, which are non-judicial official institutions with functional autonomy aimed at promoting children and young person's rights, and preventing or protecting them against dangerous situations that affect their safety, health, training or full development. The National Commission promotes a culture of prevention supporting specific activities and systemic projects to be developed by CPCJ.

Currently (2017), there are 309 Commissions, with 6 more Commissions being set up.

⁴ www.inr.pt

⁵ www.cnpdcjr.pt

⁶ Decree-Law No. 159/2015, of August 10th

The National Commission undertook a training plan, aiming at qualifying its professional staff working in CPCJ, in areas related to the promotion and protection of children and young person's rights. Also special attention is given to the working methodologies and knowledge about the existing legal framework and social responses. It also promotes the implementation of parental training programmes for families at risk, in collaboration with different private associations of public interest and universities.

The National Commission also has the responsibility to: plan, monitor /supervise and evaluate the National Strategy for the implementation of the Convention on the Rights of the Child, and its multiannual plan.

d) The High Commission for Migration⁷

The High Commission for Migration is under the Office of the Secretary of State for Equality of the Presidency of the Council of Ministers, and has the mission to collaborate in the definition, execution and evaluation of public policies, transversal and sectorial in the matter of migration, relevant for the attraction of the migrants in the national and international contexts, for the integration of immigrants and ethnic groups, in particular Roma communities, and for the management and valorisation of diversity among cultures, ethnicities and religions. The Strategic Plan for Migration is the main tool for monitoring of the integration of migrants, which is the responsibility of the High Commission for Migration, in partnership with the 13 ministries involved.

e) The Commission for Citizenship and Gender Equality (CIG)⁸

The Commission for Citizenship and Gender Equality (CIG) is under the Office of the Secretary of State for Equality of the Presidency of the Council of Ministers. CIG is the national mechanism responsible for the elaboration and the implementation of global and sectorial policies for the promotion of citizenship and the promotion and protection of gender equality. CIG contributes to the amendment of the regulatory framework, or to its implementation; prepares studies and plans documents to support political decision-making; promotes education for citizenship and activities to raise civic awareness with a view to identifying situations of discrimination and ways of eradicating them; suggests measures and carries out activities to counter all forms of gender based violence and to support its victims and provides technical supervision of structures for assisting and caring for victims. It also co-operates with international and EU organizations as well as with similar entities in other countries.

f) Commission for Equality in Labour and Employment⁹

The Commission for Equality in Labour and Employment (CITE) is under the Ministry for Labour, Solidarity and Social Security, in coordination with the member of Government in charge of gender equality. It is a tri-partite body composed by government representatives and social partners representing the employees and the employers. Its main tasks are:

The promotion of equality and non-discrimination between women and men in work, employment and professional training both in the public and private sector;

The protection of maternity and paternity as well as the reconciliation between professional, family and personal life, especially by issuing Opinions or Recommendations regarding complaints on the grounds of gender based discrimination.

The Commission evaluates the complaints of discrimination and draws up reports on these matters, which are sent to interested parties. It is compulsory for employers to ask for the legal opinion of this Commission before the dismissal of pregnant, puerperal or breast-feeding women.

The legal opinion is given in 30 days. If the opinion is negative, only a court of law may authorize the dismissal. Employers are also required to seek the opinion of this Commission if they do not agree with the requests of reduced timetables or flexible time arrangements for women and men with small children. The opinion must be given within 30 days and, again, if the opinion is negative only a court of law may authorise the employer to deny the employee's request.

⁷ <http://www.acm.gov.pt/acm>

⁸ www.cig.gov.pt

⁹ www.cite.gov.pt

CITE maintains the register of court decisions with regard to equality and non-discrimination between men and women in work, employment and vocational training, in order to provide information about any final decision.

CITE provides information and legal services on equality and non-discrimination, and assists victims of discrimination on grounds of sex at work, employment or vocational training.

CITE promotes studies, research and projects concerning equality and non-discrimination in labour, employment and vocational training, as well as good practices for reconciling professional, personal and family life. It also cooperates at national and international levels with public and private organisations in activities and projects related with CITE's mission.

g) Commission for Equality and Against Racial Discrimination (CICDR)

Portugal has a specific Commission that receives and takes decision on complaints related to racial discrimination, which counts on the participation of social partners and organizations that are active in the field of fighting against racial discrimination. With the entrance into force of the Law No. 93/2017, of 23 August, which establishes the legal regime for the prevention, prohibition and combating of discrimination based on racial and ethnic origin, color, nationality, ancestry and territory of origin, competencies of the Commission were extended. From this moment the Commission will also be able to receive denunciations and open the respective infringement proceedings, and decide and apply the fines and additional penalties under the infringement proceedings, for example.

h) The UNCRPD Portuguese independent mechanism

UNCRPD article 33° establishes an independent mechanism for the implementation of the convention. The UNCRPD Portuguese independent mechanism has a total of 10 members and has entered into force in December 2016. Five disability NGO, representing different disabilities are part of this mechanism (blind disability, deaf disability, intellectual disability, physical disability and organic disability) and other five members representing the National Parliament, Ombudsmen, Disability Commission, Human Rights National Commission and an academic.

i) Portuguese Ombudsman¹⁰

The Portuguese Ombudsman is, under the Portuguese Constitution, an organ of the State elected by the Parliament which has full independence in the exercise of its mission. The Ombudsman's mission covers the entire national territory and, in the exercise of its duties, it is immovable, impartial and completely independent.

Its main responsibility is the defence and promotion of the citizen's rights, freedoms, guarantees and legitimate interests (in which social rights are included), thus ensuring the justice and legality on the exercise of public powers.

The Portuguese Ombudsman is the Portuguese National Human Rights Institution, accredited with the Statute "A" of the (former) Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (current Global Alliance of National Human Rights Institution of the United Nations), which means that its activity is fully compliant with the Paris Principles.

The Portuguese Ombudsman also assumed, in 2013, the role of National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It can therefore be said that, in Portugal, the Ombudsman is the institution that concentrates the typical functions, powers and responsibilities of Ombudsman, National Human Rights Institution and National Preventive Mechanism.

The Portuguese Ombudsman has, within his organization, a structure especially dedicated to the treatment of issues that may affect people who, due to their age, health condition or other circumstances that may limit them, are in a condition of greater vulnerability: Children, Senior Citizens and Disabled Persons Unit (N-CID). This is a structure that, along with the activity of assisting citizens and monitoring situations reported to the Institution, performs a function of awareness and promotion of human rights. The N-CID has also support telephone lines specialized in children, the senior citizens and people with disabilities.

¹⁰ www.provedor-jus.pt

j) Social Partners

In Portugal there is a long tradition of social dialogue and many subjects are discussed prior in the Social Concertation Standing Committee. The main tasks of this Standing Committee is to foster dialogue and social concertation to enter into agreements and they must also give an opinion on the restructuring and socioeconomic development policies, as well as their implementation; provide solutions for the proper functioning of the economy taking into account its effect on the social and the labour fields; regularly appraise the evolution of the country's social and economic situation; appraise the legislation projects concerning social and labour matters, namely labour law, and employment policies, vocational training, social welfare, tax and public administration policies are included among the matters to be discussed.

Other remarks:

Additionally, we would like to share some examples of good practices on the concrete implementation of social rights at the national level:

In 2004, the High Commission for Immigration and Ethnic Minorities (presently High Commission for Migration) created the National Immigrant Support Centres, presently **National Support Centres for the Integration of Migrants** in Lisbon and Oporto (and in Faro in 2009), following the verification of diverse difficulties envisaged by the immigrants in their integration process in Portugal.

The National Support Centres for the Integration of Migrants¹¹ (CNAIM) aims at providing a step forward regarding the integration of migrants in Portugal, including refugee population by offering competent, efficient and human rights assistance in order to respond to their needs. Intercultural mediators, who originate from the different immigrant communities, play a key role in all CNAIM services. Each CNAIM provides a range of Government and non-Government services under one roof in a variety of languages (Arabic, Cape Verdean, English, Guinean Creole, Mandarin, Portuguese, Romanian and Russian). Services include, among others, the provision of information and direct assistance regarding legalisation and visa issues, family reunification, the educational system, access to healthcare, professional and educational skill recognition, social security and welfare issues, employment concerns, legal aid and support for immigrant associations. All services are provided free of charge.

Portugal has received international recognition as one of the countries with the best integration policies (MIPLEX, 2007, 2011, 2015; UNDP, 2009; IOM, 2010). In 2011 the High Commission received the first prize in the European Public Sector Award (EPSA 2011) under the theme 'Opening Up the Public Sector Through Collaborative Governance'¹².

In the **High Education field**, Portugal has been developing some measures regarding the protection of social rights, namely:

a) Grants for higher education students

Social support for higher education students provides grants to students in conditions of proven economic shortage in order to foster some opportunities for higher education attendance.

Additionally, the grants regulation for higher education students contains a set of measures with positive discrimination to displace and mobility students through a grant complement majority.

The grants regulation also sets others measures with positive discrimination for student workers, particularly socially protected situations as the exercise of maternity and paternity rights, unavoidable assistance by the student to family members and students with physical or sensorial impairment ($\geq 60\%$ incapacity). This group of students can do their course in more years (one or two) without losing their grant.

The students with special educational needs ($\geq 60\%$) have a special grant to buy specific services and products to pursue their studies.

¹¹ <http://www.acm.gov.pt/-/cnaicentro-nacional-de-apoio-ao-imigrante>

¹² www.epsa2011.eu

b) Higher Education Access

In the Portuguese access system to higher education, there are some vacancies reserved for certain groups of students such as candidates with physical or sensory disabilities and candidates over 23 years old (lifelong learning), available through a specific selection process.

c) Support Offices for students with special educational needs

In order to promote inclusion in the academic context and equal opportunities, many higher education institutions already have support offices for students with special educational needs.

In the **youth field**, we highlight the following projects:

- **"Dating with Fair play" Project** (Youth and Sports Portuguese Institute (IPDJ)/Regional Directions¹³) aims at:
 1. Preventing the victimization of young people and violence based on gender inequalities;
 2. Combating dating violence;
 3. Awareness of young people to gender equality issues;
 4. Eliminating gender stereotypes by promoting a culture of non-violence;
 5. Promoting participatory citizenship.
- **"SOMOS" – Municipal Program for Democratic Citizenship and Human Rights Education** (Lisbon Municipality with IPDJ/Lisbon Youth Centre¹⁴).

The program points out the need to promote effective access to social rights and the elimination of the causes of discrimination and exclusion situations.

From July 10th to 15th 2017, it took place the second edition of *SOMOS School*, and the main activities were: training of multipliers and teachers on Human Rights Education/Democratic Citizenship Education and training on Volunteering Management and Working Seminars.

- **"Get involved" Project** (LIFESHAKER – Association: Youth Organization).

The main objective is to involve young people by creating conditions that allow, through informal learning the following:

1. Developing their full potential as citizens by informing, sensitizing, think and act, both locally and globally;
2. Creating similar starting conditions for all individuals, enabling individual development, educating citizens to become aware and capable of acting in local and global society;
3. Stimulating the creation and dissemination of values of solidarity and entrepreneurship in the youth community;
4. Interacting with the young people in order to know the social reality in which they are inserted allowing the development of integration tools increasingly effective.



République slovaque

Yes.

Social rights are monitored by several bodies/institutions, such as the social partners (especially within the regular meetings of the Economic and Social Council which is an advisory body of the Government and the council has to approve all acts, policies, strategies, etc. before these documents are submitted to the Parliament for adoption), ombudspersons (there are several types – such as ombudsman for children, for the disabled persons, etc.), Slovak National Centre for Human Rights (the Centre performs a wide range of tasks in the area of human rights and fundamental freedoms and observance of the principle of equal treatment), several Government Plenipotentiaries (e.g. for National Minorities, for the Roma minority, for the least developed regions, etc.).

¹³ <https://juventude.gov.pt/voluntariado/namorar-com-fair-play/paginas/namorarcomfairplay.aspx>

¹⁴ <https://juventude.gov.pt/eventos/educacaoformacao/paginas/3-escola-somos.aspx>



Slovénie

Yes. In Slovenia, there are specific independent institutions for monitoring social rights (see below), however there is no independent institution responsible for monitoring specifically the decisions and/or conclusions of the ECSR. The latter have been monitored by the Ministry of Labour, Family, Social Affairs and Equal Opportunities which is at the national level responsible for the implementation of the Revised European Social Charter according to the Revised European Social Charter Ratification Act.

The Human Rights Ombudsman of the Republic of Slovenia is a **constitutional category** that does not fall under the executive, judicial or legislative branch of authority. The Ombudsman examines complaints on violations of human rights and freedoms or on **violation of any right of an individual arising from a holder of authority**. Human rights ombudsman is in relation towards the state bodies, autonomous and independent agency. According to the Rules of Procedure the matters falling within the jurisdiction of the Ombudsman are divided into the following fields: constitutional rights; restrictions of personal freedom (habeas corpus); social security; employment; administrative matters; law court proceedings; environment and planning; public services; housing. For more information please see: <http://www.varuh-rs.si/index.php?id=1&L=6>.

The Advocate of the Principle of Equality is the Slovenian national equality body. The Advocate is an independent and autonomous state institution with a mandate to prevent and eliminate all forms of discrimination. The main tasks are related to awareness raising and promotion of equality, support and assistance to victims of discrimination as well as issuing recommendations regarding the reported cases of discrimination on various grounds. For more information please see: <http://www.zagovornik.gov.si/en/index.html>.

The Economic and Social Council of the Republic of Slovenia (ESC) is a national tripartite body. The ESC is the main consultative and coordinative institution for social dialogue in Slovenia. Before the governmental procedure the ESC examines draft strategic documents and draft legislation covering the economic and social rights. The ESC produces opinions, position papers, proposals and recommendations on the various issues it deals with. The ESC submits them to the relevant ministry, the government, parliament and/or other institutions concerned. Although the decisions of the ESC are binding for the institutions represented in the Council, there are no legal sanctions for not following the opinion of the ESC. For more information please see: <http://www.ess.si/ess/ess-eng.nsf>.



Espagne

RESPONSE FROM THE MINISTRY OF EMPLOYMENT AND SOCIAL SECURITY, DIRECTORATE-GENERAL FOR THE LABOUR AND SOCIAL SECURITY INSPECTORATE

Pursuant to its Organization Act, the Labour and Social Security Inspectorate is responsible for monitoring and enforcement of compliance with laws, regulations and the provisions contained in agreements and collective agreements in the spheres of labour relations, the Social Security system, employment and migration. The Labour and Social Security Inspectorate is also responsible for duties involving technical assistance, work-life balance, mediation and arbitration (Article 12 of Act 23/2015).

It must be noted that the activity of the Labour and Social Security Inspectorate of defending, safeguarding and enforcing compliance with social provisions involving workers' rights (for example, the right not to be discriminated against when accessing employment and in labour relations, pursuant to Article 4 of Royal Legislative Decree 2/2015 of 23 October which approved the consolidated text of the Workers' Statute Act, and this in relation with Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 12 to said Convention), takes place solely in the administrative sphere.

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

There are Participation Councils for social entities, together with the public administrations, in which the voice of groups requiring specific protection for special reasons can be heard. For example, within the Ministry of Health, Social Services and Equality: the Council for the Elimination of Racial or Ethnic Discrimination; the National Councils for Older People, for the Disabled, for the Roma People, and for social NGOs; and the Civil Dialogue Committee.

Moreover, the Institute for Women and for Equal Opportunities (hereinafter, IMIO) is a national body, under the aegis of the Ministry of Health, Social Services and Equality, whose primary goal is to promote and foster conditions enabling social equality between the genders, and women's participation in political, cultural, economic and social life, as well as to prevent and eliminate all forms of discrimination on the grounds of birth, gender, racial or ethnic origin, religion or ideology, sexual orientation or identity, age, disability or any other personal or social condition or circumstance (Article 2 of Act 16/1983, of 24 October).

Authority involving equal opportunities is also exercised by Spain's 17 Autonomous Communities, and the Autonomous Cities of Ceuta and Melilla; therefore, they all have a body responsible for these issues: Women's Institutes and/or Directorates-General for Equality.

The Government's Delegate Commission for Equality Policies, chaired by the Vice-President of the Government, ensures the full integration of the principle of equal treatment and opportunities, coordinating general issues involving different Ministries.

Furthermore, Organic Law 3/2007, of 22 March, on the effective equality of women and men (LOIEMH) created institutional structures to further the coordination and mainstreaming of the principle of equal treatment and opportunities:

- The Interministerial Commission for Equality of Women and Men, with representatives from all the Ministries;
- The Equality Units within each Ministry.

As regards the rights of persons with disabilities, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) includes the social rights of persons with disabilities: in 2011, the Spanish Committee of Representatives of Persons with Disabilities (CERMI) was designated as an independent mechanism for the implementation of the CRPD in Spain (Royal Decree 1276/2011, Additional Provision One).

CERMI is Spain's umbrella organization representing the interests of the principal Spanish NGOs for different types of disabilities, the specialized organizations working in the field of disability, and the regional organizations of persons with disabilities. In all, it represents more than 6,000 associations.

CERMI's mission is to guarantee equal opportunities for women and men with disabilities and to protect their human rights, guaranteeing their full participation in society.

Since 2011, CERMI publishes an annual report on human rights and disability in Spain, which can be found on its website:

http://www.cermi.es/sites/default/files/docs/novedades/Informe%202016_ONUDEF.pdf

The main duties of the Council for the Elimination of Racial or Ethnic Discrimination are:

- Providing independent assistance to victims of direct or indirect racial or ethnic discrimination, helping them process their complaints;
- Conducting analyses and studies, and publishing independent reports on discrimination on these grounds;
- Promoting measures for equal treatment and the elimination of racial or ethnic discriminations, making any appropriate recommendations and proposals;
- Drafting and approving an annual report on the Council's activities and forwarding it to the Minister of Health, Social Services and Equality.

The Council has an Office of Disability Services, responsible for promoting equal opportunities, non-discrimination and universal accessibility for persons with disabilities.

The National Council for the Roma People is responsible, among other duties, for proposing measures to promote the Roma people, advising on matters regarding advancement plans for the

Roma population, drafting the appropriate reports on issues affecting the Roma, and fostering studies on projects and programmes.

RESPONSE FROM THE MINISTRY OF ECONOMY, INDUSTRY AND COMPETITIVENESS

In response to Spain's adherence to the OECD Guidelines for Multinational Enterprises (and the OECD Declaration on International Investment), a National Contact Point (NCP) was established. Its mandate is to achieve the effectiveness of the above-cited Guidelines (OECD CSR/RBC standards for multinational enterprises) by organizing and participating in promotional activities aimed at their dissemination. Another key duty of the NCP is to manage applications for mediations in cases involving potential violations of the Guidelines and, if appropriate, to mediate in said cases.

Spain's NCP is at the State Secretariat for Trade, of the Ministry of Economy, Industry and Competitiveness; specifically, at the Deputy Directorate-General for International Trade in Services and Investments. Among other duties, it is responsible for promoting and offering information and advice on issues involving corporations and human rights. Moreover, it offers a mechanism for extrajudicial claims, in the event of possible violations of the Guidelines by a Spanish corporation in the exercise of its activity in foreign markets, and the decisions it adopts in this regard are not binding upon the parties involved.

RESPONSE FROM THE AUTONOMOUS COMMUNITY OF CASTILLA Y LEÓN

In this Autonomous Community, the *Procurador del Común* (ombudsman), reporting to the *Cortes de Castilla y León* (Castilla y León's legislative body), is the institution responsible for monitoring the public administrations' activity and, therefore, their implementation of social rights.

Castilla y León's legislative body has entrusted this institution with the mission of defending and protecting citizens' constitutional rights and the rights and principles enshrined in Castilla y León's Statute of Autonomy. One of its duties is to monitor the activity of the Autonomous Community's government, town councils and provincial councils, and of other local government entities and their attached bodies.

Castilla y León's *Procurador del Común* is an independent institution, does not receive instructions from any authority, and performs its duties with absolute autonomy and objectivity. The duties and powers of this High Commissioner are regulated in Act 2/1994 of the *Cortes de Castilla y León*, of 9 March, on the *Procurador del Común of Castilla y León*.

The institution is not specifically responsible for monitoring the implementation of social rights, because the scope of its powers encompasses the all activities of the public administration. However, many of its recommendations and resolutions, either issued as a result of citizens' complaints or at its own initiative, refer to the implementation of social rights deriving from health, education or social services.

Likewise, the Spanish State has a national ombudsman—*Defensor del Pueblo*—responsible for ensuring respect for the rights granted to citizens in Title I of Spain's 1978 Constitution. This responsibility includes monitoring the activities of the public administration.

Any citizen may address the Ombudsman's Office and request its intervention, which is free of charge, to investigate any allegedly irregular activity of the public administrations or their agents. The institution may also intervene on its own initiative in cases that come to its knowledge, even if no complaint has been made regarding them. Any citizen, Spanish or foreign, may submit complaints, either individually or collectively, regardless of their age or legal status in Spain.

Moreover, the *Defensor del Pueblo* reports to Spain's *Cortes Generales* (Parliament) in an annual report, and may also submit specific reports on issues it deems serious, urgent or requiring special attention.

Lastly, the Autonomous Community of Castilla y León considers social dialogue a means of monitoring the implementation of social rights in Castilla y León.

This Autonomous Community's process of recognizing the value of social dialogue culminated in the amendment of its Statute of Autonomy, which describes social dialogue in Article 16 as a factor for social cohesion and economic progress, recognizing the role of trade unions and employers' organizations as representatives of their economic and social interests, through the permanent institutional meeting points between the government of Castilla y León and these social partners.

This social dialogue, in which trade unions, business representatives and the government of the Autonomous Community take part, is a forum where decisions relating to social rights are debated and adopted, and the agreements reached are monitored by specific bodies deriving from said agreements.

Article 16.4 of the Statute of Autonomy of Castilla y León includes, as the guiding principle of the Autonomous Community's public policy, the fostering of social dialogue as a factor for social cohesion and economic progress. That is why the Autonomous Community has established the Regional Labour Council of Castilla y León and the Provincial Labour Councils, which are tripartite collegiate bodies involved in labour affairs, with consultation and advisory functions and enabling the participation of the most representative trade unions and employers' associations of Castilla y León, without prejudice to the powers attributed to the institutional participation bodies created within Castilla y León's Public Employment Service, and also involved in affairs concerning cooperatives and occupational health and safety. Likewise, the Regional Labour Council of Castilla y León is responsible for intervening in dispute settlement procedures arising from lack of agreement in procedures on non-application of working conditions in the applicable collective agreement, in the cases set forth in Article 82.3 of the Workers' Statute.

(Decree 14/2014, of 3 April, regulating the Regional Labour Council of Castilla y León and the Provincial Labour Councils, and creating the Collective Agreements Commission of Castilla y León).

As regards the Autonomous Community's Employment Department, the social rights it manages are those relating to the pillar of equal opportunities and access to the labour market, with regard to the groups comprised in the social economy and the self-employed. Said management is carried out by virtue of powers arising from the implementation of labour legislation.

In the specific area of the social economy, the Autonomous Community has the Regional Council of Social Economy of Castilla y León, in which, in addition to the most representative economic and social agents, there are representatives from the different groups that constitute the social economy (cooperatives, worker-owned companies, special employment centres, and companies aimed at social inclusion).

Lastly, with regard to the self-employed, there is also a body for their participation in policy-making, which is known as the Bureau for the Self-Employed.

RESPONSE FROM THE AUTONOMOUS COMMUNITY OF THE BALEARIC ISLANDS

The implementation of social rights in the sphere of the social services of this Autonomous Community and by the Department for Social Services and Cooperation essentially focuses on guaranteeing users' access to services and benefits under equal conditions, and on promoting the participation of citizens and organizations in the creation and maintenance of the social services system.

Description:

Technical and planning instruments:

- Basic Portfolio of Social Services: The public social services system's services (technical, economic, and technological benefits), programmes, projects and benefits have been organized in the Basic Portfolio of Social Services (Decree 66/2016, of 18 November, on the Basic Portfolio of Social Services of the Balearic Islands 2017-2020)

<http://www.caib.es/eboibfront/es/2016/10578/587796/decreto-66-2016-de-18-de-noviembre-de-2016-por-el->

- Financing plan for basic community services

<http://www.caib.es/govern/sac/fitxa.do?codi=2771678&coduo=2390652&lang=ca>

- 2017-2021 Strategic Plan for Social Services in the Balearic Islands (in preparation)

http://www.caib.es/sites/plaestrategicsocial/ca/2n_pla_2017-2021/?campa=yes

The Strategic Plan for Social Services that is being prepared sets forth, as its first strategic pillar, guaranteeing citizens' rights and the participation of users of social services by designing instruments for the evaluation and assessment of the social services system. Both of these actions will be incorporated into the Quality Plan to be included in the Strategic Plan.

Inspection instruments:

- The Social Services Inspector exercises inspection, monitoring, and sanctioning powers in the sphere of social services in relation to centres and services of a supra-insular scope.

Participation bodies:

- An **Ethics Committee** has been created, as a collegiate, interdisciplinary and independent consultation and advisory body for the Department for Social Services and Cooperation, for the natural or legal persons responsible for the services belonging to the social services network, and for the professionals rendering services through their respective professional associations. The Committee's aims are to raise awareness among the staff of the services and centres about the ethical dimension in their professional practice; to guarantee persons' rights regarding their personality, human dignity and privacy, without any discrimination; and to identify, analyse and evaluate the ethical aspects of social practice.

<http://www.caib.es/eboibfront/es/2010/7463/431309/decreto-62-2010-de-23-de-abril-por-el-cual-se-regu>

This Committee has not yet been formally constituted. Its first meeting for analysing social practice is scheduled to take place in September.

**Suisse**

Au niveau **gouvernemental**, il sied de mentionner notamment :

Au niveau fédéral : la Commissions (des deux Chambres du Parlement) de la sécurité sociale et de la santé publique CSSS :

<https://www.parlament.ch/fr/organe/commissions/commissions-thematiques/commissions-csss>

Au niveau cantonal : la Conférence des directrices et directeurs cantonaux des affaires sociales (CDAS).

La CDAS a été fondée en 1943 ; elle soutient, encourage et coordonne la collaboration entre les cantons dans le domaine de la politique sociale et défend leurs intérêts notamment vis-à-vis de la Confédération. Sur le plan intercantonal, la CDAS exerce une fonction dirigeante d'ordre sociopolitique et favorise le fédéralisme coopératif.

Conjointement avec les cantons, la CDAS cherche des solutions novatrices dans le domaine social avec pour objectif d'optimiser les résultats de la politique sociale en y investissant les moyens adéquats. Elle défend les points de vue des cantons auprès du Conseil fédéral, de l'administration fédérale, du Parlement et du public. Elle organise des consultations, rédige des rapports et des prises de position, coordonne et favorise les échanges entre cantons et elle assure la direction de la Convention intercantonale relative aux institutions sociales (CIIS).

Les matières principales traitées par la CDAS sont la politique en faveur des personnes handicapées (y compris la CIIS du 13 décembre 2002), la politique familiale (notamment la conciliation entre travail et famille, les allocations familiales, les prestations complémentaires pour les familles, l'accueil extrafamilial), l'enfance et la jeunesse (promotion et protection des enfants et des jeunes), la politique migratoire (en particulier l'hébergement et l'encadrement dans le domaine d'asile) ainsi que les assurances sociales (notamment l'assurance vieillesse et survivants, l'assurance-chômage, l'assurance-invalidité, les prestations complémentaires, l'aide sociale). La CDAS s'occupe aussi de dossiers d'ordre intergénérationnel, de questions liées à l'aide aux victimes, de la formation dans le domaine social et de la statistique sociale.

Pour plus d'informations : <http://www.sodk.ch/fr/qui-est-la-cdas/>

Mécanismes/institutions indépendants : cf. notamment :

- Le plateforme d'information de *humanrights.ch* (<https://www.humanrights.ch/fr/service/recherche-par-mot-cle>) qui offre une documentation circonstanciée sur les droits sociaux, englobant les sujets *Droit à l'eau, Droit à l'alimentation, Droit à la santé, Droit au logement, Droits sociaux, Garantie à l'existence / aide d'urgence, Pauvreté / précarité, Sécurité sociale / politique sociale*

- Le Centre suisse pour les droits humains (CSDH) : <http://www.skmr.ch/frz/home.html>

Actuellement, le projet « Concrétisation des droits des groupes de personnes particulièrement vulnérables » figure parmi les principaux sujets de recherche :

<http://www.skmr.ch/frz/axes/groupe-vulnérables/index.html>



“L’ex-République yougoslave de Macédoine”

It could be pointed out that there are several institutions/bodies/mechanisms that are, to certain extent, dealing with issues related to monitoring, coordination and/or consultations of policies and rights that are covered/guaranteed by the CoE instruments, particularly the European Social Charter.

One of these bodies/mechanisms is the tri-partite national **Economic and Social Council (ESC)**, together with the several (15) Local Economic and Social Councils (LESCs), established and functioning on local level in several municipalities, as bodies that institutionalize the social dialogue both at national and local levels.

The Economic and Social Council is the main tripartite (consultative) body at national level, established by the Government and social partners for tripartite social dialogue and for creating conditions for economic and social stability and realization of the fundamental values of the country as a democratic and social state.

Some of the responsibilities of the ESC are to monitor, study and evaluate the impact of the economic and social policy measures on the social stability and development, to promote and foster and improve the tripartite cooperation (tripartite social dialogue) between the social partners in tackling various economic and social issues and challenges, to propose, to discuss, provide opinions/recommendations on policies, legislative and other measures in the field of labour, social security etc.

On its meetings, the ESC (and LESC)s members discuss and provide opinions, proposals and/or recommendations on various topics related to the themes and rights covered also by the European Social Charter.

Even more, there are five special standing committees established under the ESC (on labour relations and salary; on employment and labour market policy; on social security; on occupational safety and health; and the Committee on issuing and revoking licenses to conciliators and arbitrators). These committees serve as a driver for policy discussion and provide the ESC members with information and advice on specific theme/topics.

It is very important to mention that the structure, i.e. the mechanism of the Economic and Social Council is used in order to request and ensure inputs and contribution by the social partners (relevant trade union associations and employer’s organizations) during the process of drafting the regular annual national reports on the implementation of the (accepted provisions of the) European Social Charter. Especially when reporting on the Charter provisions from the thematic group on labour rights, and other relevant and concerned areas. Also, through the ESC channels of communication, the copies of the draft-reports are communicated (and submitted for comments) to the representative social partners. In few occasions, the prepared National report on the implementation of the European Social Charter was put for discussion on the agenda of the ESC meeting, before being submitted to the Government for adoption.

Many activities are already planned to further strengthen the capacities of the ESC (and LESC)s and to further increase its role and participation in the national policy dialogue on economic and social reforms in the country, in the joint efforts to improve and protect economic and social rights of citizens, in improving the legal harmonization with the international (labour) standards and EU acquis in the relevant fields, especially in tackling shortcomings in the realization of fundamental rights, including freedom of association, right to strike, right to collective bargaining and other. For this purpose it is also planned to further increase the knowledge of the members of the ESC (NEC)s and its standing committees on monitoring the implementation of ratified conventions / international instruments.

Another important body in the Republic of Macedonia in this respect is the **Office of the Ombudsman**. The Ombudsman is special, professional and independent body with special status for protection of citizen's rights. It monitors the implementation of citizens rights (including social rights) and acts accordingly in cases of determined violation of the rights and freedoms of citizens guaranteed by the Constitution, laws, and ratified international agreements/conventions. Some of the determined fields/areas in which the citizens can ask help from the Ombudsman for the violation of their rights are: discrimination, pension & disability insurance, labour relations, medical protection, education, social rights, housing, child protection, public services, science, sport and culture, property rights and other rights.

For the determined situation(s) the Ombudsman Office prepares specific reports and submit them to the relevant (competent) institutions and publish them on its web-page (http://ombudsman.mk/EN/ombudsman_work/special_reports.aspx)

Some examples of these reports are: the Information on the conducted analysis of the work engagement of social assistance beneficiaries through the Social Work Centres; the Report on the conducted on-site inspection in the Center/Shelter for accommodating the homeless persons "Chichino Selo"; Report on the conducted analysis on the situation within the Social Work Centers and the decision-making process upon requests submitted by citizens on exercising the rights to financial assistance within the system of social protection; Special Report on the analysis on exercising the right to employment for persons with disabilities, following the published vacancy announcement by the Public enterprise "Makedonski Shumi" - Skopje; Information on the rights of children/persons with disabilities; Information on the inclusion of children with social needs in the primary and secondary schools; Information on the conducted research/analysis on the rights of citizens in the field of health protection and health insurance; Information about the situation in respect to the children on streets in the Republic of Macedonia, Information on the situation related to the enrollment of children in special elementary and secondary schools; Report on the conducted research on sexual abuse and sexual exploitation of children; Information on the general situation and exercise of the rights of old persons in the homes for elderly; and many other reports.

In addition to that, the Ombudsman Office every year submits to the Parliament Annual Report on the level of respect, promotion and protection of human rights and freedoms, and in its corresponding parts/sections, the rights that are guaranteed by the European Social Charter are also covered. (http://ombudsman.mk/EN/ombudsman_work/annual_reports.aspx)

These situations/issues are also closely monitored by the **Ministry of Labour and Social Policy**, especially through the work of its **Social Work Centres**, as well as by many relevant **non-governmental organizations** for which the social area is a field of their work and activities, even though, in accordance with our legal system, they do not have a legal obligation to do so.

Very important mechanism in this respect is the **Commission for Protection against Discrimination**, the independent body, established in January 2011, in accordance with the provisions of the Law on Prevention and Protection Against Discrimination.

The competences/responsibilities of the Commission are in the domain of prevention and protection against discrimination, affirmation and promotion of the right to equal treatment, non-discrimination and tolerance. The Commission acts upon complaints submitted by citizens, provides opinions and recommendation, informs the submitters of the complaints about their rights, about the possibilities of initiating court or other procedure for protection; initiates a procedure before competent authorities for violations of the Law on Prevention and Protection Against Discrimination, initiates legislative changes for the purpose of implementing and improving the protection against discrimination; establishes cooperation with the authorities competent for the implementation of equality and protection of human rights by the local self-government; provides the state authorities with recommendations for undertaking measures for implementation of equality; gives opinions upon draft laws related to protection from discrimination; collects statistical and other data, creates data bases, conducts studies, researches and trainings related to discrimination etc. Yearly, the Commission submits a report on its work to the Parliament.

Additionally, within the reply to this particular question, we could also mention few other bodies/mechanisms:

The **coordinators for equal opportunities of women and men** appointed on central and local level, pursuant to the provisions of the Law for equal opportunities for women and man, initiate and implement activities to promote the specific needs of women. For the undertaken measures they deliver information in unified form to the Ministry of Labour and Social Policy.

The Republic of Macedonia, through the office of the **National Mechanism for referral of victims of human trafficking** within the Ministry of Labour and Social Policy, is working on prevention of human trafficking and protection of the victims, in the context of implementing a National Strategy and Action Plan for fighting human trafficking and illegal migration.

The **State Labour Inspectorate (SLI)** – institution responsible for monitoring (inspection supervision) and ensuring proper implementation of the regulation related to labour relations, employment, health and safety at work, collective agreements, employment contracts etc. The SLI inspectors are also continuously trained to recognize and tackle the issue of discrimination in employment and at the workplace on various grounds, and particularly to monitor the implementation of the Labour Law provisions related to discrimination. They are also trained to implement the provisions from the Law on Protection from Harassment in the Workplace. Trade Unions also protect the rights of women workers (advocacy, legal advice).

Regarding, for example, the right of equal opportunities and equal treatment for issues related to employment and occupation (as regulated within the Article 20 of the revised European Social Charter), we could note that there are several institutions/bodies, where persons, who believe to be discriminated on any grounds, provided in the Law on Prevention and Protection against Discrimination and in any field, including the field of work and working relations:

Non-judicial authorities that provide protection against discrimination:

- **Ombudsman**
- **Commission for Protection against Discrimination**
- **Advocate for determining the unequal treatment of women and men.**

Judicial protection against discrimination is exercised in:

- **the Constitutional Court**
- **the Administrative Court**
- **the Primary Courts**

Of course, as it was already mentioned, important role in monitoring the implementation of various rights, is played by various **civil society organizations**. Normally, some of them are much more active and involved than others. Organizations have various methods and mechanisms to make public, to inform relevant institutions about and to draw the necessary attention to their observations/findings/opinions on various possible violations of citizen's rights and freedoms. There are many very competent, professional and very active CSOs dealing with the issues and areas, which are also related to the rights guaranteed by the Council of Europe instruments (including the European Social Charter).



Turquie

Examples of specific institutions in charge of monitoring social rights are here in below indicated:

One of the mechanisms that could be quoted within the scope of monitoring at the national level of social rights is Human Rights and Equality Institution. National and independent human rights institution was founded in 2012 in line with the UN system and structure and started functioning immediately and ultimately in 28 January 2014, it was designated with the decree of Council of Ministers as the National Prevention Mechanism. The Institution adopted the name "Human Rights and Equality Institution of Turkey" with the act dated 20 April 2016 and the legal framework and corporate structure concerning anti-discrimination and equal treatment in accordance with the main

objective of ensuring activation of mechanisms of protection of human rights have been re-designed with the act dated 20 April 2016. Members of Human Rights and Equality Institution of Turkey have been nominated in the Official Gazette No 30009 and dated 16 March 2017. It is assessed that Human Rights and Equality Institution of Turkey can be addressed in relation to rights within the scope of “anti-discrimination” in particular assured by the European Social Charter. Human Rights and Equality Institution of Turkey (TİHEK) was established by the Law N° 6701 published in the Official Gazette N° 29690 and dated 20 April 2016 in order to act on such principles as protection and development of human rights based on human dignity, guaranteeing the right of equal treatment of people, prevention of segregation over enjoyment of legally recognised rights and freedoms and operate in line with these principles and combat torture and maltreatment. In Paragraph (m) of Article 9 of the Law N° 6701 on Human Rights and Equality Institution of Turkey which regulates tasks and duties of the Institution, it reads “to monitor and assess international developments in the fields of human rights and anti-discrimination, collaborate with international institutions in the field within the scope of relevant legislation”, in the Paragraph (n) of the same Article, it reads “to collaborate with the government agencies and institutions, NGOs, professional organisations and universities which deal with protection of human rights and anti-discrimination”, in Paragraph (ö), it reads “to monitor implementation of human rights treaties of which Turkey is a party, to deliver its opinion by inquiring also pertinent NGOs within the framework of drafting the reports which the Government has the obligation to provide with for the examining, monitoring and inspecting mechanisms set up in virtue of these aforementioned treaties”.

Another mechanism in this respect is the Institution of Ombudsman. With the advent of Enactment N° 6328 and dated 29 June 2012, legal infrastructure of the Institution has been completed. The main goal of the Institution is to examine and check and make suggestions about all kinds of actions and transactions along with the attitudes and behaviors of the relevant Administration in terms of conformity to the law and justice, equitably based on human rights, by way of constituting an independent and efficient complaint mechanism in terms of operation of public services. The Institution operates directly under the Grand National Assembly of Turkey (TBMM). The Ombudsman Institution, as an independent human rights mechanism which started receiving complaints and applications since 29 March 2013. Ombudsman Institution aims, through its recommendations, not only at the expansion of citizen’s culture of claiming rights but also at the friendly settlement of complaints. The Institution endeavors to achieve to serve as a bridge between the Administration and the citizens and to contribute to guide the Administration towards the creation of good governance and by doing so to enhance the public service standards. The implications of recommendations given by the Ombudsman Institution to Administrations are cautiously monitored and the rates of Administrations’ compliance with the Ombudsman’s conclusions continues to get better with every passing year. Accordingly the Ombudsman Institution contributes to the development of social rights within the scope of its own authority and mandate.

Tripartite Consultation Board which was established by the regulation entitled “Regulation on Operation Rules and Procedures of the Tripartite Consultation Board” published in the Official Gazette N° 25423 dated 04 April 2004 is composed of employee, employer and government representatives and it is another mechanism for the establishment of social dialogue in Turkey. The Board regularly gathers and takes decisions in the scope of social dialogue. This tripartite structure also ensures a healthy monitoring system for social rights especially in terms of labour rights and has direct impact on decision making process.

There are other examples of mechanisms created within institutions in relation to monitoring social rights which are indicated below:

General Directorate of Persons with Disabilities and the Elderly (EYHGM) is a public institution affiliated with the legal entity of the Ministry of Family and Social Policies of Turkey (ASPB) and carries out activities in coordination with related organizations and institutions for the purposes of helping persons with disabilities (PwDs) enjoy their rights and developing policy and services for

PwDs. EYHGM has been a focal point of the Republic of Turkey on disability issues since 2011 provided by Article 33 of the Convention on the Rights of Persons with Disabilities. As the focal point, it carries out various activities in order to promote and ensure implementation of the Committee on the Rights of Persons with Disabilities in cooperation with relevant ministries, public institutions, civil society organizations - particularly the ones representing persons with disabilities and academia. Within this context, it tries to mainstream disability into all policy areas and practices in parallel with various awareness-raising activities aimed at different target groups. Moreover, to promote the implementation and monitoring of the Committee on the Rights of Persons with Disabilities, Monitoring and Evaluation Board on

the Rights of PwDs was established in line with Prime Ministry Circular N° 2013/8. Since the civil society organisations have an important role to play in the policy making process, it was envisaged that the Board would be consisted of high level representatives of the related and responsible public institutions and representatives of disability-focused civil society organisations and human rights institutions. The Board has the tasks of carrying out administrative and legal work regarding protection, enhancement and usage of the rights of PwDs, making recommendations on the possible measures to take in drafting and approving strategies and plans of action and ensuring cooperation and coordination among institutions. Through the board, persons with disabilities can directly be involved in decision-making processes that directly concern them.

Among the institutions involved and measures taken to cite in respect of protection of social rights, the Law on the Establishment of a Monitoring Commission on Security Forces N° 6713 was enacted in 2016 after being published on official gazette for a more effective and fast process of complaint procedure of security forces, for transparency and reliability and for recording and monitoring the alleged crimes committed, by security forces. The Law applies to procedures and actions of administrative authorities for acts, attitudes and behaviors that need disciplinary punishment and the alleged crimes committed by the personnel of General Directorate of Security, General Command of Gendarmerie, Coast Guard Command.



Ukraine

Yes.

- Verkhovna Rada of Ukraine (Committee on Social Policy, Employment and Pension Provision);
- Ukrainian Parliament Commissioner for Human Rights;
- Cabinet of Ministers of Ukraine;
- Social partners;
- Civil society.

A.2. Débats & discussions au niveau interne sur les droits sociaux

Pouvez-vous faire état de débats/discussions au niveau interne¹⁵ concernant les droits sociaux, plus spécifiquement sur la Charte sociale européenne et les conclusions et/ou les décisions du CEDS ?



Albanie

The State Social Service has held meetings with all local representatives in 12 regions, regarding:

1. The right of families in need to apply for economic assistance, which is a monthly payment to support the family to emerge from the poverty cycle. In these meetings it is explained that the payment is conditional until the family can find employment opportunities.

¹⁵ Notamment au niveau de vos assemblées parlementaires ou de vos juridictions suprêmes ou encore des débats impliquant la société civile, les partenaires sociaux, les Instituts nationaux des droits de l'homme (INDH), médiateurs, et/ou autres acteurs...

Members of socially vulnerable families are a priority for the employment offices, to enable better employment opportunities or qualification courses.

2. In the meetings with local representatives, the new law 121/2016 "On social care services in the republic of Albania" was discussed and promoted. The law obliges local government units to raise community social services in according with the needs at the local level as a human right to social inclusion. In this framework, trainings and workshops have been organized with representatives of municipalities on the legislation in the field of social services, drafting social plans and monitoring of social services.



Arménie

- Regular discussions concerning various aspects of social rights, particularly in the framework of the commitments stemming from the European Social Charter, are convened at domestic level by the RA Ministry of Labour and Social Affairs with participation of parties/authorities concerned to reflect on the ECSR conclusions on the conformity of the situation in the country with the Revised European Social Charter as well as to prepare National Report on the implementation of the Charter. National Report is being then discussed and approved by the RA Government.
- The conclusions and decisions of ECSR are regularly discussed and taken into account while developing new legislative acts and programmes in the sphere. The relevant information on conclusions (particularly on non-conformity cases) are discussed during the different meetings and sessions with structures introduced above in the point A1.
- Non-governmental entities are also engaged in the preparation of the above mentioned national reports, particularly Confederation of Trade Unions and Republican Union of Employers. They have the opportunity to represent their comments and recommendations, which are in most possible terms taken into account while elaborating the final version of the report.
- The draft Law on "Making amendments and supplements to the Labour Code of the Republic of Armenia" was discussed at the meeting of the Republican Tripartite Committee, which took place on 10 February 2017 at the RA Ministry of Labour and Social Affairs. In addition, a round-table discussion with participation of the representatives of state bodies concerned, social partners, major employers and interested NGOs was held on 22 February 2017 to reflect on the above mentioned draft document. In the framework of the event, the results of the research and analysis conducted by the Ministry of Labour and Social Affairs as well as regulations proposed by the draft were presented. The legislative regulations contained in the draft Law are aimed at the solution of problems outlined in the conclusions of the research, analysis and evaluation of the law enforcement practice, simplification of regulatory mechanisms of labour relations as well as compliance of the requirements of the Labour Code with the separate provisions of international treaties ratified by the Republic of Armenia.
- Standing Committees on Social Affairs and Protection of Human Rights of the National Assembly of the Republic of Armenia periodically organise parliamentary hearings on social rights (rights of persons with disabilities and their social inclusion, children's rights, equal rights and equal opportunities for women and men) with participation of state officials, NA deputies, representatives of international organisations, NGOs and target groups.



Autriche

No discussions specifically concerning the ESC but there are discussions which are also linked to the remit of the ESC. E.g. discussions about the minimum wage, which is – also according to the ECSR – deemed to be too low and should be risen.

Other topics are especially gender equality: equal pay for men and women, equal sharing of caring responsibilities, introduction of a paternity month, participation of women in supervisory boards.

Also issues concerning long term care: how to secure the financing of the system, the status and payment of professional carers.

Another topic. Social assistance. How to secure the financing of social assistance (rising number of entitled persons because of many migrants from 3rd countries.

Fight against unemployment.



Azerbaijan

Recent debates and discussions at domestic level concerning social rights and conclusions of ECSR and the European Social Charter was conducted on June 2nd, 2017 at the Parliament of Azerbaijan in the framework of Parliamentary workshop "Promotion of socio-economic rights in Azerbaijan from the prism of the European Social Charter". Mr. Salim Muslumov the Minister of Labour and Social Protection of Population, deputies of Parliament and other government officials participated at this high-level meeting.



Belgique

Les débats concernant les droits sociaux ont lieu dans les enceintes parlementaires, et au sein des institutions susmentionnées. Par ailleurs, les milieux académiques et la société civile organisent ou participent à ce type de débat.



Bulgarie

In October 2016 a wide-ranging discussion was held on the issue if Bulgaria is to be part of the European Commission's project for the European Pillar of Social Rights. The discussion was organized by the Economic and Social Council of the Republic of Bulgaria in partnership with the European Economic and Social Committee. The opening of the discussion was attended by the Minister of Labour and Social Policy and the Chairman of the Labour, Social and Demographic Policy Commission at the National Assembly. The discussion was attended by over a hundred representatives of various civil organizations, members of the European Economic and Social Committee, members of the Economic and Social Council, representatives of the scientific community.

Discussions focused on: equal opportunities, access to the labour market, fair working conditions and appropriate and sustainable social protection. The main theme in the talks of both employers, trade unions and representatives of various civil organizations was that Europe needs a new, modern project that reflects all the changes caused by the rapid development of new technologies, new phenomena such as the shared economy, and as consequence, the new working conditions and requirements for adequate quality education, flexibility of professional skills and competences, new standards for labour, working time, workplace etc.

In November 2016 an International Scientific and Practical Conference on Law and Social Policy was held in Sofia University St. Kliment Ohridsky, with participants from Bulgaria, Belarus, Germany, Estonia, Spain, FYROM, Romania, Russia, Ukraine and France, discussing, inter alia, the role of the European Social Charter for their respective national policies. Participants included not only representatives of academia, but also high-level representatives from Bulgarian public bodies, i.e. the National Social Security Institute, the National Revenue Agency, the General Labour Inspectorate, and the Employment Agency.



Croatie

At the session of the Economic and Social Council held in April representatives of the Government and social partners discussed the state of social rights in Republic of Croatia, especially in context of implementation and reporting obligation of European Social Charter. Also thematic session of

the Parliament's committee for human rights and rights of the national minorities was held in order to discuss application of UN' international covenants by which numerous human, especially social rights are guaranteed. In this discussion participated representatives of the Government, University of Zagreb, civil society associations and Ombudsmen.



République tchèque

There were no recent debates/discussions at domestic level in connection with ECSR's conclusion/decision.



Danemark

There is no organized public debate on the European Social Charter. However, on very rare occasions members of parliament ask questions and queries on the Charter especially.



Estonie

In 2016 the process of amending the terms (such as working hours, types of work allowed and the procedure for applying for permission to work from the Labour Inspectorate) on which the entry into employment contract with minors is allowed was started. It sparked a wide debate in the society about how much children should be allowed to work and what kind of work should be allowed for them. The final amendments to the Employment Contracts Act that entered into force in May 2017 were heavily influenced by this debate and opinions of the interest groups.



Finlande

In Finland, major structural reforms are planned for health and social services, and county government. The key objective is to create counties that are responsible for providing health and social services across municipal borders. The purpose is to provide integrated and effective customer-oriented services, promote equal access and free choice, and slow down rising costs. See also information submitted under B.1. below.

The European Committee of Social Rights visited Finland in June 2017. During the visit, discussions were held on non-ratified articles and the possibility of ratifying them.

The Finnish media have reported on decisions issued on collective complaints, especially the decision concerning the level of the labour market subsidy. The media have also featured some debates on the relationship between economic policy, especially the handling of the economic crisis, and human rights.

Finnish Society of Social Rights has also organised seminars and discussions concerning the decisions issued on collective complaints.

Discussions pertaining to social rights have been conducted within the sector of the Ministry of Economic Affairs and Employment, for instance during the preparation of legislative measures to improve Finland's cost-competitiveness by affecting unit labour costs, and during the revision of the Working Hours Act. Discussions have focused on topics such as the applicability of working-hour regulation to expert work and flexible work schedules.

There is a constant public debate concerning high housing prices in the capital region of Finland. Although Finland has an adequate number of homes overall, Helsinki and to a lesser extent certain other growth centers are suffering from housing shortages, high housing prices and high rents. In most municipalities the housing market is balanced, or there may even be an oversupply.



France

Non



Géorgie

The recent discussions concerning social rights were held within the framework of the constitutional amendments. In particular, for the purpose to improve and render the Constitution more effective, through the substantive and technical points of view, the whole Constitution of Georgia has been reviewed and significant changes have been elaborated for the majority of its norms within the framework of a State Constitutional Commission established by the Parliament of Georgia (the process started in December 2016).

For the aim to ensure sufficient guarantees and high standards for the protection of fundamental human rights, including the social rights, new pack of amendments offers a further compatibility of constitution with the internationally recognized human rights standards. Through these discussions, the Commission, which was composed of representatives of parliamentary and non-parliamentary political parties, constitutional bodies, non-governmental organizations and experts, revised social rights and established them in one article, which makes the issue more distinct, *i.e.* the principle of a social state has become clearer and new provisions, which have not been mentioned in the constitution previously have appeared (e.g. guarantees for persons with disabilities, *etc.*).

Hereby, as cited above, National Strategy (2014-2020) and the Action Plans (2014-2015 and 2016-2017) for the Protection of Human Rights have a significant role in the process of establishing main dimensions and implementing human rights effectively. Responsible authorities submit Action Reports in response to the mentioned mechanisms to the Human Rights Secretariat of the Administration of the Government of Georgia. As mentioned documents contain issues in regard with the activities concerning economic and social rights, for the aim to their progressive realization, hence, the Secretariat is constantly in the course of ongoing activities, which involves permanent discussions and debates at domestic level.

Within the framework of reporting system on the implementation of the European Social Charter established by the European Committee of Social Rights, Georgia regularly submits reports, which are examined and concluded by the Committee. Correspondingly, the Government of Georgia submitted its 10th report concerning the situation of implementing the specific norms of the European Social Charter in December, 2016. Drafting process of reports requires involvement of relevant authorities to collect and analyze consistent information and through the process of consultations and evaluations constant discussions are held. Accordingly, as Georgia is in charge of preparing and submitting reports to the international bodies, discussions/debates regarding the issues in question are frequent.

The European Union and the United Nations Development Programme (UNDP) in Georgia commissioned a survey, "*Human Rights and Access to Justice in Georgia: Public Perceptions and Awareness*", regarding the attitude of Georgian population towards protection of human rights and access to justice was conducted in 2017. The results of the survey, which concerned, *inter alia*, the labor rights, right to social security, healthcare, *etc.*, are based on 5,000 face-to-face interviews, 14 focus groups and 29 in-depth interviews. In-depth interviews were held with representatives of public sector, business, non-governmental organizations and LGBT community.¹⁶

Another survey was also conducted by UNDP Georgia, in 2016, which concerned the issue of economic and social vulnerability in the country. In collaboration with the National Bureau of

¹⁶Available at:

http://www.ge.undp.org/content/georgia/en/home/library/democratic_governance/human_rights_survey_2017/

Statistics, the study examined the most widespread causes of vulnerability in the Georgian population.¹⁷



Islande

One example of a debate at domestic level concerning social rights is the ongoing discussion in recent years concerning the potential extension of maternity/paternity leave from 9 months to 12 months.



Irlande

In July 2012 a Convention on the Constitution was established by the Oireachtas (Parliament) to consider possible areas for reform of the Constitution. It is made up of 100 members drawn from civil and political society. Among the matters considered by the Convention is the question of whether Economic, Social and Cultural rights should be enumerated in the Constitution. In February 2014 it voted in favour of affording greater constitutional protection to Economic, Social and Cultural (ESC) rights.



Italie

Les décisions du CEDS ont suscité de nombreux débats nationaux entre les institutions politiques et gouvernementales qui ont mené à l'adoption de mesures importantes pour lutter contre la pauvreté et l'exclusion sociale, telles que le Décret législatif qui a introduit le Revenu d'Inclusion – approuvé par le Conseil des Ministres le 9 Juin 2017 - et la Stratégie nationale d'inclusion des populations roms, sintis et des gens de voyage, édictée en 2012. La stratégie vise à promouvoir l'égalité de traitement et l'inclusion économique et sociale des communautés roms, sintis et des gens de voyage dans la société en leur assurant une amélioration durable de leurs conditions de vie, une participation effective à leur développement social ainsi que la pleine jouissance des droits à la citoyenneté garantis par la Constitution italienne et les Conventions internationales.

En outre, les articles 1091 et 1094 du Code de la navigation italien ont été modifiés suite à des remarques répétées du CEDS et du BIT.



Lettonie

- a) From 2012-2014 Ombudsman participated in debates regarding the ratification of the European Social Charter. The Ombudsman insisted that Latvia has to ratify the whole Charter not only several articles.
- b) Ombudsman has initiated debates on poverty since 2011.
 - ✓ At the end of 2012 the Ombudsman issued a report on the risk of poverty in Latvia, where the attention was drawn to the following: despite the economic recovery, economic tension is still being felt by more than a half of Latvian residents, in Vidzeme and Latgale region even in up to 77.7% of households. The data indicate that economic tension in households is not diminishing, on the contrary – it continues to grow. 40% of the Latvian population is subject to the risk of poverty and social exclusion, including 43% of children and 33% of retired persons.
 - ✓ In 2016 Ombudsman draw the attention of both the government and the parliament to the still comparatively great number of inhabitants subject to poverty risk and social isolation in Latvia. This is not about individuals who have chosen to live according to their own rules: not working, not studying, not paying taxes, carelessly treating their health, etc. Concerns are caused by the fates of those people who had been rather responsible towards themselves, others, and their State, but have ended up in an unfavorable situation due to coincidence. Often enough, those are persons, who enjoy special State protection in accordance with the international

¹⁷ Available at: <http://www.ge.undp.org/content/georgia/en/home/library/poverty/economic-and-social-vulnerability-in-georgia--2012/>

human rights standard: children, the elderly, persons with disabilities, working women during the maternity leave, single-parent families, and asylum seekers.

According to information summarised by the Ombudsman: (1) 606 thousand or 31% of inhabitants are subject to poverty risk and social isolation in Latvia; (2) Latvia has one of the greatest gaps between the income of the wealthiest and poorest inhabitants of the country (even greater income inequality is observed only in Bulgaria); (3) 70% or 322 thousand of Latvian pensioners receive pension below EUR 300 a month, wherewith a comparatively high share of poverty risk is observed exactly among elderly people in Latvia as compared to other countries; (4) it is worrying that persons who work and receive salary, which is mostly just EUR 270 after taxes, are subject to poverty and social isolation in Latvia. 9% of employed persons are subject to poverty risk, etc.

- ✓ In 2016 the Ombudsman created portraits which illustrated the life of several people at poverty risk – single parent family; persons with disabilities; seniors. These portraits were presented during conference on constitutional rights, and they gave better understanding for decision makers on problems people can face.
 - ✓ In 2017 the Ombudsman in cooperation with Council of Europe, Equinet, FRA and ENNHRI organizes Platform on social and economic rights with the focus on poverty.
- c) The Ombudsman has drawn attention to health care system in Latvia which is not accessible to inhabitants of the Republic of Latvia. In the beginning of 2016 the Ombudsman published the research on health care which illustrated the most crucial issues. The Ministry of Health currently is working on improvement of health care system, however the Ombudsman is concerned about the result.
- d) In 2016 the Ombudsman finished the case regarding on unequal treatment for medical professionals (over hours). According to normative regulation normal work day is 8 hours long. If employee has to work more than 8 hours per day, then he/ she has rights to get double payment for every extra hour. However medical professionals have to work prolonged normal working time which is 12 hours per day. Double payment starts from the 13th working hour. Thus the Ombudsman concluded that equal treatment has not been ensured for medical professionals. Currently the case is in Constitutional court, as the Parliament did not agree to ensure equal treatment for medical professionals.



Lituanie

Discussions have been held in relation to the drafting and deliberating of legal acts on the new Lithuanian social model.

In 2016, the draft Law No. XIIP-1570 Amending Article 2 of the Republic of Lithuania Law No. IX-317 on Ratification of the 1996 European Social Charter (Revised), submitted by the group of members of the Seimas, was deliberated and discussed. The draft proposes to adopt point a of paragraph 1 of Article 23 of the European Social Charter as binding. On 9 November 2016, having regard to the opinions and proposals of concerned authorities, the Government of the Republic of Lithuania adopted Resolution No. 1113, whereby it approved of the abovementioned draft law and proposed to the Seimas of the Republic of Lithuania not to deliberate the draft law until the entry into force on 1 January 2018 of Law No. XII-2512 Amending the Republic of Lithuania Law on State Social Insurance Pensions No. I-549 which establishes pension indexation.

On 4 May 2017, seeking to ensure compliance of the provisions of the Criminal Law with the standards stipulated in European Union and international documents on the protection of human rights, the Seimas of the Republic of Lithuania adopted the amendments to the Criminal Code of the Republic of Lithuania, which provide for criminal liability for discrimination on the grounds of age and disability, for incitement to discrimination or violence or hatred against these groups.

Moreover, a round table discussion “Efficient combining of career and child care”, initiated and organised by the Office of the Equal Opportunities Ombudsperson, could be mentioned among the

best practice examples. The discussion, held at the Seimas of the Republic of Lithuania on 29 May 2017, was targeted at considering an alternative model of child care, which creates favourable conditions for a woman or a man to return to the labour market already in the first year of child care. The discussion was attended by the Equal Opportunities Ombudsperson, the Minister of Social Security and Labour, the members of the Seimas, the Chair of the Board of AB Swedbank, the representatives of ministries, non-governmental organisations, academic community, and business. It has been widely featured in national mass media, which testifies high relevance of the topic. After the discussion in the Seimas, the *draft Law Amending Article 24 of the Law on Sickness and Maternity Social Insurance No. IX-110*¹⁸ was registered. The purpose of the draft law is to create, until the new procedure of the maternity, paternity and child care benefit is adopted, the conditions for women and men to return to employment, when necessary, until the child attains one year of age, i.e. to provide that a child care benefit is paid to mothers or fathers irrespective of their current income not only during the second year of child care, but also during the first year of child care.

It should also be noted that the Office of the Equal Opportunities Ombudsperson considers the problem of the gap of pay between women and men for work of equal value¹⁹ as particularly sensitive and relevant, and it constantly mentions the necessity to reduce the gender pay gap and search for efficient measures to address this problem in public space²⁰.



République de Moldova

We mention that once every four years, namely 2008, 2012, 2014, at the seminar held in the Republic of Moldova by the Council of Europe, debates were held on the provisions of the Charter that had not been accepted at the moment of ratification by the Republic of Moldova. The organization of a seminar of the same kind is expected for November 2017.

In April and July 2017, the National Trade Union Confederation of the Republic of Moldova together with the Friedrich-Ebert-Stiftung Foundation and the Institute for Development and Social Initiatives "Viitorul" held public debates on the effects of the pension reform and recent legislative amendments to the Labour Code of the Republic of Moldova.



Pays-Bas

Debates at domestic level concerning the European Social Charter and the decisions of the ECSR relate to a great extent to collective complaint procedure No 86/2012 (FEANTSA vs The Netherlands) and collective complaint procedure No 90/2013 (CEC vs The Netherlands), in which the ECSR concluded that there was a violation of, respectively, Articles 31§2, 13§1 and §4, 19§4c and 30 and Articles 13§4 and 31§2. The Committee of Ministers did not share the ECSR's findings and explicitly referred to the limitation of the personal scope of the European Social Charter. The Parliament in the Netherlands was informed of both collective complaint procedures by letters. The Government refers to the letters discussed in the Netherlands' 28th report, submitted in October 2015.

On 26 November 2015 the Administrative Jurisdiction Division of the Council of State gave its judgment on the issue addressed in CEC vs The Netherlands, establishing the legitimacy of the national policy, which has further settled the continuous debate.



Norvège

¹⁸ Draft Law Amending Article 24 of the Law on Sickness and Maternity Social Insurance No. IX-110, <https://goo.gl/9ysGqN>.

¹⁹ European Social Charter (Revised), Article 4(3).

²⁰ See, for example, <http://lygybe.lt/lt/atotrukis-tarp-moteru-ir-vyru-atlyginimu-dideja-5-metus-is-eiles>, <http://lygybe.lt/lt/nesant-efektyviu-priemoniu-moteru-ir-vyru-darbo-uzmokescio-atotrukis-dideja-6-metus-is-eiles>.

Public debates/discussions concerning the European Social Charter and/or decisions of the ECSR are not frequent. There has been some public debates concerning complaints against Norway within the Collective complaints procedure. Some criticism from the ECSR has also been used and debated to a certain degree, e.g. relating to the termination of collective action.



Pologne

- L'élaboration d'un projet législatif est souvent précédée par des débats et consultations, la fréquence et l'étendue des consultations, ainsi que la liste des participants dépendant du contenu du futur projet. Le projet élaboré est consulté avec des organisations représentatives des partenaires sociaux ainsi qu'avec des organisations non-gouvernementales, selon leur compétence. Lors de ces consultations le respect des obligations internationales peut être abordé, le cas échéant.
- Des conclusions du Comité d'experts indépendants concernant la Pologne sont mises sur le site internet du Ministère de la famille, du travail et de la politique sociale (rubrique consacrée à la Charte sociale). Elles sont transmises aux ministères et institutions responsables pour des questions soulevés dans ces conclusions.
- Des observations finales des organes onusiens de contrôle font objet d'un examen préliminaire immédiatement après leur publication par un organe de contrôle donné. Le but est de formuler l'avis sur leur contenu, indiquer des observations que le Gouvernement trouve mal fondées, basées sur des informations ou interprétations fausses. Cet avis est adressé à l'organe de contrôle auteur des observations.
- Par suite des observations finales sont traduites en polonais et envoyés aux ministères compétents pour qu'elles puissent être prises en compte, éventuellement, au moment de décider des directions de la politique nationale ou des solutions concrètes.
Des observations finales sont mises sur le site internet du Ministère de la famille, du travail et de la politique sociale (rubrique consacrée à des conventions des Nations Unies en matière des droits de l'homme) de même que l'avis du gouvernement sur des observations finales.
- En 2017 un groupe des organisations non-gouvernementales a demandé au Ministère de la famille, du travail et de la politique sociale des informations sur la mise en œuvre des observations finales émises par le Comité des droits des enfants en novembre 2015. La réponse indique, en termes générales, des intentions du Gouvernement quant à leur mise en œuvre ou, le cas échéant, reproduit l'avis du gouvernement sur certaines observations. C'est pour la première fois qu'on a fait la demande au Gouvernement de présenter de telles informations.
- Voir sous A.1 pour ce qui concerne la Convention des droits de l'homme.
- La Convention relative aux droits des personnes handicapées attire une attention particulière de la Commission de la politique sociale et de la famille de la Diète - le Gouvernement a été demandé d'informer la Commission sur le progrès de la ratification et, plus tard, le premier rapport sur la mise en œuvre de la Convention a été discuté par la Commission (2014).
Des initiatives similaires n'ont été jamais prises concernant la Charte sociale européenne ou autres conventions onusiennes.
- Des discussions sur la mise en œuvre des droits des personnes handicapées, y compris prévus par la Convention relative aux droits des personnes handicapées, sont menées par le groupe pour la mise en œuvre de la Convention, décrite sous A.1), des conférences sont organisées par le Ministère de la famille, du travail et de la politique sociale ainsi que par d'autres ministères et organisations non gouvernementales.
Jusqu'à présent le Comité des droits des personnes handicapées n'a pas évalué le premier rapport polonais sur la mise en œuvre de la Convention (soumis en 2014), le groupe n'a pas eu d'occasion de se pencher sur les résultats de contrôle.
- Le Plénipotentiaire pour l'égalité de traitement organise des réunions et conférences sur la mise en œuvre des droits sociaux des groupes minoritaires dans la société ou des groupes discriminés ou en situation d'exclusion.

- L'analyse de la législation polonaise à la lumière de la Charte révisée vient d'être achevée (juillet 2017) par le Ministère de la famille, du travail et de la politique sociale, avec concours d'autres ministères, le point de départ étant une analyse préparée en 2005 et mise en jour en 2010 et en 2012-2013.
- Le Conseil du dialogue social a initié la discussion sur la ratification de la Charte sociale révisée par la Pologne. Un groupe pour des questions internationales en est chargé. Le Ministère du travail et de la politique sociale ministère lui a présenté en 2013 une analyse de la législation polonaise à la lumière de la Charte révisée. Le groupe dispose d'une expertise indépendante de 2016 sur les différences entre la législation polonaise et des dispositions de la Charte révisée. Ce même groupe discute également la possibilité de ratifier des conventions de l'OIT et la mise en œuvre des conventions ratifiées.
- Autres activités:
 - novembre 2016: le Commissaire pour les droits de l'homme a organisé une conférence « La Charte sociale européenne : défis et opportunités. 25^e anniversaire de l'adhésion de la Pologne au Conseil de l'Europe »,
 - avril 2017 le NSZZ Solidarność a organisé une conférence sur la stratégie de ratification de la Charte révisée.



Portugal

In the context of the **economic crisis and the austerity policies** in Portugal, social rights and the violation of rights enshrined in the European Social Charter were taken in consideration in the political decisions. Moreover, social rights have been discussed in **several national forums**, such as the Portuguese Parliament, the Standing Committee for Social Concertation, the Centre for Labour Relations, the Economic and Social Council, the Commission for Gender Equality at Work and the Council for Promotion of Health and Safety of the Labour Inspection.

In 2016, social partners participated in a meeting with representatives of **GRETA – Group of Experts on Action against Trafficking in Human Beings/Council of Europe and also in a Parliamentary Audition**, organized for the discussion of a legal proposal in the field of the fight against forced labour (13.07.2016).

During the celebrations of the **Centenary of the Portuguese Labour Inspection**, a seminar was held in March 2017, where a communication was presented on the theme "The protection of health and safety at work within the framework of the European convention on Human Rights and the European Social Charter".

There were also two events promoted by the **Judicial Studies Centre** in December 2016 and June 2017.

The event on Multilevel Protection of Social Rights and the National Jurisprudence aimed at:

- Increasing the knowledge of social rights guaranteed by relevant sources of international law, such as the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and the European Social Charter (revised);
- Awareness-raising for the European Control System to the implementation of these legal instruments, in particular through the monitoring of the European Committee of Social Rights and the case law of the Court of Justice and national courts.

The event on European labour law aimed at:

- Providing a reflection on relevant issues of European Labour Law, with particular reference to the Brussels I and Rome I Regulations, European Social Charter (revised) and European Union Directives;
- Awareness-raising for the European Control System to the implementation of these legal instruments, in particular through the monitoring of the European Committee of Social Rights and the case law of the Court of Justice and national courts.

The General Secretariat of the Ministry of Labour, Solidarity and Social Security has been developing some initiatives that have contributed to securing and/or reinforcing the social rights of the people, in particular the workers who work in the Ministry. The initiatives developed fall within

the scope of social responsibility, human rights, work-family reconciliation, harassment, gender equality, etc.

Some initiatives were developed in close coordination with some ministry services and bodies, either directly or through the **Rede PorTodos (Network for Everyone)** – network for the development of social responsibility of the MTSSS.

Among the initiatives promoted by the *Rede PorTodos*, we highlight the Information Event on Moral and Sexual Harassment and the presentation of the Diversity Charter by an Aga Khan Foundation collaborator, both in May, 2016.

The Ministry of Labour, Solidarity and Social Security from 2016 to 2017 has organised the following initiatives:

- In May 2016 was held a **Colloquium on the theme “One Hundred Years of Social and Labour Policies”**;
- the **Commemorations of the 20 years of the Guaranteed Minimum Income (RMG)/ Social Integration Income (RSI) 1996-2016**.
- Several initiatives were taken on the **European Pillar of Social Rights**, such as the Conference on the European Pillar of Social Rights, which took place on October 6, 2016, in Lisbon, and the session/debate held at the European Commission representation in Portugal, on September 20, 2016, with DG EMPL, social partners, teachers and NGO.
- In October 19th, 2016, the International Conference on **"The Future of Work"** was promoted with a high level participation and renowned speakers.
- In January 2017, in collaboration with the OECD, a public presentation session was held on the study **"Labour Market Reforms in Portugal 2011-2015 – A Preliminary Assessment"**.
- In the framework of the National Reform Program, in March, 2017, the Ministry of Labour, Solidarity and Social Security in collaboration with the Ministry of Planning and Infrastructures held a debate on the theme **"Child Poverty: Which Priorities for Public Policy?"**.

In addition, the Centre of Judiciary Studies (CEJ) with the Oporto Catholic University (16 December 2016) organised a training /debate session on **"The multilevel protection of social rights and national case law"**, as well as the conference on **"The rights of the workers as human rights"** (4 January 2017).

In 2014/2015/2016, CEJ organised a **specific e-learning course on "Labour law and labour procedure law"**.

Regarding the **harassment in the workplace** – covered in Article 26 of the European Social Charter: The right to dignity in the work – some discussions were held in Portugal in the last months and Law No. 73/2017, of August 16, which reinforces the legislative framework for the prevention of harassment in the private sector and public administration, was approved, proceeding to the twelfth amendment to the Labour Code, approved by Law No. 7/2009, of February 12, the sixth amendment to the General Labour Law on Public Functions, approved by Law No. 35/2014, of June 20, and to the fifth amendment to the Labour Process Code, approved by Decree-Law No. 480/99, of November 9.

The National Campaign on Reconciliation and Time Use, which motto was **"It is time! Let's reconcile the time between work and family"**, was launched in October 2016 by CITE, in partnership with CESIS²¹ to raise awareness and to put on the political agenda of the social partners, the media and the general public the debate about the need of reconciling work, family and personal life, which contributes to ensuring the exercise of the rights provided for in Article 27 of the European Social Charter: The right of workers with family responsibilities to equal opportunities and equal treatment. This campaign comprised four different messages and four different images addressing different targets: the workplace, the family life, and the personal life.

The High Commission for Migration promotes annual debate on diversity by presenting an **annual Communication Award "For Cultural Diversity"**²². The Communication Award "For Cultural

²¹ Centro de Estudos para a Intervenção Social/ Centre for Studies on Social Intervention.

²² <http://www.acm.gov.pt/-/premio-comunicacao-pela-diversidade-cultural-2016-do-bairro-de-lata-a-galeria-de-arte-publica-da-sic-vence-em-duas-categorias>

Diversity" distinguishes journalists that work in the areas of integration of migrant communities and Roma communities in Portugal, as well as the fight against discrimination based on nationality, ethnicity, religion or documental situation. This competition involves the participation of accredited Media/Journalism professionals, content producers/screenwriters of transposed works for television and/or cinema, as well as young persons between the ages of 15 and 24.

Aiming to empower and increase migrants' sense of co-responsibility and belonging, Portugal has been promoting the participation of migrant communities in the implementation of integration policies, contributing to a state of mutual transformation.

The Council for Migration, adopted by Decree-Law No. 31/2014 of February 27, is the body for consultation, support and participation in the definition of broad lines of action of the ACM and in decision-making, ensuring the participation and collaboration of public and private entities in the definition and implementation of migration policies. It provides a space and opportunity for discussion and collaboration with representatives from migrant communities working side by side with representatives from ministries, social partners, trade unions, employers, private foundations and others. In regard to the role of immigrants in this important ACM consultative body, it is relevant to mention that its composition integrates elected representatives of the main communities, who participate and collaborate in the definition and execution of migratory policies.

The Council for Migration actively participates in the discussion of social rights for migrants in Portugal. For example, in the definition of the policies on the integration of migrants reflected in **the Strategic Plan for Migration²³ (2015-2020)**, which has set the foundation for a more comprehensive migration policy. The Plan is a modern, broad spectrum and pro-active migration policy, including the protection of migrants' social rights.

The High Commission for Migration has promoted several activities to raise awareness in the combat of discrimination, for different target groups, during the last years. More recently, it is to highlight the launch in 2015 of the internet **the campaign "Discover your colour!"²⁴** using a special website and also Facebook. This campaign was very successful, having received 45.000 viewings on the first day.

In 2017, the High Commission for Migration promoted some actions at public schools in four cities across the country, with a theatre play, discussions and reflections among the students about the combat against discrimination and a collaborative work between some artists and the children doing some murals²⁵.

Within the framework of the cooperation agreement between the High Commission for Migration and the Portuguese Ombudsman signed in 2012, despite other initiatives already promoted, an information **brochure on the rights of migrants was launched in 2017 in seven languages (English, French, Portuguese, Mandarin, Romanian, Russian and Ukrainian)²⁶**.

The **Portuguese Ombudsman** is frequently called to participate or follow the ongoing debates on the promotion of social rights in Portugal, especially when the complaints' analysis and case solving procedures require his specific intervention. Among all the problems brought to the Portuguese Ombudsman attention in recent years, which fall under the scope of the European Social Charter, only some of the most significant ones will be highlighted:

Employment and access to work

Highlighting the equality in treatment and non-discrimination regarding the access to work, the Portuguese Ombudsman dealt with a number of cases concerning direct or indirect discrimination on the grounds of age and disability:

- Regarding age-based discrimination, the complaints involve, namely, the setting of special conditions on access to employment, the fixing of maximum conditions of age for access to employment or the reduction of certain advantages linked to employment on the grounds of

²³ http://www.acm.gov.pt/documents/10181/222357/PEM_ACM_final.pdf/9ffb3799-7389-4820-83ba-6dcfe22c13fb

²⁴ <http://www.acm.gov.pt/-/campanha-descobre-a-tua-cor->

²⁵ <http://www.acm.gov.pt/-/dia-internacional-para-a-eliminacao-da-discriminacao-racial-acm-promove-campanha-de-sensibilizacao-em-escolas-do-1-ciclo>

²⁶ <http://www.acm.gov.pt/-/provedor-de-justica-visita-cnaim-de-lisboa>

age. The investigations carried out by the Portuguese Ombudsman are usually targeted at assessing whether the differences of treatment on grounds of age are justified by a legitimate aim. As an example, the law sets 30 years as the maximum age for admission in the investigative career in the national criminal police service (Decree-Law No. 275-A/2000, of November 9), prompting the Portuguese Ombudsman to address the Government, first in 2011 and later in 2015, with the aim of discussing, from a fundamental rights perspective and respective international standards, the need to adopt a different legal solution, in line with a strategy to promote equal treatment with regard to access to employment in the public service as well²⁷. While the matter should be considered in a future legislative reform to the statutory framework governing the investigative career in the national criminal police service, the Portuguese Ombudsman continues to monitor the situation.

- Concerning the protection of disabled workers and the promotion of equal opportunities in public employment for persons with disability, the Portuguese Ombudsman has been called to urge public entities to promote all adequate workplace adaptations (Q-5551/2015) and not to exclude candidates with disability from public recruitment procedures without evaluating, in particular, their suitability for the vacant post (Q-1448/2012; Q-2589/2013).

On working schedules and conditions, the public sector also felt difficulties where budgetary constraints and reduction of public expense, imposed over the last years, had a significant impact on the shortage of staff. The complainants recurrently bring to the Portuguese Ombudsman's attention problems that reveal that some public employers, for instance, systematically refuse to approve flexible or continuous work schedules, based only in a vague or abstract allegation of "public interest" in the refusal. The Portuguese Ombudsman has recurrently censured the resistance of some public employers in promoting an adequate conciliation of work and family life and highlighted the impact that this conciliation has on gender equality.

In 2016, problems regarding the protection of ill workers requiring long-term care and protection in case of accidents at work and occupational diseases were brought to the attention of this State body:

- The Portuguese Ombudsman issued a Recommendation to the Government, stressing that measures should be adopted in order to effectively allow ill workers in public schools, who require long-term care, to be absent for as long as the law permits and their recovery demands (Recommendation No. 4/A/2016 – Case Q-2095/2016)²⁸ – the Recommendation has been accepted.
- The Portuguese Ombudsman argued a set of rules laid down in the legal framework on accidents at work and occupational diseases affecting those employed by public entities (Decree-Law No. 503/99, of November 20, as amended by Law No. 11/2014, of March 6). These rules prohibit the accumulation of benefits in cases of partial permanent incapacity with the corresponding portion of the pay to which the injured or affected worker is entitled to, as well as entail the deduction of such benefits from the injured or affected worker's pension (the same applying to death and survivors' pensions), thus infringing the fundamental right of workers to fair compensation and the principle of equality²⁹. No judgment of the Constitutional Court has been handed down yet in this case.

Questions and problems regarding precarious or irregular contracting of work have also been at the centre of the Portuguese Ombudsman's concerns:

- The Portuguese Ombudsman urged the Minister of Education and the Government to reform legislation on the contracting of teachers and other public school's staff, in order to comply with international standards of employment security and the national and EU rules set to prevent the abusive recourse to successive fixed-term employment contracts (Q-1212/2012). Pending an

²⁷ The Portuguese Ombudsman, Report to the Parliament 2011, Lisbon, 2011, p. 86 (http://www.provedor-jus.pt/site/public/archive/doc/Relatorio_AR_2011.pdf) and The Portuguese Ombudsman, Report to the Parliament 2015, Lisbon, 2016, p. 117 (http://www.provedor-jus.pt/site/public/archive/doc/Relatorio_AR_2015.pdf).

²⁸ The Portuguese Ombudsman, Report to the Parliament 2016, Lisbon, 2017, pp. 135-136 (http://www.provedor-jus.pt/site/public/archive/doc/Report_to_the_parliament_2016_EN_0.pdf).

²⁹ The Portuguese Ombudsman, Report to the Parliament 2016, Lisbon, 2017, p. 155 (http://www.provedor-jus.pt/site/public/archive/doc/Report_to_the_parliament_2016_EN_0.pdf).

infringement proceeding initiated by the Commission against Portugal, new rules regarding teachers were adopted; however the Portuguese Ombudsman recently stressed that similar measures should be taken to protect trainers and other staff against forms of precarious employment in public schools (Q-520/2014).

- Confronted with the persistent and abusive recourse to *employment-insertion contracts* — contracts between public or private entities and people receiving unemployment compensation which should be celebrated to perform tasks considered “socially useful” — to ensure the fulfilment of needs consistent with vacant workplaces, the Portuguese Ombudsman has called for an effective inspection of ongoing projects and the amendment of the regulations on these matters, so as to prevent their abusive use (Q-4925/2013). Measures are currently being taken by the Portuguese Government in order to address the problem of unlawful use of fixed-term contracts, scholarships, *employment-insertion contracts* and other precarious forms of work in the Public Administration.

In 2012, following the approval of a Ministerial Resolution (No. 90/2012, of October 31), which established criteria that rendered the extension of collective agreements more difficult, the Portuguese Ombudsman brought to the attention of the Prime Minister the dampening effect of this measure in collective bargaining (Proc. Q-1613/12).

Health

It is important to highlight that healthcare in Portugal is provided through the National Health Service (*Serviço Nacional de Saúde* – SNS), a public system that assures the right to health protection, in the terms established by the Portuguese Constitution. It was created in 1979 and operates under the supervision of the Ministry of Health.

The Portuguese SNS is characterized as being national, universal, general and free. It is universal as all Portuguese citizens and foreign residents have access to it. The SNS encompasses the whole range of healthcare, including the health surveillance and promotion, the disease prevention, the diagnosis and treatment of patients and the social and medical rehabilitation.

Regarding the right to health, the Portuguese Ombudsman deals with several issues from the perspective of the users of such public service:

- In the framework of the National Health Service, deficiencies in the articulation of its several layers are brought to the attention of the Portuguese Ombudsman, namely between the primary care units and hospitals.
- The access of foreign citizens to health, after an irregular situation in the National Health Service, has been solved since 2001 by a decision of the Ministry of Health (Order No. 25360/2001), after an Ombudsman intervention. However, in rare occasions, there is still need to further action, such as in the case of pregnancy.
- Following a tighter budgetary framework and its reflections in the financing of the public health system, including tightening fees exemptions within the National Health Service, Recommendations made by the Portuguese Ombudsman were accepted with a view to extend those exemptions to encompass economically vulnerable groups not previously adequately covered. The Portuguese Ombudsman continues to monitor the follow up in this domain³⁰.
- Besides pointing out its concern on the issue of equitable access to medication related to rare diseases, oncological pathology and viral hepatitis, the Portuguese Ombudsman keeps encouraging the competent entities to define access criteria as well as to strengthen oral health care within the National Health Service.

Social security and protection

The Portuguese Ombudsman made several interventions regarding the social protection of unemployed citizens, among which we highlight the following three:

- Since 2013, the Portuguese Ombudsman has been defending the need to change the unemployment law in force in what concerns the fortnightly presentation duty (according to which unemployed with benefits should present themselves before Employment Services every fortnight). The Portuguese Ombudsman considered that, despite the need to ensure that the

unemployed citizens search actively for a new job and that an effective control held by Unemployment Services is assured, the fortnightly presentation duty should be abolished or at least modified. The Portuguese Ombudsman's proposal claiming for a legislative amendment was archived with the publication of Law No. 34/2016, of August 25.

- The Portuguese Ombudsman made a remark related to self-employed workers³¹ to the Government because these workers are still not entitled to an early old-age pension in the event of long-term unemployment, in contrast, to employees. In response, the Secretary of State for Social Security informed that the system of access to early pensions, including the system of flexibility of the age of access to the long-term unemployment pension, and the scheme for self-employed workers were under review. The Portuguese Ombudsman's suggestion would therefore be examined in the context of the review of those legal systems.
- After analysing several complaints filed by unemployed citizens, the Portuguese Ombudsman concluded that the legal discipline of protection in the event of unemployment (contained in the Decree-Law No. 220/2006 of November 3) should be improved in various aspects, namely by:
 - a) adopting a legal discipline especially applicable to citizens enrolled in employment centres who are not receiving any subsidy, in order to enforce the access to vocational training and other social benefits;
 - b) establishing limits to the reduction of 10% of the unemployment allowance after six months, provided for in no. 2 of article 28 of Decree-Law no. 220/2006 of November 3, in order to assure a minimum grade of protection in the event of unemployment;
 - and c) clarifying the scope of the unemployment benefit increase for families in a particularly fragile situation, in order to benefit all households where both spouses or equivalent are unemployed and have children to provide for.

Concerning parental benefits, the Portuguese Ombudsman has devoted particular attention to the discussion of the following issues:

- The effective social protection granted to working fathers: a special attention was given to the compulsory parental leave, since, according to the law³², the granting of the corresponding subsidy depends, among other conditions, on the completion of a guarantee period. Consequently, a father whose child is born before the completion of the guarantee period (six months of work) will be forced to have 15 days of compulsory leave but will not receive, during that period, neither his salary nor the social security subsidy. The Portuguese Ombudsman brought to the attention of the Government the injustice of the situation, arguing that the granting of parental subsidies in the case of compulsory leaves should not be subject to any conditions. The theme is still under discussion.
- Situations regarding the lack of social protection in parenthood and illness of contract teachers who moved from the convergent regime (CR) to the general social security system (GSSS). It is verified that these teachers, when they transit from one social regime to another, despite having discounts made for the CR, they don't have access to the benefits of parenthood and illness in the GSSS. This led to a number of interventions addressed by the Portuguese Ombudsman to the previous and to the current Government, but the issue is not yet solved, allegedly due to the budgetary implications resulting from the adoption of appropriate legislative measures.

With regard to the implementation of the right to social security, the Portuguese Ombudsman expressed his concern about the effective, timely payment of social benefits to beneficiaries. In this regard, the Portuguese Ombudsman asked the Government to allow the payment of social benefits twice a month, instead of the existing single processing system, in order to reduce the time gap between the benefits' request and the corresponding payment. Despite waiting for a formal answer from the Secretary of State for Social Security, the Portuguese Ombudsman was informed by the Social Security Institute that his suggestion on this matter was accepted and temporarily implemented under experiment.

³¹ Decree-Law No. 65/2012, of March 15.

³² Decree-Law no. 91/2009, of April 9.

It should also be noted that the Portuguese Ombudsman is also concerned about the social protection of disability. In this context, the Portuguese Ombudsman addressed a Recommendation to the Government³³ to revise the special education allowance legal framework (a special support benefit provided to children and young with disabilities and learning difficulties), with the purpose that all children with special educational needs could benefit from it. This Recommendation was accepted³⁴.

The right of children and young persons to social, legal and economic protection – school attendance

Regarding issues dealt by the Portuguese Ombudsman from the perspective of the users of the educational public service, an increase of complaints occurred in 2016, especially because of preschool education issues. This increase in preschool education was mainly due to the enlargement of the universal guarantee of public offer to all children completing 4 years until the end of the civil year (Law No. 65/2015, July 3), thus creating more pressure on allocating the places available on public educational facilities in specific areas. In general terms, the same issue is also an important cause for complaint, on non-superior levels of education, during July and August of each year.

Also in the same levels, the Portuguese Ombudsman has increasingly been drawn to deal with the issue of lacking or insufficiency of support provided to children and youngster with disabilities or other special educational needs. The Portuguese Ombudsman's intervention is focused on promoting dialogue between all the concerned parties, deepening the reasoning and technical grounds on allocating resources. In basic education, besides the material conditions of facilities, a common issue presented relates to the payment of transportation, especially when the pupil lives in a certain municipality and studies in a neighbouring one, and neither the City Council assumes the cost. As there is no perfect match between the school network and the administrative structuring of the territory, further emboldened by the right of choice acknowledged by the parents, the Portuguese Ombudsman always stresses the need to respect this freedom of choice, however restraining the financial support to the cost bearable by the municipality if the school chosen was that provided by the officially established network.

Still in the year 2016, a major issue dealt by the Portuguese Ombudsman related to a conflict between some private schools and the Ministry of Education, on the quantitative and qualitative aspects of the support the former gave to the public educational sector, in the framework of a triennial contract. The Portuguese Ombudsman underlined that the issue should be solved strictly following the legal rules on the interpretation of contracts, rejecting both opposite positions, mutually excluding the other on constitutional and legal grounds.

An ongoing debate concerns the model of free use and reuse of school textbooks and other teaching materials, in the light of the rights to education and to equal opportunities in access to and success in schooling, as well as of the State task to ensure universal, compulsory and free basic education³⁵. As result, the State Budget for 2016 provided that, since the beginning of the school year of 2016/2017, textbooks are free of charge to all students in the first year of compulsory schooling (see Order No. 6861/2016 of the Ministry of Education).

Housing

The Portuguese Ombudsman is also attentive to the promotion and protection of the right to adequate housing. As for recent times, he has taken action in respect of the imminent demolition of precarious dwellings located in several neighbourhoods of the municipality of *Amadora*, in the Lisbon metropolitan area. Reports on how people were informed they were to be evicted from their

³³ Recommendation no. 15/B/2012, published (in Portuguese only) in: <http://www.provedor-jus.pt/?idc=35&idi=15372>. For further information on this initiative, v. Portuguese Ombudsman, Report to the Parliament 2014, Lisbon, 2015, pp. 107-108 (http://www.provedor-jus.pt/site/public/archive/doc/Report_2014_ING.pdf).

³⁴ By the publication of Implementing Decree No. 3/2016, of August 23, this legal instrument updates some concepts. It also clarified some items about the medical certification related to disability and its effects, as well as about the necessary supports/devices that children and young with disabilities need.

³⁵ The Portuguese Ombudsman, *Report to the Parliament 2015*, Lisbon, 2016, p. 49 (http://www.provedor-jus.pt/site/public/archive/doc/Report_2015_0.pdf).

homes, and without being offered any alternative housing, led the Portuguese Ombudsman to suggest the municipality to postpone the evictions and demolitions until suitable rehousing could be guaranteed. Unfortunately, this suggestion was not accepted.

The Portuguese Ombudsman also expressed its concern about the situation of *Bairro da Torre*, an informal settlement very close to Lisbon, in which Roma people and African descendants live in very precarious housing conditions, with no electricity and, in some cases, with no water and sanitation. Faced with the lack of housing alternatives, these families recently requested the intervention of the Portuguese Ombudsman. Public authorities responsible for social housing argue they are unable to meet the requests because they are struggling with financial constraints. This poses a major challenge for the Portuguese Ombudsman's Office that actively tries to find solutions on a day-to-day basis through the available social support system.

Although, in general terms, the number of precarious settlements has decreased considerably in Portugal over recent decades, the fact that some of them still exist demands a coordinated, committed and urgent action from all the entities involved, which includes the Government and Municipalities. This situation is exacerbated by the fact that, in the metropolitan areas of Lisbon and *Porto*, the private rental market, increasingly oriented towards tourism, is not accessible to lower income families.

In 2016, the Portuguese Ombudsman addressed a Recommendation to the Government to revise the law applicable to rehousing in the metropolitan areas of Lisbon and *Porto*, which is currently unable to respond to the existing demand for housing³⁶. The Portuguese Ombudsman suggested that the legislative initiative should consider, firstly, the adoption of programmes to promote controlled-cost housing for rent or sale; secondly, the use of occupied land for resettlement programmes; thirdly, the use of vacant houses; and, lastly, the adoption of new forms of registration that enable adequate solutions to be found for those who were excluded from the initial survey. In response to the Recommendation, the Government agreed to carry out a survey on housing shortage and to strengthen housing support programs, according to the availability of financial resources. The Portuguese Ombudsman hopes that the initiatives of the Government will address the existing housing needs, thereby fulfilling the international commitments assumed by the Portuguese State regarding the right to adequate housing.

The Ministry of Education has participated in several debates on social rights in the framework of National Plans/Strategies, such as:

- Access to education by all refugee children and young people - Strategic Plan for Migrations, 2015-2020³⁷;
- Protection of Children's Rights – National Strategy for the Rights of the Child (2017-2021), in conclusion;
- Integration of homelessness – National Strategy for the Integration of Homeless People (2017-2023);
- National Alcohol and Health Forum - National Plan for the Reduction of Admissible Behaviours and Dependencies (2013-2020).

In 2017, eight bills within the framework of the social rights specified in the European Social Charter were under public discussion in the Parliament, namely:

- Bill 508/XIII - Reinforces the rights of workers in night work and in the shift work regime;
- Bill 533/XII - Eliminates individual hour bank schemes and individual adaptability, proceeding to the 15th amendment to the Labour Code approved by Law no. 7/2009 of February 7;
- Bill 534/XIII - Amends the legal regime applicable to fixed-term employment, regarding the recommendations of the "Working Group for the preparation of a National Plan to Combat Precariousness";
- Bill 547/XIII - Amends the National Republic Guard (GNR) Statute regarding the weekly reference time (1st amendment to the Decree-Law no. 30/2017, of March 22);

³⁶ The Portuguese Ombudsman, *Report to the Parliament 2016*, Lisbon, 2017, p. 110 (http://www.provedor-jus.pt/site/public/archive/doc/Report_to_the_parliament_2016_EN_0.pdf).

³⁷ <http://www.dge.mec.pt/agenda-europeia-para-migracoes>

- Bill 549/XIII - Amends the National Republic Guard (GNR) Statute restoring justice in the right to vacations (1st amendment to the Decree-Law no. 30/2017, of march 22);
- Bill 505/XIII- Proceeds to the 1st amendment to the Decree-Law no. 237/2007 of June 19, which transposes into national law the Directive no. 2002/15/CE, of the European Parliament and of the Council, of March 11, on the organization of working time of persons performing mobile road transport activities;
- Bill 552/XIII - Establishes the duty of professional disconnection and reinforces the supervision of working hours, proceeding to the 15th amendment to the Labour Code approved by Law no. 7/2009 of February 7;
- Bill 553/XIII - Restores the value of supplementary work and the compensatory rest, deepening the recovery of incomes and contributing to job creation (15th amendment to the Labour Code approved by Law no. 7/2009 of February 7).



République slovaque

Conclusions are discussed with the social partners. The same applies when preparing for the individual meetings of the Governmental Committee of the European Social Charter, as the representative of the Slovak Republic in that committee consults the presentation with the social partners. The conclusions are also discussed between individual ministries and state institutions, municipalities (in case they concern issues which the municipalities are primarily dealing with).



Slovénie

Yes:

- **2015: Slovenian Annual Congress on Labour Law and Social Security in Portorož.** The Congress is the most important national gathering of academic and other experts in the field of labour law and social security. During the first plenary session *-Protecting social rights in times of economic crisis: the contribution of international standards-* the European Social Charter and its implementation in Slovenia was discussed by the Vice – President of the ECSR prof. dr. Monika Schlachter and the former member of the ECSR from Slovenia, prof. dr. Polonca Končar.

- regular (once per year) discussions within the **Economic and Social Council of the Republic of Slovenia** on the regular report on the implementation of the Charter in Slovenia.



Espagne

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

In the legislative sphere, it must be noted that the Spanish Parliament, which consists of the Congress of Deputies and the Senate, has, among other bodies, Equality Commissions that function as standing legislative commissions:

- Equality Commission of the Congress of Deputies;
- Equality Commission of the Senate

Moreover, the legislative assemblies of Spain's 17 Autonomous Communities have Women's Commissions or Commissions dedicated to equality and social services.

As regards participation by civil society, Organic Law 3/2007, of 22 March, on the effective equality of women and men (LOIEMH) created the Women's Participation Council, a collegiate consultation body with representatives from Spain's public administrations and from nationwide women's associations and organizations.

Moreover, the Directorate-General for Families and Children informs about compliance with the right regulated in Article 13.1 of the Charter. It is also responsible for coordinating, evaluating and monitoring the National Social Inclusion Plans. At present, a new 2017-2020 National Strategy for

Preventing and Combating Poverty is being drafted, with the different stakeholders discussing the goals and priority lines of action to be included in the Strategy, as well as the approach of cross-cutting and specific policies that contribute to reducing poverty and social exclusion. They are also identifying key aspects in which the Strategy seeks to effect change, in order to focus actions and enhance effectiveness and efficiency. One of the thematic aspects included is child poverty, and examples of organizational aspects or approaches include coordination between social services and employment services, coordination of the different benefit and assistance systems, and stakeholder collaboration.

RESPONSE FROM THE AUTONOMOUS COMMUNITY OF CASTILLA Y LEÓN

At the parliamentary level, the Legislative Assembly of the Autonomous Community of Castilla y León has **different Standing Legislative Commissions** dedicated to analysing, discussing, monitoring and drafting action proposals for the Government of the Autonomous Community involving social rights, in their respective scopes of action.

Furthermore, and also in the **area of social dialogue**, the different parliamentary levels (Plenary, Commissions and working groups) periodically hold working meetings where representatives from the public administration, from trade unions and from employers' organizations discuss, analyse and agree upon employment policies and social policies in general that are implemented in the Autonomous Community.

As regards bodies for debate and discussion with representatives from the sector, the same can be said as was previously mentioned regarding the monitoring bodies; specifically, as to our scope of action, what was said about social dialogue, about the Regional Council of Social Economy of Castilla y León, and about the Bureau of the Self-Employed.

Moreover, the Autonomous Community has the Economic and Social Council of Castilla y León, a consultation and advisory body for social and economic matters, which has its own legal personality and independence with regard to the administration of the Autonomous Community in the exercise of its functions.



Suisse

La Suisse dispose d'un système de protection sociale étendu dont l'un des piliers est le partenariat social permettant des solutions flexibles en réponse d'une part aux adaptations requises par l'économie et d'autre part, aux demandes des syndicats.

Au niveau des Nations Unies, la Suisse a ratifié non seulement le Pacte international relatif aux droits civils et politiques, mais également le Pacte international relatif aux droits économiques, sociaux et culturels, reconnaissant ainsi la valeur équivalente de ces deux catégories de droits de l'homme.

Pour ce qui est de la Charte sociale européenne, le Gouvernement suisse (le Conseil fédéral) considère que, d'un point de vue juridique, la Suisse serait en mesure de la ratifier (voir ci-dessous la réponse à la question C.1 let. a). Le Parlement fédéral n'a, pour l'heure, pas pu atteindre un consensus à ce sujet (voir ci-dessous la réponse à la question C.1 let. a).

Une partie importante de la société civile suisse est en faveur de la ratification de la Charte sociale. Un Comité de soutien «Pro Charte sociale» et les syndicats sont intervenus à ce sujet auprès du Conseil fédéral. Une pétition a été lancée par ACAT Suisse demandant de signer et ratifier sans délai la Charte sociale révisée. En mars 2016, le Conseil des Etats (chambre haute du Parlement) a décidé de ne pas donner suite à la pétition.

Dans une pratique constante, le Tribunal fédéral suisse (cour suprême suisse) reconnaît la justiciabilité des droits civils et politiques, à savoir notamment des garanties du Pacte international relatif aux droits civils et politiques et de la Convention européenne des droits de l'homme (CEDH). Il n'admet en revanche qu'avec retenue la possibilité d'une applicabilité directe des droits économiques, sociaux et culturels. Malgré les critiques émanant d'une partie de la doctrine, le Tribunal fédéral a globalement maintenu cette position dans ses arrêts récents. Ces dernières années, les droits économiques, sociaux et culturels ont toutefois gagné en importance du fait qu'ils sont de plus en plus pris en considération dans le cadre de pesées des intérêts ou de

l'interprétation de dispositions constitutionnelles ou législatives. En outre, la jurisprudence a plusieurs fois relativisé le principe selon lequel ces droits ne sont pas directement applicables. Sans pour autant reconnaître de droits justiciables dans les affaires en cause, le Tribunal fédéral a évoqué la possibilité, dans plusieurs jugements, que certains aspects de ces droits pourraient être invoqués devant les tribunaux.



“L'ex-République yougoslave de Macédoine”

We are not able to point out to some recent discussions and/or debates that were organized specifically on the topics of European Social Charter and/or ECSR conclusions, but nevertheless there are many discussions/debates (seminars, round tables, conferences, consultation events etc.) on various topics and themes, policies, measures) that are related to rights and standards already covered by the European Social Charter.

There were many of these in the recent period. In this reply, we could mention just some of these:

- in 2017 the Ministry of Labor and social policy has organized 3 public debates in 3 cities in the country (in the premises of the Law faculties), with the purpose of ensuring wide discussion and involvement of various stakeholders in the debate on the possible amendments to the Law on prevention and protection against discrimination, with the purpose of providing and ensuring more effective protection against discrimination. As a result of these and other discussions/inputs, due to the level and scope of required amendments, it was decided to draft completely new Law (that is planned to be adopted by the end of the year);
- in the last 2 years (2015-2017) the national authorities, in partnership with the European Commission, were engaged in drafting one overall strategic document for the areas of labour market and employment, education (i.e. human capital and skills), social protection and social inclusion, health protection - the so called “Employment and Social Reform Programme 2020 – ESRP”. The document determined the main challenges and the planned reforms/measures and activities in these areas for the period until 2020. This process was highly participative with active involvement and participation of all relevant stakeholders (administration, social partners, civil society organizations, universities, national experts in the fields, international development partners etc.). Several rounds of consultations and debates were organized, finalized by one wider-scale event - “ESRP Conference - Consultation and way forward”(organized in Skopje, February 2017);
- another example in this respect, are the number of public discussions and consultation events that were organized for the purpose of discussing the preparation of the new Strategy for the Roma in the Republic of Macedonia 2020 and the corresponding national Action plans for its implementation for several areas (NAP - education, NAP – employment, NAP - health, NAP – housing, and NAP – Roma woman)
- the regular debates and discussions among the social partners, within the meetings of the Economic and Social Council - at national, and the local ESCs at local level, on various themes/topics of the economic and social field;
- many public debates and consultation events organized by the Ministry of Education and Science as the coordinator of the process of development of the new Education Strategy (during 2016 and 2017);
- etc.



Turquie

European Social Charter of 1961 and Revised European Social Charter are important source documents of the Council of Europe of which Turkey became a member since its very foundation. Turkey signed the former in 18 October 1961 and became a party to it and accepted the articles of the Social Charter. It entered into force in 24 December 1989 further to the accomplishment of

domestic legislation process. The Revised European Social Charter was signed in 6 October 2004 and it entered into force in 1 August 2007. Our institutions and agencies, the Ministry of Labour and Social Security of Turkey being in the first place, keep endeavoring to make use of the means which they hold in order to bring to the attention of the Institutions and Agencies the subjects presenting unconformity in our national legislation in terms of articles of the Social Charter. A few samples of social right-related works are indicated below:

- Report by parliamentary research commission on detecting measures to take to fortify family union and investigating divorces and other elements which affect family integrity negatively 14 May 2016
- Strategy Paper towards Roma Citizens (2016-2021) and Action Plan of 1st Phase (2017-2018) by High Planning Board of the Ministry of Development dated 27 April 2016.
- National Program on Fight against Child Labour (2017-2023)
- The Project of START WORK FOR THE FUTURE, which started in 2017 and will continue for 12 months. It is envisaged with this project to employ young girls of 16-18 ages who live in Child Support Centers (ÇODEM) and orphan's asylums further to their accomplishment of seminars of vocational training and personal development courses. One of the objectives of the Project is to help them adjust more easily to the social life following a psycho-social support and rehabilitation services.
- The Project "Come on, Hug the Life- Training of Life Experiences" was accomplished in 2016. It was envisaged with the Project to increase human and institutional capacity of institutions and agencies responsible for prevention of drug abuse by the youth by implementing programs of such nature through specialized staff.
- The program of Family and Social Works by Presidency for Turks Abroad and Related Communities in 2016 to encourage the creation of institutions accredited by the countries where they operate in the field of family and social problems, and training and guiding efforts in this area by the experts specialized on the matter.



Ukraine

Hearings entitled 'On status of implementation of the European Social Charter (revised) in Ukraine' were held in the Verkhovna Rada Committee on Social Policy and Labour on 21 November 2013.

A.3. Implication gouvernementale face à la Charte

Dans quelle mesure les gouvernements centraux et régionaux/locaux collaborent-ils à la mise en œuvre des décisions et/ou conclusions du CEDS dans votre pays ? Pouvez-vous nous donner des exemples de collaboration ayant bien fonctionné ? Dans certains cas, avez-vous rencontré des difficultés particulières ?



Albanie

As a rule, a very important part of drafting the Report for the Committee of Ministers for the assessment of direct requests of the Committee on Human Rights is the procedure of forwarding the detailed requests to the relevant institutions at the central and regional level. The answers are then reviewed and the relevant report drafted.

Furthermore, for any observation or request to bring an issue in accordance with the directives and the European Social Charter, is sent to the competent institution for assessment and response.



Armenia

The RA Ministry of Labour and Social Affairs collaborates with other related state bodies in drafting and preparation of national reports on implementation of the Revised European Social Charter based on the ECSR conclusions. In particular, after receiving the ECSR conclusions, the Ministry

sends them for consideration, among others, also of the RA Ministry of Territorial Administration and Development, which is in charge of administrative territorial units (regions) in the country. The RA Ministry of Labour and Social Affairs regularly receives the relevant information from the RA Ministry of Territorial Administration, where the position of regional/local authorities on the raised issues is reflected.



Autriche

As Austria is a federal state with 9 provinces, collaboration between The Federal State and the Provinces is crucial. Many topics concerning the ESC are coordinated and negotiated with the regional governments.



Azerbaïdjan

The Presidential Administration, Cabinet of the Ministers and the relevant ministries always work together in the implementation of ECSR decisions.



Belgique

Le département des affaires étrangères organise les concertations en la matière.



Bulgarie

Good example for cooperation - understanding on the part of the Ministry of Defense in respect to the right to effective strike actions of the civil personnel in the military system.

Example of encountered difficulties - with the Ministry of Transport, Information Technologies and Communication in respect to the right to effective strike actions in the system of the Bulgarian State Railways.



Croatie

The government finances numerous projects which are carried out by local community and NGOs representatives. These projects involve promotion of rights guaranteed by ECSR instruments. For example, in 2014 and 2015 there were projects dealing with long-term unemployment of disabled persons, social inclusion and employment of Roma, women in the Labor Market, Unemployment of persons with intellectual difficulties. In all of these projects participated local community and NGOs representatives. One of good examples is the project aimed at activating the Roma community's unemployed members to facilitate easier entry into the labor market. After series workshops held in order to inform the target group about the project and motivate them to participate in it, selected candidates were educated about the basics of health and disease prevention, civil rights, communication skills and parenting. As part of the project, two persons were educated for the post of a Roma assistant in teaching and others were educated for the skills that employers are looking for.

In addition to training activities, the local community was also promoted as a potential employer and Roma as potential employees. The project was implemented by the Center for Social Welfare in partnership with the Croatian Employment Office - Regional Office Đurđevac and city Đurđevac.



République tchèque

International treaties promulgated by the Parliament which are bound for the Czech Republic are part of the national legal order. All levels of administration are involved in the implementation of international commitments. Decrease of number of non-compliance with international obligations can be evaluated as a successful collaboration. No difficulties were noticed.



Danemark

Relevant actors collaborate as part of the involvement in evaluations, reporting and conclusions on conformity



Estonie

Local governments proceed from the legislation in force, within their specific competence. They do not implement ECSR decisions/conclusions independently.



Finlande

The Government has no comments as regards this question.



France

Les administrations centrales concernées sont informées des décisions ou conclusions de non-conformité à la Charte sociale européenne et s'efforcent selon les cas de rendre la situation conforme. Afin de sensibiliser l'ensemble des ministères concernés une réunion annuelle est organisée par le Ministère de l'Europe et des Affaires étrangères, en lien avec les Ministères sociaux, afin de faire un état des lieux du système de suivi par rapport et des réclamations collectives.

Voici quelques exemples de mise en conformité :

- Extension de l'interdiction d'employer des enfants avant l'âge de 15 ans dans les entreprises familiales du secteur agricole (décret n° 97-370 du 14 avril 1997) et les autres secteurs (ordonnance n° 2001-174 du 22 février 2001).
- Réclamation collective n° 14/2003 - FIDH c. France : violation de l'article 17 § 1 de la Charte (droit des enfants et des adolescents à la protection sociale, économique et juridique). La question portait sur la couverture médicale des enfants étrangers en situation irrégulière sachant que les adultes qui ne peuvent bénéficier de l'aide médicale d'Etat sont soumis à la règle des soins urgents, à savoir soins médicaux limités aux seules situations mettant enjeu le pronostic vital immédiat.

La circulaire DHOS/DSS/DGAS n° 2005-141 du 16 mars 2005 relative à la prise en charge des soins urgents délivrés à des étrangers résidant en France de manière irrégulière et non bénéficiaires de l'aide médicale de l'Etat, a permis de mettre la situation en conformité. « *Compte tenu de la vulnérabilité particulière des enfants et des adolescents, tous les soins et traitements délivrés à l'hôpital aux mineurs résidant en France, qui ne sont pas effectivement bénéficiaires de l'aide médicale de l'Etat, sont réputés répondre à la condition d'urgence mentionnée par l'article L. 254-1 du code de l'action sociale et des familles* ».

- Introduction du principe de l'école inclusive pour tous les élèves sans aucune distinction (loi n° 2013-595 du 8 juillet 2013 d'orientation et de programmation pour la refondation de l'école de la République). Une avancée considérable pour les élèves en situation de handicap.

Par ailleurs, dans le cas de situations complexes transversales qui demandent un gros investissement y compris financier donc du temps, les décisions de non-conformité du CEDS peuvent avoir une influence sur la politique nationale.

- La décision sur le bien-fondé du CEDS du 4 novembre 2003 dans le cadre de la réclamation collective n° 13/2002 -Association internationale Autisme-Europe c. France a été un déclencheur pour la création de :

- un premier plan national autisme 2005-2007 ; o des études organisées en France ;
- un groupe de travail au sein du Conseil de l'Europe ;
- un deuxième plan autisme plus ambitieux 2008-2010 ;
- un dialogue serein et constructif avec les associations et les professionnels ;
- la nécessité d'un suivi.

Enfin, sans qu'il y ait de lien évident entre les décisions de non-conformité du CEDS (articles 19, 30 et 31 de la Charte notamment) et la politique gouvernementale, la Banque de Développement du Conseil de l'Europe (« CEB ») vient de signer un prêt de 100 millions d'euros, destiné à financer un dispositif d'accueil et d'hébergement d'urgence pour les demandeurs d'asile en France. Il s'agit du second prêt accordé par la CEB et mis en œuvre par Adoma, premier opérateur national de logement accompagné en France.

Outre le financement d'infrastructures, ces fonds serviront également à la mise en place d'un accompagnement social adapté aux besoins des personnes concernées, l'objectif étant de les orienter vers un logement pérenne, l'insertion professionnelle, ou encore les dispositifs de soin et d'éducation. Pour les demandeurs d'asile en particulier, des services de conseil seront mis à disposition afin d'accéder au dispositif national d'accueil (« DNA ») des demandeurs d'asile.



Géorgie

As to the collaboration of the central and regional/local governments in the processes related to implementation of social rights in Georgia, remarkably, the Ministry of Labor, Health and Social Affairs of Georgia implements the employment-promotion programs through the LEPL Social Service Agency. The agency has 69 territorial units across the country, which cooperates with the local authorities in the implementation of various programs. For instance, in the course of training-retraining programs they are actively helping the establishment of contacts with employers during the internship component.



Irlande

All decisions of the ECSR are carefully considered by the relevant authorities and Ireland responds to decisions of the ECSR in the Committee of Ministers as necessary. Responses to decisions of the ECSR are coordinated by the Department of Foreign Affairs and Trade in its capacity as Agent for the Government before the European Committee of Social Rights. The implementation of a decision or conclusion is for the lead Department.



Italie

En règle générale, les acteurs locaux doivent être directement impliqués dans la mise en œuvre de mesures identifiées en synergie avec les autorités centrales comme, par exemple, pour l'adoption et la mise en œuvre de politiques de logement et d'inclusion sociale en faveur des populations roms, sintis et gens de voyage.

Pouvez-vous nous donner des exemples de collaboration ayant bien fonctionné ? La mise en œuvre de la Stratégie nationale d'inclusion des populations roms, sintis et gens de voyage. *Dans certains cas, avez-vous rencontré des difficultés particulières ?* Parfois, les populations locales se sont opposées à l'acceptation des familles roms sur leur territoire malgré tous les efforts déployés pour intégrer ces communautés dans la société italienne. En ce qui concerne, cependant, le revenu d'inclusion, les implications ont été de nature économique.



Lettonie

No information



Lituanie

Upon receipt of the ECSR decisions and conclusions, they are analysed. Summarised information together with substantive comments is submitted to the management of the Ministry of Social Security and Labour of the Republic of Lithuania, the responsible units of the Ministry as well as other concerned institutions. When, after evaluating the ECSR conclusions, respective actions must be taken, draft legislation needs to be prepared, etc., meetings are organised, working

groups are formed and other collaboration takes place. The aim is to involve non-governmental organisations in discussions as well.

Lithuania's reports on the European Social Charter and the ECSR conclusions regarding the report are published on the website of the Ministry of Social Security and Labour of the Republic of Lithuania at the following link:

<http://www.socmin.lt/lt/ataskaitos/tarptautiniu-dokumentu-igyvendinimo/europos-socialine-chartija.html>



République de Moldova

The conclusions of the European Committee for Social Rights of the Council of Europe are forwarded to the central public administration authorities involved in the implementation of the decisions and/or conclusions of the ECSR for informing and taking appropriate measures in order to remedy non-compliance situations.

The greatest difficulty for implementation is the high fluctuation of civil servants in central public administration authorities (ministries, departments), including those who know foreign languages, as well as the change of the persons responsible for reporting on the implementation of the revised European Social Charter.



Pays-Bas

Local governments have an important role in the implementation of decisions and/or conclusions, because of their responsibility for the assistance of, for instance, homeless people.

In 2015 a special commission has formulated an advice on how the protective housing and community shelter services could best be organized. The municipalities have subscribed to this advice and are now working on regional action plans. In these plans municipalities describe how homelessness can be prevented and- when homelessness still occurs- how they will provide good community shelter services. Special attention is given to regional problems of homelessness and the actions that need to be taken to ensure people can live on their own again or at a specific home care institution. The National Association of Local Authorities (VNG) has started a program – funded by the Ministry of Health, Welfare and Sports- in which municipalities are supported with the implementation of effective action plans to tackle homelessness.



Norvège

There is a high degree of collaboration between relevant ministries in Norway when the report to the ECSR and/or the contributions to the work in the Governmental Committee is being prepared. One coordinating Ministry gathers contributions from other relevant Ministries and puts together the report. The different relevant Ministries consider their need for contributions from its own underlying agencies or other relevant sources.



Pologne

- Des changements législatifs suite aux constats de la mise en œuvre insatisfaisante de la Charte ou d'autres instruments internationaux sont préparés par des ministères compétents, si on trouve que ces constats sont bien-fondés et des changements sont jugés opportuns, faisables etc. De tels changements font partie des amendements de plus large envergure et une conclusion négative sert comme l'un des motifs des amendements proposés, le motif principal étant toujours des besoins sociaux ou économiques réels.

- Des collectivités territoriales ne participent à la mise en œuvre de la Charte de façon directe. Des actes législatifs adoptés par la Diète ou des actes exécutifs adoptés par le Gouvernement transposent des dispositions des traités/accords internationaux ratifiés par la Pologne. Des collectivités territoriales prennent part dans la mise en œuvre de la législation en vigueur ou de la politique, selon leurs compétences. Des actions sont financées du budget local ou du budget de l'Etat, selon le domaine.

- La Commission mixte du Gouvernement et des collectivités territoriales a pour tâche de trouver des solutions aux problèmes de fonctionnement des collectivités locales et d'élaborer la politique de l'Etat dans un domaine donné. La Commission examine des questions concernant les collectivités territoriales qui relèvent de la compétence de l'Union européenne ou sont réglés par des traités/accords internationaux. La Commission donne son avis sur des projets des actes législatifs, programmes et autres documents qui concernent des collectivités territoriales. Des questions relatives à la mise en œuvre de la Charte n'ont pas été touchés par la Commission jusqu'à là.

Il arrive, mais rarement, que des autorités locales sont impliqués dans l'exécution des arrêts de la Cour des droits de l'homme. Un cas concernait le fonctionnement de l'Institution des Assurances Sociales, des autres des biens immobiliers.



Portugal

Given the Portuguese constitutional regime, decisions are usually taken at a central government level, without prejudice to consultations with local/regional entities.

For example, the Collective Complaint No. 61/2010 (European Roma Rights Centre v. Portugal) we highlight the collaboration between the High Commission for Migration, the members of the Consultative Group for the Integration of Roma Communities, the Municipalities (local governments), local NGOs and local members of the Roma Communities.



République slovaque

Due to the administrative division of the Slovak Republic, certain responsibilities have been shifted directly to the municipalities and they cooperate with all of the state institutions. If a particular conclusion with regard to the charted focuses on topics which belong to the responsibility of the municipalities, these are directly involved in preparing reactions to these conclusions. The same applies when preparing annual reports. Examples of such shifted responsibilities are certain types of social services provision, primary and secondary education to some extent, etc.



Slovénie

The Ministry of Labour, Family, Social Affairs and Equal Opportunities (hereinafter: MOLFSa) is at the national level responsible for the implementation of the Charter according to the Revised European Social Charter Ratification Act. In practice it means, that the MOLFSa co-ordinates preparation of national reports which are finally adopted by the Government, monitors conclusions and other decisions of the ECSR and informs competent authorities (other ministries and services) thereon. In case of need for clarifications of the ECSR's interpretations of the Articles of the Charter, the MOLFSa provides all relevant information to the competent authorities.

The MOLFSa cooperates successfully with the other competent authorities (ministries). In most cases the competent authorities are well aware of the obligations from the Charter, but in rare cases they are not.

One of the difficulties we have been encountering for years is associated with the primary competence of local government in certain fields (for example: spatial planning) and a lack of political consensus on certain issues, especially those falling within the competence of two or more ministries (for example: the right to housing).



Espagne

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

The **Equality Sector Conference** is a body chaired by the Minister of Health, Social Services and Equality, and by the Heads of the Autonomous Communities' Departments responsible for equality. It is a cooperative body for all common affairs involving equality, which analyses the plans of the national Government and of the Autonomous Communities for combating gender violence and promoting equal opportunities between women and men and other cooperation issues between

public administrations. The Technical Commission of Directors-General for Equality reports to this body.

The Territorial Council for Social Services and for the System for Self-Sufficiency and Care of Dependent Persons—constituted by virtue of Additional Provision Nine of Royal Decree-Law 20/2012, of 13 July, on measures to guarantee budget stability and foster competitiveness, as well as Article 8 of Act 39/2006, of 14 December, on promoting self-sufficiency and care of dependent persons—is under the aegis of the Ministry of Health, Social Services and Equality, and has the purpose of ensuring the necessary coherence, coordination and collaboration between the General State Administration and the Autonomous Communities on matters involving social services and the promotion of the self-sufficiency and care of dependent persons.

RESPONSE FROM THE MINISTRY OF THE TREASURY AND OF THE CIVIL SERVICE

The State Secretariat for the Territorial Public Administrations participates in the European Committee on Democracy and Governance. This Committee addresses issues involving good governance from a territorial perspective, as well as from the perspective of cross-border cooperation under the Madrid Convention. From that perspective, there is no information about the implementation of the European Social Charter from a territorial perspective, because these issues are not addressed by said Committee.

Moreover, it is suggested that for information on this issue, the Steering Committee for Human Rights could address the Secretariat of the Congress of Local and Regional Authorities of the Council of Europe, as it is the assembly responsible for promoting policies and compliance with the Council of Europe's standards and recommendations at the sub-State level, and its structure includes bodies capable of providing advice from the perspective of regions and local entities.



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The process of preparation of the annual national reports on implementation of the European Social Charter is being coordinated by the Ministry of Labour and Social Policy (MoLSP). The national representative, i.e. the member, of the Governmental Committee of the Charter is also from the MoLSP. The MoLSP as the coordinator of these activities, always establishes close and effective collaboration with all relevant institutions and bodies, both for the process of preparation of annual reports (institutions/bodies competent for the issues covered by each particular annual report, i.e. thematic group of ESC articles, as well as when informing the institution about the particular findings/conclusions of the ESCR, as well as about the debates and discussions during the Governmental Committee meetings. The cooperation among institutions is crucial also when preparing the interventions (informations to be presented) at the meeting of the Governmental Committee in Strasbourg, in respect to the specific ESCR findings of non-conformity.

We could also confirm the existence of successful cooperation with the social partners (particularly the relevant trade unions) when preparing the annual reports and collecting their inputs/contributions, and this especially for reports dealing with the ESC provisions related to the thematic group on labour rights (social dialogue, collective bargaining, rights to strike, consultation and information of workers etc).

When necessary, the communication and cooperation is established with some other institutions/organizations, independent bodies, universities, courts etc.

In respect to the antidiscrimination legislation for example, we can emphasize that in addition to the domestic, the relevant international organizations have also been consulted, such as OSCE, UN offices in the country, Helsinki Committee, and the expertise was also requested from the Venice Commission for this legislation.



Turquie

The Ministry of Labour and Social Security of Turkey along with 20 other ministries works towards realising the assignments delivered by the State. The works carried out by the Ministry of Labour and Social Security as regards European Social Charter account practically for the Government Involvement in relation to the Charter. The unconformities put forward by the Committee of Social

Rights in relation to the Charter are brought by the Ministry of Labour and Social Security to the attention of various institutions throughout the reporting process and information concerning legal enhancements and amendments and other measures towards the elimination of unconformities are incorporated into the national reports.



Ukraine

- Action Plan on Implementation of the European Social Charter (Revised) for the period 2015 – 2019 was adopted by the Cabinet of Minister of Ukraine on 14 May 2015 No 450;
- Consultative Group of Experts was created by the Order of the Ministry of Social Policy of Ukraine of 24 April 2013 No. 235. There is a target group on Art. 10 para. 7 of the ESCR.

A.4. Information relative aux mises en œuvre nationales de la Charte

Dans quelle mesure vos autorités administratives notifient-elles au Secrétariat du Conseil de l'Europe ou à d'autres instances ou organisations nationales les initiatives nationales prises pour se mettre en conformité par rapport aux décisions et/ou aux conclusions du CEDS ?



Albanie

Information not available



Armenia

Preparation of National Reports according to the international liabilities of the Republic of Armenia takes place in accordance with the procedure approved by the Decision of the Government of the Republic of Armenia N 1483-N of 23 November 2007.

The Decision of the Government of the Republic of Armenia N 1793-A of 15 December 2011 prescribes the list of State bodies responsible for the preparation of national reports and time limits for submitting them. Ministry of Labour and Social Affairs of the Republic of Armenia, as a State administrative body responsible for the preparation of the national report (in the manner prescribed by the Decision of the RA Government) on the Revised European Social Charter and as required by the reporting procedure, on an annual basis, provides written reports on the national initiatives and efforts taken with a view to ensuring compliance with the separate Articles of the Revised European Social Charter (following ECSR conclusions).

If necessary, inter-agency working group or committee is created, on an ad hoc basis, during the preparation of a report. The Ministry, if needed, also engages specialists, experts and consultants in the preparation of a national report.

After drawing up the draft of the national report, the competent governmental agency (in this case, the Ministry of Labour and Social Affairs) shall agree with the Ministry of Justice, the Ministry of Finance and the Ministry of Foreign Affairs, and where necessary, with other interested State administration bodies. After receiving opinions and summarising the report, the competent governmental agency shall submit the report to the approval of the Government of the Republic of Armenia.



Autriche

We fulfill all the obligations relating to the notification procedure of the Charter, most of the time with a lot of information and almost always on time.



Azerbaijan

We notify the Secretariat of the Council of Europe or other national bodies by submitting our national reports on conclusions of ESCR. In addition, during our participation at the European Social Charter's meeting we try to notify on the national initiatives taken to comply with ECSR decisions by our statement. At the same time every year we submit our MISSCEO report to the Council of Europe.



Belgique

Ceci est lié à l'exercice de reportage.



Bulgarie

National initiatives- such as drafts for amendments and supplements of acting national norms- are included in the national reports on the implementation of the ESCR, which are sent to the CoE Secretariat, and are being discussed at the National Human Rights Coordination Mechanism, which has its meetings twice per year.



Croatie

They notify them within regular reporting procedure.



République tchèque

All aforementioned bodies and organizations are informed within the regular reporting system.



Danemark

Notifications of national initiatives related to compliance of the Charter are contained in the reports etc. part of the regular feedback system.



Estonie

The Secretariat of the Council of Europe is notified via regular yearly reports that are also made public on the Ministry of Social Affairs' website as well as shared with relevant partners. In addition, the Secretariat is sometimes notified when a relevant law has been passed or changed.



Finlande

Labour legislation is prepared in a tripartite setting, in cooperation with employers' organisations and employees' organisations. Stakeholders are heard when revisions to national laws are prepared. Reports are submitted to the Council of Europe at set intervals whenever requested.



France

Les initiatives nationales prises pour se mettre en conformité par rapport aux décisions et/ou aux conclusions du CEDS sont adressées au secrétariat dans le cadre des rapports d'application thématiques annuels ou bien depuis 2014 des rapports biannuels sur le suivi des réclamations collectives. Par ailleurs, ces rapports sont transmis aux partenaires sociaux.



Géorgie

The Ministry of Labor, Health and Social Affairs of Georgia collects information regarding the state of implementation of the European Social Charter from different agencies and at least twice a year submits the reports on implementation of the ratified and non-ratified articles of the Charter to the Council of Europe. However, there are occasions during the year when further information is submitted on the fulfillment of specific articles of the Charter.



Iceland

The Government of Iceland has notified the Secretariat of the Council of Europe of national initiatives taken to comply with the ECSR's decisions and/or conclusions under the reporting system. Reports are transmitted to the principal organizations of workers and employers in Iceland, i.e. the Icelandic Confederation of Labour, SA- Business Iceland, The Federation of State and Municipal Employees and the Alliance of Graduate Civil Servants. Furthermore, the relevant national bodies or organizations are notified of national initiatives taken to comply with the ECSR's decisions and/or conclusions as necessary, on a case-by-case basis.



Irlande

Ireland engages fully with the Secretariat of the Council of Europe on initiatives taken to comply with the ECSR's decisions and or conclusions. Additionally, as part of the simplified reporting process on implementation of the European Social Charter, every other year the Government will report on follow up to findings of the ECSR during a certain period where there was a finding of non-conformity with the Charter.



Italie

Des informations sont fournies à l'occasion de la présentation de rapports nationaux périodiques sur les articles de la Charte sociale européenne révisée et des réponses aux cas de non-conformité soulevés par le CEDS.



Lettonie

The Ombudsman of the Republic of Latvia submits alternative reports or any other requested information to international or regional level partners regarding the social and economic rights. In national level the Ombudsman constantly informs government and Parliament about necessity to obey social and economic rights, mostly through verification procedures. If the responsible institutions are not willing to follow the recommendations by the Ombudsman, then the Ombudsman can submit the cases to Constitutional court.



Lituanie

A unit of the Ministry of Social Security and Labour of the Republic of Lithuania – the International Law Division – ensures fulfilment of commitments related to Lithuania's membership of the European Union, the International Labour Organisation, the Council of Europe and the United Nations Organisation in the areas assigned to the minister.

See also response to A3.



République de Moldova

On the national initiatives taken by the authorities in order to comply with the decisions and/or conclusions of the European Committee for Social Rights, the Secretariat of the Council of Europe is informed through the annual reports on the implementation of the revised European Social Charter according to the four set thematic groups, but also through the comments on the findings of non-compliance at the meetings of the Government Committee for the Revised European Social Charter and the European Code of Social Security.



Pays-Bas

Information is provided in the follow up procedure (relevant reporting procedure).



Norvège

National initiatives are primarily being reported to the Council of Europe through the national reports. A copy of the reports are usually sent to the central trade unions and business organisations in Norway. Organisations or other bodies are informed of any initiatives on request.



Pologne

Des informations sur le progrès législatif font partie du rapport national sur la mise en œuvre de la Charte, selon les dispositions de la Charte. On n'a jamais rapporté en dehors de ce cadre.

Niveau national - procédure législative - information dans le cadre des consultations interministérielles et avec des partenaires sociaux. »



Portugal

The Ministry of Labour, Solidarity and Social Security is responsible through the Strategy and Planning Office (GEP) to ensure the preparation of national reports on the implementation of the European Social Charter. Between 1993 and 2016, Portugal submitted 9 reports on the application of the Charter and 12 on the application of the Revised Charter.

The National Reports on the implementation of the European Social Charter submitted annually contain the national initiatives taken to comply with the ECSR's decisions and/or conclusions. These reports are always disclosed to the national bodies and organizations that collaborate in their preparation.



République slovaque

The authorities inform the Ministry of Labour, Social Affairs and Family of the Slovak Republic about the adopted measures and the ministry's representative notifies the Council of Europe about these measures either in the annual report or during individual sessions of the Governmental Committee.



Slovénie

We usually notify the Secretariat of the CE of the national initiatives taken to comply with the ECSR's decisions and/or conclusions within the reporting system and/or during the meetings of the Governmental Committee.



Espagne

RESPONSE FROM THE MINISTRY OF EMPLOYMENT AND SOCIAL SECURITY. DIRECTORATE-GENERAL FOR THE LABOUR AND SOCIAL SECURITY INSPECTORATE

The Labour and Social Security Inspectorate, in the scope of its powers, periodically provides information for the drafting of the corresponding Reports on the implementation of the European Social Charter and of its Additional Protocol of 1988. Said information may include, depending on the issue in question, a response to requests made by the European Committee of Social Rights.

It also provides information regarding requests for clarification or for additional information made by the European Committee of Social Rights with regard to the latest Report/s submitted. Such requests may be based on the Committee's own considerations or on comments made by social partners regarding these Reports. The information provided is always from the perspective of the powers of the Labour and Social Security Inspectorate.

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

This is always done through other Ministries: the Ministry of Employment and Social Security, or, as the case may be, the Ministry of Foreign Affairs and Cooperation.

IMIO collaborates with the Ministry of Employment and Social Security—which is the Ministry responsible for relations with the Council of Europe on social affairs, and, especially, with the European Committee of Social Rights—and provides information regarding the issues within its scope for the drafting of Spain's national reports on the European Social Charter, and responds with regard to any ECSR conclusions that express disagreement.

As regards gender equality, the Council of Europe's Gender Equality Commission (GEC, an intergovernmental body with representatives from the 47 Member States) and the Gender Equality Unit, which acts as the GEC Secretariat, are informed of any legislative amendments, policies and measures carried out in the sphere of equality between women and men in Spain. To this end, annual reports are drafted on the implementation of the different measures, and collections of good practices in specific areas are compiled.



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These information are mainly being provided within the regular national annual reports on the implementation of the (accepted provisions of the) European Social Charter.



Turquie

During the preparation process of the draft acts related to social rights, they are sent to related national bodies and organisations, even to social partners and NGOs to reflect their opinions and recommendations in terms of the ECSR's decisions and/or conclusions.

Social rights-related legal arrangements which are in parallel to articles of the European Social Charter are made public through press releases of Official Websites of Institutions.



Ukraine

Meetings of the Governmental Committee of the European Social Charter and the European Code of Social Security;

- Permanent Representation of Ukraine to Council of Europe;
- Official web site of the Ministry of Social Policy
<http://www.msp.gov.ua/timeline/Mizhnarodne-spivrobitnictvo.html>
- postal and electronic correspondence;
- seminars, workshops, meetings.

A.5. Implication des juridictions internes face à la Charte

Les juridictions de votre pays s'appuient-elles sur des dispositions de la Charte, des conclusions et/ou décisions du CEDS pour résoudre des litiges en matière de droits sociaux ?

Oui ?

Non ?

Si oui, pouvez-vous nous fournir quelques exemples de décisions (si possible, dans différents domaines) ?

Si non, pouvez-vous brièvement expliquer le statut actuel de la Charte dans votre ordre juridique ?



Albanie

Courts in Albania rely on the Constitution of the Republic of Albania, in all the conventions ratified by Parliament, on the accepted provisions of the revised European Social Charter, and on the basic laws that are in accordance with the European legislation.

In some cases, relating to issues to unfair termination of labor relations, the courts have made wide use of citations and references to the case law of the European Court of Human Rights.



Armenia

Yes.

The international treaties to which the Republic of Armenia has acceded constitute an integral part of the legal system of the Republic of Armenia and have supremacy over the laws of the Republic of Armenia by virtue of the Constitution and laws of the Republic of Armenia “On International Treaties” and “On legal Acts”. Thus, if the international agreements of the Republic of Armenia envisage norms differing from the ones stipulated by law or other legal acts, then the norms of the international agreement are applicable. Courts in Armenia rely on this provision when adopting relevant decisions.

Furthermore, in accordance with the international treaties of the Republic of Armenia, everyone shall have the right to apply – with regard to the protection of his or her rights and freedoms – to international bodies for protection of human rights and freedoms. In this regard, Article 241 of the Civil Procedure Code of the Republic of Armenia enshrines the right to apply to the international court. Thus every person, who finds that his or her right (rights) provided for by the international treaties of the Republic of Armenia has been infringed by the final judicial decision relating to him or her adopted in a civil case, shall have the right to apply to an international court participated by the Republic of Armenia and having the jurisdiction to hear civil cases.

The Republic of Armenia has been a State party to the European Convention for the Protection of Human Rights and Fundamental Freedoms since 26 April 2002. By becoming a member, the Republic of Armenia has adopted the jurisdiction of the European Court of Human Rights, which covers all the issues referring the interpretation and implementation of the provisions of the Convention and the Protocols attached thereto.



Autriche

We don't know about any Court decisions which rely on the provisions of the ESC. As to the legal status the ESC is not directly applicable but has to be implemented by national law.



Azerbaïjan

Yes, it is referred to as an international document.



Belgique

Yes. Pour ce qui concerne le droit de grève, nous pouvons disposer de plusieurs éléments d'informations. Pour le surplus, nous ne disposons pas d'un relevé précis.



Bulgarie

See the enclosed³⁸ Supreme Court of Cassation and Supreme Administrative Court's decisions/orders, which mention/interpret rights set out in Art. 1, Art. 13 and Art. 15 of the European Social Charter (rev.) in respect to national legislation/cases.

If no, can you explain briefly the current status of the Charter in your legal order?

According to Art. 5 (4) of the Constitution of the Republic of Bulgaria, international treaties ratified according to the constitutional procedure, promulgated and entered into force for the Republic of Bulgaria, are part of the domestic law of the country. They take precedence over those rules of domestic law that contradict them.

³⁸ Will be sent later on after the necessary translation.



Croatie

Yes. According to Article 141 of the Constitution of the Republic of the Croatia ratified international standards are a component of the domestic legal order and they have primacy over domestic law but we are not aware of any such court decisions.



République tchèque

The European Social Charter is a part of the national legislation, as stipulated in Art 10 of the Constitution of the Czech Republic. In case of dispute concerning social right, the decision on merits is usually based on national law. The European social charter is mentioned only from the point of view of the principles on which the national legislation is based.



Danemark

Yes. Denmark has ratified the Charter. Accordingly, the courts can apply the Charter in a given dispute concerning social rights.



Estonie

Yes, sometimes.

For example, the Estonian Supreme Court in case regarding the provision of healthcare coverage to unemployed people, referred to the European Social Charter and ruled that the difference in healthcare afforded to employed and unemployed persons cannot be disproportionately large. It further ruled that reducing the amount of persons covered by healthcare because of a lack of funds must be adequately justified³⁹.

In another case in 2014, regarding a delay by the local government in providing social housing, the Supreme Court referred to article 13, paragraph 1 of the European Social Charter regarding the provision of adequate assistance⁴⁰.



Finlande

Yes

According to Section 22 of the Constitution of Finland, the public authorities shall guarantee the observance of human rights.

In legal praxis, human rights also affect interpretation.

However, the rulings published by the Supreme Court, the Courts of Appeal and the Labour Court have only few references to the European Social Charter. An article published in 2012 sought to determine the extent to which higher court instances in Finland, in particular the Supreme Administrative Court and the Insurance Court, have issued decisions where social human rights have played a role, and the extent to which these rights have been considered in the decisions. The conclusion was that social human rights were also largely ignored by courts, whereas the European Convention on Human Rights was the human rights agreement quoted clearly the most often. In general, the national norms on fundamental rights are applied without referring to social human rights norms.

If yes, can you give us some examples of decisions (if possible, in different areas)?

Supreme Court decision (2016:12)

In accordance with the limitation clause contained in a company's performance bonus scheme, participation in an illegal industrial action cancelled a person's right to a performance bonus for the

³⁹ <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=206126316>

⁴⁰ <https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-91-13>

period targeted by the illegal industrial action. As a consequence of work stoppages initiated by the company's employees during industrial peace obligation, the company had refused to pay performance bonuses to employees who had taken part in these stoppages. On the grounds explained in the Supreme Court's decision, the court considered that the work stoppages were not executed by the trade union. Instead, they represented employees' own activities, which had no connection to workers' freedom of organisation. By denying the performance bonuses, the company had not breached the prohibition of discrimination or the prohibition to prevent and restrict the freedom of association.

The issue to be assessed was whether the freedom of occupational association also encompasses the right to participate in industrial action that is not executed by an employees' organisation but that has been decided spontaneously among employees themselves.

In the grounds to its decision, the Supreme Court refers to Article 6, paragraph 4 of the Revised European Social Charter and concludes the following: "In discussing the issue of who or which body is entitled to initiate collective action, such as a strike, referred to in Article 6, paragraph 4, the European Committee of Social Rights has considered that the decision to call a strike can be taken only by a trade union provided that forming a trade union is not subject to excessive formalities (Digest of the Case Law of the European Committee of Social Rights, p. 56). On the other hand, the provisions of the above-mentioned agreements and their application practice do not indicate that the right to call a strike would be each employee's independent right so that the right could also be exercised otherwise, not just as part of trade union activities."



France

En droit français, la Charte souffre d'une invocabilité sinon limitée, du moins peu contraignante, aspect sur lequel les deux cours suprêmes, à savoir le Conseil d'État et la Cour de Cassation, essayent de se concerter par le biais d'une commission composée de membres des deux juridictions.

La chambre sociale de la Cour de cassation, au sommet de la juridiction judiciaire, ne reconnaît pas d'effet direct à la Charte dans son ensemble mais admet l'effet direct de certains articles de la Charte. Tel est le cas des articles 5 (droit syndical) et 6 (droit à la négociation collective) de la Charte ainsi que de l'article 24 qui concerne le droit à la protection en cas de licenciement.

Cependant, dans son célèbre arrêt relatif aux forfaits jours⁴¹ la même Cour de cassation est restée prudente quant à l'applicabilité de la Charte. Elle s'est fondée sur une disposition du droit de l'UE, par lequel elle opère un renvoi indirect à la Charte, puisque cet article évoque les « *droits sociaux fondamentaux, tels que ceux énoncés dans la Charte sociale européenne signée à Turin le 18 octobre 1961* » qui « *ont pour objectifs la promotion de l'emploi, l'amélioration des conditions de vie et de travail, permettant leur égalisation dans le progrès, une protection sociale adéquate, le dialogue social, le développement des ressources humaines permettant un niveau d'emploi élevé et durable et la lutte contre les exclusions* ». Cet avis a été réaffirmé par la chambre sociale à plusieurs reprises par la suite.

Le Conseil d'État a, quant à lui, accepté l'application directe de la Charte dans l'ordre juridique français, à ce stade plus particulièrement l'article 24 de la Charte depuis sa décision du 10 février 2014⁴².



Géorgie

Yes. It is worth mentioning that the involvement of Georgian courts in relation to the European Social Charter, in the process of dealing with the disputes concerning social rights, is sufficiently extensive. Particularly, the common courts of Georgia (the Regional Courts, the Court of Appeals and the Supreme Court) refer to the provisions of the European Social Charter while discussing

⁴¹ Soc. 29 juin 2011, pourvoi n° 9-71.107, Bull.2011, V., n°181

⁴² Conseil d'État, 7ème et 2ème sous-sections réunies, 10/02/2014, 358992

<https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000028583868>

civil, as well as administrative cases. Notably, together with domestic laws, Georgian Courts directly rely on the norms of the European Social Charter in regard with the issues such as, *inter alia*, labor disputes, specifically, concerning the reinstatement of the employee and compensation of compulsory missed pay;⁴³ issuing pension funds;⁴⁴ the right of employed women to protection of maternity,⁴⁵ etc.⁴⁶

b) As to the Constitutional Court of Georgia, the practice reveals that the Court refers to the internationally recognized norms of social rights while discussing the cases in regard with the socio-economic field. It is noteworthy, that the Constitutional Court of Georgia notes that, as long as the social and economic rights stem from the international obligations of a state, they should be considered as universally recognized rights.⁴⁷ The Court led to the conclusion, that social and economic rights are constitutionally recognized fundamental rights.⁴⁸ Herewith, according to the reasoning of the Court, as the principle of a social state is given in the preamble of the Constitution of Georgia, recognition of social rights is based on the constitutional principles, and without this, it would be impossible to establish a social state. The Court has directly referred to the International Covenant on Economic, Social and Cultural Rights while dealing with the cases concerning the labor issues.⁴⁹



Islande

Yes. Iceland is a dualist state. Therefore, international law must be incorporated into national legislation before it can be applied by the national courts. However, national legislation is construed in accordance with the state's international obligations insofar as possible. Although the European Social Charter has not been incorporated into national legislation, reference has been made to the Charter by Icelandic courts in connection with the interpretation of domestic legislation, cf. the Supreme Court of Iceland's judgment of 19 December 2000 in case no.

⁴³ Judgment of the Chamber for Civil Cases of the Tbilisi City Court, referred by the Supreme Court of Georgia in its Decisions №სს-1124-1080-2016, 10 March, 2017, para. 7.2.; №სს-1000-961-2016, 3 February, 2017, para. 12.2.

⁴⁴ Decision of the Chamber of Administrative Cases of the Supreme Court of Georgia, №სს-381-370(3-13), 21 January, 2014, Reasoning part.

⁴⁵ Judgment of the Chamber for Civil Cases of Tbilisi Court of Appeals, 24 March, 2016, referred by the Supreme Court of Georgia in its Decision №სს-476-457-2016, 10 January, 2017, para. 20.

⁴⁶ See also other judgments of the common courts of Georgia: Judgment of Tbilisi City Court, №2/ 21095-14, 13 April, 2016; Judgment of Tbilisi City Court, №2/3678-15, 19 February, 2016; Judgment of Tbilisi City Court, №2/3528-15, 19 February, 2016; Judgment of Batumi City Court, №3-600/15, 25 March, 2016; Judgment of Gori District Court, №2/70-16, 14 July, 2016; Judgment of Zestafoni District Court, №2/46—2016, 13 April, 2016; Judgment of Sachkhere District Court, №2/19 -17 §, 14 March, 2017; Judgment of Kutaisi City Court, №2/1047-2016 §, 16 June, 2017; Judgment of Kutaisi Court of Appeals, №3/8-397-16, 28 October, 2016; Judgment of Kutaisi Court of Appeals, №3/8-454-2016, 8 November, 2016.

⁴⁷ See the Ruling of the Constitutional Court of Georgia, N1/2/458, 10 June, 2009, available online at: <http://constcourt.ge/ge/legal-acts/rulings/saqartvelos-mogalageebi-davit-sartania-da-aleqsandre-macharashvili-saqartvelos-parlamentisa-da-saqartvelos-iusticiis-saministros-winaagmdeg-543.page>

⁴⁸ See the Judgment of the Constitutional Court of Georgia, N1/1/126, 129, 158, 18 April, 2002, available online at: <http://constcourt.ge/ge/legal-acts/judgments/bachua-gachechiladze-simon-turvandishvili-shota-buadze-solomon-sanadiradze-da-levan-qvacbaia-2-vladimer-dobordjginidze-nineli-andriadze-guram-demetrashvili-da-shota-papiashvili-3-givi-donadze-saqartvelos-parlamentis-winaagmdeg-98.page> Judgment of 15 October, 2002 N1/2/174,199, available online at: <http://constcourt.ge/ge/legal-acts/judgments/saqartvelos-mogalageebi-tristan-xanishvili-tedore-ninidze-nodar-chitanava-levan-aleqsidze-giorgi-qavtaradze-da-sxvebi-sul-12-mosarchele-saqartvelos-parlamentis-winaagmdeg-100.page> Judgment of 30 December, 2002, N1/3/136, available online at: <http://constcourt.ge/ge/legal-acts/judgments/saqartvelos-mogalage-shalva-natelashvili-saqartvelos-parlamentis-saqartvelos-prezidentisa-da-saqartvelos-energetikis-maregulirebeli-erovnuli-komisiis-semekis-winaagmdeg-103.page>

⁴⁹ See the Judgment of the Constitutional Court of Georgia, N1/3/301,23 March, 2005, III, para. 1. Available online at: <http://constcourt.ge/ge/legal-acts/judgments/saqartvelos-mogalageebi-davit-silagadze-liana-darsania-da-ekaterine-wowonava-saqartvelos-parlamentis-winaagmdeg-220.page>

125/2000, in which the court referred to Articles 12 and 13 of the Charter, as well as other provisions of international law, in connection with the interpretation of Article 76 of the Icelandic Constitution (on the right to necessary assistance) and corresponding domestic legislation. The case concerned the legality of the Social Insurance Administration's decision to reduce an invalidity pensioner's pension supplement due to the pensioner's spouse's income (who was not also an invalidity pensioner) by considering the invalidity pensioner's income to amount to half of the couple's total income. The Supreme Court concluded that the practice did not sufficiently ensure the rights protected by Articles 76 (on the right to necessary assistance) and 65 (on equal treatment) of the Icelandic Constitution.



Irlande

Ireland has a dualist approach to international law, predicated on Article 29 of the Constitution. Therefore international treaties that are signed and ratified by Ireland do not automatically become part of the domestic law of the State. In order to be enforceable and binding at the domestic level, such treaties must be domestically incorporated, either by an Act of the Oireachtas, or an amendment to the Constitution. The European Social Charter has not been incorporated into domestic law.



Italie

Oui, rarement.

b) À titre d'exemple, on mention deux ordonnances du Tribunal de Rome - Sect. II, du 8 août 2012 et du 4 juin 2015. Les ordonnances, en reconnaissant le caractère discriminatoire de la décision du comité municipal de Rome de réaffecter près de l'aéroport de Rome Ciampino, dans une zone séparée de la communauté habitée et mal équipée, certains Roms et Sintis (déterminant ainsi une "ghettoïsation" substantielle), a reporté les règles de la Charte sociale sur le droit à une résidence digne et a rappelé les décisions du CEDS concernant l'Italie.



Lettonie

No information.



Lituanie

Lithuanian courts, including the Constitutional Court of the Republic of Lithuania, rely on the provisions of the Charter when examining cases on social rights. The provisions of the Charter are incorporated in the Lithuanian national law, thus courts follow them when applying the respective provisions of national legal regulation.

It should also be noted that, in accordance with Article 138(3) of the Constitution of the Republic of Lithuania, international treaties ratified by the Seimas shall be a constituent part of the legal system of the Republic of Lithuania. International treaties ratified by the Republic of Lithuania shall have the power of law, while in the event of the collision between the provisions of a ratified international treaty and national legal acts, the provisions of the international treaty shall have supremacy.

Maternity protection

1. The Constitutional Court referred to the provisions of the Charter while examining the case based on the applicant's request to investigate compliance of paragraph 5 of Article 6 of the Republic of Lithuania Law on Sickness and Maternity Social Insurance (wording of 15 December 2011) and the provisions of Item 7 of the Regulations on Sickness and Maternity Social Insurance Allowances as approved by Resolution No. 86 of the Government of the Republic of Lithuania of 25 January 2001 "On the approval of the Regulations on Sickness and Maternity Social Insurance Allowances" (wording of 21 August 2012) to the extent that they provide that the maximum

reimbursed remuneration for calculation of maternity allowances may not exceed the sum of the 3.2-fold amount of the insured income approved by the Government for the current year which was valid in the month of acquisition of the entitlement to an appropriate allowance (the start of the pregnancy and childbirth leave), with Article 29, Article 38(1) and (2), Article 39(2) of the Constitution of the Republic of Lithuania.

The Constitutional Court indicated that *“Article 8 of the European Social Charter “The right of employed women to protection of maternity” establishes that with a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to provide, inter alia, either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks. The European Committee of Social Rights, which monitors fulfilment of the commitments of states under the Charter, has interpreted that wages or social insurance allowances and allowances from public funds must be paid during the maternity leave; the amount of allowance must be sufficient and equal or approximately equal to the amount of wage. For example, an allowance of 70 per cent of the amount of wage is considered to be sufficient; when evaluating the amounts of allowances smaller than wages, the factors such as fixing the ceiling, the level of this ceiling in the entire wage structure, and the number of women who receive allowances exceeding this ceiling are taken into consideration.”*

By this ruling, the Constitutional Court acknowledged that paragraph 5 of Article 6 of the Law on Sickness and Maternity Social Insurance to the extent that it provides that the maximum reimbursed remuneration for calculation of maternity allowances may not exceed the sum of the 3.2-fold amount of the insured income approved by the Government for the current year which was valid in the month of acquisition of the entitlement to an appropriate allowance, without establishing in laws the allowances to all employed women corresponding to the average wage received during the established period before the pregnancy and childbirth leave, contradicts the Constitution. The provisions of Items 7 and 10 of the Regulations on Sickness and Maternity Social Insurance Allowances approved by the Government’s resolution, which implement this legal regulation, have also been acknowledged as contradicting the Constitution (Ruling of the Constitutional Court of 15 March 2016 “On the maximum amount of maternity allowance”).

2. Klaipėda Regional Administrative Court examined an administrative case on the award of payment in arrears of the maternity allowance in the amount of EUR 1258.02 and stated that *“according to the international commitments of the Republic of Lithuania the right to social protection, the right to receive social benefits established in the law, inter alia, during the pregnancy and childbirth leave, is a constituent part of the general principles of law, observance whereof, inter alia, is ensured by courts that settle arising disputes. Interpretation of law that is incompatible with respect for human rights, which is substantially guaranteed by all main international legal acts, cannot be acknowledged. The fact that the right to maternity leave is considered to be a safeguard of social right of particular importance, is established, inter alia, in Article 22 and Article 25(2) of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948, Article 10 of the International Covenant on Economic, Social and Cultural Rights of 19 December 1966, Article 8 of the European Social Charter, Article 6(1) of the ILO Convention No. 183 concerning the Revision of the Maternity Protection Convention (Revised), 1952 of 15 June 2000.”*

The court awarded part of reimbursed remuneration in the amount of EUR 1258.02 with respect to the applicant against the defendant (Decision in administrative case No. I-29-243/2017 of Klaipėda Regional Administrative Court of 20 March 2017).

Right to social support

By ruling on the right to social housing dated 26 May 2015, the Constitutional Court acknowledged that the provisions of the Law on State Support for the Acquisition or Rental of Housing and

Renovation (Modernisation) of Multi-Apartment Buildings, whereby a social housing lease contract shall be terminated in cases where the tenant's property or income exceeds the amounts set by the Government to a smaller extent than sufficient to rent housing meeting the minimum socially acceptable needs of an individual or a family, contradicted Article 52 of the Constitution, which guarantees the right to social assistance, and the constitutional principle of the rule of law. The Constitutional Court noted that according to this legal regulation where an individual or a family is deprived of social housing having exceeded the amounts of property and income set by the Government even to the smallest extent the situation of the tenant of social housing may be significantly aggravated and the tenant may be returned to basically the same situation where he was before being provided with social housing.

In this ruling the Constitutional Court referred to the provisions of the Charter: *"The European Social Charter <...> establishes the right to social and medical assistance (Article 13) and the right to housing (Article 31). Article 13 of the Charter establishes, inter alia, that "with a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake: 1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition; 2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights." Article 31 of the Charter establishes, inter alia, that "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: 1. to promote access to housing of an adequate standard; 2. to prevent and reduce homelessness with a view to its gradual elimination." The 2011 conclusions on the report of implementation of the Charter, submitted by the Republic of Lithuania, presented by the ECSR that monitors the fulfilment of states' commitments under the Charter, note, inter alia, that due to the fact that the right to adequate housing is not effectively guaranteed, the situation in Lithuania does not meet the requirements set out in Article 31(1) of the Charter. The above conclusions note, inter alia, that states seeking to implement the provisions of Article 31(1) of the Charter must take into consideration the impact of their measures on every category of persons, particularly the most vulnerable ones."*

Dismissal

Vilnius Regional Court examined a civil case in appeal concerning a decision adopted in a civil case on acknowledging dismissals as unlawful, award of compensations for unused annual leave, severance pay, average wages for the period of involuntary idle time and stated that *"Article 4(4) of the European Social Charter recognises the right of all workers to a reasonable period of notice for termination of employment. J. B. admitted that she had been notified of the sale of part of business from February 2016; the appellant was dismissed from work on 31.03.2016 according to Article 129(2) of the Labour Code, upon failure of the parties to agree on employment at MB "Latmus". Article 130 of the Labour Code provides that an employer shall be entitled to terminate the employment contract by giving the employer written notice upon signature two months in advance. The appellant indicated that she had the right to be notified of dismissal two months in advance. It means that upon failure of the employer to provide evidence of the concrete date of the notice of dismissal, the date of dismissal from work of the appellant is postponed to 31.05.2016, by awarding the average wage for two months."* (Ruling in civil case No. e2A-482-803/2017 of the Civil Division of Vilnius Regional Court of 24 January 2017).

The rights of persons with disabilities

In its decision dated 30 March 2017, the Supreme Administrative Court of Lithuania in case No. I-3-502/2017 stated that *"the European Social Charter declares that with a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake <...> to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with*

disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services. Article 15(3) of the European Social Charter lays down that with a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.”

The court admitted that Item 3.2 of the Conditions of the Implementation of Active Labour Market Policy Measures and the Description of Procedure, approved by Order No. A1-499 of the Minister of Social Security and Labour of the Republic of Lithuania of 13 August 2009 (wording of Order No. A1-61 of the Minister of Social Security and Labour of 4 February 2014), to the extent that it does not provide to attribute passenger cars with fewer than 8 passenger seats and with one driver's seat used by persons with disabilities in their work to the category of work equipment, contradicts the principle of availability established in subparagraph 6 of paragraph 1 of Article 3 of the Republic of Lithuania Law on Social Integration of Disabled Persons (wording of Law No. IX-2228 of 11 May 2004).

The right of children and young persons to protection

By the judgment of a court in appeal R. B. was convicted for committing a homicide through negligence in violation of the special conduct security rules as specified by legal acts. The Supreme Court of Lithuania examined this case in cassation and stated that *“in this context regard should also be paid to the provisions of the European Social Charter. Article 7 of Part II of the Charter (The right of children and young persons to protection), the commitments whereof became binding to the Republic of Lithuania upon ratification of the Charter, establishes, inter alia, that with a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy (paragraph 2 of this article); to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work (paragraph 10 of this article). These provisions have been established in the Republic of Lithuania Law on Fundamentals of Protection of the Rights of the Child, Article 4(1) whereof stipulates that legal interests of the child must always and everywhere be given priority consideration by natural and legal persons. Natural and legal persons are prohibited to exploit or otherwise discriminate a working child; a child may not be entrusted with a job or occupation, detrimental to health or education or one that would interfere with his physical, intellectual or moral maturity. Natural and legal persons who shall unlawfully interfere with a child availing himself of his rights and freedoms or who shall otherwise violate the rights of the child shall be held liable according to the procedure established by laws (Article 42(1), Article 57(1)).”*

“Having regard to the above, a conclusion is drawn that minors who perform works on the basis of civil legal relations must be guaranteed the same safe work conditions as the minors who work under the employment contract. The panel decides that by assigning dangerous works to minors who cannot perform such works according to the requirements of legal acts, the organiser of works assumes all risks related to the performance of these works and potential harmful consequences. Even in the case where civil legal relations are established between the organiser of construction works and a minor who performs these works, like in the present case, the supervisor and organiser of works must ensure that performance of specific works does not cause danger to a young person's safety and health. Thus, legal acts regulating safe and healthy work conditions for

young persons are applied." (Ruling in criminal case No. 2K-181-489/2017 of the Criminal Division of the Supreme Court of Lithuania of 5 July 2017).

Strikes

The Supreme Court of Lithuania examined the case according to the complaint regarding recognition of the indefinite strike called by the joint representation of AB Švyturys trade union organisation and Utenos Alus workers' union at the production unit of UAB Švyturys–Utenos Alus as unlawful and stated that *"the key international documents declaring the right to a strike are the International Covenant of Economic, Social and Cultural Rights (Article 8(d)) and the European Social Charter (Article 6(4)). These documents directly establish the employees' right to strike. The European Social Charter adheres to the principle that collective action is possible only in cases of conflicts of interest, but even in this case the right to strike is not absolute, since the states may establish the limits of exercise of this right. <..> Thus international documents recognise the restrictions of the right to strike, established in national legal systems, provided that these restrictions are justified and do not deny the essence of the right to strike. The ILO Committee on Freedom of Association has the opinion that the conditions, which have to be established by laws in order to recognise the strike as lawful, must be reasonable and substantially not to restrict the modes of action available to trade unions."*

The court stated in this case that *"the right to strike, like any other person's right, has certain limits and cannot be exercised arbitrarily, i.e. its exercise conditions established by law must be followed. When addressing the issue of the lawfulness of a strike, legal norms regulating collective employment relations and determining the conditions of the lawfulness of a strike as well as its restrictions are primarily applied."* (Ruling in civil case No. 3K-3-81/2012 of the Civil Division of the Supreme Court of Lithuania of 6 March 2012).



République de Moldova

No.

From our research, we have not identified recent court decisions where judges invoked the provisions of the European Social Charter and/or the decisions of the European Committee for Social Rights when addressing social rights disputes.

At the same time, we mention that Article 4 of the Constitution of the Republic of Moldova stipulates that the constitutional provisions on human rights and freedoms are interpreted and applied in accordance with the Universal Declaration of Human Rights, the pacts and other treaties to which the Republic of Moldova is a party. If there are inconsistencies between the pacts and the treaties on the fundamental human rights to which the Republic of Moldova is a party and its national laws, the international regulations have priority.



Pays-Bas

All accepted Charter's provisions are fully binding in the Kingdom of the Netherlands, as a State Party to the Charter. The Netherlands is bound by international law to enable everyone within its jurisdiction to exercise the rights set out in the Charter. However, according to the Dutch Constitution, treaty provisions may be directly applied in the domestic legal order, and can thus be directly invoked before national courts, if their wording is sufficiently precise to do so. Whether this is the case is to be decided by the judiciary. Most of the provisions of the Charter give a general instruction to the Government and are of a programmatic nature. Therefore, the Charter is in principle not meant to produce direct effect.

Article 6, paragraph 4 of the Charter is currently the only article that is directly applicable in the Netherlands' legislation, through article 93 of the Netherlands' Constitution. In the NS judgment of 30 May 1986 the Supreme Court referred to article 6 as the legal foundation of a right to collective

action in the Netherlands, based on the conclusions of the ECSR. In subsequent cases, the Charter has remained the central point of reference of the Supreme Court.



Norvège

The courts rely on provisions of the Charter as human rights obligations. One example from the Supreme court is the case no. 2008/978, HR-2008-2036-A (Tariff fee. Wage agreement).



Pologne

L'analyse de la jurisprudence montre que dans un premier lieu c'est la législation ordinaire qui est prise en considération, puis la Constitution. Le juge ressort aux dispositions des conventions en dernier lieu et souvent en termes générales, pour appuyer le raisonnement basé sur des textes nationaux. Dans certains cas c'est la façon dont des recours sont formulés qui ne permet pas aux juges d'analyser en détail des dispositions internationales (pas d'indication des dispositions d'une convention, motifs vagues) et, par suite, de statuer sur leur base. Mais, la raison principale pour laquelle la jurisprudence basée sur la Charte sociale et autres conventions sur les droits sociaux reste limitée est qu'une large majorité de leurs dispositions ne créent pas de droits subjectifs, ce qui est confirmé explicitement par la jurisprudence.

La modification de la loi sur l'organisation des cours de droit commun adoptée le 12 juillet 2017 instaure des coordonnateurs de coopération internationale et des droits de l'homme dans chaque circonscription judiciaire. Ils auront pour tâche, entre autres, d'informer:

- juges, assesseurs de la cour, greffiers de la cour et assistants aux juges sur les principes et la procédure d'obtention des informations sur le droit et la pratique d'autres Etats, le contenu des dispositions de la Convention européenne des droits de l'homme,
- président de la cour sur le besoin d'organiser une convocation des juges, assesseurs de la cour, greffiers de la cour et assistants aux juges pour, entre autres, assurer le respect de la Convention européenne des droits de l'homme,
- juges, assesseurs de la cour, greffiers de la cour et assistants aux juges sur la jurisprudence de la Cour suprême et des organes internationaux.

Exemples de décisions

Ont été identifiées quelque 120 sentences (arrêts, décisions, résolutions) des cours et du Tribunal constitutionnel, dans lesquelles il est fait référence à la Charte sociale européenne. En principe les dispositions de la Charte sont mentionnées afin de soutenir l'argumentation présentée dans les motifs des jugements et en tant que la directive de l'interprétation des dispositions de la législation nationale. Il y a un nombre des arrêts dans lesquels on fait juste une référence générale à la Charte sociale européenne (même cas pour les conventions onusiennes).

1/ Les cours de droit commun – les cours d'arrondissement (d'appel)

- Affaire III APz 8/16, décision du 14.03.2016 – en appréciant la recevabilité de la garantie sous forme de l'interdiction, opposée aux syndicats défendeurs, de proclamer et organiser une grève générale ou une grève d'avertissement ou d'autres actions ou omissions liées à l'action de grève, la cour a indiqué, entre autres, l'art. 6 al. 4 de la Charte (remarquant en même temps que cette disposition n'est pas contraignante pour la Pologne). Le rappel de cette disposition, ainsi que des dispositions pertinentes d'autres conventions, avait pour objectif de souligner que le droit de grève est considéré comme un droit de l'homme, tandis que la constitution de la garantie (sous forme d'interdiction aux syndicats défendeurs de proclamer ou d'organiser une grève générale ou une grève d'avertissement), représenterait une sérieuse ingérence dans les droits des défendeurs.
- Dans l'arrêt du 11.06.2014 dans l'affaire II Ca 870/13, la cour a indiqué que dans la jurisprudence et la doctrine était établie l'opinion que des limites des prestations des services de santé définies dans des accords avec des prêteurs de ces services ne peuvent pas être à la

base d'un refus de prestation en cas de danger pour la vie et la santé. Cette position est justifiée, selon le juge, par l'art. 68 al. 1 et 2 de la Constitution de la République de Pologne et les dispositions des accords internationaux, dont la Pologne est partie (art. 12 al. 1 et al. 2 lettre d du Pacte international relatif aux droits économiques, sociaux et culturels, art. 35 de la Charte des droits fondamentaux de l'Union européenne et art. 11 de la Charte sociale européenne).

- Dans l'arrêt du 19.01.2012 dans l'affaire I ACa 1337/11, la cour a indiqué que la protection de la santé était garantie par l'art. 12 al. 1 et l'art. 12 al. 2 lettre d du Pacte international relatif aux droits économiques, sociaux et culturels, art. 35 de la Charte des droits fondamentaux de l'Union européenne et art. 11 de la Charte sociale européenne, sans autant entrer plus en détails.

Dans les motifs des arrêts dans les affaires concernant les assurances sociales sont invoqués parfois "les principes de la Charte sociale européenne", sans toutefois préciser des dispositions qui auraient été enfreintes dans l'affaire en cause.

2/ Les cours administratives

- Dans des pourvois en cassation (affaires I OSK 955/09 et I OSK 956/09) on a notamment allégué la violation du droit matériel suite à la non-application des dispositions du droit international généralement applicable, dont de l'art. 13 et 16 de la Charte sociale européenne. Dans les arrêts du 15.12.2009 la Cour administrative suprême a indiqué comme inadmissible d'exiger l'application directe de la Constitution de la République de Pologne et de la Charte sociale européenne tout en omettant l'art. 5 de la loi sur les prestations familiales. La Cour a indiqué que les organes de l'administration publique avaient le devoir d'agir sur la base du droit en vigueur, ce qui se rapporte à l'intégralité du système légal, y compris la Constitution et le droit international contraignant. Ces organes n'ont toutefois pas le droit de juger de la conformité de l'acte normatif avec la Constitution de la République de Pologne et les traités et accords internationaux. Les organes des deux instances qui statuaient dans l'affaire ne pouvaient pas passer outre les règlements du droit matériel en vigueur, estimant qu'ils sont en contradiction avec la loi fondamentale ou bien avec les traités et accords internationaux ratifiés. Si le tribunal saisi en première instance est convaincu de l'incompatibilité ou bien doute de la conformité de la loi avec la Constitution alors, en vertu de l'art. 193 de la Constitution et de l'art. 3 de la loi sur le Tribunal constitutionnel, il est tenu d'adresser au Tribunal constitutionnel une question juridique. Ce n'est que si le Tribunal constitutionnel affirme l'incompatibilité de cette loi avec la Constitution, qu'il est possible que la cour ne l'applique pas. L'arrêt prononcé le 4.04.2007 par la cour administrative de voïvodie à Gdańsk dans l'affaire II SA/Gd 135/07, dans laquelle on s'en référait à l'art. 12 de la Charte, était similaire.
- Dans l'affaire SA/Wr 507/16, le demandeur a soulevé l'enfreinte au droit matériel, notamment à l'art. 1 et à l'art. 16 de la Charte sociale européenne. Dans l'arrêt du 7.03.2017, la cour administrative de voïvodie à Wrocław n'a pas pris en compte cette objection, statuant uniquement sur la base du droit national. De même dans les affaires II SA/Kr 1544/03, II SA/KR 1510/03, dans lesquelles l'enfreinte aux art. 12 et 13 de la Charte était reprochée.
- La cour administrative de voïvodie à Opole, dans l'arrêt du 22.09.2015, affaire II SA/Op, 223/15 a constaté, comme dans l'arrêt de la Cour suprême du 13.04.2007, affaire I CSK 488/06 (voir plus loin) que l'art. 12 al. 2 de la Charte sociale européenne ne pouvait pas constituer une base pour l'octroi d'une aide, parce qu'il n'imposait pas à l'Etat l'obligation d'assurer à chaque citoyen inapte au travail en raison de l'état de santé ou de l'âge ou qui reste sans travail contre son gré, une prestation de sécurité sociale susceptible de satisfaire ses besoins élémentaires. La Cour administrative suprême dans l'arrêt du 21.04.2009 dans l'affaire I OSK 592/08 a statué dans le même sens, ainsi que la cour administrative de voïvodie à Olsztyn dans son arrêt du 6.11.2007, affaire II SA/OI 811/07.
- Dans le arrêt du 1.10.2009, affaire I OSK 423/09, la Cour administrative suprême a indiqué que la Charte définissait des engagements de l'État relatifs à l'assistance sociale et qu'en signant la Charte, la République de Pologne s'était engagée d'assurer qu'une personne ne possédant pas de ressources suffisantes et n'étant pas capable de se les procurer à partir d'autres

sources, notamment à travers les prestations du système de sécurité sociale, bénéficiait de l'aide nécessaire. Les dispositions de la Charte engagent l'État, également vis-à-vis de la communauté internationale, à créer les conditions visant à éliminer le chômage et assurer l'emploi. Au cas où celui-ci ne s'acquitterait pas de cette obligation, l'Etat est engagé à allouer une assistance sociale permettant de vivre dans des conditions qui correspondent à la dignité de l'homme. Selon la Cour, l'art. 13 de la Charte sociale européenne ne représente pas, en tant que tel, la base juridique des décisions prises par le pouvoir public, mais que c'est une idée, dont sont dérivées les valeurs nécessaires pour la formation des droits et obligations de l'individu – idée qui repose à la base de l'interprétation et de l'application des lois par le pouvoir public.

- Dans l'arrêt du 16.05.2006, affaire I OSK 8/06, la Cour administrative suprême a constaté que l'art. 65 al. 5 de la Constitution de la République de Pologne règle les devoirs des autorités publiques en matière de politique de lutte contre le chômage mais n'établit pas expressis verbis le droit de l'individu à la sécurité sociale. La Cour a indiqué qu'une réglementation plus détaillée de cette question se trouvait à l'art. 67 al. 2 de la Constitution, mais réservait aux lois la définition de la portée et de la forme juridique du droit à la sécurité sociale. Cet article n'établit donc pas le droit à un type défini de prestation de sécurité sociale. La Cour a indiqué qu'il fallait attribuer le même sens à l'art. 11 du Pacte international relatif aux droits économiques, sociaux et culturels et à l'art. 13 de la Charte sociale européenne qui n'établissent pas le droit à une prestation définie de la sécurité sociale. Selon la Cour c'est la raison pour laquelle ces solutions ne permettent pas d'en déduire le motif du pourvoi en cassation.
- Dans un certain nombre d'affaires a été soulevée la violation de la Charte sociale européenne mais sans pour autant préciser la disposition de la Charte que cette violation pouvait concerner. Dans certains de ces cas la cour précisait elle-même quel était l'art. de la Charte que le demandeur avait à l'esprit. Par exemple dans l'affaire II SA/Gd 429/06, dans l'arrêt du 6.12.2006, la cour a indiqué l'article 14 de la Charte, constatant que dans la réalisation de ce droit les Etats ayant ratifié la Charte étaient tenus de favoriser et d'organiser les services d'assistance sociale et encourager les citoyens et les organisations de charité à soutenir ces services. La cour a en même temps constaté que cette disposition n'avait pas été enfreinte, sans donner plus de détails.

3/ La Cour suprême

- Dans l'arrêt du 13.09.2016, affaire III PK 146/15, la Cour a rappelé les actes de droit international contraignants pour la Pologne et définissant le cadre des devoirs dans le domaine de la sécurité et de l'hygiène au travail. La Cour a indiqué que l'obligation d'assurer la sécurité du travail était une valeur ne résultant pas exclusivement du contrat. En témoignent les dispositions du droit international (art. 7b et art. 12 du Pacte international relatif aux droits économiques, sociaux et culturels), européen (art. 3 de la Charte sociale européenne) et aussi de l'Union européenne (art. 31 al. 1 de la Charte des droits fondamentaux de l'Union européenne). La Cour a indiqué qu'également à l'art. 66 al. 1 de la Constitution de la République de Pologne, il est déclaré que chacun a droit à des conditions de travail sûres et saines et que ce droit est reflété dans le devoir imposé à l'employeur. Du principe élémentaire du droit du travail exprimé à l'art. 15 du Code du travail, il résulte que l'employeur est tenu d'assurer aux employés des conditions de travail sûres et saines.
- Dans l'affaire III PZP 2/13, dans la résolution du 5.06.2013, la Cour s'est référée à l'art. 7 al. 1 de la Charte en tant qu'indication à prendre en interprétant la notion "admission au travail" présente dans les actes du droit polonais.
- De même, la Cour se rapportait à la Charte en tant qu'indication pour l'interprétation :
 - considérant la requête II PK 85/10, la Cour a constaté dans l'arrêt du 19.10.2010 que la norme inscrite à l'art. 8 de la Charte sociale européenne révisée de 1996 indiquait comme justifié d'assurer la protection à la demanderesse avant la résiliation du contrat de travail. Cette disposition indique une importante norme internationale qui devrait être prise en

- considération au moment de l'interprétation du droit polonais, bien qu'elle ne puisse pas être décisive, étant donné que la Pologne n'a pas ratifié la Charte de 1996,
- dans l'arrêt du 2.04.2008, affaire II PK 268/07, la Cour a constaté que la liberté du travail (art. 65 al. 1 de la Constitution de la République de Pologne, art. 10 § 1 et art. 11 du Code du travail) est le principe du droit du travail qui est aussi un principe généralement reconnu du droit international et européen (par exemple la Convention n° 105 de l'OIT de 1957 sur l'abolition du travail forcé, art. 8 du Pacte international des droits civiques et politiques de 1966, l'art. 4 de la Convention européenne des droits de l'homme et des libertés fondamentales de 1950, les art.s 5 et 15 de la Charte des droits fondamentaux de l'UE et l'art. 1 de la Charte sociale européenne de 1961). Sur cette base, la Cour a constaté que du principe de la liberté du travail résultait la liberté du salarié de prendre un emploi supplémentaire, et que le comportement du salarié en dehors du temps où il reste à la disposition de l'employeur donné dépassait le cadre de la relation de travail,
 - dans l'arrêt du 29.05.2006, affaire I PK 230/05, la Cour a indiqué l'art. 4 al. 1 de la Charte sociale européenne (non ratifié par la Pologne) comme utile pour établir la définition de rémunération équitable.
- Dans l'arrêt du 13.04.2007, affaire I CSK 488/06, la Cour suprême a constaté que le droit en vigueur, dont l'art. 67 de la Constitution et l'art.12 al. 2 et 3 de la Charte sociale européenne, n'imposait pas à l'Etat l'obligation d'assurer à chaque citoyen inapte au travail en raison de santé ou en raison de son âge ou qui est en chômage contre son gré, une prestation de sécurité sociale garantissant la satisfaction de ses besoins élémentaires. L'exception d'incompatibilité des dispositions du droit polonais avec l'art. 12 al. 2 et 3 de la Charte sociale européenne peut être examinée uniquement par le Tribunal constitutionnel (art. 188 de la Constitution). Considérant s'il existait des prémisses pour saisir le Tribunal constitutionnel de cette question juridique, la Cour a indiqué que conformément à la position commune de la doctrine et du Comité européen des droits sociaux (...) les dispositions de la Charte sociale européenne imposaient aux Etats la mise en place et le maintien d'un système de sécurité sociale qui garantissait la protection contre la plupart des risques et assurait la protection sociale à une partie prépondérante de la société et présentait une certaine cohésion. La Charte n'exige pas que tous les risques et tous les citoyens soient couverts par la sécurité sociale d'un niveau donné. La Cour a souligné que l'art. 12 al. 2 de la Charte contraignait les Etats à maintenir la sécurité sociale au moins au niveau défini dans les dispositions de la Convention n° 102 de l'OIT et qu'également les Etats qui ne l'avaient pas ratifiée, parmi lesquels la Pologne⁵⁰, remplissent les exigences de l'art. 12 al. 2 de la Charte, si le niveau de la protection sociale correspond de fait au niveau prévu par la convention. Le Comité des droits sociaux qui examinait le droit polonais n'a pas constaté d'incompatibilité de la législation polonaise avec l'art. 12 al. 2 ou 3 de la Charte; concernant l'évaluation du montant des allocations de chômage, des périodes de versement des allocations maladie, du montant des allocations familiales et du cercle des ayant droit aux prestations de survivants, le Comité a différé la décision jusqu'au moment, où la Pologne aurait complété l'information. En conséquence, la Cour n'a pas trouvé de raison pour saisir le Tribunal constitutionnel et lui poser cette question juridique. (...) Par ailleurs, la Cour suprême a constaté qu'aucune des dispositions en vigueur, dont l'art. 67 de la Constitution, ainsi que l'art. 12 al. 2 et 3 de la Charte sociale européenne de 1961, n'imposait à l'Etat l'obligation d'assurer à chaque citoyen inapte au travail en raison de santé ou d'âge ou qui reste au chômage contre son gré, d'allocation de sécurité sociale pour satisfaire ses besoins essentiels.
- Statuant dans plusieurs affaires (par exemple I PZP 9/07, arrêt du 4.01.2008, II PZP 3.06.2006, résolution du 29.09.2006) la Cour suprême s'est référée à l'arrêt du Tribunal constitutionnel du 18.11.2002 (affaire K 37/01) concernant l'art. 241⁷ § 4 du Code du travail (art. 241⁷ § 4: " en cas de résiliation de l'accord avant l'entrée en vigueur du nouvel accord on applique les stipulations de l'accord actuel, à moins que les parties aient convenu dans l'accord ou par un commun accord, un autre délai d'application des stipulations de l'accord résilié"). Le

⁵⁰ La Pologne a ratifié cette convention en 2003.

Tribunal constitutionnel a considéré que cette disposition était incompatible avec l'art. 59 al. 2 de la Constitution, avec l'art. 4 de la Convention n° 98 de l'Organisation internationale du travail sur le droit d'organisation et de négociation collective et avec l'art. 6 al. 2 de la Charte sociale européenne, ainsi qu'avec l'art. 20 de la Constitution.

4/ Le Tribunal constitutionnel

– Dans l'affaire SK 18/15 était alléguée l'incompatibilité de l'art. 32 al. 1 de la loi du 27 juillet 2001 sur le corps diplomatique dans la mesure où il prive les fonctionnaires qui ne remplissent pas de fonctions de direction et ne sont pas "de hauts fonctionnaires publics", du droit à la rémunération des heures supplémentaires et du droit au temps libre en contrepartie du temps de travail, notamment avec l'art. 4 al. 2 de la Charte sociale européenne. Étant donné que cette affaire a été portée devant le Tribunal en vertu de l'art. 79 al. 1 de la Constitution⁵¹, le Tribunal ne pouvait pas décider de la violation éventuelle de la Charte. Dans l'arrêt du 29.11.2015 le Tribunal, se référant à l'art. 4 al. 2 de la Charte en tant que modèle de contrôle a remarqué "qu'en vertu de l'art. 79 al. 1 de la Constitution, le contrôle est admissible uniquement du point de vue des libertés ou droits constitutionnels (prévus dans la Constitution). Cette procédure n'admet donc pas le contrôle de la compatibilité avec des actes du droit international et il est sans pertinence que les dispositions du droit international sont identiques, de par leur contenu, avec les dispositions de la Constitution clamant les droits et libertés.

– Dans l'affaire K 5/15, dans laquelle le Tribunal constitutionnel examinait la compatibilité de l'art. 239 § 3 point 1 du Code du travail avec l'art. 59 al. 4 de la Constitution, en liaison notamment avec l'art. 6 al. 2 de la Charte sociale européenne et la Convention des droits de l'homme, dans l'arrêt du 17.11.2015, il a constaté que dans la Charte:

" n'a pas été prévue explicitement la possibilité de modifier ou d'exclure cette réglementation [art. 6 al. 2] à l'égard des fonctionnaires publics. Toutefois, conformément à l'art. 31 al. 1 de la Charte, la mise en œuvre effective des droits et des principes énoncés dans la partie I, ainsi que leur application efficace, comme prévu dans la partie II, ne pourront pas faire l'objet d'aucune limitation ou restriction non énoncées dans les parties I et II, à l'exception de celles qui sont définies par la loi, et qui sont indispensables dans la société démocratique pour la protection des droits et libertés d'autres personnes ou pour la sauvegarde de l'ordre public, de la sécurité nationale, de la santé publique ou des bonnes mœurs". Dans la doctrine on admet que la limitation éventuelle des droits prévus dans cet accord international en ce qui concerne les fonctionnaires publics peut s'appuyer précisément sur l'art. 31 de la Charte". (...) Le syndicat NSZZ "Solidarność" a remarqué dans la requête que si en raison du statut des fonctionnaires publics réglé par des dispositions légales, la conclusion des conventions collectives n'est pas possible, alors l'art. 6 al. 2 de la Charte impose à l'Etat partie l'obligation d'organiser, par l'intermédiaire de représentants, leur participation à l'élaboration des dispositions légales qui concernent les fonctionnaires publics. En revanche, dans la position du Procureur général, il a notamment été souligné que le Comité avait signalé que dans différents Etats-membres étaient appliquées diverses théories sur le fondement des relations de travail établis avec les organes du gouvernement ou l'administration publique. Dans les relations de service, la règle qui ne permet pas aux représentants des fonctionnaires publics de négocier avec l'employeur des conventions collectives de travail continue d'être acceptée. Selon l'opinion du CEDS rappelée le Procureur général, il est nécessaire de garantir à la représentation des fonctionnaires la participation au processus d'adoption des règlements édictés par les employeurs pour définir les conditions de travail et de salaires. Ce faisant, l'important n'est pas seul le droit d'exprimer l'opinion concernant les projets, mais l'influence effective de l'organisation syndicale sur le

⁵¹ Art. 79 alinéa 1 de la Constitution: " Toute personne, dont les libertés ou droits constitutionnels ont été lésés, a droit, suivant les principes définis dans la loi, se saisir le Tribunal constitutionnel au sujet de la compatibilité avec la Constitution de la loi ou d'un autre acte normatif, en vertu duquel la cour ou un organe de l'administration publique a statué définitivement sur ses libertés ou droits ou bien sur ses devoirs définis dans la Constitution."

contenu des dispositions édictées par l'Etat qui régle les conditions d'emploi et les salaires. Dans la position du Procureur général il a aussi été constaté que le Comité ne s'était pas occupé de l'analyse de base juridique d'établissement des relations de service, mais avait mis l'accent sur l'absence d'égalité des parties de ces relations. Le fait que le fonctionnaire soit subordonné à l'organe du gouvernement ou de l'administration publique justifie – selon l'opinion du Comité que rapporte le Procureur général – que les conditions d'emploi et des salaires soient réglées par l'employeur lui-même. Une telle subordination de service du fonctionnaire caractérise aussi bien le rapport de travail d'un membre nommé du corps civil que celui qui est embauché sur la base d'un contrat de travail."

Ensuite le Tribunal a constaté que le grief d'avoir violé l'art. 59 al. 4 de la Constitution en liaison avec l'art. 6 al. 2 de la Charte n'était pas justifiée, parce que:

"à la lumière de cette disposition de l'accord international, en vue "d'assurer l'exercice effectif du droit de négociation collective", les Etats parties se sont engagés à soutenir" lorsque cela est nécessaire et utile "les solutions qui consistent en "procédures de négociation volontaire entre les employeurs ou les organisations d'employeurs, d'une part, et les organisations de travailleurs, d'autre part, en vue de régler les conditions d'emploi par des conventions collectives". L'engagement ci-avant dépend de la nécessité et de la finalité. Les conditions de nécessité et de finalité doivent être comparées avec le modèle adopté en Pologne qui prévoit que les conditions d'emploi des membres du corps civil, résultent des dispositions légales. Dans les déclarations citées ci-avant du Comité européen des droits sociaux il a été souligné que les fonctionnaires devraient avoir la possibilité de participer à chaque processus en rapport direct avec la définition des procédures appliquées visant à établir les conditions de leur emploi. De plus, le règlement des conditions de l'emploi par le biais d'une convention collective - notion pouvant être entendue de façon autonome, c'est-à-dire n'avoir pas la même signification que la convention collective réglée dans la section onze du Code du travail - doit être le résultat des négociations favorisées par l'Etat. Ceci permet d'admettre que par "la convention", dont il est question à l'art. 6 al. 2 de la Charte (dans la version linguistique officielle – ang. *collective agreements*) on peut, par rapport au droit national, comprendre également d'autres conventions collectives au sens du Code du travail, des mécanismes et résultats des négociations collectives entre la représentation des salariés, en particulier le syndicat, et l'employeur, à condition qu'ils aient pour résultat "le règlement des conditions de l'emploi. Ceci signifie que le seul manque de possibilité de conclure une convention collective au sens de la section onze du Code du travail ce que prévoit la disposition attaquée, n'implique pas la violation par l'Etat partie de cet engagement précité de la CEDH, si d'autres mécanismes servant à la finalité définie dans la convention, c'est-à-dire à assurer la participation de la représentation des travailleurs au processus de définition des conditions d'emploi, ont été prévus dans le droit national. Par ailleurs, conformément toutefois à l'art. 31 al. 1 de la Charte, une réalisation efficace des droits et principes adoptés dans la partie I et leur application efficace, comme prévu dans la partie II, ne pourront faire l'objet d'aucune limitation ou restriction qui ne soit pas énumérée dans les parties I et II "à l'exception de celles qui sont définies par la loi et qui sont indispensables (...) pour la protection de l'ordre public (...)". Il convient de partager l'opinion du requérant selon laquelle si le statut des fonctionnaires publics est réglé par les lois et la conclusion de conventions collectives n'est pas possible, l'art. 6 al. 2 de la Charte impose à l'Etat partie le devoir d'assurer la participation, par l'intermédiaire de représentants, à l'élaboration des dispositions légales qui concernant les fonctionnaires publics. De plus, il ne serait pas justifié d'admettre que l'absence dans un accord international d'une possibilité de restreindre l'une des libertés syndicales autre que la liberté essentielle de coalition, puisse conduire à la conclusion que l'art. 59 al. 4 de la Constitution ne permet pas d'introduire au droit national de restrictions au droit à la conclusion de conventions collectives. Ceci se trouverait en contradiction avec l'esprit de tous les accords internationaux contraignant la Pologne, dont il résulte que le droit aux autres libertés syndicales, dont celui de conclure

des conventions collectives, est plus faible que la liberté essentielle de s'associer en syndicats. En plus il faut tenir compte du fait que les accords internationaux contiennent leurs propres clauses exprimant le principe de proportionnalité qui permettent de limiter même la liberté essentielle de s'associer, et de plus, il est admissible de s'appuyer sur la clause prévue à l'art. 31 al. 3 de la Constitution."

Dans l'arrêt, le Tribunal a constaté la conformité de l'art. 239 § 3 point 1 du Code du travail avec l'art. 59 al. 2 et 4 de la Constitution en liaison avec l'art. 1 et l'art. 7 de la convention n°151, l'art. 11 de la CEDH et l'art. 6 al. 2 de la Charte.

- Dans l'arrêt du 21.01.2014 le Tribunal constitutionnel a répondu à la question juridique si l'art. 42 al. 4 de la loi du 21 novembre 2008 sur les fonctionnaires des administrations locales était conforme à l'art. 2, 24, 32, 64 al. 1 de la Constitution et l'art. 4 al. 2 de la Charte sociale européenne (affaire P 26/12). Le Tribunal a constaté que l'art. 4 al. 2 de la Charte ne définissait pas la majoration minimale obligatoire du salaire et également le Comité européen des droits sociaux (Comité d'experts indépendants du Conseil de l'Europe, CEDS) n'a pas précisé cette majoration. Le CEDS estimait que le temps libre accordé peut représenter une forme de rémunération des heures supplémentaires à la place d'un salaire majoré, mais que sa durée doit être supérieure au nombre d'heures supplémentaires fournies. L'art. 4 al. 2 de la Charte concerne tous les travailleurs, admettant des exceptions dans "des cas particuliers". Dans le cadre de l'interprétation de la Charte, le CEDS considérait comme compatible avec l'art. 4 al. 2 de la Charte l'exclusion du droit à la rémunération supplémentaire pour des heures supplémentaires des salariés aux postes de cadres (en raison, comme il l'a souligné des salaires habituellement élevés de cette catégorie de salariés) et des fonctionnaires publics. Quant à ce deuxième groupe, le CEDS a souligné, qu'il était inadmissible de priver de ce supplément tous les fonctionnaires publics, la privation ne pouvait s'appliquer qu'aux fonctionnaires publics de haut rang uniquement.

Selon le Tribunal constitutionnel, la réglementation attaquée dans la mesure, où elle concerne les fonctionnaires des administrations locales qui gèrent l'établissement au nom de l'employeur, entre dans la notion des "cas particuliers", dont il est question à l'art. 4 al. 2 de la Charte. Les fonctionnaires appartenant à ce groupe organisent eux-mêmes leur travail et celui des subalternes et ils ne sont pas contrôlés en continu. En règle générale leur rémunération est relativement élevée, ce qui permet d'admettre qu'elle récompense aussi, au moins en partie, le travail en dehors des horaires normales de travail. En conséquence, le Tribunal a reconnu l'art. 42 al. 4 de la loi sur les fonctionnaires des administrations locales, dans la mesure, où elle concerne les fonctionnaires qui dirigent l'établissement au nom de l'employeur, comme conforme à l'art. 4 al. 2 de la Charte.

- Dans l'affaire K 37/01, dans laquelle il s'agissait notamment d'examiner la conformité de l'art. 241⁷ § 4 du Code du travail avec l'art. 59 al. 2 de la Constitution de la République de Pologne, l'art. 4 de la Convention n° 98 de l'OIT sur le droit d'organisation et de négociation collective et avec l'art. 6 al. 2 de la Charte sociale européenne, ainsi qu'avec l'art. 20 de la Constitution de la République de Pologne, dans l'arrêt du 18.11.2002, le Tribunal constitutionnel a confirmé que l'art. 241⁷ § 4 du Code du travail n'était pas conforme avec l'art. 6 al. 2 de la Charte sociale européenne.

Les motifs de l'arrêt indiquent que celui-ci a été fondé sur les dispositions de la Constitution de la République de Pologne et de la convention de l'OIT. En ce qui concerne l'art. 6 al. 2 de la Charte, le Tribunal n'a pas présenté son analyse de fond de cette disposition, pas plus qu'une appréciation détaillée de la législation polonaise à la lumière de cette disposition. Le Tribunal s'est limitée à constater qu'il partageait l'opinion du requérant que l'art. 241⁷ § 4 du Code du travail:

- "restait en contradiction avec l'art. 6 al. 2 de la Charte sociale européenne qui ordonne de promouvoir l'institution de procédures de négociation volontaire entre les employeurs ou les organisations d'employeurs, d'une part, et les organisations de travailleurs, d'autre part, en vue de régler les conditions d'emploi par des conventions collectives" et
 - qu'il "enfreint le droit des employeurs et de leurs organisations ainsi que des syndicats aux négociations collectives librement consenties et à la conclusion des conventions collectives afin de régler les conditions du travail comme contenu dans cette disposition."
- Le Tribunal se réfère, en termes générales, aux dispositions de la Charte sociale comme ligne directrice de l'interprétation des dispositions légales nationales (par exemple affaire P 50/07 – mention de l'art. 5 parmi autres accords internationaux (arrêt du 13.05.2008), affaire K 27/07 (arrêt du 28.04.2009) – art. 6, affaire K 63/07 (arrêt du 15.07.2010) – art. 12 de la Charte), l'analyse plus détaillée concerne les dispositions du Pacte des droits économiques, sociaux et culturels, de la Convention des droits de l'homme, des conventions de l'OIT.
 - Les affaires suivantes attendent que le Tribunal constitutionnel statue à leur sujet :
 - K 20/15 concernant le droit à une rémunération majorée pour les heures supplémentaires effectuées par des travailleurs et autres groupes professionnels (enfreinte à l'art. 4 al. 2 de la Charte sociale européenne),
 - K 26/15 concernant l'établissement du règlement des salaires et du règlement des récompenses (enfreinte notamment à l'art. 6 al. 2 de la Charte). »



Portugal

Yes. Despite the fact that national laws adopted, at least since April 25, 1974, the general principles contained in the Charter of Fundamental Rights of the European Union and in the European Social Charter, courts in Portugal still rely on the provisions of the Chart to solve disputes concerning social rights.

As examples, please take note of the following Court decisions:

| Decision | Subject | European Social Chart |
|---|--|-----------------------|
| Tribunal da Relação do Porto 250/14.2TTPRT.P1, in http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/152e3b2fb84f84cd80257f1700373bea?OpenDocument | <i>Employment contract; Subordination; Contract amendment; Acceptance; Abuse of rights.</i> | Article 4 |
| Tribunal da Relação do Porto, 75/05.6TACP.V.P1, in http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/8b1f714a6d7918368025790a00464b80 | <i>Lack of prompt payment of compensation.</i> | Article 4 b) |
| Tribunal da Relação do Porto, 0743201, in http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/24bd21b4c80bbdd280257432003d28f8?OpenDocument | <i>Employment contract Suspension; Dismissal; Closure.</i> | Article 5 |
| Tribunal da Relação do Porto, 0615445, in http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/aece0c253b847b4f8025727a005051fa?OpenDocument | <i>Employment contract Retribution; Payment in kind</i> | Article 4 |
| Tribunal da Relação de Lisboa, 1177/11.5TTLSB.L1-4, in http://www.gde.mj.pt/jtrl.nsf/33182fc732316039802565fa00497eecd6d2f10a18c05dac80257fb5002e3a74 | <i>Action for a declaration of Invalidity of the Statute of a Trade Union Association; Freedom of Association; Principle of proportionality; Principle of appropriateness.</i> | Article 5 |
| Tribunal da Relação de Lisboa, 1992/ | <i>Maternity protection</i> | Articles 7 and 28 |

| | | |
|---|---|------------------|
| 07.4TTLSB.L1-4, in http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/9c2bba0bb445f37b802578a20052399e | | |
| Tribunal da Relação de Coimbra 174/13.0TTCBR.C1 in http://www.dgsi.pt/jtrc.nsf/8fe0e606d8f56b22802576c0005637dc/94c9d9a1024f9bd880257d7400372926 | <i>Ultra petitem condemnation; Professional category; National minimum wage; Upgrade.</i> | Articles 8 and 4 |
| Tribunal da Relações de Guimarães, 3550/14.8T8GMR.G1 in http://www.dgsi.pt/jtrg.nsf/86c25a698e4e7cb7802579ec004d3832/c66d275fc723771f80257f33005b1c20 | <i>Disclaimer of liabilities ; Holiday allowance; Available income; Christmas bonus.</i> | Article 4. |
| Tribunal da Relação de Évora 789/13.7- TMSTB-B EI in http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/7c52769f1dfab8be80257e830052d374 | <i>Parental responsibilities; Cybercrime.</i> | Article 17, 1b) |

Occasionally the Constitutional Court takes into account the text of the European Social Charter, which happened, for example, in the Judgment no. 474/13 – Process no. 754/13, related with the requalification of civil servants, published in the Diário da República, 1st series – no. 179 of September 17, 2013.



République slovaque

Yes. Courts are free to apply all international treaties ratified by the Slovak Republic, as the majority of treaties (including the charter) are ratified as having precedence in relation to domestic law. This means that all individuals can turn to the court in relation to the protection of rights guaranteed by these treaties.



Slovénie

Yes.

The Constitutional Court of the Republic of Slovenia, the Supreme Court of the Republic of Slovenia and the Higher Labour and Social Court usually rely on provisions of the Charter and sometimes also on the Conclusions and decisions of the ECSR in resolving disputes concerning social rights. Their decisions are available on the web page: www.sodnapraksa.si (in Slovenian language only) and on the web page of the Constitutional Court of the Republic of Slovenia: <http://www.us-rs.si/en/> (this page provides access to the most important case-law of the Constitutional Court of the Republic of Slovenia, which has been regularly translated into English since 1992. The Case-Law Section of the website is updated periodically). There is no data available on the consideration of the Charter by the Labour Courts in Ljubljana, Koper and Celje; while the Labour Court in Maribor (although recognizing the direct applicability of the Charter) does not rely on the provisions of the Charter in resolving individual and collective labour disputes because according to their explanation “the national legislation is consistent and sufficient for resolving these disputes; in case of insufficiency of the national legislation the provisions of the Charter would be applied”.

In the last five years the following decisions have been adopted by the respective court:

| Court | Number of decision | Substance |
|--|--------------------------------------|--|
| The Constitutional Court of the Republic of Slovenia | Odločba U-I-249/10 z dne 15. 3. 2012 | The right to organise, the right to bargain collectively |
| | Odločba U-I-794/11 z dne 21. 2. 2013 | The right to social security |

| | | |
|---|---|---|
| | Odločba U-I-146/12 z dne 14. 11. 2013 | The right to protection in cases of termination of employment |
| | Sklep U-I-282/13, Up-925/13 z dne 12. 3. 2015 | The right of a foreigner to scholarship |
| | Odločba U-I-289/13 z dne 10. 3. 2016 | The right to strike (armed forces) |
| The Supreme Court of the Republic of Slovenia | VSRS sodba VIII Ips 80/2015 | The right to a fair remuneration |
| | VSRS sodba VIII Ips 173/2013 | The right to paid holiday leave |
| | VSRS sklep VIII Ips 320/2010 | Restrictions on new employment |
| | VSRS sodba in sklep VIII Ips 26/2013 | Rights of workers' representatives |
| | VSRS sodba VIII Ips 71/2014 | The right to strike |
| The Higher Labour and Social Court | Sklep Pdp 731/2015 | The right to a fair remuneration |
| | Sodba Pdp 1559/2014 | The right to a fair remuneration, readiness to work |
| | Sodba Pdp 548/2013 | Employment termination |
| | Sodba Pdp 36/2014 | The right to a fair remuneration |

There is also a very good overview of the Slovenian courts' practice of relying on the Charter and decisions of the ECSR prepared by prof. dr. Barbara Kresal, a current member of the ECSR. The article was published in 2016 (*Pravosodni bilten 1/2016, 109*) and is accessible (in Slovenian language only) via :

[http://www.sodnapraksa.si/?q=id:47909&database\[SOSC\]=SOSC&_submit=i%C5%A1%C4%8Di&order=changeDate&direction=desc&rowsPerPage=20&page=0&id=47909](http://www.sodnapraksa.si/?q=id:47909&database[SOSC]=SOSC&_submit=i%C5%A1%C4%8Di&order=changeDate&direction=desc&rowsPerPage=20&page=0&id=47909).



Espagne

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

It is worth noting Supreme Court Judgment of 12 May 2015, handed down by the Labour Chamber, appeal no. 153/2014, upholding in part the appellants' claims regarding the content of a collective agreement that they claim is in breach, among others, of Article 8 of the European Social Charter.



“L'ex-République yougoslave de Macédoine”

So far, we were not able to obtain this information for the purpose of providing relevant reply to this question. We will try to acquire this information by addressing the courts directly and will try to provide this reply in a later stage.

In general, the status of the international agreements is regulated by the Article 118 of the Constitution of the Republic of Macedonia, stating that the international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law.



Turquie

The way for individual applications to the Constitutional Court of the Republic of Turkey which is a milestone in terms of protection and development of human rights in Turkey was cleared by the constitutional amendment of 2010. The Constitutional Court started receiving and rule on, as of 24 September 2012, applications based on claim of infraction of human rights of individuals who have consumed all other ways of legal remedies. Judgments of individual applications passed on by the Constitutional Court in reference to European Social Charter are accessible for the public view. The Constitutional Court decided that the freedom of association and organisation is violated when it assessed individual applications submitted in connection to formal reprimands given on the grounds of absence from work for two days in a row in accordance with the decisions taken by the trade union of which the applicant is a member. The Constitutional Court referred in its justifications not only to the case laws of European Court of Human Rights but also to ILO

Conventions and European Social Charter. It is possible to have access to the Constitutional Court's decisions at

<http://www.anayasa.gov.tr/icsayfalar/kararlar/kbb.html>

(Application No: 2014/7688, 2014/1949, 2014/1948, 2014/1947, 2014/1946, 2014/1263, 2014/941, 2014/940, 2014/939, 2013/9662, 2013/8812, 2013/8809, 2013/8808, 2013/8807, 2013/8806, 2013/8805, 2013/8758, 2013/8757, 2013/8746, 2013/8745, 2013/8744, 2013/8517, 2013/8516, 2013/8464, 2013/8463, 2013/7199, 2013/7197, 2013/5447, 2013/1315)

The section "Bireysel Başvuru Kararları" should be sought and the four digit Application No should be entered across "Başvuru No" after selecting the corresponding year on the drop-box.



Ukraine

Within the framework of national reports on the ESCR the Ministry of Social Policy sends requests as appropriate to the relevant judicial bodies.

Suggestions

Quelles suggestions pourraient être formulées en vue d'une meilleure mise en œuvre de la Charte et des décisions et conclusions du CEDS tant au niveau judiciaire, qu'au niveau législatif ou exécutif dans votre pays (par exemple, activités de coopération techniques avec le Conseil de l'Europe, projets européens d'échange de bonnes pratiques institutionnelles ou encore sur des thématiques spécifiques...)?



Armenia

Relevant projects can be mutually discussed and included in future Armenia-Council of Europe Action Plans, EU-CoE Programmatic Cooperation Framework for EaP countries as well as other cooperation documents financed through e.g. Voluntary Contributions.



Azerbaijan

European projects for the exchange of good institutional practices or on specific topics.



Bulgarie

We support the listed example suggestions.

We would welcome also the conduct of seminars (on relevant thematic reporting groups on the European Social Charter) that will provide concrete examples of how the individual ESC countries have dealt with established situations of inconsistencies under the individual articles of the Charter - legislative and other measures taken.

It would be useful to carry out training of judges, prosecutors and lawyers on the ESCH (Rev.) and its implementation.



République tchèque

European projects for the exchange of good institutional practices would be appreciated and helpful.



Estonie

Training for national institutions implementing the decisions and conclusions as well as awareness raising activities.



Finlande

For instance, the following means could be suggested: increasing awareness through universities and other education; research projects at universities; as well as updating the ECSR's compilation of decisions and translating them into national languages



France

Mieux faire connaître la Charte et les droits sociaux garantis permettrait d'améliorer la sensibilisation et la mobilisation des différents acteurs. La formation de l'ensemble des professionnels du droit qui agissent à tous les niveaux (Judiciaire, législatif, exécutif) est souhaitable et pourrait être faite par le Conseil de l'Europe, grâce notamment à la formation dispensée par le Programme européen de formation aux droits de l'homme (« HELP ») et par des conférences techniques thématiques ou par des réunions collectives directes via Internet (webinaires).

Le Gouvernement français souhaite davantage d'information de la part du Conseil de l'Europe sur la Banque européenne de développement (« CEB ») qui est dotée d'un mandat social et peut aider les Etats notamment à investir.



Géorgie

As to the suggestions, awareness-raising activities would serve for a better implementation of the Charter and the ECSR's decisions and conclusions at the judicial, legislative and executive levels. In particular, retraining of the relevant officials, such as judges, attorneys, public servants, *etc.* As well as participation in the European projects for the sharing of institutional practices would be fruitful for better implementation of social rights in practice.

Also, more attention should be paid to social rights in higher education institutions. In practice, civil and political rights are more widely taught in higher institutions than socio-economic rights, which should be balanced and more disseminated.

Further, with the support of the ILO and other international organizations, the Government of Georgia is planning to discuss the practical implementation of the Articles of the European Social Charter as well as the ILO Fundamental Conventions in a trilateral format (with social partners and legislative body). Agenda of the meeting includes the issues of the implementation of the ILO Conventions; Labor Inspection Conventions; ILO recommendations – fundamental rights and principles; regulation of labor relations, *etc.* International experts who will share the European experience with the Georgian side, are invited at the meeting. Such mechanism will further enhance the implementation of the Charter and decisions/conclusions of the ECSR's at all levels.



Lettonie

It would be necessary if Council of Europe drafted the comments on Charter the same way as UN CRPD committee drafts comments regarding CRPD articles. Thus it would give clearer understanding of Charter. Currently the information on implementation of Charter is not transparent, as Council of Europe give information regarding individual states.



Lituanie

Trainings, seminars, technical assistance from experts of international organisations and exchange of best practice is very important in order to have better understanding on the implementation of the complex international treaties.



République de Moldova

In this context, we mention that any media coverage and promotion of the European Social Charter and the conclusions of the European Committee for Social Rights is welcome.



Norvège

We do not have any big suggestions for a better implementation. It is however always important that the ECSR manages to see the entirety of a case and also to see the differences between different countries.



Pologne

- La mise en œuvre de certaines dispositions de la Charte concernant le droit du travail pose aux plusieurs Etats des problèmes similaires. Il serait utile d'avoir accès aux informations détaillées sur des dispositions adoptées pour se mettre en conformité avec la Charte ainsi que sur des considérations économiques et sociales justifiant leur adoption. L'explication des obstacles à l'alignement de la législation (facteurs économiques, sociaux, position des partenaires sociaux) serait aussi intéressante. En cas de besoin le secrétariat pourrait mener des enquêtes détaillées pour recueillir des informations. Ce travail du secrétariat paraît nécessaire parce que:
 - trouver des rapports nationaux sur le page web de la Charte sociale n'est pas facile, en plus chaque fois il faut examiner plusieurs rapports de différents cycles de contrôle sans être sûr de trouver l'information demandée ou de n'avoir pas omis quelque rapport - le secrétariat possède une bonne orientation où on peut trouver l'information,
 - la base HUDOC n'est pas particulièrement utile pour de telles recherches (expérience personnelle et de mes collègues du ministère qui ont essayé de trouver des informations sur des sujets précis),
 - il est possible que des rapports nationaux ne contiennent pas d'informations suffisamment détaillés.
- Cet exercice devrait être aussi léger pour des Etats et le secrétariat que possible car ils sont déjà chargés de plusieurs autres tâches. Pour cette raison on pourrait traiter un problème particulier par an.
- La réflexion au niveau national sur la possibilité d'aligner la législation nationale à la Charte pourrait être soutenue par:
 - accès aux rapports sur des dispositions non-acceptés - ils devraient contenir des informations détaillées sur les obstacles à la ratification de certaines dispositions de la Charte. Il est possible qu'on les a mis le page web de la Charte sociale mais ils sont introuvables,
 - publication du recueil des interprétations des articles de la Charte faites par des experts indépendants et leur mise à jour - la base HUDOC n'aide pas beaucoup dans ce domaine.
- Au cours des réunions du Comité gouvernemental on pourrait aborder les jugements de la Cour des droits de l'homme: un point d'ordre du jour - information sur les jugements de la Cour concernant les affaires sociales/droits qualifiés comme sociaux, présentation par le secrétariat.
- Echange de bonnes pratiques avec d'autres Etats concernant des procédures et des dispositions matérielles. Un bon exemple d'une telle activité est le forum de travail sur la mise en œuvre de la Convention sur les droits des personnes handicapées, dans le cadre de l'Union Européenne. Il se réunit une fois par an. A réfléchir sur les modalités de telles réunions (thèmes spécifiques, fréquence, participants).



Portugal

We believe that, for a better implementation of the European Social Charter at the judicial, legislative and executive level, it is necessary to include it in the Law Schools curricula and to disseminate it to the executive bodies, such as the Superior Council of the Judiciary, the Superior Council of the Public Prosecutor's Office and the Bar Association.



République slovaque

Exchange of practices and harmonization of the charter provisions with the EU legislation.



Slovénie

We suggest targeted training (for judges, experts within public administration, NGOs) organised by the Council of Europe and exchange of good institutional practices among state parties to the Charter.

We also suggest the translation of the ECSR's decisions and conclusions (or at least summaries) in all state parties' languages to be provided by the Council of Europe upon requests of the state parties.



Espagne

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

Meetings could be held among different countries to share good practices on a specific social right that is being implemented optimally by a particular State.

RESPONSE FROM THE AUTONOMOUS COMMUNITY OF THE BALEARIC ISLANDS

A positive course of action would be to design a good practices bank at the European level regarding the implementation of the Charter.



Ukraine

- technical cooperation activities with the Council of Europe;
- European projects for the exchange of good institutional practices.

B. Prise en compte des normes internationales relatives aux droits sociaux dans le droit et les politiques au niveau national

B.1. Etudes d'impact social

Réalisez-vous dans votre pays des tests/études d'impact social lors de l'élaboration de nouvelles lois/politiques ?

Oui ?

Non ?

Si oui, comment les droits sociaux⁵² y sont-ils pris en compte ?

En particulier, de tels tests/études ont-ils été réalisés dans le cadre de l'adoption de mesures pour faire face à la crise économique



Albanie

The policy-making process goes through the assessment of all the factors, the social impact they will have, the calculation of costs, as well as the intended purpose to be achieved.

Here we can mention the impact study on the development of service standards, economic aid, etc. on the basis of which the service and economic assistance reform was carried out.



Armenia

Yes.

⁵² En particulier les droits sociaux garantis par les instruments du Conseil de l'Europe.

According to Article 27.1 of RA Law on Legal Acts, the regulatory impact assessment of draft laws shall be carried out. A body elaborating a draft shall submit it (except for a draft law on the State Budget of the Republic of Armenia) to the appropriate republican bodies of executive power prescribed by the Government of the Republic of Armenia (“the impact assessors”) for carrying out the mandatory regulatory impact assessment in the field of costs — connected with administrative action — arising for natural and legal persons, as well as in environmental, social, health, economic, including small and medium-sized entrepreneurship, competition, anti-corruption, and budgetary fields. If the body elaborating a draft is an impact assessor in one of the mentioned fields, the regulatory impact assessment in the field concerned shall be carried out by the body elaborating the draft. Where a draft concerns fields other than those provided for in this part, the regulatory impact assessment of the draft regulatory legal act may, at the initiative of the body elaborating the draft, be also carried out with respect to those fields. At the initiative of the body elaborating the draft, regulatory impact assessment of the draft may also be carried out by scientific organisations.

According to Section 4 of the same Article, the body elaborating the draft shall, alongside with the submission of the draft regulatory legal act to impact assessors, arrange public consultations on the draft, the aim of which is to notify natural and legal persons on the draft regulatory legal act, as well as to collect their opinions and to carry out the necessary adaptation works of the draft regulatory legal act based thereon.

Public consultations shall be carried out through making public — on the Internet website of the body elaborating the draft — draft regulatory legal acts, other materials provided for by a decision of the Government of the Republic of Armenia, whereas at the initiative of the body elaborating the draft, they may be carried out through public meetings or meetings with stakeholders, open hearings, discussions, public opinion surveys, as well as possible telecommunications means. The period of carrying out public consultations shall be at least 15 days.

It should be noted that the Republic of Armenia, as a Council of Europe member state, in 2001 signed and in 2004 ratified the Revised European Social Charter, thus taking commitments with respect to the ratified Articles and Paragraphs. In view of this, the RA labour legislation, its amendments and supplements are elaborated and evaluated for social impact, taking into account the commitments under international treaties (including the provision of social rights guaranteed by the CoE documents).

If yes, how are social rights⁵³ taken into account in these tests/assessments?

There is a worked up procedure for impact assessment relating to social security sector which includes indicators for sub-sectors (employment, pension system, family, women and children, the elderly, persons with disabilities, demography, etc.). In a process of assessment, the impact of the legal act on these indicators is considered and a general conclusion is made about further application/non-application of a given legal act (depending on its impact on social security sector).

In particular, have such tests/assessments been carried out in the context of the adoption of measures to deal with the economic crisis?

The Assessment Report “ARMENIA: the 2008–09 Global Economic Crisis, Policy Responses, and Household Coping Strategies” was implemented by the World Bank in 2010 in cooperation with RA Government. The main objective of the Report is to analyze the welfare impact of the 2008–2009 global economic crisis and to assess the effectiveness of public and private coping strategies. More specifically, the Report asks the following questions: What was the poverty impact of the 2008–2009 global economic crisis in Armenia? Did the crisis reverse the poverty reduction trends of the last decade? Who was affected most in the aftermath of the crisis? What were the main government policy response measures and how effective were they in mitigating the impact? What were households’ own coping strategies and their implications for long-term welfare?

According to the Report, Armenia’s social protection programs played a larger poverty reduction role during the crisis than before. Public policy response measures to deal with the economic crisis were highly effective in providing mitigation against the crisis. The observed increase in poverty was substantially lower than what would have occurred in the absence of public policy measures,

⁵³ In particular, the social rights guaranteed by the Council of Europe instruments.

which provided significant protection to the poor and vulnerable. While the Government's crisis response has been multipronged, most important for the poor and vulnerable was the protection of priority social spending in last-resort social assistance program and pensions. Armenia was able to reduce the poverty impact of the crisis from a projected 8-percentage-point increase to the actual 3-percentage-point increase. Moreover, the RA Government was able to substantially improve the efficiency of spending on its signature last-resort social assistance program⁵⁴.



Autriche

There is no specific obligation to make a social impact assessment. Often, studies are made in order to assess the need for a new law or policy.



Azerbaijan

No.



Bulgarie

Yes.

Obligatory impact assessments of all draft laws - in respect to their economic, social and ecological implications.

The impact analysis involves three main steps:

1. identification of economic, social and environmental impacts;
2. qualitative assessment of the more significant impacts;
3. in-depth qualitative and quantitative analysis of the most significant impacts.

The first step of the impact analysis aims to identify the economic, social and environmental impacts that are likely to occur as a consequence of the implementation of the chosen decision, including foreseen and unforeseen. It is obligatory to clarify who is affected by the impacts and when. The analysis of economic impacts also includes an assessment of the impact on small and medium-sized enterprises. The analysis of social impacts also includes an assessment of the impact on demographic development of the population and different social groups.

The second step of the impact analysis involves identifying the more significant impacts and is predominantly qualitative. It requires:

1. To identify the areas in which the suggested action will lead to benefits as well as the areas where it may lead to direct costs or unforeseen negative impacts;
2. To establish the low, medium, or high probability scale of the impact to occur, including by making assumptions about factors beyond the control of the persons managing the intervention who may interfere with these probabilities;
3. To evaluate and predict the magnitude of each impact by presenting ranges, taking into account the impact of the intervention on the behaviour of the addressees in the socio-economic and environmental contexts;
4. To assess the significance of the impacts based on the two preceding elements.

The third step of the impact analysis involves a thorough qualitative and quantitative analysis of the most significant impacts. It builds on the results of the structural qualitative analysis of the previous step, its purpose being to deepen the analysis to produce quantitative estimates of expected benefits and costs.

Normally, the assessment also includes specific aspects of economic, social and environmental impacts such as:

1. assessment of impacts on fundamental rights;
2. **specific social** impacts;
3. impacts on small and medium-sized enterprises;

⁵⁴

4. impacts on the competition in the country;
5. impacts on consumers;
6. external transport effects, which include an assessment of the impact of noise, air pollution, carbon dioxide emissions and the accidents of the transport activities
7. impacts at regional and local level.
8. impacts at European and international level

In assessing the specific social impacts, a number of questions are addressed in the following areas:

- Balanced demographic development
- Employment and labour market
- Standards and rights related to quality of work
- Social inclusion and protection of certain groups
- Equality between women and men, equal treatment and equal opportunities, non-discrimination
- Natural persons, personal and family life, personal data
- Governance, participation, good administration, access to justice, media and ethics
- Public health and safety
- Crime, terrorism and security
- Access to and impact on social protection, health and education systems
- Culture



Croatie

Yes. When assessing the impact of new laws on the social rights we take into account scientific research, studies, reports of the academic and non-governmental organisations and all other available information. We assess whether a new law directly impacts the gender equality, equal treatment, right on free movement, right to privacy, right to free legal aid, right to access to the courts, right to international protection and all other human rights. Beside impact on general human rights we particularly assess the impact on the social rights such as social inclusion, protection of vulnerable and groups and groups with special needs, access to the social and health protection system and all other expected direct social impacts that new law might have.

In particular, have such tests/assessments been carried out in the context of the adoption of measures to deal with the economic crisis?

This procedure is mandatory when drafting all laws.



République tchèque

The evaluation of the impacts on society, including social impacts precedes to each subsequent adoption of the new law/policy/strategy. Since November 2007, Regulatory Impact Assessment (RIA) is a constant part of the legislative process in the Czech Republic when preparing draft legislation by the state administration bodies in accordance with the Government's Legislative Rules. RIA includes a set of analytical methods to systematically assess the expected impacts of the proposed policies and legislation that implement them.



Danemark

Yes.

A range of assessments, including social rights, gender equality, environmental impacts ect., are contained in the standard procedure applied when developing new laws or the like. Hence, such assessments are taken into account in the preparatory legislative process when drafting a bill.



Estonie

Yes.

Every law that is sent to the Parliament has to have an impact assessment conducted, one part of the impact assessment is its social impact. This is required by the government regulation "Rules for Good Legislative Practice and Legislative Drafting"⁵⁵.

In particular, have such tests/assessments been carried out in the context of the adoption of measures to deal with the economic crisis?

Yes, even though the current law (mentioned in the previous answer) requiring impact assessments is in force since 01.01.2012, it has been a requirement since 1999⁵⁶ as for all bills going

to the parliament.



Finlande

The impacts of legislative proposals are investigated when legislation is prepared. The guidelines for impact assessment cover the assessment of impacts on the economy, the authorities and the environment as well as other social impacts.

If yes, how are social rights³ taken into account in these tests/assessments?

In line with the guidelines issued on impact assessment, legislative proposals are also assessed in terms of their impacts on social rights. The effects that the proposed law/policy has on the social rights are a key element in most tests and impact assessments, since the implementation of social rights is the fundamental goal of most laws and policies.

Services for children and families will be reformed during 2016–2018 as part of the Government's key projects. Child impact assessment is one of the tools in the programme and the rights and the best interests of the child shall be taken into account in all planning and decision-making.

The Government Action Plan for Gender Equality 2016–2019 collates the objectives and measures by which Prime Minister Juha Sipilä's Government promotes equality between women and men. The Action Plan consists of approximately thirty measures concerning working life, equal pay, economic decision-making, immigrant reception and integration services, reconciliation of work and family, parenthood, gender segregation in education and labour market, education, sports resources and library services, violence against women and intimate partner violence, and men's health and wellbeing. The Action Plan also includes other measures to ensure that all ministries assess the gender impacts of their activities and take them into account in their decision-making.

The Ministry of Social Affairs and Health has published a Handbook "Gender Glasses in Use" in 2009 which is intended for use in support of the ministries' gender equality work. It gives practical instructions for gender impact assessment, carrying out of projects, drafting of legislation, and planning of the ministries' operations and economy.

In 2016, the Ministry of Social Affairs and Health published a Human Impact Assessment Guide which is a collection of different views of how the human impact of proposed statutes can be examined.

In particular, have such tests/assessments been carried out in the context of the adoption of measures to deal with the economic crisis?

The Employment Contracts Act was amended as of the beginning of 2017. The goal was to increase the number of people employed, to encourage SMEs to hire new employees and, in particular, to promote the employment of the long-term unemployed. Effort was made to reach these goals by amending the Employment Contracts Act by extending the trial period, enabling the hiring of a long-term unemployed person for a maximum of three fixed-term contracts with a combined duration of under a year without a justified reason, and by making the re-employment obligation more flexible when terminating the employment relationship. The grounds for the proposed amendments include the assessment of impacts on employment and working life.

⁵⁵ <https://www.riigiteataja.ee/en/eli/508012015003/consolide>

⁵⁶ <https://www.riigiteataja.ee/akt/77750>

The health and social services reform and the reform of county government are currently under preparation. The objective of the reform is to close a large part of the sustainability gap existing in general government finances. The reform includes the establishment of new counties, overhaul of the healthcare and social welfare structure, services and financing, and the transfer of new duties to counties. An extensive growth services reform will be carried out at the same time by reorganising the current labour and enterprise services as growth services. The preparation of the proposals has included the assessment of social impacts, such as impacts on various population groups and on the job seeker's service process, as well as gender and employment impacts.



France

Oui.

En matière législative, l'évaluation préalable est prévue par la loi organique n° 2009-403 du 15 avril 2009 relative à l'application des articles 34-1, 39 et 44 de la Constitution qui impose la rédaction d'une étude d'impact pour tous les projets de loi. Ce dispositif constitue un outil d'évaluation et d'aide à la décision.

L'étude doit notamment être engagée dès le stade des réflexions préalables sur le projet de réforme et doit être affinée au fur et à mesure de l'élaboration du projet. Elle doit permettre de déterminer les concours susceptibles d'être recherchés auprès d'autres administrations pour contribuer aux travaux d'évaluation préalable.

Les documents rendant compte de cette étude d'impact sont joints aux projets de loi dès leur transmission au Conseil d'État. Ils sont déposés sur le bureau de la première assemblée saisie en même temps que les projets de loi auxquels ils se rapportent.

Ces documents définissent les objectifs poursuivis par le projet de loi et exposent les motifs du recours à une nouvelle législation. Ils exposent notamment :

- l'articulation du projet de loi avec le droit européen en vigueur ou en cours d'élaboration, et son impact sur l'ordre juridique interne ;
- l'état du droit sur le territoire dans les domaines visés par le projet de loi ;
- les modalités d'application dans le temps des dispositions envisagées, les textes législatifs et réglementaires à abroger et les mesures transitoires proposées ;

Ils doivent également évaluer les conséquences économiques, financières, sociales et environnementales, les coûts et bénéfices financiers attendus des dispositions envisagées pour chaque catégorie d'administrations publiques et de personnes physiques et morales et les conséquences des dispositions envisagées sur l'emploi public.

Enfin, ces documents doivent permettre d'identifier les consultations qui ont été menées avant la saisine du Conseil d'État.



Géorgie

Yes.

Healthcare and Social Issues Committee of the Parliament of Georgia implements preliminary collaboration of legislative issues and supports implementation of laws. It identifies the core directions of the policy of social security and labor issues. One of the main objectives of the Committee is to promote the issues concerning social security, employment and labor relations, protection of family and of mother and a child, veterans, elderly, and persons with disabilities. The Committee participates in the ongoing process of reforming, reorganization and restructuring of the system of health and social security in Georgia.

The Committee examines and analyzes the state of the enforcement of the law in the field of the issues of its competence, takes measures to ensure its implementation, elicits legislative deficiencies and prepares the necessary legislative proposals. Herewith, in regard with the draft laws, the Committee takes part in drafting conclusions on draft laws from the standpoint of social rights.



Islande

Yes. Under Article 10 of the Government of Iceland's decision on the preparation of government bills and government proposals for parliamentary resolutions of 10 March 2017, an impact assessment shall be carried out in connection with all government bills, inter alia regarding financial effects on the state treasury and the impact on gender equality.

Social rights may be taken into account in such assessments when the subject matter of bills gives reason to do so. A special assessment of the impact on gender equality shall be carried out in connection with all governmental bills as of 2018 and 40% of governmental bills as of 2017.



Irlande

In the course of preparing draft legislation Government Departments will sometimes use the mechanism of a Regulatory Impact Assessment which (depending on the context of the legislation) may include a human rights focus. A Regulatory Impact Assessment is a tool used when a new regulation or regulatory change is being considered to address particular policy issues, in order to explore alternative options to the use of regulation. The Regulatory Impact Assessment identifies the objectives to be achieved and examines the possible impacts of the various options available. In relation to the latter, the relevant Government Department assesses whether the proposals impinge disproportionately on the rights of citizens.

In 2012, the Government committed to developing an integrated poverty and social impact assessment as a mechanism for mainstreaming the national social target for poverty reduction across all aspects of policy. A key application of social impact assessment is in relation to the annual Budget. An evidence-based methodology based on a tax-welfare forecasting model is used to estimate the likely distributive effects of policy proposals on income and social inequality. Since 2013, the Department of Social Protection has published a social impact assessment of the annual Budget, including the welfare and tax measures. Social impact assessment is also used extensively for consideration of policy proposals in advance of the Budget.



Italie

Oui, mais exclusivement dans certains domaines (emploi, inclusion sociale, santé).

Si oui, comment les droits sociaux y sont-ils pris en compte ? Le droit à l'emploi, au logement, au revenu minimum, à l'éducation et à la formation professionnelle. *En particulier, de tels tests/études ont-ils été réalisés dans le cadre de l'adoption de mesures pour faire face à la crise économique?* Oui.



Lettonie

There is a special instrument (called – annotation) which is used by the institutions while drafting the policy planning documents or laws. However the instrument usually is not used properly as responsible institutions avoid fulfilling it as necessary.



Lituanie

Pursuant to Article 15 of the Republic of Lithuania Law on Legislative Framework, when drawing up a draft legal act which provides for regulation of previously unregulated relations, also whereby legal regulation is substantially amended, assessment of the effect of envisaged legal regulation must be carried out. The comprehensiveness of this assessment must be proportionate to the likely consequences of envisaged legal regulation. The drafter shall carry out the assessment of the effect of envisaged legal regulation. When the draft is sophisticated and needs special

technical or other qualifications, knowledge and skills that the drafters lack, experts of other state institutions and agencies or those working in non-state institutions or agencies may be consulted. When carrying out the assessment of the effect of envisaged legal regulation, the likely positive and negative effect on the area of that legal regulation and on persons or groups thereof in respect of whom the envisaged legal regulation will apply shall be determined. Taking into account the nature and scope of the new legal regulation provided for in the legal act, the effect on the economy, state finances, social environment, public administration, legal system, crime situation, level of corruption, environment, administrative burden, regional development and other areas must be assessed.

The Methodology for Assessment of the Effect of Envisaged Legal Regulation was approved by Resolution No. 276 of the Government of the Republic of Lithuania of 26 February 2003. In accordance with this Methodology and the Questionnaire of Assessment of the Effect of Envisaged Legal Regulation contained therein, when evaluating the effect on the legal framework, an analysis has to be conducted in order to determine whether envisaged legal regulation is in conformity with the European Union law and international treaties. When evaluating the effect on social environment, an analysis has to be conducted in order to determine whether project implementation will affect individual social groups, for example, socially vulnerable persons, youth, children, families, particularly young families or those raising three and more children, the elderly and other persons; whether project implementation will affect the labour market and employment; whether project implementation will ensure equal opportunities; whether project implementation will affect labour relations and work conditions; whether project implementation will affect social partnership; whether project implementation will affect consumer prices and the actual level of income and expenses of the population.

In accordance with Article 135(3) of the Statute of the Seimas of the Republic of Lithuania, a draft law submitted to the Seimas shall be accompanied by an explanatory note which must indicate, inter alia, the conformity of the draft law with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Union documents.

These legal act requirements were also effective during the economic crisis.



République de Moldova

No.

In this context, we mention that no social impact tests/assessments are being carried out when elaborating the draft laws.



Pays-Bas

No.



Norvège

Yes - this is part of the instructions relating to government measures ("Utredningsinstruksen") - to be found in Norwegian here: <https://lovdata.no/dokument/INS/forskrift/2016-02-19-184?q=utredningsinstruksen>

If yes, how are social rights taken into account in these tests/assessments? It is taken into account where relevant.

In particular, have such tests/assessments been carried out in the context of the adoption of measures to deal with the economic crisis?

We refer to the answer above.



Pologne

Elles sont préparées obligatoirement.

Avant d'établir le projet d'un acte législatif on procède à l'évaluation d'impact économique et social de solutions possibles. L'étendue de cette évaluation dépend du statut de l'acte (loi, règlement, décision), de son objet et de son impact possible.

On joint au projet une fiche d'évaluation d'impact de nouvelles dispositions (cette fiche fait partie intégrante du projet). Cette fiche contient des informations suivantes:

- problème traité,
- solution du problème proposée et effet attendu,
- solution du même problème adoptée par d'autres Etats,
- sujets sur lesquels la solution proposée a l'impact, comment cet impact se manifeste,
- déroulement et résultats des consultations,
- conséquences pour des finances publiques, perspective de 10 ans (budget de l'Etat, budgets des collectivités locales, budgets des autres institutions du secteur publique),
- effets sur la compétitivité économique et la position des entreprises,
- impact sur la situation économique des individus et des ménages,
- conséquences procédurales (nombre de documents à produire, procédures à suivre, leur raccourcissement),
- impact sur le marché du travail,
- conséquences pour d'autres secteurs (environnement, développement local, santé, démographie, biens de l'Etat),
- comment et quand les effets du projet seront évalués.

S'il y a des obligations internationales en la matière, elle sont présentées et le degré de compatibilité est analysé. En cas de besoin on consulte le Ministère des affaires étrangères au sujet de la compatibilité du projet avec les traités et accords internationaux.

Au projet on attache une fiche qui présente la compatibilité du projet avec le droit de l'Union européenne, selon le cas. C'est au ministre des affaires européennes d'établir une telle fiche. Si nécessaire, on établit un tableau de concordance renversé si les normes polonaises dépassent les normes d'une directive transposée.



Portugal

Yes, test/social assessments are performed when developing new laws/policies. The 21st Constitutional Government has instituted a mechanism for the prior evaluation of the legislative impact of legislative acts of the Portuguese Government, entitled «Custa Quanto».

«Custa Quanto» aims at verifying the impact that a legislative act can have on citizens and companies, in particular at economic level. However, social issues are also relevant in this context, since both benefits and social impact enter into the final evaluation. If there is social impact it is recommended a revaluation of the measure assessed by this mechanism in order to cut it out.

As examples we would like to mention:

- The modification of some of the active labour market policies have been preceded by an evaluation of the existing active labour market policies.
- The recent increases in the Portuguese minimum wage are monitored by regular reporting on their social and economic impacts.
- Some measures in the field of disability, such as Social Inclusion Benefit.

Under Article 470 of the Labour Code any project or bill, decree-law project or regional decree project concerning labour law can only be discussed and voted by the Parliament, by the Government of the Republic, by the Legislative Assemblies of the autonomous regions (Azores and Madeira) and by the Regional Governments after the committees of workers or their coordinating committees, trade union associations and employers' associations had been able to pronounce on it, particularly on their social impacts.

Furthermore, the Standing Committee on Social Dialogue may express its views on any draft or proposed labour legislation, it may be convened by President's decision upon the request of any of its members, as provided in article 471 of the Labour Code.

After the discussion begins the deadline for public review during which the entities referred to in article 470 can decide on the project or bill and request an oral hearing to the Parliament, to the Government, to the Legislative Assembly of an autonomous region or to the Regional Government, in accordance with the provisions of article 474 of the Labour Code.

The above-mentioned procedures provided for in the law for the elaboration of labour legislation were taken into account in the measures against the economic crisis that hit Portugal.



République slovaque

Yes. Each piece of legislation has impact assessment annexed to it when it is in the legislation process. This assessment takes into consideration social impact, financial impact, environmental impact, impact on business activities of the proposed legislation or measure. All of these impact studies have to be present, otherwise the proposed legislation cannot be adopted.



Slovénie

No. In Slovenia, we don't have a social impact assessment mechanism in place.

When developing new laws and policies ministries are obliged to consider impacts of the draft law/policy on "the social field" as required by the Instruction on the implementation of the Rules of Procedure of the Government, but the "assessment" is limited to "yes" or "no". No detailed description of possible social impacts is required by the above mentioned Instruction.

When the MOLFSA drafts law, social impacts of the draft law are usually considered by the experts preparing the draft law, but not from the social rights perspective. However, it has to be pointed out that each draft law falling within the competency of the MOLFSA is usually negotiated with social partners before its adoption by the Government. A constructive social dialogue is also a mechanism for securing social rights.

In particular, have such tests/assessments been carried out in the context of the adoption of measures to deal with the economic crisis?

No.



Espagne

RESPONSE FROM THE MINISTRY OF EMPLOYMENT AND SOCIAL SECURITY, DIRECTORATE-GENERAL FOR THE LABOUR AND SOCIAL SECURITY INSPECTORATE

The Labour and Social Security Inspectorate, in the specific scope of its authority to monitor and enforce compliance with labour standards, carries out a continual monitoring of activities, assessing their efficiency and effectiveness. This is determined, to a great extent, by the increase in planned activities, i.e. activities which have a clearly established scope of action, goals, procedures for action, and information collecting. The implementation of these types of activities, which may take the form of specific labour inspection campaigns, is evaluated both in quantitative and in qualitative terms.

In this regard, the Labour and Social Security Inspectorate is evolving from a reactive towards a more proactive model, in which, prior to each action, the sectors or scope of activity are analysed, focusing more on actions in those sectors in which greater levels of non-compliance have been detected, in order to increase the efficiency and effectiveness of the Labour and Social Security Inspectorate system.

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

Pursuant to the LOIEHM, and in order to set out the priorities and major lines of action regarding equality, an Equal Opportunities Strategic Plan (PEIO) is periodically drafted. Each Strategic Plan is evaluated, and this serves as the basis for the drafting of the following PEIO.

Also worth mentioning are the ex ante gender impact reports on draft legislation and regulations, and particularly relevant plans. In accordance with said LOIEHM, Royal Decree 1083/2009, of 3 July, which regulated reports on regulatory impact analysis, was issued. Gender impact reports are part of those reports, and they must analyse and assess the outcomes that may result from the

approval of draft legislation and regulations, from the perspective of eliminating inequalities and contributing to the achievement of the goals of equal opportunities and treatment for women and men, based on the indicators describing the initial situation and the expected results and impact.

Furthermore, as regards the gender impact reports for the General State Budget, the Ministry of Finance annually issues an Order setting forth rules for drafting the General State Budget, including the relevant instructions for a prior gender impact assessment. As an example, the latest gender impact report can be found in the General State Budget Bill for 2017.

The report also studies the impact on families and children.

RESPONSE FROM THE MINISTRY OF EMPLOYMENT AND SOCIAL SECURITY. DIRECTORATE-GENERAL FOR THE LABOUR AND SOCIAL SECURITY INSPECTORATE

The economic crisis has had different effects. One of them has been the increase in undeclared work and in Social Security fraud.

The Ministry of Employment and Social Security has significantly stepped up efforts to combat this. The cornerstone of this drive has been the Plan to Combat Irregular Employment and Social Security Fraud, approved by Spain's Council of Ministers on 27 April 2012.

As a result of the adoption of this Plan, a series of measures and amendments has been designed to facilitate the appropriate instruments to combat fraud, in order to achieve such goals as: a) Promoting the disclosure of undeclared employment, in order to regularize working conditions and generate greater economic resources for the Social Security system thanks to social contributions; b) Combating cases of undue application and receipt of rebates or reduction of employer's contributions to Social Security, and of other incentives related to employment policies; and c) Identifying cases of fraud in accessing and receiving other Social Security benefits, mainly in cases of non-registration in the Social Security system of workers who are actually rendering services in companies.

To achieve these goals, the Labour and Social Security Inspectorate has carried out continuous and determined activities of oversight and monitoring compliance with the rules governing Social Security, and continues to do so.

RESPONSE FROM THE AUTONOMOUS COMMUNITY OF CASTILLA Y LEÓN

The planning of social and employment policies stems from a detailed study of the social reality in which the intervention is to take place, based on data, studies, surveys and other sources of information made available by the Labour Market Studies and Surveys Service (former Employment Observatory). To this end, systematic studies of the labour market, analyses and assessment of previous employment plans are carried out periodically, in order to promote improvements in the policies that are to be implemented.

Furthermore, there is an ongoing dialogue with the entities involved in this area of action, so that they may present their vision and participate in the drafting in the regulatory and planning instruments necessary for the implementation of social policy, which includes their impact on social rights.

Moreover, all regulations and plans are the result of a consensus stemming from social dialogue, and prior to their approval they are published on the Autonomous Community's website, so that any individual or entity may make any proposals, allegations or contributions they deem appropriate.

As regards employment, multi-annual strategies and annual plans are based on an analysis of the outcomes of the implementation of previous plans, as well as on new proposals from the stakeholders involved in the present one.

Specifically, the instruments used are the 2nd Integrated Strategy on Employment, Vocational Training, Workplace Risk Prevention, and Equality and Work-Life Balance in Employment 2016-2020, as well as the Annual Employment Policies Report.

RESPONSE FROM THE AUTONOMOUS COMMUNITY OF THE BALEARIC ISLANDS

In our particular case, the social impact of the implementation of new regulations is indeed analysed when drafting new regulations, because in most cases this means ensuring and guaranteeing access to new benefits and/or services, or increasing the groups of population with

new rights. For example, this is the case of the Guaranteed Social Income Act (Act 5/2016), approved in May 2016. Guaranteed Social Income is a periodic benefit targeting situations of economic vulnerability and covering the basic expenses of people, families or other households in a situation of poverty.

<https://www.caib.es/seucaib/es/tramites/tramite/2615446/>

In particular, have such tests/assessments been carried out in the context of the adoption of measures to deal with the economic crisis?

Yes, in this specific case the implementation of a Guaranteed Social Income was introduced on the basis of prior studies and analyses of the increase in persons in a situation of vulnerability and poverty in the Autonomous Community of the Balearic Islands.



“L’ex-République yougoslave de Macédoine”

The development of the new legislation is usually accompanied with the process of, so called, **RIA (Regulatory Impact Assessment)**. RIA represents the process of evaluation conducted in the drafting phase, and with the purpose of improving the efficiency and accountability of the Government and the ministries, through mandatory consultations with concerned parties (stakeholders).

The main goal of the RIA process is to obtain relevant and precise informations about the positive and negative impact of the possible solutions (options) for tackling and solving the particular problem, and for achieving the goal for which the draft-law is being proposed. RIA is conducted before the preparation of the draft-text of the concerned regulation. The RIA process ensures active involvement of all stakeholders who, with relevant informations, could substantially contribute in improving the quality of the proposed regulation. The results of the conducted RIA, together with the proposed draft-legislation, are then published on the, so called, **ENER-system** (the Unique National Electronic Register of Regulations) – the electronic system (tool) containing the proposed draft-legislation, allowing interested parties (stakeholders) to submit electronically their comments and suggestions directly to competent institution(s). The use of these procedures (tools) contributes greatly to the transparency of the regulatory process and the functioning of the Government.

An integral part of the RIA process is the “Analysis of the costs, impacts and benefits of the identified possible solutions (options) and their comparison”. Part of these analyses is to determine the impacts on the economy, social impacts, impacts on the environment and health of citizens, as well as other type of impacts – according to the area/topic etc., analyses of the possible benefits for the concerned parties (stakeholders) etc.

In respect to the analysis of the possible impacts of the proposed regulation, the RIA form/report also contains the information about the various types of impacts, for example impacts on the national competitiveness, impacts on the consumers, impacts on the socially excluded and vulnerable groups, impacts and effects of the regulation on the gender aspects and the equality, impacts on the citizens’ rights, etc.



Turquie

During the law making process, Ministry of Labour and Social Security always takes the opinions of social partners, as the labour legislation directly affects both sides. So, this mechanism leads to gain a different point of view and assess the possible effects of new legislation on social rights/labour rights for workers’ side and employers’ side).

“The Impact Analysis Survey on Implementation of the Law N° 6284 on Protection of Family and Prevention of Violence Against Women” was conducted in order to analyse the effectiveness of the Law No.6284. The target of the survey was to find out how the Law reflected on women victims of violence, perpetrators, children and relatives of these victimised people and to evaluate whether or not it was effective for preventing domestic violence and violence against women and for protection of victims of violence. “Summary Report and Final Report” of the survey was concluded in October 2015. According to the result of the research, a comprehensive roadmap for solving the problems

encountered in the implementation of Law No. 6284 will be prepared and efforts will be continued to resolve the problems in cooperation with the related institutions and organisations.



Ukraine

Yes.

According to the Standard Order of the Cabinet of Ministers of Ukraine of 16 July 2007 No 950 (§ 45. Expertise), the Ministry of Justice verifies within the framework of legal expert examination the draft acts of the Cabinet of Ministers the compliance with the Constitution of Ukraine, legislation and current international treaties of Ukraine, Council of Europe standards in the field of democracy, rule of law and human rights, in particular the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, the practice of the European Court of Human Rights, the principle of equal rights and opportunities for women and men (gender expertise).

B.2. Mécanismes de conformité au droit international

Des mécanismes spécifiques existent-ils dans votre pays pour vérifier la compatibilité des projets de loi, des législations existantes et des pratiques administratives internes avec les normes internationales en matière de droits sociaux⁵⁷ ?



Albanie

Article 5 of the Constitution provides that the Republic of Albania implements mandatory international law. Furthermore, in the hierarchy of norms provided by Article 116, international agreements ratified by law are placed in the hierarchy of norms only after the Constitution, which consequently leads to the fact that any act that comes into force must necessarily be in accordance with them.

There are some mechanisms that check in advance the compatibility of draft laws in general (including those related to social rights) with international agreements ratified by the Albanian Parliament in this field.

The first control mechanism is provided in the Council of Ministers' Regulation, approved by the DCM no. 584, dated 28.03.2003, where it is foreseen that the draft law prior to being submitted to the respective institutions should be accompanied by an explanatory statement, which should include, inter alia, a preliminary assessment of the legality and compatibility of the form and content of the draft with the Constitution and the norms of international law mandatory for the Republic of Albania. Thus, during the drafting of a bill regarding social rights, drafters must necessarily present their compatibility with the extent of the international agreements ratified in this framework. Afterwards, these draft laws, in accordance with to Law No. 9000, dated 30.01.2003 "On the Organization and Functioning of the Council of Ministers" and the above-mentioned regulations, are submitted to the Ministry of Justice, which decides on the legality of form and content.

Another important mechanism, as mentioned above, is the ex ante check-up of the acts that is carried out by the Ministry of Justice. Law no. 8678, dated 14.5.2001, "On the Organization and Functioning of the Ministry of Justice", as amended, specifies the scope of activity of this institution expressly providing the provision of specialized opinion on drafts of legal acts and by-laws of the Council of Ministers, Ministers and other chairs of central institutions, as well as for realizing the reform of the legislation in general. Even in this case, the opinion of the Ministry of Justice takes into account the coherence of new draft laws with the existing arrangements provided for in international agreements.

⁵⁷ En particulier les droits sociaux garantis par les instruments du Conseil de l'Europe mais également ceux par l'Union européenne ou encore les Nations-Unies (notamment l'Organisation internationale du travail – OIT – et le Pacte international relatif aux droits économiques, sociaux et culturels – PIDESC).

Based on the Rules of Procedure of the National Assembly, another important link is the submission of the draft law to the parliamentary committees of the Assembly. Concretely, the draft acts related to social rights must be subject to the control of the Committee on Legal Affairs, Public Administration and Human Rights and, as the case may be, with the Foreign Policy Committee, covering the issues related to foreign affairs, International relations and cooperation, as well as the implementation of international agreements.

Concerning the conformity assessment mechanisms of existing legislation with international law regarding social rights standards, this is a prerogative of the Albanian judiciary system. In any case when a judge finds an internal rule that is openly contrary to the provisions laid down in international agreements ratified by law, he shall apply in a straightforward manner the provisions of the agreement, which, as mentioned above, are ranked higher than ordinary laws in the hierarchy of norms.



Arménie

With a view to assessing the quality of a draft legal act submitted to a law-making body, an official independent (legal, financial, scientific-technical, environmental, linguistic and stylistic, etc.) expert examination may be carried out upon the decision of the law-making body.

In cases and as prescribed by the RA Law on Legal Acts and with a view to bringing draft regulatory legal acts or regulatory legal acts in line with the Constitution of the Republic of Armenia, the laws of the Republic of Armenia and other legal acts, draft regulatory legal acts or regulatory legal acts shall undergo compulsory state expert examination in the Ministry of Justice of the Republic of Armenia.

In the Republic of Armenia the constitutional justice is administered by the Constitutional Court, which shall determine the compliance of laws, decisions of the National Assembly, decrees of the President of the Republic of Armenia, decisions of the Government, Prime Minister, local self-government bodies with the Constitution. Prior to ratification of an international treaty, the Constitutional Court shall determine the compliance of commitments enshrined therein with the Constitution.

A case may be lodged with the RA Constitutional Court to challenge an existing law. Verification mainly takes place within the framework of court proceedings brought by individuals with legal standing to act or even by state organs, persons or bodies not directly affected before Constitutional Court.

Meantime, the draft laws usually are referred to the international organizations (Council of Europe, ILO, UN agencies, etc.) for expertise before submitting for approval.



Azerbaïdjan

There is no any specific mechanisms but almost all draft laws, existing legislation and also state programs are prepared in accordance with the international agreements to which the Republic of Azerbaijan has acceded to. This fact is also noted in Article 151 of the Constitution of the Republic of Azerbaijan.



Bulgarie

Such a mechanism exists, i.e. all draft laws which are to be discussed by the Council of Ministers (before their submission to the National Assembly) when transposing EU Directives have in annex a table of concordance with the respective act/s (elaborated by the respective Ministry) or, since recently (Nov. 2016), a reference of concordance with the European Convention of Human Rights and the practice of the European Court of Human Rights (elaborated by the Ministry of Justice).

Comparative and legal analyses of national legislation are being carried out in the process of preparation for ratification of ILO conventions and other international legal instruments.



Croatie

Ratified international standards are a component of the domestic legal order of the Republic of Croatia and they have primacy over domestic law.



République tchèque

Obligatory parts of RIA among others are compliance with EU and international law and social impact. The legislative process includes circulation of a draft bill for comments from executive departments and state agencies, including those responsible for international standards.



Denmark

The ministry responsible for the particular subject/file together with Ministry of Justice.



Estonie

Each draft law is sent to all ministries for comments and consent, the Ministry of Foreign Affairs and the Ministry of Justice verify compatibility with international law and existing legislation.



Finlande

Each ministry is responsible for safeguarding fundamental and human rights in the legislative drafting within its mandate. A legislative proposal must be assessed in relation to the Constitution (in respect of fundamental rights, in particular) and human rights treaties to ensure that the proposal conforms to the Constitution and human rights obligations. The drafting instructions for Government proposals as well as the Handbook for Legislative Drafters include comprehensive information on how to take fundamental and human rights as well as Finland's international obligations into account in the drafting process.

The duty of Parliament's Constitutional Law Committee is to give its statement during a parliamentary hearing on the constitutionality of legislative proposals submitted for its consideration and on their bearing on international human rights instruments.



France

Oui.

En vertu de l'article 39 de la Constitution, le Conseil d'État est obligatoirement saisi de tous les projets de loi, avant leur adoption par le Conseil des ministres et leur dépôt devant le Parlement. En vertu de l'article 38 de la Constitution, le Conseil d'Etat doit être également saisi, pour avis, des projets d'ordonnance avant leur adoption par le Conseil des ministres.

Depuis la révision constitutionnelle du 23 juillet 2008, la saisine du Conseil d'État a été élargie aux propositions de loi émanant des membres des assemblées parlementaires.

L'avis du Conseil d'Etat porte sur la régularité juridique des textes, leur forme et la pertinence des dispositions proposées au regard des objectifs poursuivis ainsi que sur les risques juridiques encourus par l'Etat.



Géorgie

For the aim to, *inter alia*, verify the compatibility of draft laws, existing legislation and internal administrative practices with international standards of social rights, Georgia submits regular reports (Provided by the Ministry of Labor, Health and Social Affairs of Georgia) to the one of the core international bodies in the field of human rights - the European Committee of Social Rights of the Council of Europe. Herewith, a consolidated report to be submitted to the United Nations Committee on Economic, Social and Cultural Rights (CESCR) is being elaborated. As each report

is examined, the compatibility of domestic legislation with international standards is consequently analyzed.

It should be mentioned that within the framework of implementation of the EU-Georgia Association Agreement and Agenda 2014-2017 (which includes the issues such as: employment, social policy; equal opportunities; healthcare ; *etc.*), the meetings of the Association Council, the Association Committee, the Association Subcommittees and the Association Parliamentary Committee are being systematically arranged.⁵⁸ For the aim to provide effective implementation of the Association Agreement and the Association Agenda, the Office of the State Minister of Georgia on European & Euro-Atlantic Integration coordinates the development and application of the Annual National Action Plan for the implementation of the Association Agreement and the Association Agenda between the European Union and Georgia, likewise, elaboration of relevant progress reports.

The Action Report on Implementation of the Human Rights Action Plan of 2014-2015 (as well as the Action Plan of 2016-2017) of the Government of Georgia outlines, *inter alia*, the main dimensions, such as bringing the legislative environment of persons with disabilities into compliance with international standards; continuing the process of improvement of labor legislation; protection of labor rights in compliance with internationally recognized standards; implementing of the main conventions of the International Labor Organization, deepening international cooperation with traditional partners⁵⁹ in the field of labor and employment, *etc.*⁶⁰

Moreover, noticeable that, reports have been prepared and submitted to the International Labor Organization on the implementation of the Conventions №87; №100; №111; №98 in 2014, and №29; №105; №88; №138; №181; №182 in 2015. Conclusions made by the Committee on Experts of the International Labor Organization based on the reports, positively assess the dynamic of Georgia in the implementation of the conventions.⁶¹

Further, the Mid-term Report on the Implementation of the Human Rights Action Plan of 2016-2017 of the Government of Georgia also refers to the legislative compliance to the international standards with regard to the social rights, as well as possibility to ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities and determination of the possibility/expediency of ratification of the 1976 Convention (N144) on the Tripartite Consultations (International Labor Standards) of the International Labor Organization.⁶²

As illustrated above, Georgia constantly coordinates with international bodies. As a consequence, through the mechanism of submitting reports in the field of social rights, including the effectiveness of existing laws and draft amendments, compatibility is regularly controlled and assessed by international bodies.



Islande

Under Article 8 of the Government of Iceland's decision on the preparation of government bills and government proposals for parliamentary resolutions of 10 March 2017, a comment shall be made in the explanatory notes to a government bill on the compatibility of the bill with the state's obligations under international law, if the subject matter of the bill has given rise to do so. As for existing legislation and internal administrative practices, there are no specific mechanisms, other than bringing such matters before the courts, to verify their compatibility with international standards of rights.

⁵⁸ Available online at:

http://www.eunato.gov.ge/sites/default/files/400%20CALI_New_Action%20Plan%20ENG%202107%20axali.pdf

⁵⁹ In particular, United States Department of Labor, International Labor Organization, International Organization for Migration, European Union, World Bank, German Society for International Cooperation, European Foundation for Educational, *etc.*

⁶⁰ Please see: the Report on the Implementation of the Human Rights Action Plan (2014-2015) of the Government of Georgia, para. 20.1; available online at: <https://matsne.gov.ge/ka/document/view/3315211>

⁶¹ *Ibid*, para. 21.2.

⁶² Mid-term Report on the Implementation of the Human Rights Action Plan of 2016-2017 of the Government of Georgia, task 20.1.3.



Irlande

There are no specific mechanisms to verify the compatibility of draft laws and existing legislation and internal administrative practices with international standards of social rights. However, the Houses of the Oireachtas (the National Parliament) establish Parliamentary Committees to discuss laws and draft laws which will include a human rights perspective. Further, the Oireachtas maintains a research capacity to inform Oireachtas members of human rights developments in the process of pre-legislative scrutiny.

Pre-legislative scrutiny is where Parliament, through its committees, scrutinises General Schemes of draft legislation. Ministers are required to forward the General Scheme of a Bill to the relevant Committee for scrutiny. In the exceptional circumstance where a Minister does not do so, he/she must explain to the House (of Parliament) why this was not done. The Committees are empowered (but not obliged) to consider the General Scheme. Pre-legislative scrutiny allows extensive engagement of the public in law-making as it enables parliamentary committees to consult civil society and advocacy groups, stakeholders and experts.



Italie

Oui, des mécanismes spécifiques ont été prévus pour l'adoption des instruments internationaux par le gouvernement italien.



Lettonie

Yes, responsible institutions have to fill annotations to do abovementioned. However the responsible institutions only partly fill the annotations.



Lituanie

Entities participating in the legislative process must observe the principles of legislation established in the Republic of Lithuania Law on Legislative Framework. The legislative process, inter alia, observes the principle of respect for an individual's rights and freedoms, meaning that legal provisions must ensure and may not exclude an individual's rights and freedoms and legitimate interests laid down in the Constitution of the Republic of Lithuania, legal acts of the European Union, international treaties of the Republic of Lithuania, laws and other legal acts of the Republic of Lithuania.

The Questionnaire of Assessment of the Effect of Envisaged Legal Regulation contained in Annex I to the Methodology for Assessment of the Effect of Envisaged Legal Regulation includes, inter alia, questions on the effect to certain human rights and freedoms which are protected not only by the national legislation of the Republic of Lithuania, but also by international law. This questionnaire assists the drafters of legal acts in determining all potential aspects of the effect of envisaged legal regulation and the scope of this effect.

The assessment of the effect of envisaged legal regulation on the legal framework focuses on conformity of envisaged legal regulation with the European Union law and international treaties and absence of the obstacles of envisaged legal regulation to the creation of equal opportunities for all persons, regardless of their nationality, gender, convictions, to defend their rights, legitimate interests as well as seek justice, etc.

Pursuant to Article 9(4) of the Republic of Lithuania Law on Legislative Framework, conclusions on the conformity of draft legal acts with European Union law, judgments of the Court of Justice of the European Union, international treaties of the Republic of Lithuania, the European Convention for the Protection of Human Rights and Fundamental Freedoms and rulings of the European Court of Human Rights shall be provided by institutions authorised by the Government.

When drafting new legislation, drafting working groups sometimes invite experts from related international organisations (such as Council of Europe, UN, ILO) to assess the compatibility of draft legislation with international standards and give advice on how to implement it in the best way.

For example, on 6 April 2016 European Committee of Social Rights delegation visited Lithuania and met with representatives from relevant governmental institutions and members of the Seimas to discuss the possibilities for the ratification of the unratified articles of the European Social Charter.

As regards the compatibility of existing legislation and internal administrative practices with international standards of social rights, the usual procedure is through the regular reporting on the implementation of international standards.

The Ministry of Social Security and Labour is responsible institution for the coordination of the implementation of relevant international standards in the field of social security and labour. After receiving the comments and recommendations from concerned international bodies/committees that assess the implementation of international standards in national legislation and in practice, the Ministry shares the information with responsible institutions, social partners and coordinates actions on how to better implement the recommendations, initiates legislative changes.



République de Moldova

In this context, we mention that all draft normative acts in the Republic of Moldova are subject to legal expertise, which ensures the conformity of the draft normative acts with the norms of the Constitution, with the practice of the constitutional jurisdiction and with the provisions of the international treaties to which the Republic of Moldova is a party.



Pays-Bas

Draft law, prepared by government, need to comply with international standards. The responsible Ministry, preparing the draft law, has to check the compatibility with the various international standards, especially EU legislation and the European Convention on Human Rights. The Netherlands Drafting Directives (a comprehensive legislative-technique handbook) are to be observed by all persons involved when drafting laws and other legislation. Directive 254 deals with European and international compatibility.

Additionally, the Ministry of the Interior and Kingdom Relations has drafted guidance (Handreiking Economische en Sociale rechten) to ensure compliance with social and economic rights in policy and legislation. The guidance is used in the drafting of policy and legislation to provide an initial broad overview of information on economic, social and cultural fundamental rights. In this context, it provided lawyers and policymakers with reference points enabling them to ascertain, in drafting and examining policy/ legislation, whether these fundamental rights may or should be taken into account, and if so to what extent. More over in 2016 a seminar for civil servants was organized on economic and social rights.

Furthermore, the Netherlands has intradepartmental quality checks and the Ministry of Security and Justice operates an all-embracing quality check.

Finally the Advisory Division of the Council of State must always be consulted on proposed legislation before a law is submitted to Parliament. The Council of State assesses whether the proposed legislation is compatible with higher law (e.g. Constitution, treaties (such as the human rights conventions) and EU law) and gives its advisory opinion (called 'dictum').



Norvège

Yes, e.g.:

- This can come up through public hearings: Cases are presented for consultation when the Ministry wants to consult affected parties on a suggested bill or act. Consultations are used to allow the public, organisations and the business community to state their opinion, and to control how the public administration works and performs their tasks.

- The social impact studies during the consideration and preparation of governmental measures, see B.1.

- The Norwegian National Human Rights Institution, see A1.



Pologne

- Concernant la ratification d'un traité ou accord international, des exigences quant à la forme et le contenu des documents sont détaillés dans un règlement d'application de la loi sur les accords internationaux. Afin de remplir ces exigences il est nécessaire de procéder à des analyses juridiques et économiques.
Une analyse préliminaire est faite au début des négociations du traité/de l'accord pour établir une instruction aux négociateurs, l'analyse continue pendant le processus de négociations. Une analyse approfondie est faite pour demander l'autorisation du Premier Ministre de signer le traité/accord. La dernière et la plus détaillée analyse est faite pour établir la motion de ratification.
La motion de ratification contient, entre autres, les motifs avec des éléments expliquant:
 - la nécessité et le but de la ratification,
 - la différence entre la législation en vigueur et les dispositions du traité/de l'accord,
 - l'impact social, économique et politique de la ratification ainsi que la source de financement des changements qui interviendront suite à la ratification.
 La pratique est qu'on procède à la ratification quand la législation est en ligne avec les dispositions du traité/accord donnée ou le processus d'alignement de la législation est bien avancé. Cela peut résulter en des procédures de ratification prolongées (Charte de 1961 - 6 ans, Convention sur les droits des personnes handicapées - 6 ans), mais grâce à cela on s'assure que la Pologne est en mesure de s'acquitter pleinement de ses obligations internationales.
Le ministre compétent dans les domaines visés par le traité/accord international est responsable de mener ces procédures.
- Le Ministère des affaires étrangères examine les projets à la lumière de la Convention sur les droits de l'homme et la jurisprudence pertinente.
- Dans le cadre de consultations interministérielles portant sur des projets, s'il y a une question touchant aux normes prévues par la Charte (et, en général, normes internationales), le département au sein du Ministère de la famille, du travail et de la politique sociale responsable pour la Charte est consulté, mais pas de manière cohérente. Des normes de la Charte sont plutôt bien connues, il n'y a pas de besoin de procéder aux consultations chaque fois. Ce département peut être demandé (plus ou moins formellement) de produire la documentation, informer sur l'interprétation de la Charte par des experts indépendants et la position de la Pologne concernant cette interprétation.
- La conformité de la législation polonaise avec des traités et accords internationaux ratifiés par la Pologne est le sujet de discussions au Conseil du dialogue social avec les représentants des organisations patronales et syndicales (son groupe pour des questions internationales, voir sous A.2).
- Il existe un procédure facultative d'évaluation ex post de la mise en œuvre d'une loi en vigueur. Le ministre compétent pour des questions traitées par une loi donnée peut établir une telle évaluation de sa propre initiative, à la demande du Conseil des Ministres ou pour remplir une disposition contenue dans la fiche d'évaluation d'impact du projet de cette loi.
L'évaluation ex post peut être consulté avec des sujets auxquels la loi est adressée et avec d'autres institutions et organisations. Dans ce cadre il est possible de vérifier la compatibilité de la loi avec des accords internationaux, y compris à la lumière des évaluations faites par les organes internationaux de contrôle.



Portugal

Yes. All piece of legislation, as well as all draft laws, is evaluated internally in the Government by the Presidency of the Council of Ministers. This analysis involves a verification of the compatibility of the legislative act with certain national and international parameters. Compatibility with international parameters includes, among other aspects, the possible fulfillment of the legislative

act with international standards, namely the international instruments (v.g., the ICESCR) related to social rights.

This verification is also made by the services responsible for drafting the laws, when dealing with draft laws, legislation and administrative procedures, the responsible services and their work teams take into account the social rights as they are settled in the international standards. In particular, when an international instrument is ratified, the conditions for its implementation are met or are in attainment processes, and the country can complete the necessary administrative internal processes, as well as the introduction of new or amended legislation.

Under Article 168 of the Portuguese Constitution the law projects and bills include a public discussion in general and another in specialty, followed by a general voting, a specialty voting and a final global voting, which works in a certain way as mechanisms to verify the compatibility with international standards of social rights.

Furthermore, the European Social Charter provisions are fully accepted as part of our own Constitution, any draft law or current law considered to be incompatible with such provisions may be submitted to the enforcement of the Constitutional Court according to our system of constitutional review.



République slovaque

Yes. When developing new legislation, the international commitments arising from the ratified international treaties have to be respected. The same applies to all amendments of the existing legislation, these have to respect international obligations as well. When adopting new legislation, the adoption process includes interministerial discussion process to ensure that obligations from international treaties being coordinated by one ministry do not interfere with obligations arising from international treaties coordinated by other ministries.



Slovénie

According to the Constitution of the Republic of Slovenia (Art. 8): “Laws and other regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. **Ratified and published treaties shall be applied directly.** “

The **Government Office for Legislation** verifies compatibility of draft laws with domestic legislation and European Union law.



Espagne

Article 96 of the Spanish Constitution establishes that international treaties form part of Spanish legislation.

Any legal instrument released by the Council of Europe, if signed by Spain, automatically becomes part of Spanish legislation.

International Conventions, Agreements or Covenants, to the extent that they are ratified by the Kingdom of Spain and published in their entirety in the *Boletín Oficial del Estado* (Spain's Official State Gazette, or BOE), become part of our country's legal system (Article 1.5 of the Civil Code).

When it comes to drafting new regulations or legal provisions, a table or list of provisions in force that could be affected is always made. Included among these provisions, in accordance with the paragraph above, are those international Conventions, Agreements or Covenants that are ratified and published in their entirety in the BOE.

RESPONSE FROM THE AUTONOMOUS COMMUNITY OF CASTILLA Y LEÓN

The employment policies implemented in Castilla y León are in accordance both with national and European strategies, and their goals are aligned in their respective spheres of authority. Moreover, the rules governing and implementing policies are submitted to legality reviews by the relevant administrative bodies.



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This issue is also related to the abovementioned RIA process. The methodology for conducting the RIA (Regulatory Impact Assessment) prescribes also the process of “Analysis of the situation(s), defining the problem and goals setting”. Within this part, the ministries are responsible for conducting (detailed) analysis of the situation in order to describe the content/substance, the nature and the scope of the identified problem (issue to be tackled). It describes the reasons/causes of the problem, the existing regulation influencing or related to the problem and the connection with the international agreements/instruments ratified in accordance with the Constitution. In this phase, the experts from the administration, working on the concerned draft legislation, are reviewing/presenting/taking into consideration also the existing standards determined within the (accepted/ratified) international instruments, including here the EU legislation, ILO conventions, UN, CoE instruments etc.



Turquie

An amendment was made in 2004 to Article 90 of the Constitution which stipulates that in the event that the international treaties duly put into practice and Internal Laws which are in relation to basic rights and freedoms have contradictory provisions on the same matter, articles of the international treaties will prevail. In this context, it is presumed that the practice stipulating that the international treaties will be prioritised in the event that the human rights-related international treaties and domestic legislation have different provisions, will include the ones in relation to the European Social Charter, as well. Accordingly, the judgments passed on by the Supreme Court Assembly of Civil Chambers in reference to the European Social Charter to solve conflicts based on the said Article and Article 90 of the Constitution are accessible at <http://www.anayasa.gov.tr/icsayfalar/kararlar/kbb.html>



Ukraine

According to the Standard Order of the Cabinet of Ministers of Ukraine of 16 July 2007 No 950 (§ 45. Expertise), the Ministry of Justice verifies within the framework of legal expert examination the draft acts of the Cabinet of Ministers the compliance with the Constitution of Ukraine, legislation and current international treaties of Ukraine, Council of Europe standards in the field of democracy, rule of law and human rights, in particular the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, the practice of the European Court of Human Rights, the principle of equal rights and opportunities for women and men (gender expertise).

B.3. Cohérence du droit et/ou des obligations international(es)

Etes-vous confrontés dans votre pays à des situations de mise en œuvre nationale de textes ou de décisions d'organes internationaux et/ou européens contradictoires ?

Oui ?

Non ?

Si oui, pourriez-vous décrire plusieurs de ces situations ?



Albanie

See B 3.



Armenia

According to Article 21 of RA Law on Legal Acts, an international treaty of the Republic of Armenia is a regulatory legal act which governs the relations between the Republic of Armenia and foreign States, international organisations, and other subjects of international law. Generally recognised

principles and norms of international law, as well as international treaties of the Republic of Armenia are a constituent part of the legal system of the Republic of Armenia. Laws and other legal acts of the Republic of Armenia must comply with the general norms and principles of international law. The norms and principles of international law that have equal legal effect for all States, including the Republic of Armenia, shall be regarded as generally recognised.

Regarding the RA labour and social protection legislation, the authorized state body (Ministry of Labour and Social Affairs) constantly monitors the legislation, studies and analyzes the issues raised in the law enforcement practice, reveals the inconsistencies of the legislation with the requirements of international treaties (including the Revised European Social Charter) ratified by the Republic of Armenia, according to which relevant amendments are being introduced in the legislation.

The discrepancy of national legislation with the requirements of the Revised European Social Charter is also raised in the conclusions of the European Committee of Social Rights regarding the regular national reports on the commitments undertaken under the Revised European Social Charter.

As an example, the Labour Code of the Republic of Armenia came into force on 21 June 2005. The Code has been amended several times over the last 12 years. The amendments of 2010 and 2015 have mainly been introduced to address the inconsistencies of the Labour Code with the provisions of the Revised European Social Charter and ILO Conventions.

The draft Law on "Making amendments and supplements to the Labour Code of the Republic of Armenia" is currently in circulation, by which the part of the proposed amendments are also aimed at bringing certain provisions of the Code in conformity with the norms of international law.



Azerbaijan

No.



Bulgarie

Yes. Prohibition of underground work of women in mines /ILO convention 45, ratified by BG/ and the EU concept and legislation in respect to equal treatment of women and men in employment and occupation.

Some conflicting issues between ESCR commitments and EU Country Specific Recommendations- for ex. in respect to the adequacy/growth of the minimum salary, adequacy/period of payment of some social benefits /for unemployment, assistance.../- considering that the CSR-s are mostly based on economic/budgetary indicators for stability/discipline and not so much on social rights.



Croatie

No.



République tchèque

We are not confronted with conflicts of text but with the too excessive interpretation of ECSR going far behind accepted obligations.



Estonie

For example, to fully apply Article 13, paragraph 4 of the Social Charter, Estonia would need to have social security treaties with all countries that are part of the Social Charter. Unfortunately, this is not the case today.



Finlande

One example that can be mentioned concerns the conflict between the interpretation adopted by the ECSR with respect to Article 24 of the Revised European Social Charter, on the one hand, and ILO Convention No. 158 and EU law, on the other, in cases where an unjustifiably terminated employment relationship would be reinstated. Neither the ILO Convention No. 158 nor EU law requires that the employment relationship be reinstated.



France

Concernant la France, il ne s'agit pas tant de mise en œuvre de décisions ou conclusions du CEDS qui seraient en contradiction avec les décisions d'autres organisations mais plutôt d'exigences précises du CEDS qui ne sont pas prévues notamment par le droit communautaire et qui conduisent parfois à des incompréhensions des pouvoirs publics.

Par exemple, le CEDS estime que les délais de préavis de licenciement ne sont pas raisonnables entre 7 et 10 ans d'ancienneté. C'est un sujet qui relève des prérogatives nationales en droit communautaire. De même, le CEDS estime que le fait que les astreintes durant lesquelles aucun travail effectif n'est réalisé, soient assimilées à des périodes de repos n'est pas en conformité avec la Charte. Pour le droit de l'UE, la notion d'astreinte n'existe pas.



Géorgie

No.



Islande

Yes. One example is the ECSR's interpretation of Article 2(4) of the European Social Charter, i.e. the conclusion that the situation in Iceland is not in conformity with the provision on the ground that the working hours for seamen may go up to 72 hours per week, despite the fact that the situation is in conformity with EU law and the ILO Maritime Labour Convention.

Another example is the ECSR's interpretation of Article 8(1) of the European Social Charter, i.e. that there must in all cases be a compulsory period of leave of no less than six weeks which may not be waived by the woman concerned. Iceland has not ratified this provision and considers that emphasis should rather be placed on this being a woman's right rather than her obligation, i.e. that women should have freedom of choice in this respect.



Irlande

To date, Ireland has not been confronted with the situation of national implementation of conflicting texts or decisions of international and/or European bodies.



Italie

Il ne nous semble pas.



Lettonie

No information.



Lituanie

Before considering the ratification of the international treaty, discussions and consultations are held among related institutions, social partners, NGO's and scientists. After having adopted the decision on the rationale of ratification, institutions prepare a detailed correlation table on the conformity of

each article of the international standard with the national legislation. In case of the nonconformity of certain provisions, changes in national legislation are made.

For example, on 16 June 2017 Human Rights Committee of the Lithuanian Parliament has arranged the international conference on the possible ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence. The opinions regarding this Convention is quite controversial in Lithuania, therefore it was crucial to have various views on this issue before taking concrete steps towards the ratification. Representatives from different institutions, including minister of international affairs and minister of social security and labour, NGO's, national experts as well as experts from GREVIO have participated in this conference.



République de Moldova

No.

We mention that until now in the Republic of Moldova we have not faced situations of implementation at national level of contradictory norms or decisions of international and/or European bodies.



Pays-Bas

With regard to social rights, and more in particular with regard to the European Social Charter, the Netherlands is not confronted with situations of national implementation of conflicting texts or decisions of international and/or European bodies.



Norvège

We know that this is being pleaded in some cases. The courts usually solve such questions.



Pologne

Pas de cas concernant la Pologne.

- Il semble que des contradictions des normes, si elles existent, deviennent moins significatives (voire insignificatives) plus on étudie le système dont elles font partie et on se rend compte du contexte de leur application.
- Par contre on observe que des interprétations des dispositions similaires des conventions et/ou des actes européens par des organes de contrôle peuvent différer ou être contradictoires pour différents motifs (système juridique, contexte politique et économique, finalité de l'organisation dans le cadre de laquelle la disposition donnée a été adoptée).
Des interprétations sont contraignantes pour des Etats si cela est prévu explicitement par un acte de droit international. Des conventions sur des droits sociaux ne contenant pas de dispositions pertinentes, il en ressort que ce sont des Etats qui décident, en ultime instance, du contenu des dispositions des conventions et, en prenant compte des obligations en vertu de droit européen, le cas échéant, comment assurer une application cohérente des obligations.
- Position des juridictions: dans le cadre de l'affaire K 5/15 le Tribunal constitutionnel examinait la compatibilité de l'art. 239 § 3 point 1 du Code du travail avec l'art. 59 al. 2 et 4 de la Constitution, en liaison notamment avec l'art. 6 al. 2 de la Charte sociale européenne. Dans son arrêt du 17.11.2015 le Tribunal a soulevé la question de la manière de procéder quand la Pologne est liée par plusieurs accords internationaux concernant les libertés syndicales, dont les contenus diffèrent. Le Tribunal a remarqué, qu'un "tel phénomène de "conflit des conventions" est causé par l'adhésion par les Etats, au cours de plusieurs dernières dizaines d'années, à de nombreux accords internationaux, préparés sous les auspices de différentes organisations internationales, dont la portée d'application, notamment matérielle est la même. Dans la doctrine il est proposé d'interpréter *in favorem libertatis* les limitations des libertés syndicales admissibles à la lumière de l'art. 59 al. 4 de la Constitution. Il est postulé qu'en cas d'absence de règlements explicites qui tranchent des cas de collisions, des accords

internationaux qui prévoient des limitations de moindre importance aient la priorité pour définir des limitations des libertés syndicales acceptables. Sont en général considérées comme telles les conventions préparées sous les auspices de l'Organisation Internationale du Travail (...). Conclure, à partir des déclarations générales dans les accords internationaux, pour déterminer le contenu de l'art. 59 al. 4 de la Constitution pourrait alors, dans une situation extrême, conduire à la conclusion que le silence, de ne serait-ce qu'une seule convention internationale, sur la possibilité d'introduire des limitations à quelque'une des autres libertés syndicales, en liaison avec la déclaration générale sur la liberté de s'associer signifie que l'art. 59 al. 4 de la Constitution ne permet pas de prévoir dans le droit national de limitations au droit de conclure des conventions collectives. Une telle conclusion n'est pas admissible, ce serait en effet en contradiction avec l'esprit des accords internationaux analysés ci-après et qui sont contraignants pour la Pologne, dont il résulte que le droit syndical, y compris le droit de conclure des conventions collectives, est moins intense (plus faible) que la liberté essentielle de s'associer en syndicats. De plus, les accords internationaux contiennent leurs propres clauses générales exprimant le principe de proportionnalité.



Portugal

No. According to the Portuguese Constitution (Article 8) the norms and principles of general or common international law form an integral part of Portuguese Law. The norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published, and remain so for as long as they are internationally binding on the Portuguese state.

The norms issued by the competent bodies of international organizations to which Portugal is party come directly into force in Portuguese internal law, on condition that this is laid down in the respective constituent treaties.

The provisions of the treaties that rule the European Union and the norms issued by its institutions in the exercise of their respective competences are applicable in Portuguese internal law in accordance with the European Union law and with respect for the fundamental principles of a democratic state based on the rule of law.

Despite the fact that in recent years the Portuguese Government has been under strong international pressure to pursue a policy of fiscal consolidation and contraction of social spending to respect the 3% deficit threshold set out in the Treaty on the Functioning of the European Union, the Portuguese Government was not confronted with situations of conflicting texts or decisions of International and/or European bodies, and did not found difficulties of this nature in national implementation of the Council of Europe's legal framework for the protection of social rights in Europe.



République slovaque

No.



Slovénie

Yes. Some country-specific recommendations in the context of the European Semester were contrary to the Charter.

For example, in 2010 Slovenia received a conclusion of the ECSR on non-conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage was manifestly unfair. Since 2010 the ratio between the minimum and the average wage in Slovenia has been on a steady rise and reached 50,0 % in 2012, which was still not full in conformity with the Charter. On the other hand, in the context of the European semester 2012 the European Commission found out that the ratio is among the highest in the EU and suggested Slovenia to revise the minimum wage regulation in order to support competitiveness and job creation (Country Specific

Recommendations for Slovenia 2012).



Espagne

Specifically regarding the rules governing the Labour and Social Security Inspectorate system, these are deemed to be in accordance with international rules, mainly contained in ILO Conventions No. 81, on Labour Inspection, and No. 129, on Labour Inspection (Agriculture).



Ukraine

No.

Suggestions

Quelles suggestions pourraient être formulées afin de permettre une meilleure prise en compte nationale des normes internationales quant aux droits sociaux et/ou une plus grande cohérence du droit international dans ce domaine ?



Arménie

There can be various reasons for states not to comply with international standards or to ensure a complete consistency of international law and/or obligations not only in the field of social rights, but relating to various international norms and principles. One of the main reasons is the economic situation of the country, the existing financial constraints which can cause challenges for full and effective implementation of international obligations at the national level. It can also happen because of the states lacking the capability to carry out their obligations. Also, there may be situations when norms may not have the ability to be implemented by domestic institutions, or new norms could conflict with existing national norms. Even developed states can lack this capacity if domestic institutions hamper compliance. However, this does not necessarily mean states are not committed.

In time, the norms and practices in the international system evolve and develop which also factors state interest, society and internal frameworks within states to capture all likely variables.

However, it should be stressed that consistent work is being carried out to bring the national legislation into line with the international treaties ratified by the Republic of Armenia.



Azerbaijan

If it is possible can be made exchange of experience on this issue or expert mission from Council of Europe drawn into this matter and the existing legislation can be considered with policy makers.



Belgique

La Belgique a ratifié de nombreux instruments internationaux qui cadrent l'activité normative. Par ailleurs, les mécanismes de contrôle de l'application des normes assurent la conformité des dispositions avec le droit international.



Bulgarie

Further development of the Turin Process, better collaboration between the respective bodies/institutions in the sphere of social rights at the international, CoE and EU level, further research on possible discrepancies on social commitments coming from different international and European organisations.



Finlande

Legal research projects could promote the consideration of social rights.



France

Une meilleure prise en compte nationale des normes internationales quant aux droits sociaux et/ou une plus grande cohérence du droit international passent par les échanges et la communication. Concernant les instruments du Conseil de l'Europe et plus particulièrement la Charte, une mise à plat des moyens de fonctionnement est souhaitable pour une revalorisation de l'action du CEDS.

Des contacts réguliers entre le CEDS et la Commission européenne comme le prévoit le processus de Turin sont à poursuivre. En effet, si le CEDS estime ne pas être soumis aux règles de l'UE, il ne peut néanmoins ignorer que les 27 Etats membres ont ratifié l'une des deux Chartes (Charte sociale européenne de 1961 ou Charte sociale européenne révisée).

Par ailleurs, le CEDS devrait engager une réflexion sur son rôle et les objectifs à atteindre. Son interprétation du texte est extensive. Il rend des conclusions extrêmement précises qui peuvent paraître injustes voire inadaptées (par exemple, sur le droit à des pauses d'allaitement dans le secteur public), sur des sujets complexes.



Lettonie

Content of international treaties is wage which allows states to interpret treaties differently.

If the responsible organization of the treaty does not draft comments regarding each article of the treaty, it restricts possibility to implement treaty accordingly.

If the treaty does not have international level control mechanism, which is efficient then the states are not interested to fulfil the responsibilities set by international treaties. For example, EU has mechanism which gives clear understanding to EU member states on procedures if the Directive is not going to be implemented into national legislation.

If the control mechanism is not efficient (for example, no follow up procedure), then the states can be not interested to fulfil the obligations set by the treaty.



Lituanie

Technical assistance from experts of international organisations and exchange of best practice is very important in order to have better understanding on the implementation of the complex international treaties.



Pologne

Pour ne pas créer de fausses considérations en ce qui concerne la mise en œuvre des conventions et opinions/décisions des organes de contrôle il faut dûment tenir compte de la nature des dispositions des conventions concernant les droits sociaux (applicabilité, justiciabilité) et de la position et compétences de différents organes de contrôle.

- Des décisions quant à l'étendue et la façon de la mise en œuvre des normes internationales au niveau national sont prises par des Etats, tout en prenant compte de plusieurs facteurs. Ces facteurs peuvent, dans certains cas, forcer des Etats de ne pas aller exactement dans la même direction que des dispositions contenues dans des conventions indiquent et (beaucoup plus souvent) peuvent forcer d'aller à l'encontre des interprétations des organes de contrôle.
- Il est difficile de proposer des mesures plus ambitieuses que des activités d'information et de formation au sujet des normes internationales, la jurisprudence de la Cour des droits de l'homme, des interprétations proposées et des situations nationales particulières.
- Traduction, analyse et distribution des arrêts de la Cour des droits de l'homme portant sur des questions sociales concernant des autres Etats. Cela aiderait à assurer une plus grande cohérence des normes internationales (interprétation, positions nationales).
- Coordination institutionnelle de la mise en œuvre des droits sociaux, au niveau de ministères compétents pour améliorer la mise en œuvre des aconventions en la matière (suivi et évaluation de leur mise en œuvre, contacts avec coordinateurs dans d'autres ministères,

négociations et interprétation des normes - de tels coordinateurs sont déjà nommés pour la Convention des droits de l'homme).

- Le groupe pour la Cour des droits de l'homme (voir sous A.1) est un bon modèle de coopération pour la mise en œuvre d'une convention. C'est une formule flexible, les représentants de l'exécutif, de la justice et du législatif sont réunis ainsi que des organes de contrôle étatique et la société civile. Le modèle que représente le groupe pour la mise en œuvre de la Convention sur les droits des personnes handicapées (voir sous A.1) pourrait être aussi utilisé pour soutenir la mise en œuvre des accords internationaux en matière des droits sociaux.

Ce qu'on propose sous le second et troisième tiret demande une analyse approfondie de faisabilité et modalités de fonctionnement vu la spécificité de chaque convention accord, le statut différent des décisions des organes de contrôle (jurisprudence de la Cour vs. conclusions et décisions prises dans le cadre des conventions concernant les droits sociaux), le mode de fonctionnement d'administration nationale.



Slovénie

- Council of Europe and European Union shall cooperate closer in the field of human rights. European Commission shall consider accession to the Revised European Social Charter.
- Better national consideration of the Charter could be achieved by reaching broader political/social consensus on the importance of social rights for sustainable development of society.
- Targeted training on the Charter should be provided for judges, employees in public administration, NGOs...



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What is still (very much) needed is the greater promotion of the international standard-setting instruments (especially those of the CoE), further improving the knowledge and awareness of the professionals and experts working in the public administration, but equally important, of other stakeholders as well, – especially the social partners, CSO/non-governmental sector, judicial sector representatives, academics etc. There is a perception that (at least some of) the CoE standard-setting instrument, including here the European Social Charter, are not sufficiently wide-known and recognized, sometimes even among the institutions/organizations/bodies which are directly dealing or involved in creating/implementing/monitoring/assessing the economic and social policies or regulation etc.

Perhaps, in this respect, the greater (and more frequent) involvement of the Council of Europe is also needed, in order to improve the awareness, knowledge about and visibility of their instruments (ESC included) at national level.

C. Instruments relatifs à la Charte sociale européenne et ratifications

C.1. Charte sociale européenne

Pourriez-vous décrire, le cas échéant, quels sont les principaux obstacles (politiques, juridiques, administratifs,...) auxquels votre pays est confronté :

- a) pour ratifier la Charte sociale européenne (révisée) de 1996 (STE No. 163);
- b) pour accepter de nouvelles dispositions de la Charte sociale européenne ;
- c) pour ratifier le Protocole portant amendement à la Charte sociale européenne (STE n°142)



Albanie

Albania has signed the Revised European Social Charter on 21 September 1998 and has ratified it on 14 November 2002. The Republic of Albania has not ratified the Additional Protocol on Collective Complaints Procedure of the European Social Charter and the engagement to this engagement in the future requires a technical and political evaluation.



Arménie

The second meeting on the non-accepted provisions of the European Social Charter with the Armenian Government was organized jointly by the Council of Europe Department of the European Social Charter and the Ministry of Labour and Social Affairs of the Republic of Armenia on 30 September 2015.

The information provided and the discussions conducted during the meeting confirmed that there are no major obstacles in law and in practice to Armenia's acceptance of several additional provisions of the Charter, including provisions such as Articles 9, 10(§§1,3 and 4), 13§3, 14§1 and 15§1. As regards Articles 4§1, 11§1, the Committee considered that the current legal situation and practice in Armenia may still raise a problem of conformity. As regards other provisions examined at the meeting, such as Articles 10§5, 11§2 and 11§3, the Committee considered that further information is necessary to assess the situation properly.

The next examination of the provisions not accepted by Armenia will take place in 2019.



Autriche

Collective complaints do not fit into our national legal system. We prefer an individual approach.



Azerbaïdjan

To accept new provisions of the European Social Charter but right now we are working on it and we are planning to ratify some articles of the Charter recently.



Belgique

De façon générale, la structure fédérale de l'Etat belge impose la ratification par l'ensemble des assemblées. ceci peut allonger les délais de ratification.



Bulgarie

n/a

b) to accept new provisions of the European Social Charter;

Additional administrative burden on reporting obligations which is very difficult to handle - in view of the budgetary/personnel reductions in the post-crisis years.

Other top priorities of the central administration - preparations for the first BG EU Council Presidency.

c) to ratify the Protocol amending the European Social Charter (ETS No. 142). n/a



Croatie

a) We have started drafting analysis of the revised European Social Charter to review the compliance of articles with the existing Croatian legislation as a basis for the drafting of the Act on the certification of European Social Charter (amended) bill.



République tchèque

The rules for ratification concerning international obligations are based on the basic legal principles that full compliance with existing commitments must be ensured before accession to broader international commitments.

In the current situation, according to the conclusions of the ESCR, the Czech Republic it is not in compliance with several articles of the 1961 Charter. For that reason, the acceptance of the higher level of obligations is not a subject of discussion.



Danemark

There are especially three reasons for Denmark not being able to ratify the Revised Social Charter

1. A number of provisions of the Revised Social Charter may conflict with various labour law provisions under Danish legislation, incl. of the collective agreement model of the Danish labour market

2. Concern because of Article E, the provision of non-discrimination, partly because the scope seems quite unclear and partly because of its nature of being “open-ended”

3. Possible conflicts in relation to provisions in the fields of taxation and maritime law

b) Denmark has ratified by far the majority of the provision of the Social Charter (1961) and thus to a very high degree fulfills the intentions of the Social Charter to secure the nationals of the Council of Europe Member States as far as social and labour laws are concerned. There are no intentions to ratify further provisions for the time being.



Estonie

N/A. Estonia has signed and ratified the 1996 European Social Charter (revised).

N/A. Estonia has signed and ratified the 1996 European Social Charter (revised).

N/A. Estonia has signed and ratified the 1996 European Social Charter (revised).



Finlande

In the branch of administration of the Ministry of Economic Affairs and Employment, the obstacles are legal. The Finnish legal order does not guarantee the rights protected by the revised Charter in every respect.



France

La France a ratifié la Charte sociale européenne de 1961 le 9 mars 1973 et la Charte sociale européenne révisée le 7 mai 1999 en acceptant la totalité des dispositions de la Charte révisée. Seuls le Portugal et la France ont accepté les 98 § de la Charte révisée.

Enfin, la France a également ratifié le 24 mai 1995 le Protocole portant amendement à la Charte sociale européenne (STE n° 142).



Géorgie

As ratification of the European Social Charter imposes relevant obligations to the member states, fulfillment of is dependent on available financial and economic resources new international commitments are undertaken gradually.

It should be outlined that discussion regarding the issue of ratification of the non-ratified articles/paragraphs of the European Social Charter presents one of the main activities of the 2016-2017 Action Plan of the Tripartite Commission for Social Partnership.

On the meeting of February 10, 2017, the Tripartite Commission for Social Partnership decided to ratify number of articles of the European Social Charter.⁶³

Noteworthy, the Ministry of Labor, Health and Social Affairs of Georgia has already commenced procedures for ratification and relevant conclusions are being prepared by the state agencies.

⁶³ Such as: Paragraph 3 of Article 2 (*the right to just conditions of work*); Paragraphs 1, 2, 4 of Article 3 (*the right to safe and healthy working conditions*); Paragraph 2 of Article 8 (*the right of employed women to protection of maternity*); Article 9 (*the right to vocational guidance*); Paragraphs 1, 3 of Article 10 (*the right to vocational training*); Paragraph 1 of Article 15 (*the right of persons with disabilities to independence, social integration and participation in the life of the community*); Paragraph 2 of Article 17 (*the right of children and young persons to social, legal and economic protection*).



Islande

As regards all of the above, a heavy workload within the Ministry of Welfare has been the main obstacle to the ratification or acceptance of new provisions or instruments.



Irlande

Ireland ratified the Revised European Social Charter on 4 November 2000 and has accepted all the provisions save Articles 8.3, Article 21, Article 27 para (c) and Article 31. An Interdepartmental Committee has been established to ensure closer cooperation between Government Departments on all matters related to the Council of Europe Social Charter, including consideration of whether non-accepted provisions can be accepted.



Italie

Nous ne savons pas.



Lettonie

Lack of political will. The responsible institutions (Parliament and Government) understand that it will not be possible to fulfill all the obligations to be set in abovementioned documents.



Lituanie

Lithuania ratified the 1996 European Social Charter (Revised) in 2001. There is no data of any obstacles encountered when ratifying the abovementioned Charter. While ratifying the revised Charter, Lithuania undertook not only to ensure the implementation of ratified provisions, but also to evaluate possibilities to join non-ratified provisions every five years. Since 2001, Lithuania has not undertaken any new obligations concerning the Charter. Currently, the greatest attention is paid to proper fulfilment of assumed obligations, especially while addressing the problems that arose during the economic crisis.



République de Moldova

b) We mention that the main obstacle faced by the Republic of Moldova in accepting the new provisions of the European Social Charter is the poor economic situation in the country, which does not allow the efficient assurance of social rights.



Pays-Bas

The Netherlands has ratified the 1996 Revised European Social Charter (ETS no 163), but considers itself not bound by Article 19, paragraph 12 of the RESC. It is currently not likely that the Netherlands will accept this specific provision, because the Netherlands give priority to teaching migrants the Dutch language, in order to encourage social cohesion. For that reason the Netherlands does not facilitate special mother-tongue classes for children of migrant workers. The Netherlands has also ratified the Collective Complaints Protocol 1995 (ETS no 158).



Norvège

a) Norway has ratified the revised Charter

b) Norway has accepted many provisions, and we are regularly going through non-accepted provisions.



Pologne

Pour ratifier la Charte révisée il faut accéder aux dispositions auxquelles l'Etat est partie au titre de la Charte de 1961. La mise en œuvre de certaines de ses dispositions par la Pologne n'est pas satisfaisante. Certaines des conclusions négatives la Pologne trouve sans fondement, il y a des autres que la Pologne ne remet pas en question. Pour ce qui concerne ces derniers il y a des difficultés ou obstacles (économiques, sociaux ou politiques) pour changer la législation pour la mettre en ligne avec la Charte.

Depuis 2016 un groupe spécial d'experts indépendants travaille sur le nouveau Code de travail individuel et Code de travail collectif. A l'issue de ces travaux on va procéder à leur analyse à la lumière de la Charte et on connaîtra des perspectives quant à la ratification de la Charte révisée. L'adoption de nouveaux codes par la Diète devra précéder la ratification. En plus, la décision concernant l'approche aux conclusions négatives concernant autres domaines que la Charte couvre devra être prise.

Un autre problème est le champ d'application personnel de la Charte révisée. Il est plus vaste que celui de la Charte de 1961 - il couvre des apatrides comme définis par la Convention des Nations Unies sur le statut des apatrides. La législation polonaise ne garantit pas aux apatrides des droits prévus par la Charte. Avant de ratifier la Charte révisée il faudrait donc ratifier la Convention sur le statut des apatrides, avec une réserve pour limiter son champ d'application personnel et, par suite, le champ d'application personnel de la Charte. Or, la ratification de la Convention sur le statut des apatrides n'est pas prévue.

b) pour accepter de nouvelles dispositions de la Charte sociale européenne ;

Le nombre de dispositions de la Charte de 1961 que la Pologne pourrait ratifier étant limité on ne prévoit pas d'ouvrir la procédure de ratification qui est plutôt longue et encombrante.

c) pour ratifier le Protocole portant amendement à la Charte sociale européenne (STE n°142)

Sans objet (ratifié par la Pologne)



République slovaque

a) The Slovak Republic has ratified the revised Charter.

b) Mainly incompatibility of the national law with the Charter's provisions and the related financial aspects.



Slovénie

Not relevant to Slovenia.



Espagne

RESPONSE FROM THE MINISTRY OF EMPLOYMENT AND SOCIAL SECURITY. DIRECTORATE-GENERAL FOR EMPLOYMENT

Our labour legislation system is in line with the wording of the provisions of the European Social Charter (Revised), or ESCR. However, some objections have been made, because regarding certain aspects, the ESCR's European Committee of Social Rights maintains a specific interpretation of the ESCR, not at all compulsory in light of the text of the Charter and of its interpretative Appendix. In the past, this has led to certain objections being made regarding Spain's non-compliance with the commitments undertaken with regard to the 1961 European Social Charter, and which would lead to a similar conclusion with regard to the ESCR. This interpretation increases considerably the content of the obligations deriving from the Charter in force, thus creating legal uncertainty for the ratifying States.

In November 2014, the Ministry of Employment and Social Security drafted a report on the possibility of ratifying the ESCR.

The report concluded that, in the Ministry's scope of powers, and reiterating the general reservations made, our legislation would allow the ratification of said international instrument, albeit not in its entirety; i.e., it would be possible to ratify it partially, which is a possibility provided for in the ESCR itself. Please bear in mind that even though a new Workers' Statute has been approved, this is merely a consolidated text, which does not introduce new substantial elements into our legal system; therefore, the regulation remains the same as what was in force in November 2014.

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

As regards IMIO's powers, the right to equal treatment and non-discrimination enshrined in the ESCR adopted in 1996 has already been incorporated into the relevant legislation in force. (For the ratification of the ESCR, see the criteria of the Ministry of Employment and Social Security in this regard.)

b) to accept new provisions of the European Social Charter;

c) to ratify the Protocol amending the European Social Charter (ETS No. 142).



Suisse

Le 2 juillet 2014, le Gouvernement suisse (le Conseil fédéral) a adopté un rapport sur la Charte sociale européenne révisée donnant suite à un postulat de la Commission de politique extérieure du Conseil des Etats (chambre haute du Parlement fédéral) «Compatibilité de la Charte sociale européenne révisée avec l'ordre juridique suisse». Il y a conclu que, d'un point de vue juridique, la Suisse serait en mesure d'accepter six articles du noyau dur (articles 1, 5, 6, 7, 16, 20) et, ainsi, de ratifier la Charte sociale révisée. Ce rapport a été présenté à plusieurs commissions parlementaires et une audition des partenaires sociaux a eu lieu. Ces discussions n'ont pas pu aboutir à un consensus du Parlement fédéral sur la question de la ratification de la Charte sociale révisée. Les craintes principales résident dans une remise en cause du système suisse de formation professionnelle duale, dans une extension de l'Etat social et dans une ingérence dans la politique de gestion de l'immigration. Le dossier continue à être suivi par le Gouvernement dans des formes idoines.



“L'ex-République yougoslave de Macédoine”

Ratified.



Turquie

Our country ratified and put into practice 29 of 31 Articles and 91 of total 98 Paragraphs of the Revised European Social Charter. The unratified articles and paragraphs are indicated below:

1st Article 2/3 : a minimum of four weeks' annual holiday with pay

2nd Article 4/1: a remuneration such as will give them and their families a decent standard of living;

3rd Article 5: The right to organise

4th Article 6/1, 2, 3 ve 4: The right to bargain collectively

As a result of assessments made in previous years, it was decided that it would be feasible to ratify Article 1 provided that categories of Armed Forces and Security Services are excluded, Article 5 and the first three paragraphs of Article 6 of the Revised European Social Charter, and the ratification process on the matter started in 2016.

As far as ratification of Paragraph 3 of Article 2 and Paragraph 4 of Article 6 of the Charter is concerned, no steps are envisaged.



Ukraine

Economic and financial considerations.

C.2. Procédure de réclamations collectives

Pourriez-vous décrire, le cas échéant, quels sont les principaux obstacles (politiques, juridiques, administratifs,...) auxquels votre pays est confronté pour ratifier le Protocole additionnel à la Charte sociale européenne de 1995 prévoyant un système de réclamations collectives (STE No. 158) ?

Quelles raisons empêchent votre pays d'autoriser les ONG nationales (alors que les partenaires sociaux nationaux y sont autorisés) à utiliser le système des réclamations collectives⁶⁴ ?

**Albanie**

At national level, discussions have taken place on the possibility of acceptance of the Additional Protocol of 1995 on collective complaint procedures. At the technical level, the government representatives have taken a positive position.

The right to collective complaint of social partners relates to the enforceability of the right to organize and collective bargaining.

**Arménie**

At the second meeting between the Council of Europe Department of European Social Charter and the Armenian authorities (September 2015) an exchange of views was held concerning Armenia's acceptance of the Collective Complaints Procedure. Armenian authorities are of the opinion that the Procedure is important, both for strengthening the respect of social rights as well as promoting the dialogue between the Government and civil society organisations. The authorities understand the need to further strengthen civil society by supporting and enabling them to take their grievances to the international level. The authorities think, however, that a closer examination of the experiences with the complaints procedure, including an analysis of why only a limited number of States had accepted the procedure, before taking a decision in this regard, is necessary.

**Azerbaïdjan**

We are currently not in the position to accept the collective complaints procedure.

**Belgique**

Sans objet.

**Bulgarie**

-n/a

-Eventual abuse of the NGO-s with the right to collective complaints and additional administrative burden in view of handling the respective complaints /see point C.1.b/, considering there are seven nationally representative social partners, at the same time there are thousands of NGO-s, with hundreds of them with activities in the sphere of human/social rights.

**Croatie**

At this moment in the Republic of Croatia there are 51 305 registered NGOs and most of them do not have administrative and technical capacities to follow up collective complaints procedure (most of them do not have numerous membership). Given these circumstances at this time, the Government believes national NGOs are guaranteed sufficient opportunity to act through international NGOs with regard to collective complaints.

⁶⁴ Pour rappel, jusqu'à présent, seule la Finlande a autorisé les ONG nationales à utiliser cette procédure.



République tchèque

The Czech Republic ratified the Protocol.

What are the reasons why your country does not allow national NGOs (while the national social partners are allowed to do so) to use the collective complaints system?

- a. It was the decision of the Government of the Czech Republic.
- b. The main reasons why the change is not considered are as follows:
 - too excessive interpretation of the ECSR (mainly concerning its interpretation of representativeness of national organisations, recognition of having particular competence of complainant, subject of the complaint etc.
 - the fact that ECSR only may request the country to submit written information instead of obligation
 - the fact that NGOs are informed in advance of developments in the complaint process and are trained by the Council of Europe how to write complaints which from our point of view undermined the equal access to both parties.



Danemark

The main reason Denmark has not ratified the collective complaints protocol is that the Governmental Committee is not party to the monitoring system of the collective complaints system. Denmark considers it a problem that governments are thus excluded from the process of complaints.



Estonie

There is low interest for it from out social partners and problems are normally solved domestically within our national framework.

b- N/A. Estonia has not signed the Additional Protocol of 1995 to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158).



Finlande

Finland has ratified the Additional Protocol and has notified in accordance with Article 2 that it recognises the right of any representative national non-governmental organisation within its jurisdiction which has particular competence, to lodge complaints against it.



France

La France a ratifié l'intégralité des 98 § de la Charte révisée ainsi que le Protocole de 1995 prévoyant un système de réclamations collectives.



Géorgie

It should be underscored, that within the scope of the Universal Periodic Review under the auspices of the Human Rights Council, Georgia undertook the commitment to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.⁶⁵ Herewith, the issue of the collective complaints in the system of the Council of Europe will also be discussed.

As to the main obstacles which hitherto hindered the ratification process of ETS No. 158, the limited financial and economic resources of the country shall be referred.

⁶⁵ Report of the Working Group on the Universal Periodic Review, Georgia, p.13, para. 116.1. Available online at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/005/04/PDF/G1600504.pdf?OpenElement>



Islande

To simplify the system and lighten the workload of the states who have ratified the Additional Protocol.



Irlande

Ireland ratified the Additional Protocol of 1995 providing for a system of collective complaints on 4 November 2000.



Italie

Nous ne savons pas.



Lettonie

The complaint procedure does not seem efficient. Only NGOs can submit the complaint, however NGOs do not have investigative rights. That leads to complaints which cannot be fully evidence based and that is obstacle for Council of Europe to understand fully the situation in particular country. Thus it would be reasonable if also NHRI could submit complaints.

It also would be necessary if Council of Europe provided follow up after the complaint procedure.



Lituanie

In 2001, Lithuania ratified 86 of 98 points of articles of the European Social Charter (Revised) and assumed quite many obligations in comparison with other Council of Europe states. Currently, the greatest attention is paid to proper fulfilment of assumed obligations, especially while addressing the problems that arose during the economic crisis; therefore, assuming new international obligations should be viewed with caution at present.



République de Moldova

In this context, we mention that the Government of the Republic of Moldova is focused on the gradual improvement of the social rights (education, health care, economic protection) for the implementation of the accepted provisions of the revised European Social Charter.

We mention that the Government will then return to the issue of ratifying the Additional Protocol of 1995 to the European Social Charter (ETS nr. 158).



Pays-Bas

The Netherlands does not allow national NGOs to use the collective complaints system.

The Netherlands considers the measures in Article 1 of the Additional Protocol of 1995 sufficient. The Council of Europe has a procedure for INGOs to enjoy participatory status and these INGOs are subsequently allowed to submit an application for inclusion on a special list to lodge collective complaints.

A national NGO can join one of the so-called 'umbrella' INGOs if it wishes to have the possibility of a participatory status and lodge collective complaints. According to the Netherlands this is far more effective and efficient than multiple national NGOs.



Norvège

Norway has ratified the protocol.



Pologne

La Pologne n'étant pas partie au protocole, la connaissance du fonctionnement de la procédure est plutôt limitée. Des observations sont basées sur les discussions que tient le Comité gouvernemental et l'examen des documents présentés au Comité des Ministres.

Au Comité gouvernemental des opinions sont exprimées qu'un petit nombre de ratifications peut refléter des doutes quant au fonctionnement actuel de la procédure. On fait des observations suivantes :

- admissibilité des réclamations – le pourcentage des réclamations admissibles est étonnamment élevé (voir les taux pour la Cour, des procédures onusiennes) - on peut se poser des questions sur la fiabilité d'examen d'admissibilité même tout en prenant compte de différences entre les procédures,
- examen des allégations, informations et données plus critique :
 - cas des réclamations contre plusieurs Etats portant sur la même question – des allégations et informations devraient être traitées sur base strictement individuelle,
 - cas des informations manifestement vagues ou incomplètes – elles devraient être évaluées de manière appropriée,
- réclamations comme point de départ pour des interprétations de la Charte élargissant sa portée matérielle et personnelle, sans justification légale suffisante, et des interprétations contraires au texte de la Charte, ce qui conduit à l'imposition aux Etats des obligations nouvelles,
- décisions du Comité d'experts indépendants et de la Cour des droits de l'homme ou du Tribunal de Justice (ie. Mesures d'austérité grecques) dans des cas similaires qui divergent. La Charte, la Convention et l'ordre juridique européen étant des ordres internationaux distincts, des obligations varient ainsi que le statut de différents organes de contrôle. Vu cela des problèmes sont examinés sous différents angles et avec des résultats différents. Mais, globalement, quand des décisions portant sur des mêmes problèmes sont différentes, elles mettent en difficulté des Etats mis en cause (ou bien l'Etat peut jouer un jugement/décision contre l'autre). Il semble que des organes de contrôle ne peuvent pas rien faire pour remédier à cette situation (vu des sources de ces problèmes – système juridique, contexte politique et économique) mais il faut être bien conscient du problème auquel des Etats pourraient faire face,
- aptitude de mettre en œuvre des décisions du Comité d'experts indépendants : chaque Etat prend des décisions dans le domaine social (et autres) en tenant compte de la situation nationale dans son ensemble (politique, économique, sociale). Le Comité ne considère qu'une affaire donnée sur la base des informations limitées, parfois, et sans avoir connaissance détaillée de la situation nationale dans son ensemble,
- des décisions du Comité peuvent limiter la faculté des Etats de procéder à des choix politiques vu la nécessité de préserver l'équilibre entre les garanties légales concernant les droits sociaux et la réalisation des objectifs à long terme, dans l'intérêt général de la société et le développement économique ainsi que limiter le pouvoir de décider quelles dépenses dans le domaine social faut faire en premier lieu,
- si la décision du Comité n'est pas exécutée l'Etat peut être blâmé (dans le cadre de la procédure des rapports périodiques). Même si les décisions du Comité ne sont pas contraignantes, le fait d'accéder à la procédure implique la bonne volonté de se conformer aux résultats de la procédure,
- procédure quasi-exclusivement écrite : elle se limite à l'échange des documents écrits, utilisation extrêmement limitée de la possibilité d'organiser des réunions avec les requérants et l'Etat mis en cause. La pratique établie d'apporter ultérieurement des informations au Comité des Ministres (écrites, orales) et de les discuter montre un besoin de dialogue direct entre les gouvernements et le Comité.

Raisons empêchant d'autoriser les ONG nationales à utiliser le système des réclamations collectives

Sans objet (protocole non ratifié)



République slovaque

There are currently political obstacles as well as legal obstacles related to the national legislation. *What are the reasons why your country does not allow national NGOs (while the national social partners are allowed to do so) to use the collective complaints system?*⁶⁶
The Slovak Republic has not ratified the collective complaints procedure.



Slovénie

- a) Not relevant to Slovenia
- b) Not relevant to Slovenia.



Espagne

RESPONSE FROM THE MINISTRY OF EMPLOYMENT AND SOCIAL SECURITY. DIRECTORATE-GENERAL FOR EMPLOYMENT

As for the protocol for collective complaints, the criteria of this Directorate-General is that the adoption of the ESCR does not necessarily mean adopting this Additional Protocol, because its adoption is optional. However, the incorporation of new agents into the monitoring of compliance with the 1961 European Social Charter (or with the 1996 ESCR, if this Instrument is ratified), such as national organizations representing employers or workers, or non-governmental organizations, is understood to be unnecessary for the purpose of adding value to the effectiveness of ratified international instruments.



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The Protocol is still not ratified by Republic of Macedonia. The authorities will have to make an assessment and analyze the situation, readiness and the necessary capacities/resources needed for fully accepting the Collective Complaints Procedure.



Turquie

The protocol concerning this procedure is not at the moment on the agenda of Grand National Assembly of Turkey.



Ukraine

Economic and financial considerations.

Suggestions

Quelles améliorations pourraient, selon votre pays, être apportées au système des réclamations collectives, notamment afin d'encourager plus de ratifications du Protocole additionnel ?



Arménie

Acute consideration of the experiences with the complaints procedure, including an analysis of reasons for its non-acceptance by a big number of States, through organization of awareness-

⁶⁶ As a reminder, so far, only Finland has authorized national NGOs to use this procedure.

raising events, knowledge transfer and experience exchange may be useful for encouraging more ratifications of the Additional Protocol.

On December 26, 2016 the Republic of Armenia has adopted the new RA Law "On Public Organizations", which envisage provision according to which "The organization could file a claim on the issues concerning the protection of environment, if the claim derives from the statutory goals and issues and is aimed at the protection of collective interests of the beneficiaries of the Organization, which are related to the statutory goals of the Organization.



Bulgarie

Stricter admissibility criteria of collective complaints and their strict application by the ECSR.

Stricter criteria for international and national NGO-s /criteria for national representativeness for the latter/ in order to be included in the respective list, as well as limitations in their number in the lists.



République tchèque

Ratification of international instruments is fully in responsibility and competence of a particular country.



Estonie

Better and more efficient screening of complaints, especially with regards to eligibility. A reduced burden of reporting.



Finlande

The Government finds the collective complaints procedure to be a useful tool in the execution of social rights. In order to encourage more ratifications peer-to-peer dialogue and sharing of experiences could be suggested as useful methods. Finland is committed to participate in this work.



France

- Une plus grande rigueur de la part du CEDS sur le contrôle de la recevabilité des réclamations collectives ;
- un meilleur respect du contradictoire (notamment s'agissant de la recevabilité des réclamations collectives et de la possibilité de formuler des observations sur des tierces interventions) ;
- une interprétation moins extensive et plus conforme à la lettre de la Charte et de ses annexes de la part du CEDS (cf. décisions sur le bien-fondé du CEDS du 25 octobre 2013, réclamation n° 86/2012 - FEANTSA c. Pays-Bas et réclamation n° 90/2013 - CEC c. Pays-Bas).



Lettonie

Look above.



Pays-Bas

The Netherlands has ratified the Additional Protocol of 1995.

However the Netherlands considers the follow up procedure not effective. Currently the follow up procedure to complaints could continue indefinitely. It is absolutely necessary to reexamine the effects of the CM Resolution of 2014 and to explicitly subscribe the opinion of the GC with respect to the concerns the GC expressed in her letter of 13 May 2016.



Norvège

We can unfortunately not provide any specific suggestions for the time being.



Pologne

Pistes à considérer:

- procédure plus contradictoire (organisation plus systématique des réunions avec les requérants et l'Etat mis en cause) permettant des échanges sur l'interprétation de la Charte, la situation nationale, les facteurs déterminant la politique nationale,
- possibilité pour l'Etat mis en cause de discuter avec le Comité le projet de décision, ce qui pourrait faciliter l'acceptation et sa mise en œuvre, la position du requérant à ce stade de procédure à déterminer,
- examen plus critique de l'admissibilité des réclamations,
- examen plus critique des allégations vagues et données incomplètes ou peu fiables, interprétation plus stricte des dispositions de la Charte.



République slovaque

More specialized analysis of the submitted collective complaints, because from the experience of other countries, all collective complaints submitted are automatically admissible while sometimes they do not thoroughly specify the subject of the complaint, etc.



Slovénie

The MOLFSA strongly believes that admissibility criteria should be elaborated further and defined stricter in the Protocol and/or in the ECSR's Rules of Procedure. The complementarity of the reporting system and the collective complaint procedure should be properly implemented in practice (for example: In the reporting system, Slovenia has not received a non- conformity conclusion related to gender pay gap yet (because it is very low), however a collective complaint has been lodged against Slovenia (and declared admissible) on the same subject. The two procedures should remain complementary as stated in paragraph 2 of the Explanatory Report to the Additional Protocol.

D. Actions de formation et de sensibilisation aux droits sociaux

D.1. Publicité de la Charte

Quelle publicité est faite au niveau interne concernant les décisions et/ou conclusions du CEDS (notification aux autorités pertinentes, y compris parlementaires et juridictionnelles, partenaires sociaux, ONG, INDH, observatoires, autres acteurs) ? Les décisions et/ou conclusions du CEDS sont-elles traduites dans votre (vos) langue(s) nationale(s) ? Rencontrez-vous des difficultés particulières dans ce domaine ?



Albanie

At national and local level, the findings and recommendations of the Committee are periodically disseminated to the relevant institutions. The Ministry of Social Welfare and Youth regularly cooperates with social partners, as well as with Non-Governmental Organizations on issues of gender equality, people with disabilities and the protection of children.



Arménie

Relevant authorities are being notified by the RA Ministry of Labour and Social Affairs about the ECSR conclusions in the fields of their competence. The national replies and reports prepared in this regard are closely worked on with the authorities concerned. ECSR conclusions are translated in Armenian.



Autriche

We inform the relevant authorities about ECSR decisions and /or conclusions. This often starts a long discussion process how to implement the decision/conclusion.



Azerbaïdjan

Yes, the decisions and conclusions are always translated into our national language and we share it with other relevant authorities.



Belgique

Aucune remarque.



Bulgarie

When drafting national reports/positions on ECSR decisions and/or conclusions the latter are submitted in annex to the drafts for consideration by the interinstitutional Working Group on International Labour and Social Issues, where the relevant ministries as well as the social partners are represented. The WG is chaired by the respective Deputy Minister of Labour and Social Policy.

-Yes

-No



Croatie

Consultations with all interested public, including social partners, are made during the drafting of the law on the certification of international legal institutes, and they are thus acquainted with the content of these institutions and with the rights and obligations arising from them.



République tchèque

The Conclusions of ECSR have been translated to national language on regular bases, regularly sent to responsible bodies and additional questions including cases of conformity/non-conformity have been published at the web sites of the Ministry of Labour and Social Affairs, as a part of reports.



Danemark

No promotion is made specifically on the Charter.



Estonie

The yearly conclusions are translated into Estonian, published on the Ministry of Social Affairs' website as well as shared with our social partners.



Finlande

Information on the revised Social Charter and its monitoring is provided on the websites of the Ministry for Foreign Affairs and the Ministry of Social Affairs and Health. These ministries have also published press releases on decisions issued by the ECSR.

The ECSR's decisions are not currently translated into Finnish or Swedish.



France

Les décisions et conclusions du CEDS sont en langue française. Le Gouvernement français procède à leur notification auprès des différentes administrations compétentes. En conséquence, le Gouvernement français ne rencontre aucune difficulté particulière à ce sujet.



Géorgie

Please see the *Suggestion* of the question A.5. at page 8 above and the answer to the question D.3. below.



Islande

The social partners are notified of ECSR decisions/conclusions. Furthermore, relevant authorities are notified of ECSR decisions/conclusions when the situation gives rise to do so, on a case-by-case basis. The decisions/conclusions are not translated into Icelandic as the population generally has a good understanding of the English language.



Irlande

Given its small population size, adverse decisions of the European Committee of Social Rights tend to receive significant media attention and so there is no difficulty in ensuring awareness of ECSR decisions and conclusions.

Authorities are kept informed of relevant developments concerning the ECSR through a number of ways: through the inter-departmental committee on human rights (see above) and through the inter-departmental committee (see response to C1) set up to ensure closer cooperation between Government Departments on all matters related to the European Social Charter.



Italie

En règle générale, les décisions du CEDS sont communiquées aux autorités concernées lors de la rédaction des rapports périodiques et des réponses aux cas de non-conformité de façon limitée aux articles concernant des domaines de leur compétence.

Les décisions et/ou conclusions du CEDS sont-elles traduites dans votre (vos) langue(s) nationale(s)? Le Bureau publie les rapports périodiques et les réponses écrites aux cas de non-conformité en italien sur le site du Ministère du travail et des politiques sociales.



Lettonie

No information.



Lituanie

See answer to A3.



République de Moldova

All conclusions of the European Committee of Social Rights of the Council of Europe are immediately forwarded to the central public authorities involved for informing and taking

appropriate measures in order to remedy non-compliance situations. As far as the human resources of the Ministry of Labour and Social Protection are concerned, which is the authority responsible for monitoring the implementation of the provisions of the European Social Charter, the unofficial translation of the Conclusions of the European Committee for Social Rights was carried out taking into account the lack of an authorized operator for official translations.

The greatest difficulty is the high fluctuation of civil servants within the ministries and the change of the persons responsible for reporting on the implementation of the revised European Social Charter in the Republic of Moldova.



Pays-Bas

Decisions and/or conclusions of the ECSR are not translated in Dutch language. If necessary, the English version will be used in official documents.

The Ministry of Foreign Affairs sends an Annual Report on International Human Rights Proceedings on the Netherlands' position in cases brought before the international human rights bodies to Parliament. This Report also includes the ECSR decisions.

Parliament is also separately informed by letter by the competent Minister on ECSR decisions (e.g. collective complaint procedure No 86/2012 (FEANTSA vs The Netherlands) and collective complaint procedure No 90/2013 (CEC vs The Netherlands).

National human rights institutes have significant added value in the promotion of human rights at national level. The Dutch government has therefore set up a national Institute for Human Rights which came into operation on 1 October 2012. The Netherlands Institute for Human Rights promotes the observance of human rights in practice, policy and legislation, and boosts public awareness of human rights in the Netherlands including economic, social and cultural rights.

In addition, there are numerous other bodies and institutions, more specialised or more generic advisory bodies, institutes and NGOs that also provide information about human rights and are active in the realm of promoting fundamental rights

To ensure that people invoke their human rights and to encourage the application of the human rights framework to municipal policy, the National Association of Netherlands Municipalities (VNG), the Municipality of Utrecht, University College Roosevelt, the Netherlands Institute for Human Rights and Amnesty Netherlands have set up a special network. Within this network, a range of activities are devised to enhance awareness and application of human rights at local level. These partners have also invested in various ways of highlighting and raising public awareness. To increase the effectiveness of the independent network, it was decided to continue it under the name 'Local Human Rights Network'.



Norvège

The decisions/conclusions are usually not translated into Norwegian. We do not encounter any particular difficulties in this area. Relevant ministries etc. are involved in the handling of negative conclusions. Sometimes ECSR's conclusions are mentioned in the medias.



Pologne

Publicité faite au niveau interne concernant les décisions et/ou conclusions du CEDS

- Notification des conclusions négatives aux administrations compétentes (lettre formelle) - cette notification est suivie par une demande d'informations sur le progrès législatif dans le domaine afin de préparer la position à présenter au Comité gouvernemental. Dans des cas sérieux (conclusions négatives répétées) une note est adressée au secrétaire d'état du ministère responsable pour la question.
- Avant de soumettre le projet du rapport au Conseil des Ministres il doit être accepté par le Ministre de la famille, du travail et de la politique sociale, à ce moment on joint au projet une note séparé présentant des conclusions négatives traités dans le rapport et auxquelles on n'a pas donnée de réponse positive (ainsi que des conséquences possibles - avertissement, recommandation).

- Les conclusions, version linguistique originale, sont mises sur le site internet du Ministère (rubrique consacrée à la Charte) ainsi que le rapport national (en polonais) et tous les autres documents pertinents. Tous les documents concernant la Charte, les rapports (même que des documents de travail, projets) etc. sont accessibles au public, sur demande écrite. L'accès à ces documents est garanti par la loi sur l'accès à l'information publique.
- Les conclusions ne sont pas traduites en polonais, jamais une telle demande n'est parvenue au Ministère.



Portugal

ECSR decisions and/or conclusions are always notified to the national bodies and organizations that collaborated in the preparation of the National Report. The decisions and the conclusions of the ECSR are not translated in Portuguese due to budgetary constraints. However, we acknowledge that this is constrains to a wider dissemination of the decisions and conclusions, hindering the involvement of other entities such as civil society organizations.



République slovaque

When there are conclusions of non-conformity, the Ministry of Labour, Social Affairs and Family informs the relevant institutions about these conclusions and proposes adequate changes (legislative, administrative, etc.) in order to bring the situation in conformity. The Council of Europe is then informed about the adopted measures, either in the regular annual report, or during the related meeting of the Governmental Committee.



Slovénie

The MOLFSA regularly (once per year) notifies relevant authorities (ministries) about the ECSR's conclusions and when necessary on its other decisions. The MOLFSA regularly (once per year) notifies social partners within the Economic and Social Council of the Republic of Slovenia on the conclusions of the ECSR.

Conclusions of the ECSR are not officially translated into Slovene.



Espagne

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

The European Social Charter is included in the Equal Opportunities section of the website of the Ministry of Health, Social Services and Equality, and in the Council of Europe section of IMIO's website, in the International area. These websites also provide information about the principal conventions, recommendations and issues on the CoE agenda relating to gender equality.



“L'ex-République yougoslave de Macédoine”

After the ECSR issues its annual findings, i.e. conclusions, for the respective thematic cycle, and the document is received by the national authorities (usually sent by the CoE Department of the European Social Charter, i.e. the Executive Secretary of the ECSR), the document with the conclusions is translated into Macedonian language. Subsequently, right after its translation, the document (both, English and translated version) is sent to all relevant institutions/sectors within the administration, who are concerned with these particular ECSR findings and concussions. In this way, the institutions are being informed about the ECSR findings in a timely manner, so that they could undertake appropriate measures with the view to better clarify or to remedy the situation, if necessary. In addition to this initial submission of the document, this document is afterwards also used as a basis for preparing/drafting the next national report on the implementation of the ESC that is covering the same thematic group of ESC articles. At that occasions, at the very beginning of the process of preparation of the national report, the ECSR findings and conclusions (together

with all additional questions and request made by the ECSR) is once again seriously drawn to the attention of all relevant institutions and In addition to that, the representative from the Ministry of Labour and Social Policy, who is a member of the Governmental Committee, soon after the GC meeting, also informs all relevant institutions/sectors about the discussions at the meeting, and the conclusions/reactions/comments from the GC and its members.

In light of promoting the European Social Charter and its monitoring mechanism, we believe it is worthwhile to mention that every annual national Report on the implementation of the ESC, after being adopted by the Government and sent to the ECSR, is also published on the web-page of the Ministry of Labour and Social Policy (<http://www.mtsp.gov.mk/evropska-socijalna-povelba.nsp>), so that everybody who is interested can easily download a copy and get acquainted with it stakeholders that participate in drafting of the Report, or in the process of consultation.



Ukraine

ECSR conclusions are available on the web site of the Ministry of Social Policy of Ukraine. ECSR conclusions are taken into account within the framework of international technical assistance projects/program and bilateral international cooperation between ministries.

D.2. Promotion de la procédure des réclamations collectives

Vos autorités informent-elles régulièrement, en particulier les partenaires sociaux, les INDH et les ONG, sur les possibilités qu'offrent la procédure de réclamations collectives (introduction de réclamations et/ou soumission d'observations) ?



Albanie

In this regard, we have worked on triple bases at the moment of reporting the unacceptable charter provisions, namely collective bargaining. As we have stated above, such cooperation was carried out in 2012 with the presence of the representatives of the Committee.



Arménie

As Armenia is not a party to Additional Protocol of 1995 to the European Social Charter providing for a System of Collective Complaints, such activities are not deemed necessary at this stage. However, this does not preclude those interested from finding relevant information on the possibilities offered by the procedure through multimedia means.



Azerbaijan

No.



Bulgarie

Draft national reports on the European Social Charter (rev), including simplified reports and tracking of collective complaints, are communicated to and coordinated with the social partners.



Croatie

Above mentioned procedure was also carried out when adopting the Act on the Certification of the Additional Protocol of 1995 to the European Social Charter Providing for a System of Collective Complaints so social partners, NHRIs and NGOs are informed about possibilities offered by the collective complaints procedure.



République tchèque

The social partners, NHRIs and NGOs are well informed about the collective complaints' system. There is no necessity to inform them on regular base repeatedly.



Danemark

Denmark has not ratified the collective complaints procedure.



Estonie

This has been mentioned at various meetings with social partners and NGOs.



Finlande

The Government is not aware of additional need for regular information in addition to the websites of the Ministry for Foreign Affairs, the Ministry of Social Affairs and Health and the ECSR.



France

Le Conseil de l'Europe se situe en France, tant les OINGs que les syndicats connaissent parfaitement la procédure de réclamations collectives. La France fait d'ailleurs l'objet du plus grand nombre de réclamations collectives. Le CEDS a enregistré 151 réclamations collectives dont 38 concernent la France (25 % de l'ensemble des réclamations collectives déposées contre les 15 Etats parties ayant ratifié le Protocole de 1995 prévoyant un système de réclamations collectives). Sur les 38 réclamations collectives dirigées contre la France, 20 ont été déposées par des organisations syndicales.



Islande

Iceland has not ratified the Additional Protocol providing for a system of collective complaints.



Irlande

While there is no formal system of the type outlined above, social dialogue is strong in Ireland. There is ongoing engagement with the social partners on a range of matters, including Council of Europe issues as required. It is our experience that social partners, the Irish Human Rights and Equality Commission and NGOs are familiar with the possibilities of the collective complaints procedure.



Italie

Non, pas normalement.



Lettonie

No information.



Lituanie

In this regard discussions are held and information is provided according to the need.



République de Moldova

At the moment, we mention that the Government of the Republic of Moldova is focused on the gradual improvement of assurance of social rights for the implementation of the accepted provisions of the revised European Social Charter.



Norvège

Our opinion is that the social partners are aware of the collective complaints procedure.



Pologne

Sans objet.



Portugal

No, authorities do not inform the social partners, NHRIs and NGOs of the possibilities offered by the collective complaints procedure, at least not regularly. It is important to stress that the Protocol of Collective Complaints Procedure was ratified and is part of the Portuguese legal system therefore it is a legal instrument available for all citizens and organisations.



République slovaque

Not regularly, but the social partners and relevant organizations are aware of the procedure, as there were several discussions about it at the national level.



Slovénie

No.



Ukraine

At all seminars, workshops, meetings etc. on the ESCR.

D.3. Formations au niveau national

Pouvez-vous indiquer les formations dispensées, au niveau national, ces deux dernières années concernant les droits sociaux garantis par les instruments du Conseil de l'Europe ?

Quelles sont les facteurs clés pour leur succès ?

Rencontrez-vous des difficultés particulières en termes de formation aux droits sociaux ?



Albanie

Information not available.



Arménie

National Institute of Labour and Social Research of RA Ministry of Labour and Social Affairs conducts trainings on "Protection of Human Rights" for civil servants which covers separate topics on European Social Charter. In 2015-2017, 241 civil servants have participated in the training courses.

In 2014 ACE NGO implemented a Training Course "Enter Social Rights in Armenia", which was provided by European Commission in the framework of Youth in Action Programme. The training course was developed as a module for youth workers/trainers for answering questions concerning social rights issues and its implementation in community. Having the European Social Charter as a

basis and background, the idea of social rights was approached in relation to housing, education, health, employment, non-discrimination, legal and social protection, and movement of persons.

The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) held a training course on the rights of migrants in 2016 in Armenia. The overall aim of the training was to support national authorities of OSCE participating States in ensuring that their national migration management practices comply with relevant international legal obligations and OSCE commitments, aiming to respect and protect the human rights of migrants.

Project on “Sex-selective abortions as part of gender-based discrimination in Armenian family” was implemented in a course of 2014 by USAID. In the framework of the project, training was conducted and 2 training groups were formed. First training model was a training package for social workers, psychologists and social pedagogues. The second package was formed for the health care service workers, particularly gynecologists. During the training particularly the opportunities of advocacy for women in the framework of the anti-oppressive and anti-discriminative approaches were discussed.

In May 2017, the **Armenian Association for the Disabled “Pyunic”** (Yerevan, Armenia), together with the **Advocacy Centre on the Council of Europe Standards** (ACCESS, Strasbourg, France) has launched a **two-year long project** promoting the protection of social rights of persons with disabilities (PWD) living in Armenia. The overall aim of the project is promoting the social rights of persons with disabilities by building the capacities of Armenian civil society organisations to engage with Council of Europe monitoring mechanisms. The project envisages a series of capacity building and awareness-raising events to familiarize stakeholders with the Council of Europe (CoE) standards in addressing disability issues. The project's stakeholders will work together to identify gaps in Armenia's legislation with regard to the European Social Charter (ESC) and the United Nations Convention on the Rights of People with Disabilities (UN CRPD). Armenian civil society representatives will receive necessary advisory and technical support to prepare and submit two alternative reports on the shortcomings in the protection of social rights of PWD to the European Committee of Social Rights and the European Commission against Racism and Intolerance respectively. Thus, the project will help Armenian NGOs working on disability issues to have a better access to the relevant CoE monitoring mechanisms. ACCESS will also develop a Handbook on the CoE standards relevant to the protection of the rights of persons with disabilities, as a reference tool for civil society and other audiences. This publication will be available in Armenian and English. A six-month online learning course for Armenian professionals working on disability and cross-cutting issues will be developed and made available by the Council of Europe's HELP programme on its online platform.

Regular trainings are carried out for social workers, employees of different social services, including NGOs.

The National Action Plan for Human Rights Protection for the period 2017-2019 envisages the implementation of training programs for social workers, for example the training programs should be carried out for the social workers for provision of the services in the social welfare institutions of the population. This action should be implemented by the end of 2017. During 2018-2019 the training programs on prevention and fight against domestic violence should be implemented for judges, prosecutors, investigative bodies, lawyers, as well as for social workers.

There are no particular difficulties or impediments in implementing trainings on social rights.



Autriche

We don't know about any specific training.



Azerbaijan

Regularly we conduct training in the framework of the project on “Improvement of social services”. In 2014 Azerbaijan hosted a conference dedicated to the implementation of the strategy and action plan for social cohesion of the member countries of the Council of Europe.



Belgique

Oui.



Bulgarie

None, but the meeting on non-ratified ESCR provisions with ECSR members and staff of the secretariat, Sofia, 2015, with the participation of experts from the relevant ministries, agencies and social partners, was very useful in the exchange of information and understanding of difficult issues.



Croatia

Such trainings are organized in form of different panels, roundtables as part of projects whose aim is realization of the various social rights. In this way interested public is informed about their social rights and ways of protecting them.



République tchèque

There was not a specific training concerning social rights aimed at promotion of the European Social Charter organised in last two years.



Estonie

There have been trainings/seminars for employees of the Estonian Unemployment Insurance Fund on international social law in previous years, but not in the past two years.



Finlande

Many ministries organize human rights training, including also the CoE instruments, for their staff. For instance the University of Helsinki also organises seminars and conferences concerning also the social rights.



France

Le Gouvernement français relève que peu de formations ont été dispensées au niveau national sur les droits sociaux. Ce sont plutôt des conférences et des colloques informatifs qui ont été organisés sur ce sujet. Le réseau académique sur la Charte sociale européenne et les droits sociaux (« R.A.C.S.E ») est une association à but non lucratif implantée dans 15 Etats dont la France, réunissant actuellement prioritairement des personnes des milieux académiques, mais aussi des personnalités non académiques souhaitant contribuer à la réalisation de ses missions. Le réseau a pour but la promotion de la Charte sociale européenne et des droits sociaux en Europe, en lien avec les expériences sur d'autres continents. Deux Conférences récentes ont été ainsi organisées :

- Conférence internationale à Paris « Crise économique et droits sociaux, un standard de protection affaibli ? » organisée le 12-13 octobre 2016 par la Section française du Réseau académique sur la Charte sociale européenne et les droits sociaux (RACSE) ; Le Centre d'études et de recherches administratives et politiques (CERAP), Université Paris 13 - Sorbonne Paris Cité ; Le Centre universitaire de recherches sur l'action publique et le politique - épistémologie et sciences sociales (CURAPP-ESS), Université de Picardie Jules Verne ; L'Institut de recherche juridique de la Sorbonne (IRJS), Université Paris 1 Panthéon- Sorbonne & L'Institut de recherche en droit international et européen de la Sorbonne (IREDIES) Université Paris 1 Panthéon-Sorbonne.

- L'effectivité de la Charte sociale européenne : garanties substantielles et procédurales
Université Paris 13-mars 2017.

Quels sont les facteurs clés pour leur succès ?

Qu'une majorité de personnes soient informée. Les étudiants sont les acteurs de demain, leur formation est donc primordiale.



The Council of Europe (CoE) delivered another training session for senior Public Defender's staff on "Fight against Intolerance and Protection of Social Rights" on 20-22 May, 2016. Training was delivered by national and international experts with the purpose to advance the skills and knowledge of staff of the PDO to identify violations of the principle of non-discrimination, with special emphasis to indirect discrimination, evidence collection and building a discrimination case. At the same time the training specifically focused on international standards and mechanisms of protection of vulnerable groups including children, ethnic minorities, persons with disabilities, LGBT groups and victims of domestic violence. The training further familiarized PDO personal with the concept of equal treatment and equal opportunities under the ECSR with a special focus on labour rights, protection of health and medical assistance,⁶⁷ the right of elderly to social protection and right to housing.

As an outcome, the knowledge of the PDO staff with regard to the social rights, including housing, pensions, education or welfare is increased. The members of the PDO also had been well-informed regarding the European Consortium for Sociological Research's (ECSR) recommendations to Georgia on socio-economic rights.

Further, it should be mentioned that the Education Center of Georgian Bar Association systematically arranges trainings in regard with human rights issues. It is noteworthy that in 2014, more than 50 licensed lawyers and human rights activists took part in the seminar organized by the Council of Europe, the European Union and Bar Association of Europe on the Revised European Social Charter.

Participants of the event discussed the monitoring mechanisms of the implementation of the European Social Charter and the legal obligations of Georgia before the European Committee of Social Rights. Special attention was paid to the prohibition of discrimination and review of mechanisms of collective complaints under the European Social Charter. Attorneys and members of the NGOs and Trade Unions have shared their experiences in the field of protecting social rights of their clients.⁶⁸

As to the representatives of the Judiciary, including Judges and other court officials, the human rights trainings concerning the European Convention of Human Rights and other human rights instruments, as well as other selected issues regarding social rights, are continuously conducted by the High School of Justice of Georgia. Particularly, in 2016, numerous trainings were conducted.⁶⁹ Trainings covered issues such as ensuring effective access to justice for the persons with disabilities; international labor standards and the Labor Code of Georgia; rights of the child and of the asylum-seekers, etc. Aiming at increasing the qualification of judges and the officials of the judiciary, the relevant training programs will also take place in 2017.⁷⁰

⁶⁷ Available online at: <http://www.coe.int/en/web/tbilisi/-/training-for-the-senior-staff-of-public-defender-s-office-of-georgia-on-fighting-against-intolerance-and-protection-of-social-rights>

⁶⁸ Available online at: <http://edu.gba.ge/%E1%83%A1%E1%83%94%E1%83%9B%E1%83%98%E1%83%9C%E1%83%90%E1%83%A0%E1%83%98-%E1%83%A1%E1%83%9D%E1%83%AA%E1%83%98%E1%83%90%E1%83%9A%E1%83%A3%E1%83%A0-%E1%83%A3%E1%83%A4%E1%83%9A%E1%83%94%E1%83%91%E1%83%94/>

⁶⁹ Available online at: http://www.hsoj.ge/uploads/Uploads/2016_wlis_statistika.pdf

⁷⁰ Available online at: http://www.hsoj.ge/uploads/Uploads/mokmed_mosamartleta_propesiuli_treningebi-2017_w.pdf

Further, it should be outlined that in 2015, with collaboration of national specialists and the experts of the International Labour Organization, as well as the European Agency for Safety and Health at Work, several trainings were carried out for the labor inspectors of Georgia concerning the issues such as forced labor and human trafficking; establishment of modern and effective systems of labor inspection; regulatory norms for labor safety and health care at workplace; risk assessment; *etc.* In 2016, the training program covered the issues of the prevention principles - EU approach to professional security; seminar for labor inspectors on sanctions; *etc.* In 2017, seminar on, *inter alia*, the labor inspection policy planning took place.

Within the scope of the Technical Support Project for Employment and Vocational Education Reform, Regional Meeting on Skills Matching in the Eastern Partnership (2015) was held; In 2016, Branding of labor market and vocational education initiatives took place, as well as in 2017 Strategic Communication Workshop was conducted.

It should be also underscored, that national human right NGOs, as well as national educational institutions, regularly organize awareness-rising activities, such as trainings, public lectures, *etc.* on social rights.



Islande

Universities and trade unions provide various courses and seminars concerning social rights.



Irlande

While there has been no specific training of the type envisaged in this questionnaire, many seminars and other activities are used to disseminate information regarding the social rights guaranteed by Council of Europe instruments. For example, many stakeholders in the areas of social rights attended the recent keynote address delivered by Secretary General Jagland in the Department of Foreign Affairs and Trade as part of that Department's lecture series.

In 2015 the first meeting of the Inter-Departmental Committee on Human Rights⁷¹ took place and it continues to meet on a regular basis. As part of that process, colleagues from other Departments are updated on collective complaints involving Ireland pending before the European Committee of Social Rights and recent decisions of the European Committee of Social Rights.



Italie

Aucune activité de formation n'a été menée à cet égard.



Lettonie

No information.



Lituanie

According to the data of the National Courts Administration, training on the following topics was organised in 2015–2017:

In 2015:

- The specific features of questioning of persons with disabilities; the peculiarities of evaluation of their testimony.
- The peculiarities of communication with persons with different disabilities. Practical tips for communication with the disabled during proceedings.

⁷¹ To improve the coherence of the promotion and protection of human rights in Irish foreign policy, an Inter-Departmental Committee on Human Rights was established in 2015 and is chaired by a Minister of State (see Page 36, The Global Island: Ireland's Foreign Policy for a Changing World (2015))

- Interpretation or application of the elements of criminal acts established in Article 1471 (exploitation for forced labour or services) and Article 1472 (using the person's forced labour or services) of the Criminal Code.
 - Freedom of expression in democratic society. The case-law of the European Court of Human Rights.
 - The peculiarities of examining labour cases: the problems and latest practice.
 - Safeguarding the rights of disabled parties to proceedings. The main requirements of the UN Convention on the Rights of Persons with Disabilities.
 - Questioning of minors (including the disabled) at court: protection of the rights of the child, the interest of a minor to be questioned only once during criminal proceedings, the relation of this interest with the suspect's (subsequently the accused person's) right to take part in this questioning, ask questions, etc., a possibility and expedience of conducting such questioning in the absence of the suspect.
 - The case-law of the European Court of Human Rights and the Supreme Court of Lithuania regarding the questioning of minors at court.
 - Proper representation of minor parties to the proceedings (including the disabled) at court.
 - Social protection. Regulation and practical application of portability of pensions to the European Union Member States.
 - Application of minimum and medium child care.
- The rights and duties of child rights protection offices and the functions of representatives of offices during criminal proceedings in cases of minors. Presentation of information on the conditions of life and upbringing of minor to a pre-trial investigation officer and a prosecutor.

In 2016:

- Judge training programme "Equal Opportunities": The principle of equal treatment. The constitutional doctrine and the case-law of the European Court of Human Rights; Prohibition of discrimination in the United Nations conventions on human rights and its interpretation in the practice of convention monitoring bodies; The diversity of special temporary measures in order to ensure gender equality, the practical aspects of their application and experience in different countries of the world; Legal acts regulating discriminatory advertising. Examples of discriminatory advertising and judgments of foreign courts.
- Judge training programme "Ensuring human rights" (15 academic hours): The proceedings at the European Court of Human Rights; The problems of Article 2 of the Convention (right to life) (focus: the positive duties of the state; the procedural aspect; the latest trends; cases against Lithuania); The problems of Article 3 of the Convention (prohibition of torture) (focus: the positive duties of the state; the procedural aspect; the rights of persons in detention; the latest trends; cases against Lithuania); the problems of Article 6 of the Convention (right to a fair trial) (focus: statute of limitations; state immunity; impartiality of the judiciary; a behaviour model imitating criminal acts; questioning of vulnerable witnesses; use of classified information; cases against Lithuania); The problems of Article 8 of the Convention (right to respect for private and family life) (focus: the latest trends; cases against Lithuania); The problems of Article 10 of the Convention (freedom of expression) (focus: the latest trends; cases against Lithuania).

In 2017, already held/to be held:

- Application of the Law on Protection against Domestic Violence in Criminal Proceedings.
- Peculiarities of questioning of persons who have suffered from domestic violence and sexual abuse.

On 4 October 2016, the representatives of the Office of the Equal Opportunities Ombudsperson participated in the training for judges organised by the National Courts Administration, where they delivered a lecture on the special temporary measures and discriminatory advertising regulated in the Law on Equal Treatment. It is a welcome fact that the National Courts Administration includes the topic of equal opportunities in its training programme for judges. We suggest periodically organising training for judges and prosecutors in the future, thus improving their competences in the area of ensuring equal opportunities.

In 2016 and 2017, the Lithuanian Centre of Non-formal Youth Education (LCNYE) conducted training for career specialists at the national level. It should be noted that in accordance with the Republic of Lithuania Law on Education, a career specialist provides vocational information and counselling, career education services, i.e. conducts vocational guidance (Article 2(6), Article 18(1)). We consider that the training of persons who conduct vocational guidance contributes to a more efficient implementation of the right to appropriate facilities for vocational guidance established in the European Social Charter.

Seeking to ensure lifelong learning conditions and address the disproportion of the demand and supply of labour force in the country, LCNYE pays considerable attention to the development of pupils' career competences as well as the improvement of competences of career specialists. In the school year of 2016–2017, LCNYE developed qualification improvement programmes and organised 19 qualification improvement seminars (at the national level) for career specialists in the country, with regard to their competences and needs. 511 career educators took part in training. Main topics: "Early education for a career", "Modern career management starts at school", "Conscious life and career planning through the Pupil's Career Education Portfolio", "Early education philosophy and possibilities of career education in kindergartens", "Effective career education system in modern school", "Coaching as a tool for working with parents when educating pupils for a career", "Targeted career education starts in pre-school education establishments", "Subject integration for the development of career competences", "The role of a career coordinator in the development of career competences of pupils with special needs", "Pupil activation and empowerment towards self-discovery for a profession".

-What are the key factors for their success?

We consider that training changes specialists' conception of lifelong learning and their attitude towards the importance of development of competences, thus changing (improving) specialists' competences and enhancing their knowledge of international law.

-Do you encounter any particular difficulties in terms of training in social rights?

For example, the Lithuanian Centre of Non-formal Youth Education notes the lack of virtual, distance teaching/learning programmes enabling career educators to choose the most convenient qualification improvement programmes that correspond to their level of competence as well as their forms, to learn at the time that is convenient for them, irrespective of the place of residence or the funds allocated by the school.



République de Moldova

We mention that in the last two years there have been no training courses on social rights guaranteed by the instruments of the Council of Europe.



Pays-Bas

The Academy for Legislation and the Academy for Government Lawyers offer general modules on human rights for public servants. This represents an investment in the quality of primary legal advice and ensures that every policy directorate is able to recognise basic human rights issues as such.

The Training and Study Centre for the Judiciary, which trains judges and other judicial officers, provides continuous training designed to enhance knowledge of human rights.

Under the Counsel Act (Advocatenwet), the details of legal training are left entirely to the Dutch Law Society (Nederlandse Orde van Advocaten). Legal training includes the opportunity to take human rights courses.

Finally, primary, secondary and vocational teacher training courses cover the subject of citizenship. Citizenship education is designed to prepare pupils for participation in society and addresses cognitive aspects such as knowledge of democracy, the rule of law and human rights, and also skills such as debating and attitudes such as respect for the views and beliefs of others. It is the statutory duty of the Netherlands Institute for Human Rights to "provide information and to promote

and coordinate education on human rights” (section 3d of the Act establishing the Netherlands Institute for Human Rights (Wet College voor de Rechten van de Mens)).



Norvège

We can not indicate specific training provided at national level concerning the social rights guaranteed by the Council of Europe instruments. However to be mentioned is the Norwegian National Human Rights Institution, see A1, which provides information etc. in this field.



Pologne

Pas d'activités de ce genre sauf la formation des juges (initiale et permanente) - dans ce cadre on présente des normes nationales et internationales en matière des droits de l'homme, la jurisprudence de la Cour des droits de l'homme (y compris sur les logements, la propriété, la famille, la sécurité sociale), la législation nationale dans le domaine social et le droit de famille.

Facteurs clés pour leur succès, difficultés particulières en termes de formation aux droits sociaux

L'expérience provenant de participation aux conférences, réunions au niveau national et international montre qu'il y a beaucoup de spécialistes en droits de l'homme ou droits sociaux, mais il y a peu parmi eux qui ont une connaissance comment les droits sociaux sont mis en œuvre, comment fonctionne l'Etat et son administration, quelle est la réalité des procédures de contrôle internationales. Des praticiens (fonctionnaires d'Etat) sont rarement invités comme conférenciers.

Il y a beaucoup de discours strictement théorique et idéologique. S'il y a la possibilité d'aborder des questions légitimes sur le fonctionnement du droit international (et de son interprétation), le fonctionnement des organes de contrôle, les obligations des Etats, la politique nationale, souvent elles sont traitées comme la remise en cause des droits de l'homme.

En 2016 l'Académie polonaise des Sciences a organisé un séminaire sur le fonctionnement des procédures de contrôle onusiennes, de point de vue national. Des représentants des ministères ont été invités pour faire des exposés et leur approche pratique et des informations sur la réalité des procédures semblaient être révélation pour des universitaires ainsi que pour des représentants des organisations non-gouvernementales. L'objectif du séminaire étant l'échange des informations, une discussion de fond n'a pas suivi des informations apportées par les fonctionnaires.



Portugal

The Ministries of Health, Education, Labour and Social Security, Justice, foreign affairs, home affairs have been promoting training on social rights.

The following are some examples undertaken:

Various activities have been developed by the High Commission for Migration in the promotion of interculturality in the Portuguese society and valuing cultural and religious diversity and the promotion of mutual understanding and positive interaction among all citizens and resident groups in national territory, namely by **the Intercultural Dialogue Unit**, which has about 20 trainers. The training network was established in 2006, as an available resource to all entities that intend to organize training sessions in the area of interculturality at the national level. The sessions are available throughout the country and are free of charge. Sessions are available in the following topics:

- Intercultural Dialogue: Exercise of comprehension of the cultural diversity and of the relation with others in the current world.
- Inter Religious Dialogue: Proposal of reflection about the importance of religions and beliefs in a plural society and world in view of a better comprehension of the relevance of the religious dimension in the process of identity construction and as an expression of culture. Discussion of the concept as an interculturality dimension.

- Myths and facts about immigration in Portugal: Proposal of reflection and debate over “myths and facts” about immigrants in Portugal, based on the scientific knowledge acquired.
- Nationality Law: Presentation and legal frame to obtain Portuguese nationality (action to technicians).
- Immigration Law: Presentation of the conditions and entrance procedures, permanence, exit and retirement of foreigners of the national territory according to the Immigration Law (targeting experts).
- Learn with histories: first steps to interculturality: Reflection to the educative agents about the pedagogic work and use of histories to the childhood, in accordance to an intercultural approach. Participants may take part of a session of reading and performance of activities with a group of children.
- Intercultural Education to youths: Exercise of comprehension of the cultural diversity and of intercultural relationships. Discussion of the concept as a dimension of participation and democratic citizenship.
- Intercultural Education: Proposal of a deep reflection about the intercultural apprenticeship as a changing process of the practices.
- Intercultural Education in school: Proposal of reflection about the way that the intercultural apprenticeship, as a changing process of practices, may be developed in a school context.
- Health, Immigration and Diversity: Legal framing of the access to health by foreigner citizens in Portugal and identification of the main barriers. Reflection about the challenges of the interculturality in this context.
- Portuguese ROMA, Citizenship and Interculturality: Reflection about the concepts of citizenship and interculturality in accordance to the cultural diversity present in Portugal. Proposal of analysis and comprehension of the processes of inclusion and exclusion of Portuguese Roma, throughout the years, and sharing good practices and tips to intervene more equitable and social cohesion.

The Intercultural School Stamp⁷² initiative was launched in 2012 and aims to distinguish schools that stand out in the promotion of projects for the recognition and valuing of diversity as an opportunity and a learning resource for all, an initiative taken in cooperation with the Directorate-General of Education and with the collaboration of the Aga Khan Foundation. The Intercultural School Stamp is presently in its fourth edition.

Also **the Intercultural School Kit**⁷³ was prepared by the High Commission for Migration in strict cooperation with other partners. The Kit aims to provide schools and education staff, families and children, a range of materials on intercultural issues – toolkits, books, leaflets, posters, games.

The Intercultural Education School Network was launched in October of 2016 and is an initiative from the High Commission for Migration together with the Directorate-General of Education and Aga Khan Portugal Foundation. It is a Network of public education and learning establishments and/or private learning and cooperative establishments who have agreed to implement intercultural education measures with the following objectives:

- Promote the reception, integration and educational success of all children and young people in compulsory education, regardless of their cultural or national origins;
- Promote openness to difference and the establishment of positive interaction and outreach relations among students and other members of the educational community of different cultures⁷⁴.

In terms of international cooperation in the Intercultural Education, ACM is a member of the **SIRIUS Network – European Policy Network on the Education of Children and Young People with a Migrant**. This is a European collaborate platform among public political organizations, researchers, migrant organizations and education agents with the objective to facilitate the

⁷² <http://www.acm.gov.pt/-/selo-de-escola-intercultural-32-escolas-premiadas-pelo-trabalho-em-prol-da-valorizacao-da-diversidade>

⁷³ . <http://www.acm.gov.pt/-/kit-intercultural>

⁷⁴ <http://www.acm.gov.pt/-/sessao-de-lancamento-da-rede-de-escolas-para-a-educacao-intercultural>

exchange of information, knowledge and good practices in the area of education of migrant children and young people and/or with a migrant background.

The Programa Escolhas⁷⁵ (Choices Programme) is a governmental programme created in January 2001, promoted by the Council of the Presidency of Ministers and integrated in the High Commission for Migration. It is presently in its 6th edition (2016-2018). Its mission is to promote the social inclusion of children and young people from vulnerable socioeconomic environments, aiming equal opportunities and the strengthening of social cohesion. The direct participants of the Choices Programme are children and young people from vulnerable socioeconomic contexts, namely descendants of immigrants, Roma communities and Portuguese emigrants, between the ages of 6 and 30 years old.

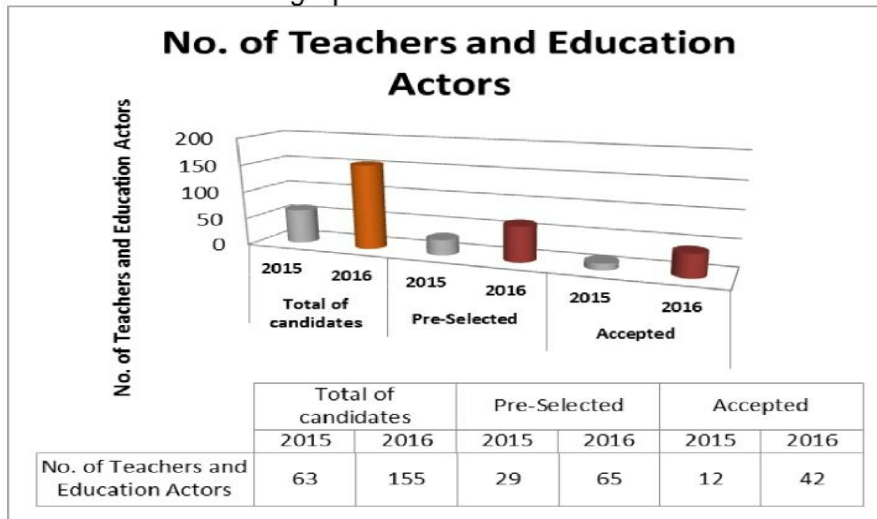
From the very beginning the Programme became increasingly recognized for its contribution to the social inclusion of young people, namely in the fight against early school leaving and youth delinquency. In 2014, the Programme received the "JUVENILE JUSTICE WITHOUT BORDERS" international award, from The International Juvenile Justice Observatory (IJJO), with the aim of recognizing the work of experts, personalities and institutions that show a steady commitment towards the development of juvenile justice systems focused on the integral promotion of children and young people in conflict with the law.

The Ministry of Education, in partnership with public entities and civil society, has developed awareness and training activities around human rights aimed at students, teachers and the general public.

Actions aimed at students, particularly in the area of education for citizenship:

- 4 awareness sessions on "Fight against Homophobia and Transphobia in School", (2015);
- 3 Actions of "Human Rights Awareness - 40 Years of the Ombudsman" (2015);
- 3 Workshops for students of the 9th grade: "Education, Gender and Citizenship" (2015); "Segregation of Professions" (2016); "And after all, are we all the same?" (2017).

Actions for teachers, namely in the Pestalozzi Programme⁷⁶ with the participation of Portuguese Education Actors illustrated as in the graph below:



Source: Ministry of Education - *Direção Geral da Administração Escolar*, 2017.

⁷⁵ <http://www.programaescolhas.pt/>

⁷⁶ <http://www.dgae.mec.pt/blog/2017/05/15/programa-pestalozzi-strengthening-education-for-democracy/>

The themes of the training activities attended by the Portuguese teachers and education actors were:

| 2015 | 2016 |
|---|---|
| <ul style="list-style-type: none"> - Pestalozzi workshop on sexual education. - Memories of conflicts in Europe: how to deal with them in today's history lessons. - Partnership for the future strategies of collaboration of school family and society as key actors of child oriented processes. - Wits and manners on-line - identifying resources and strategies to prevent hate speech. - Physical education and sport for democracy and human rights, module B. - Democracy and participation. | <ul style="list-style-type: none"> - Tolerance and respect for European values: "For intercultural Europe". - Towards an inclusive school: addressing respect and celebrating diversity. - Competencies for a culture of democracy. - Education for all: building inclusive and supportive school environments in context of change. - "On the move": flight and migration in formal education. - Education in democratic citizenship and human rights. - How to develop inclusive school culture for supporting cooperation and participation competencies? - Strengthening education for democracy. |

Source: Ministry of Education - *Direção Geral da Administração Escolar*, 2017.

In the school years 2014/2016, the School Association Training Centres nationwide promoted the following training actions:

- 2 addressing human and social rights (fundamental rights, freedoms and guarantees; and promotion of the rights and protection of children and young people in school context: from problems to best practices);
- 48 regarding Citizenship (Global Citizenship/Citizenship and Gender/Citizenship and Education...) as the tables below:

| School Years | Training actions at National Level | Training actions on the topic of Citizenship | |
|--------------|------------------------------------|--|-----|
| | Total | No. | % |
| 2014-2015 | 3151 | 48 | 1,5 |
| 2015-2016 | 2567 | 23 | 0,9 |

| School Years | DIMENSION | | | | |
|--------------|--|--------------------------------------|------|-------|------|
| | Training actions on the topic of Citizenship | Scientific and Pedagogical Dimension | | Other | |
| | | No. | % | No. | % |
| 2014-2015 | 48 | 7 | 14,6 | 41 | 85,4 |
| 2015-2016 | 23 | 5 | 21,7 | 18 | 78,3 |

| School Years | Type of Training Activities | | | | | | |
|--------------|--|------------------|------|--------------------|------|-------------------|-----|
| | Training actions on the topic of Citizenship | Training courses | | Training workshops | | Circle of Studies | |
| | | No. | % | No. | % | No. | % |
| 2014-2015 | 48 | 21 | 43,8 | 26 | 54,2 | 1 | 2 |
| 2015-2016 | 23 | 17 | 74 | 5 | 21,7 | 1 | 4,3 |

Source: Ministry of Education - *Direção Geral da Administração Escolar*, 2017.

Other actions aimed to teachers:

- 1 Training workshop on "Education, Gender and Citizenship", with 10 classes (2015);
- 1 Short-term training course on "Intercultural Education", within the scope of the 3rd edition of the "Intercultural School Stamp" Initiative (2016);
- 10 short-term training actions under the Council of Europe's "Modelling Skills Pilot Project for a Culture of Democracy" (2016);
- 1 Training workshop on "Education, Gender and Citizenship" provided to 10 Schools Association Training Centres (2017).

Actions aimed to the general public:

- 7 short-term training actions on "Health and Welfare, a responsibility of all", aimed at teachers, health professionals, psychologists and students (2015);
- Project *Beyond Not Just Numbers - More than Numbers* (High Commission for Migration, I.P., and Directorate-General for Education and the International Organization for Migration), 2016⁷⁷;
- 1 training action under the Council of Europe's "Movement Against Hate Speech - youth for online human rights" (2016)⁷⁸;
- Action to raise awareness in all cluster schools that joined the initiative "What if it was me? Make the backpack and leave" (2016)⁷⁹.

In 2015 and 2017, the National Agency for Qualification and Vocational Education (ANQEP) provided training (around 36 hours and 22 hours, respectively) for the staff of the current **Qualifica Centres**, namely the Practitioners responsible for guidance and Recognition and Validation of Competences⁸⁰ (490 participants).

The **Qualifica Centres** are structures from the education and training system. Their mission is to offer access to guidance (as well as to the Process of Recognition, Validation and Certification of Competences) not only to adults and to early school-leavers/young people who are "Not in Education, Employment, or Training" (Article 9 of the European Social Charter – The right to vocational guidance) but also to disadvantaged groups and people with disabilities.

In 2015 and 2016 **municipal councils** disseminated and dynamized a game created under **ENTER Project** by the Council of Europe with the aim of disseminating and raise awareness about social rights among young people. This game is an excellent tool to promote education for social rights in a simple way.

Do you encounter any particular difficulties in terms of training in social rights?

⁷⁷ <http://www.dge.mec.pt/noticias/educacao-para-cidadania/divulgacao-de-materiais-educativos-projeto-beyond-not-just-numbers>

⁷⁸ <http://www.odionao.com.pt/campanha-em-acao.aspx?id=1502>

⁷⁹ http://www.dge.mec.pt/agenda-europeia-para-migracoes#4_Iniciativas

⁸⁰ The Guidance Counselors or Career Counselors who work in a Qualifica Centre are called Technicians for Guidance, Recognition and Validation of Competences.

No, we do not encounter any particular difficulties.



République slovaque

No specific training focused on these instruments has been provided.

b) N/A

c) N/A



Slovénie

a) 2016: »HELP in the 28« European Seminar in Slovenia on »Labour Rights as Human Rights: Labour rights require more protection in times of crisis and austerity«. The 2-day European Seminar, organised on 26-27 September 2016 under the CoE/EU »HELP in the 28« Programme in collaboration with the Slovenian Judicial Training Centre. Seminar ended with the conclusion that labour rights require even more protection in times of crisis and austerity measures. Judges, prosecutors and lawyers should redouble their efforts to enforce them. For legal professionals in the EU, the knowledge of both the CoE and EU system and case law is imperative prior to their implementation in their daily work. Seminar was attended by around 80 legal professionals, mainly judges. The relevance of the European Social Charter as counterpart to the ECHR was emphasised by the ECSR President, Giuseppe Palmisano and the relationship between the CoE and EU systems analysed by the ECSR Deputy Executive Secretary. Specific issues discussed ranged from the potential of collective complaints to certain aspects of working time or economically dependent persons.

Detail information regarding this seminar can be found at http://www.coe.int/en/web/help/home/-/asset_publisher/ZEZyheszmBNU/content/labour-rights-require-more-protection-in-times-of-crisis-and-austerity-help-in-the-28-european-seminar-in-slovenia?desktop=true

HELP e-learning course on labour rights was launched in January 2017. The course improved professional skills on how to apply ESC and relevant EU law at the national level, with specific regard to the implementation of the labour rights. It ended very successfully, with 30 participants passing the final test.

b) The HELP methodology is developed at a very high level. After the update, the HELP web page was made even more user friendly for the participants. Considering the professional needs and already acquired knowledge the participants organised the time frame of the e-learning by themselves.

c) No, we did not encounter any particular difficulties in terms of training in social rights.



Espagne

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

Noteworthy among other training actions carried out by IMIO is the Virtual Equality School (EVI), an online training programme on equal opportunities for women and men, with a basic level targeting the general public, and an advanced level linked to labour-related sectors (employment, companies and human resources, social services, the legal sphere) so that they may incorporate the gender perspective into their labour practice. The 7th edition of the EVI is currently underway: it has a capacity for 21,000 participants and will operate until September 2017.

What are the key factors for their success?

This training is offered free of charge, has two levels—basic and specialization—and leads to certification in equality and gender violence.



“L'ex-République yougoslave de Macédoine”

We believe we are not able to point out to some trainings and/or other promotional and awareness raising events that were organized recently, specifically and directly referring to the European Social Charter, its specific articles and/or the standards and rights that the Charter is guaranteeing. The two such events that we could think of, were the two seminars organized together with the Council of Europe (Department of the ESC) in 2008 and 2010 on the European Social Charter and the Revised ESC.

However, there were many other trainings and other type of events that were organized with the participation of various stakeholders (national authorities, social partners, academia, CSO, (inter)national experts etc), that were dealing with various social rights and topics/themes that are also included/covered by the European Social Charter. There were many trainings, seminars, workshops, on topics related to employment, education, labour relations, social protection, children's rights etc., organized by different institutions/organizations/partners etc.

For the purpose of providing indication, we could mention some of such trainings organized recently:

- in 2016 and 2017, in cooperation with ILO, a series of 8 thematic trainings were organized for the members of the national Economic and Social Council, the Local ESCs, members of the Standing committees established under the ESC, representatives from trade unions and employer's organizations. The trainings were organized on the themes of International labour standards, gender equality and non-discrimination, employment policy, project cycle management, macroeconomics and informal economy, wages and minimum wage, social security and social protection, occupational safety and health;
- Training/seminar was organized (March 2017) with the support from the TAIEX instrument of the European Commission, on the topic of "Deinstitutionalization: advancing the process of transition from institutional to community-based care" with the participation of national and international experts in the field, representatives from relevant institutions (ministries, social work centres, social protection institutions), non-governmental organizations etc.;
- the Ministry of Labour and Social Policy, in cooperation with UN Women, has implemented the Project for Developing a Specific Module for Gender Mainstreaming for civil servants and their integration in the programme for training of the administration. Trainings have been provided, an electronic module has been prepared for understanding the concept of gender equality by civil servants on a national and local level, Manual has been prepared for introducing the gender perspective in the programmes and policies, available for all civil servants providing guidelines on how to make the policies, programmes and activities that are implemented by state administration bodies - gender sensitive;
- the Institute for Social Activities organized several trainings (46 workshops), covering included 627 professionals from the Social protection centres and social protection institutions for various modules (promoting equality and respecting diversity, developing communications skills, working with a child, working with a family, working with a community, gender equality in social protection, working with elderly persons, trafficking in human beings, working with marginalized communities / groups at risk, sexuality and sexual and reproductive rights of persons with disabilities, training for employees in day-care centres, training for specialized caretaking/fostering families, etc.)
- Many trainings were organized by the Academy for judges and public prosecutors "Pavel Shatev" in the framework of their activities for continuous training for judges and prosecutors. Among these, there were also trainings on the topics related to social rights. Such trainings, for example were the trainings on various themes related to the concept of equality and non-discrimination (8 trainings in 2015, 8 trainings in 2016, 2 trainings until July 2017) covering a total number of 417 participants (judges, public prosecutors, judicial associates, lawyers, representatives from the Commission for protection against Discrimination, representatives from the police, representatives from the Ombudsman office etc.). Another example are the 6 trainings organized in the period 2015-2017, on the topics of judicial protection in labour disputes in relation to the issues of salaries, compensation, salary benefits, dismissals, protection of workers rights, protection of pregnant workers, protection against mobbing (covering a total of 181 participants from various institutions). In the period 2015-2016 4 seminars were organized (with 105

participants –judges, prosecutors, judicial workers, lawyers and others) on the topic of Law on children's protection, UN Convention on the Rights of the Child, Convention on children; 1 training on the Hague Child Support Convention. Another example is the seminar (2015) for the representatives from the administrative courts on the rights from health insurance...

This is just a small list of some of the training events organized in the recent period on the topics related to the social rights and standards.

As the key factors for the successful implementation of the various trainings and other events for improving the knowledge and awareness, is the engagement of knowledgeable and well-educated professionals as trainers for the particular topics who are proven experts in the field(s) on which the training is being organize, and also the multidisciplinary approach, i.e. inclusion of representatives from various institutions, organizations, various stakeholders, which can be crucial for better understanding the topic(s) discussed and for exchanging different experiences and view points (especially important when it comes to issues related to economic and social rights).



Turquie

The Project of “Improving Social Integration and Employment of Disadvantaged People” (DESİP)

The overall objective of the project is to promote an inclusive labour market with opportunities for disadvantaged persons, with a view to their sustainable integration into labour force and combat all forms of discrimination in the labour market, to increase awareness on the problems of disadvantaged groups and combatting discrimination against them which results in exclusion from the labour market, to increase the institutional capacity of Department of Employment Policies of MoLSS, one of the main public institutions that develop policies and act in favour of disadvantaged persons, and social partners. The Project will organize one day a large scale awareness raising event in Ankara on employment and social inclusion of disadvantaged people with the participation of national and local actors including employers, employees, social partners, NGOs and relevant public institution. The Project will organize two cultural activities with the participation of target groups of the grant component to draw attention on the existence of disadvantaged groups in society and to encourage them for the participation in social and economic life. The events will include exhibitions where hand made products; art objects etc. of the disadvantaged groups can be exhibited.

Trainings have been provided concerning various aspects regarding social rights, mainly including programs on labour rights, social inclusion, protection of the family, and also specific programs for disadvantaged groups. Examples regarding these programs are given below:

Social Service Centers, which are affiliated to the Ministry of Family and Social Policies, have been established with the Social Services Act no. 2828. Accordingly, the Social Service Centers are the institutions working day-time and determine the persons in need, take necessary social service measures to intervene and follow up, provide preventive, protective, supportive, and developmental services, guidance and counseling for children, young people, women, men, disabled, elderly people and their families in the most convenient and accessible way. They are also responsible for providing services in coordination with local authorities, universities, non-governmental organizations and volunteers when needed and facilitating coordination of these services. Among other functions, trainings and awareness raising programs aimed at increasing knowledge about citizenship and human rights, children's rights and other rights, ensuring participation in social life. The number of Social Service Centers opened to service in 81 provinces has reached 217. 1.267.304 people benefited from 175 Social Service Centers in 2015.

National Action Plan to Combat Violence against Women (2016-2020) aims combating violence against women in Turkey. The Action Plan has been drafted having regard to international conventions, especially the Istanbul Convention, and legislation.

For the aims of awareness raising and mentality transformation, training and seminars on gender equality and prevention of violence against women are being carried out for the university students and the staff working in public institutions and organizations throughout the country. Protocols have been signed between the Ministries of Justice, Interior, Health and National Defense, the General Command of Gendarmerie, the Directorate of Religious Affairs and the Ministry of Family and

Social Policies in order to ensure the continuity of the trainings. In the scope of the "Training Protocols" signed with Ministry of Interior, Ministry of Health, Ministry of Justice, Directorate of Religious Affairs, 71.000 policemen, 65.000 health personnel and 47.566 religious officers were trained. Seminars were held with the participation of 326 Family Court Judges and Public Prosecutors. In addition, seminars were organized for 250 Civil Inspectors and 190 district governor candidates on gender, violence against women, etc.

SIROMA Project (Technical Assistance for Promoting Social Inclusion in Densely Roman Populated Areas Project), which is co-financed by the European Union and the Republic of Turkey includes trainings aiming to raise awareness concerning anti-discrimination and promote civil dialogue.

The Project of Protection of the Victims of Human Trafficking (2014-2016) was carried out in cooperation with International Organization of Migration (IOM), financed by EU, of which the Directorate General of Migration Management is the main beneficiary. The purpose of the project is to implement national strategies and policies compatible with the Council of Europe Convention on Action against Trafficking in Human Beings on organized crime including human trafficking. Trainings were held in order to increase the cooperation in implementation for the related institution representatives primarily for the staff of Provincial Directorates of Migration Management, the provincial organization of the Ministry of Family and Social Policy and the law-enforcement units. Workshops and consultation meetings were made with the staff of organizations and institutions that is in cooperation on Combating Human Trafficking. Trainings of the trainers for judges and prosecutors, provincial assistant experts of migration and law-enforcement staff were held. Contact meetings were realized for the tour operators, taxi drivers and hotel owners to create awareness about human trafficking, trainings were held for labour inspectors and auditors of social security institution. Posters and leaflets in 6 languages (Turkish, English, Arabic, Persian, Russian and Uzbek) were published about human trafficking to raise awareness.

Labour and Social Security Training and Research Centre (ÇASGEM), which is the affiliated body of the Ministry of Labour and Social Security is a public institution giving trainings about working life. One of the duties of the center is to prepare training programs on working life, social security, occupational health and safety, workers' and employers' relationships, employment, productivity, total quality management labour market surveys, ergonomics, environment, first aid, labour statistics and similar issues and on occupational health and safety for the workplace physicians, engineers, technical staff, nurses and the other health personnel who shall be assigned to prevent health and safety risks and to carry out protective services in the workplace together with the units of Ministry or the related institutions and organizations where necessary, to give training or to purchase training services, to certify, to make researches on these issue or have them make.



Ukraine

It should be mentioned that different training programs in the area of human rights are provided as a part of the Action plan on the implementation of the National Human Rights Strategy until 2020 approved by the Resolution of the Cabinet of Ministers of Ukraine of 23 November 2015 No.1393 and within the framework of the Council of Europe Action Plan for Ukraine 2015-2017.

D.4. Formations et programmes du Conseil de l'Europe

Soutiendriez-vous le développement des activités de sensibilisation par le Conseil de l'Europe sur les droits sociaux tels que des formations spécifiques (par exemple en ligne), des activités ou programmes de coopération ?



Albanie

Yes.



Arménie

Yes. As mentioned above, cooperation activities/programmes can be mutually discussed and included in future cooperation documents between Armenia and the Council of Europe.



Autriche

Yes.



Bulgarie

Yes, at the same time taking into consideration that on-the-ground trainings with relevant stakeholders are usually more popular and effective than on-line training /for which often there is no time.../.



Croatie

Yes, we think that would be significant help to all member states to provide promotion of ECSR decisions and conclusions and also awareness of social rights.



République tchèque

The Czech Republic supports all awareness-raising activities on social rights.



Danemark

Yes.



Estonie

Yes, we would.



Finlande

Yes.



France

Oui.



Géorgie

Georgia declares its readiness to be involved in supporting the development of awareness-raising activities on social rights by the Council of Europe.



Islande

Yes.



Irlande

Ireland fully appreciates the importance of raising awareness of social rights, and has no objection to the development by the Council of Europe of awareness-raising activities in this regard.



Italie

Oui, s'il y a lieu, la formation en ligne.



Lettonie

Yes, if the trainings are with practical value.



Lituanie

Yes.



République de Moldova

We mention that any awareness raising activity on social rights is welcome.



Pays-Bas

The Netherlands is not against awareness-raising activities on social rights.



Norvège

This depends of course of the type of activities, but we will be benevolent to hear more about such activities.



Pologne

Oui, mais sous condition. Des activités organisées actuellement par le secrétariat de la Charte n'impliquent que des membres du secrétariat et des experts indépendants. Dans le passé on invitait les représentants des Etats comme conférenciers – pour apporter des informations sur la pratique nationale, l'approche des Etats à la Charte. Dans toutes ses activités portant sur la Charte sociale le Conseil de l'Europe devrait assurer la présence équilibrée des représentants des organes de contrôle (sauf le Comité des Ministres qui est un organe strictement politique) et la présentation des approches, opinions et expériences variées.

Propositions:

- suivi et analyse des arrêts de la Cour concernant les questions sociales, par le secrétariat de la Charte et leur présentation pendant les réunions du Comité gouvernemental,
- élaboration des fiches thématiques par la Cour concernant les droits sociaux, les thèmes à choisir en consultation avec le secrétariat de la Charte,
- site internet de la Charte sociale: malgré des importantes améliorations apportées elle nécessite un travail additionnel pour la rendre vraiment "user friendly" (accès aux documents, description équilibrée des procédures et organes de contrôle).



Portugal

We would support the development by the Council of Europe of awareness-raising activities on social rights such as specific trainings (e.g. on line), cooperation activities or programs.

Portugal has an important network of CFAE (School Association Training Centres) that covers all education professionals nationwide, which are able to collaborate and be involved in different training activities or programs, namely those regarding the awareness-raising on social rights.

Most of CFAE and schools, as well as the teachers themselves, have important ICT resources that can facilitate and/or give an important contribution to the success and effectiveness of different online training activities or programs.

In addition, in partnership with universities, the Ministry of Education has also developed a network of nine ICT Competence Centres that cover all the country and have the human and ICT resources and experience necessary to implement online training programmes. Each of these centres also present pedagogical and technological conditions to establish agreements in order to implement any training program or activity.



République slovaque

Yes, these activities would be welcome.



Slovénie

Yes.



Espagne

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

The Institute for Older People and Social Services (IMSERSO) has participated in different Council of Europe activities, such as:

- Drafting Group on Disabled Adults
- CDDH - Drafting Group
- Social Cohesion Committee

Spain's Institute for Youth (INJUVE) is in contact with the CoE and participates in its European Steering Committee for Youth (CDEJ), where the rights of young people are the core of its mandate, activities and communications. As regards the specific area of defence of human rights, INJUVE has participated in the No Hate Speech Movement since early March 2013. Since then, INJUVE has carried out intense communication with the Youth Department. The 5th Coordination Meeting of the National Campaign will be held in late June in Romania, and INJUVE will be there as part of the Coordination Committee.

RESPONSE FROM THE AUTONOMOUS COMMUNITY OF THE BALEARIC ISLANDS

Yes, absolutely.



Ukraine

Yes.

Suggestions

Quelles autres suggestions pourraient être faites concernant les activités de formation et de sensibilisation sur les droits sociaux?



Azerbaïdjan

We support both, specific trainings and cooperation activities.



Bulgarie

Such training and activities would be very beneficial also for representatives of the legal and judicial bodies.



Finlande

Translation of the internet pages and the essential material on these pages into the national languages, the organisation of seminars, cooperation projects with universities and a more active presence in the media would increase awareness of social rights.



France

Colloques, séminaires techniques à destination des administrations.



Lituanie

Awareness-raising activities on social rights, especially on sensitive issues, such as LGBTI rights, would be highly appreciated. Trainings, seminars, technical assistance from experts of international organisations and exchange of best practice is very important in order to have better understanding on the implementation of the complex international treaties.

NGO's, social partners could also be included in such activities and trainings.



Norvège

No specific suggestion for the time being.



Pologne

Rien à apporter.



Portugal

Social rights awareness-raising is a crucial and transversal educational issue, which deserves deep consideration both in curriculum development and students education.

In Portugal, despite being a transversal educational content, social rights have a pivotal role in two main educational domains of the curriculum: Education for Citizenship and Class Tutoring.

Thus, we suggest the design of a **training course in b-learning regime** that can confront theory and practice in national contexts, and simultaneously allow the exchange and share of experiences, analysis and meta-analysis between educational professionals of different countries.

To encourage training in social rights it is also necessary to invest more in the dissemination and awareness of social rights to the general population and private bodies, namely the Superior Council of the Magistracy, the Superior Council of the Public Prosecutor's Office, the Bar Association, Trade Unions and Employer Associations.



République slovaque

More publications and leaflets focused on social rights at the national and international level. These would help the public to become more engaged in the protection of their rights. Online information campaigns would also help to achieve this goal.



Slovénie

Training and awareness-raising activities should be country specific and targeted at specific groups; judges, public employees, NGOs. They should not only be in "on line" form. Experts performing trainings should be financed by the Council of Europe due to lack of resources in small countries.



Espagne

RESPONSE FROM THE MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

As a suggestion for training and awareness-raising activities, it is worth highlighting that the CoE's Gender Equality website is very useful and constitutes an example of good practice. It includes updated news, events, studies, good practices, and work on the agenda of equality for women and men. In addition to being an exercise in transparency regarding the work being carried out, it also includes the main standards and rules (Conventions and Recommendations), as well as practical guidelines and handbooks for implementation.



“L'ex-République yougoslave de Macédoine”

Definitely yes. As it was already pointed out previously, under the reply on the question no.B3, we believe there is an evident need for a stronger promotion and awareness raising about the Council of Europe instruments, including here the European Social Charter. And this is, we believe, equally important not only for the representatives of various relevant state institutions and bodies, but also for other stakeholders as well, including here the social partners, civil society organizations, judiciary, various experts...

It should maybe, be considered to organize some periodical awareness raising (and/or training) events that will focus on different aspects of the CoE ESCharter for example, such as thematic presentations/explanations/discussions on the rights (provisions) guaranteed by the Charter, on the existing mechanisms for monitoring and assessment of the implementation of accepted provisions, on the conclusions/findings, their seriousness and the importance of the undertaking appropriate measure for timely resolution of identified problems/obstacles and improvements where the situation in the country is found not to be in line (in conformity) with the Charter etc. Such events could be organized for various audiences, depending of the topics and their involvement in the discussed issues.

Perhaps, such activities will have to be organized also with the greater and more frequent involvement of the Council of Europe.

In addition, it may also be considered, to occasionally organize such events in cooperation (jointly) with other international standard-setting organizations (ILO for example), in the cases/topics where there is a clear inter-relation in respect to certain standards/rights. This may (even more) contribute in greater promotion and awareness raising in these important topics.

Another issue that we could maybe work on its gradual improvement is the involvement of the media (in addition to all other stakeholders), in better and more effective informing and awareness raising about the various issues related to the Council of Europe instruments.

One positive example (but unfortunately, not very common) is the publishing of the quite extensive article (in some news-papers and web-portals) about the presentation of the annual conclusion by the ECSR (January 2016). The article provided a detailed presentation and comments about the specific ECSR findings and conclusions concerning Republic of Macedonia, highlighting the “negative” findings (non-conformity conclusions, criticisms, identified issues for further improvements), but also pointing out the positive developments, as emphasized by the ESCS (the adoption of the certain amendments to the Labour Law, at that occasion).

Link to the mentioned article:

<http://www.press24.mk/makedonija-postignuva-napredok-vo-sproveduvanjeto-na-obvrskite-od-evropskata-socijalna-povelba>

We believe this could be considered an important and useful positive practice that (if repeated periodically in the future) could potentially contribute in improving the awareness, knowledge, available information on issues related to the Charter (as well as to other instruments).



Turquie

The development of awareness-raising through training and cooperation activities on social rights especially on the promotion of rights concerning disability issues would be very useful in improving the implementation of international obligations required by the European Social Charter.

Annexe

Décisions judiciaires pertinentes en Bulgarie

- a) *Décision no.8047, 16/06/2010*
- b) *Décision no.16591, 15/12/2011*
- c) *Ordonnance no. 1013 3/09/2015*

DECISION

No 8047
city of Sofia, 16 June 2010

IN THE NAME OF THE PEOPLE

In its court hearing held on the fifth day of May, year two thousand and ten, Third Section of Supreme Administrative Court of the Republic of Bulgaria with the following members:

CHAIRPERSON:PENKA IVANOVA

MEMBERS:KREMENA HARALANOVA TANYA
KUTSAROVA

and secretary Mariana Kalcheva
the prosecutor Vicho Stanev
of the judge KREMENA HARALANOVA
on administrative proceedings No 11242/2009. 📄

with the participation of
heard the report

The proceedings are conducted according to the procedure laid down in Art.185 et seq. of the Administrative Procedure Code (APC).

They were initiated on the basis of an appeal filed by Bulgarian Pharmaceutical Union - [locality] against the provision of Art. 17, para.1 of the Ordinance on the conditions, rules and criteria for inclusion, amendment and / or exclusion of medicinal products from the Positive List of Medicines and the terms and procedure of the Commission on the Positive List of Medicines adopted by Decree of the Council of Ministers No 311 / 15.12.2007 (published in State Gazette (SG) No 110 / 21.12.2007). According to the provision, the reference value of the medicinal products which level of payment is 100 percent is calculated on the basis of the price of a wholesaler of medicinal products formed according to the procedure laid down in the Ordinance under Art.260, para.1 of the Medicinal Products in Human Medicine Act (MPHMA). It is alleged that, by laying down a reference value which does not include the retailer's mark-up for the services rendered in connection with the dispensing of the medicinal products the contested rule directly affects the interests of the qualified pharmacists members of the association which filed the appeal and therefore the same is admissible. The reasons for the inconsistency between the contested rule and imperative provisions of the acts of a higher status, including Art.52, para.1 of the Constitution of the Republic of Bulgaria, Art.13 of Part I of the European Social Charter ratified by the Republic of Bulgaria, Art. 2a (repealed) of the Statutory Instruments Act (SIA), Art.7, para.2 and Art. 15, para.1 of SIA, in conjunction with § 1, sections 64, 65 and 83 of the Additional Provisions of MPHMA, Art.262, para.2 of MPHMA, Art.258, para.1, in conjunction with Art.260, para.1 of MPHMA, Art. 4, para.1 and Art.45, para.1, section 11, in conjunction with Art.45, para.3 and Art. 51 of the Health Insurance Act (HIA) are set out. Therefore, the complaining party requests that para.1 of Art. 17 of the Ordinance on the conditions, rules and criteria for inclusion, amendment and / or exclusion of medicinal products from the Positive List of Medicines and the terms and procedure of the Commission on the Positive List of Medicines (PLM) should be repealed, being unlawful due to its adoption under conditions of material breaches of the administrative procedure rules and

inconsistency with the substantive rules. An award of the costs is claimed. The appeal is supported by similar reasons in an open court hearing through the attorney P. The written submissions put forward arguments on the admissibility of the appeal, given the existence of a legitimate interest for the members of B - S, based on which the administrative act may be contested, in particular the part showing that the statutory components of the price of medicinal products fully paid by the NHIF budget exclude the retailer's (pharmacies) mark-up.

The defendant - the Council of Ministers of the Republic of Bulgaria (CM) - acting through its legal advisor C., challenges the appeal. It claims that the contested wording does not contradict the provisions of the normative acts of a higher status cited in the appeal and set out in detail in an opinion of the Ministry of Health.

The representative of the Supreme Administrative Prosecutor's Office concludes that the appeal is inadmissible and, in support of its alternative, that it is unfounded. Detailed considerations are set out. According to them there is no inconsistency between the disputed provision and the formation of the medicinal products' prices which payment terms and procedure as laid down in Art. 262, para.4, section 1 of MPHMA and other medicines available in the pharmacies related to the sale are governed by regulations other than the disputed acts, and by the contracts concluded between NHIF and the persons authorised under Art.229, para.2 of MPHMA. The representative also submits that in essence, the dispute should be rejected.

According to Art.186, para.1 of APC, citizens, organisations and bodies which rights, freedoms and legitimate interests are affected or may be affected by it and which creates obligations for them are entitled to challenge any regulation. Bulgarian Pharmaceutical Union is an association of the qualified pharmacists. All qualified pharmacists practising their profession must be members of the association. One of its basic legislative functions is to represent its members and to protect their professional rights and interests according to Art.3 and Art.5 of the Qualified Pharmacists Association Act (QPAA). In so far as the disputed provision concerns the level of payment of medicinal products and, consequently, the payer of retail mark-up of medicinal products and in view of the alleged claims of violation of the association rights, the current members accept that there is a legal interest in the challenge according to Interpretative Decision No 2/2010 of the General Meeting of the Supreme Administrative Court panels on imperative proceedings No 4/2009 and that the submitted appeal is admissible.

The Supreme Administrative Court, considering the arguments set out in the appeal and the evidence in the case, accepts the following:

The Ordinance on the conditions, rules and criteria for inclusion, amendment and / or exclusion of medicinal products from the Positive List of Medicines and the terms and procedure of the Commission on the Positive List of Medicines adopted by Decree of the Council of Ministers No 311 / 15.12.2007 (published in State Gazette (SG) No 110 / 21.12.2007, in force from 1 January 2008) is a normative act within the meaning of Art. 75 of APC issued by virtue of a statutory power conferred by Art.264 of MPHMA. The latter stipulates that the Council of Ministers shall specify in an Ordinance, on a proposal from the Minister of Health, the terms and conditions, rules and criteria for inclusion, amendment and / or exclusion of the PLM and the terms and conditions and rules of procedure of the Commission on the PLM. According to the above mentioned provision, the ordinance is issued by a competent authority. No significant violations of the procedural rules on its adoption in accordance with the requirements of Art.2a (repealed) and Art.26 - Art. 28, inclusive, of SIA or violations of Chapter Five, Section III of APC on the development of the draft and acceptance of the ordinance requiring its annulment only in the challenged part on that basis of this reason were found in the court proceedings. The overall assessment of the evidence / letters having ref. No 112 / 29.11.2007 and ref. No 75-17-214 / 30.10.2007, opinions, reports, press releases, minutes of the meetings of the Council of Ministers, etc. annexed to the case-file leads to the conclusion that the statutory time limits for publication of the draft ordinance on the website of its proposer (Ministry of Health) have been met, and that the opinions, proposals and objections of the authorities and stakeholders have been discussed in detail prior to the adoption of the act.

There is no basis of the applicant's assertion that there is violation of Art. 2a (repealed) of SIA, since the association has not been provided with one-month time limit for proposals and objections

to the draft ordinance under Art.264 of MPHMA. The lack of evidence that the draft is sent to B, in its capacity as a representative organisation of the qualified pharmacists, does not show that material violation of the procedural rules has been made, insofar as, by virtue of the ordinance, no immediate obligations and restrictions arise for B or its member - pharmacists within the meaning of Art. 2a of SIA (currently repealed in State Gazette No 46/2007, in force from 1 January 2008, effective at the time of issue of the ordinance) which affect in a different way and more seriously the legal area compared to the need for presence of legal interest in the challenge. In addition, the draft regulation is announced through the mass media and published on the Internet at least one month before its submission by the Minister of Health for consideration and adoption by the Council of Ministers. Therefore, there is no factual and legal basis for the complaints of the applicant of any violations of the procedural requirements under Art.264 of MPHMA applicable at the time of issue of the Ordinance.

The assertions of the contesting party on the inconsistency between the contested wording and substantive provisions are also unfounded due to the following:

The contested Ordinance governs the public relations related to the terms and conditions, rules and criteria for inclusion, amendment and / or exclusion of medicinal products from the Positive List of Medicines, the level and value of their payment with public funds, and the operation of the Commission on the Positive List of Medicines. According to the disputed provision of Art.17, para.1, the reference value of the medicinal products which level of payment is 100 percent is calculated on the basis of the price of a wholesaler of medicinal products formed according to the procedure laid down in the Ordinance under Art.260, para.1 of MPHMA. The rule of Art.17, para.1 of the Ordinance under Art.264 of MPHMA concerns the calculation of the value at which the medicinal products are paid with public funds according to Art.20 of the same ordinance. According to the last provision (in the current version) the payable amount determined by the procedure laid down in Art. 18 of the Ordinance is multiplied by the value calculated for a packaging based on a reference value, thus forming the value at which the relevant medicinal product is paid by public funds. However, Art.18 determines the level of payment of the medicinal products explicitly described therein, along with those referred to in Art. 2, para.2, sections 2, 3 and 4 of the Ordinance, with the exception of the medicinal products referred to in Art. 2, para.2, section 1 identical to the products specified in Art. 262, para.4, section 1 of MPHMA (intended for treatment of diseases which are paid according to the procedure laid down in the Health Insurance Act (HIA)). Specifically also in the light of Art.262, para.5 and para.6 of MPHMA, the level of payment of the latter included in the PLM, is determined in accordance with the NHIF budget for the relevant year and the payment is made according to the Ordinance under Art.45, para.8 of the HIA. Therefore, the disputed provision of Art.17, para.1 of the Ordinance under Art.264 of MPHMA which defines reference value for the purposes of Art.20, in conjunction with Art.18 of the same ordinance, is generally unrelated to the levels of payment of the medicines for the compulsory health insurance which are subject to other normative acts. In this regard, it should be noted that the formation of the medicinal products prices, terms and procedure for payment of the medicinal products referred to in Art.262, para.4, section 1 of MPHMA and the other rules related to the sale of medicines by pharmacies are governed by the Ordinance on the conditions, rules and procedure for regulation and registration of medicinal products prices, adopted by Decree of the Council of Ministers No 295 / 03.12.2007 published in SG No 104/2007 on the grounds of Art. 260, para.1 of MPHMA, Ordinance 4/2009 on the conditions and procedure for prescription and dispensing of medicinal products, Ordinance 10 / 24.03.2009 on the conditions and procedure for payment of medicinal products referred to in Art. 262, para.4, section 1 of MPHMA, medical devices and dietary foods for special medical purposes issued on the grounds of Art. 45, para.8 of HIA and by the contracts concluded between NHIF and the persons authorised under Art.229, para.2 of MPHMA.

According to Art.52, para.1 of the Constitution of the Republic of Bulgaria, the citizens are entitled to health insurance which ensures their access to medical care and free use of medical services under terms and conditions established by law. In implementation of this constitutional power, the Health Insurance Act was adopted. According to Art.4 of the Act the health insured persons are

entitled to free access to medical care using package of health activities which type, scope and volume are established by law. Pursuant to Art.45, para.1 and para.2, in conjunction with Art.51 of HIA, NHIF pays for the types of medical care specified in para.1 of Art.45 which, except for those referred to in section 11 (for prescribing and dispensing of authorised medicines for home health care in the territory of the country), are defined as a basic package of medical care guaranteed by NHIF budget by specific ordinance of the Minister of Health. According to Art.45, para.3 of HIA, the Minister of Health determines by other ordinance the list of diseases for which NHIF pays medicines, medical devices and dietary foods for special medical purposes, fully or partially. Article 45, paragraph 8 of HIA explicitly stipulates that the terms and procedure for payment of medicinal products referred to in Art.262, para.4, section 1 of MPHMA are defined in an ordinance issued by the Minister of Health on a proposal from the Supervisory Board of NHIF. The terms and procedure for payment of medicinal products referred to in Art.45, para.1, section 11, fall exactly in the scope of the latter.

In connection with the alleged argument put forward by the applicant's procedural representative that the provision of Art.17, para.1 of the Ordinance under Art.264 of MPHMA is relevant to the price of the contracts signed between NHIF and qualified pharmacists and owners of pharmacies which scope includes also the obligation of the pharmacies to dispense to health insured persons (HIP) medicines for home health care in the territory of the country paid fully or partially by NHIF, the current members complied with Art.7 and Art.8 of Ordinance 10 / 24.03.2009 on the conditions and procedure for payment of medicinal products referred to in Art. 262, para.4, section 1 of MPHMA, medical devices and dietary foods for special medical purposes issued by the Minister of Health on the grounds of Art.45, para.8 of HIA. According to Art.7, to dispense the products referred to in Art.1, para.1 (medicinal products included in the PLM intended for home health care of diseases defined by the Ordinance under Art. 45, para.3 of HIA), NHIF shall conclude contracts with the persons referred to in Art. 229, para.2 of MPHMA entrusted with the retail supply of medicinal products. According to Art.8, para.1 and para.2 of the Ordinance under Art.45, para.8 of HIA, NHIF shall pay to the persons referred to in Art. 7 the value of the medicinal product determined in accordance with Art. 20 of the Ordinance on the conditions, rules and criteria for inclusion, amendment and / or exclusion of medicinal products from the Positive List of Medicines and the terms and procedure of the Commission on the Positive List of Medicines, and the HIP shall receive medicinal products fully paid by NHIF by the persons holding a retail trade licence for such products who have concluded the contract specified in Art. 7. The cited wordings lead to the conclusion that the applicant's allegations of inconsistency between Art.17, para.1 of the Ordinance under Art.264 of MPHMA challenged in these proceedings and the provisions of the normative acts of a higher status represent, in their nature, grounds for unlawfulness of the referring rule of Art.8 of the Ordinance under Art.45, para.8 of HIA which is not subject to these proceedings.

In view of the above, the determined value at which the medicinal products are paid with public funds according to the procedure laid down in the Ordinance under Art.264 of MPHMA does not contradict Art.4, para.1, Art.45, para.1, section 11 and para.3, in conjunction with Art.51 of HIA, since this is neither the reference value, nor the value of medicinal products fully paid by NHIF. Insofar as the health insurance is provided according to procedure established by law and its scope depends on the economic situation of the state which also complies with the budget laws (in this sense, with Decision 2 / 22.02.2007 of the Constitutional Court on Constitutional Case No 12/2006, as well), it cannot be accepted that the wording contested in these proceedings is contrary to the right of the HIP to free access to medical care established by the Constitution or to the rule referred to in Art. 13 of Part I of the European Social Charter ratified by the Republic of Bulgaria by law (published in SG No 30/2000) which stipulates that everyone who does not have sufficient funds is entitled to social and medical assistance.

The various public relations concerning the prices of medicinal products are governed by virtue of a statutory power conferred to the Commission on the Medicinal Products Prices (according to Art. 259 and Art. 260 of MPHMA) and to the Commission on Positive List of Medicines (according to Art. 261 and Art. 262 - Art. 264 of MPHMA) and do not give reason to accept the argument in the appeal that there is contradiction between the provisions of Chapter XII - Medicinal Products Prices

- of MPHMA and Art.17, para.1 of the Ordinance under Art. 264 of MPHMA - the latter determines reference value that is relevant to the value at which the medicinal products are paid with public funds in connection with Art.18 and Art. 20 of the Ordinance, rather than to the prices referred to in Art.260, para.1 of MPHMA.

The Positive List of Medicines is a normative source of a right to insurance issued by the administrative body referred to in Art. 261 of MPHMA which also determines the types of medicinal products paid for the health needs of the HIP by NHIF within the meaning of Art.45, para.1, section 11, in conjunction with Art.51 of HIA. According to Art.262, para.2 of MPHMA, the PLM contains the medicinal products which price is determined pursuant to Art.258, para.1 of MPHMA, reference value of defined daily dose, price calculated based on a reference value and level of payment. The legal definitions of the concepts defined daily dose (DDD), reference value of DDD and price calculated based on a reference value are contained in § 1, sections 64, 65 and 83 of MPHMA, as follows: "the lowest DDD value calculated on the basis of the DDD values of various medicinal products for the relevant international non - proprietary name with the appropriate formulation according to the anatomical therapeutic classification of the medicines", " the lowest value of the therapy determined on the basis of the values of the medicines for international non-proprietary name with the appropriate formulation" and "the price calculated for each medicinal product included in the Positive List of Medicines calculated on the basis of the reference value established for DDD or therapy".

The current legislation concludes that there is no legal definition (in the strict sense) of the term "reference dose" - such definitions are contained in the Ordinance under Art.260, para.1 of MPHMA, and in the Ordinance under Art. 264 of MPHMA (on calculating the value referred to in Art. 20 paid with public funds of medicinal products referred to in Art. 262, para.4, sections 2, 3 and 4 of MPHMA and of the other products specified in Art. 18 of this Ordinance). In fact, the price of a medicinal product included in the Positive List of Medicines and paid with public funds is regulated by Art.258, para.1, in conjunction with Art 260, para.1 of MPHMA and Art. 2 and Art.7 of the Ordinance on the conditions, rules and procedure for regulation and registration of medicinal products prices (published in SG No 104/2007) issued on the basis of the latter rule. This is the price in BGN approved by the Commission on the Medicinal Products Prices formed by the producer price, wholesaler's mark-up (9, 8 or 6 per cent) and retailer's mark-up (22, 20 or 18 per cent) and calculated as a sum of the above elements and value added tax. Insofar as the price components are specifically defined by the Ordinance under Art. 260, para.1 of MPHMA, there is no reason to assume that there is contradiction between Art.17, para.1 of the Ordinance under Art.264 of MPHMA and statutory provisions of the acts of a higher status. Moreover, the level of payment of the medicinal products contained in the PLM is determined on the basis of a reference value rather than the price. In addition, this reference value is, within the meaning of the Ordinance under Art. 260, para.1 of MPHMA (as defined in § 1, section 3 of its Additional Provisions), the producer price specified in Art. 7, para.1, section 1 of the medicinal products included in the PLM and is identical to the wholesaler's price referred to in section 1 of the said Art. 1. Therefore, in this case there is no contradiction between Art.17, para.1 of the Ordinance under Art.264 of MPHMA and Art.258, para.1, in conjunction with Art.260, para.1 of MPHMA, in view of the different subject matter of the settled relations. As has already been noted above, the contested provision concerns the level of payment and the value paid with public funds of some medicines included in the PLM, rather than the price of medicinal products, without, however, contradicting the acts of a higher status, since there are no acts requiring the settlement of the settled issue in a manner other than that specified in it. In view of the above, there are no inconsistencies with the statutory provisions mentioned in the appeal which would determine the repeal of the disputed part of the Ordinance under Art.264 of MPHMA.

On the basis of the above considerations, the Court considers that there are no grounds for annulment of the disputed provision of the normative act and that the challenge should be rejected. Given the above and on the basis of Art. 193 of APC, Third Section of Supreme Administrative Court

DECIDED:

to DISMISS the appeal filed by Bulgarian Pharmaceutical Union - [locality] for annulment of the provision of Art. 17, para.1 of the Ordinance on the conditions, rules and criteria for inclusion, amendment and / or exclusion of medicinal products from the Positive List of Medicines and the terms and procedure of the Commission on the Positive List of Medicines adopted by Decree of the Council of Ministers No 311 / 15.12.2007 (published in SG No 110 / 21.12.2007).

The decision is subject to appeal to a five-member panel of the Supreme Administrative Court within 14 days upon receipt of the communications by the parties.

Dissenting opinion:

DECISION

No 16591

city of Sofia, 15 December 2011

IN THE NAME OF THE PEOPLE

In its court hearing held on the twenty ninth day of November, year two thousand and eleven, Seventh Section of Supreme Administrative Court of the Republic of Bulgaria with the following members:

CHAIRPERSON:VANYA ANCHEVA

MEMBERS:PAVLINA NAYDENOVA

DANIELA MAVRODIEVA

and secretary Aneliya Stankova

the prosecutor

of the chairperson VANYA ANCHEVA

on administrative proceedings No 10544/2010. 📄

with the participation of
heard the report

The proceedings are conducted according to the procedure laid down in Art.145 et seq. of Administrative Procedure Code (APC), in conjunction with Art.68 of Protection against Discrimination Act (PADA).

They are initiated based on an appeal filed by Varna Free University Chernorizets Hrabar represented by the rector Prof. A.N., Doctor of Economic Sciences, acting through his attorney, the lawyer E. against Decision No 163 / 13.07.2010 of the Commission for Protection against Discrimination rendered on case No 230/2009 which states that the rector of the university, in his capacity as an employer, is involved in direct discrimination within the meaning of Art 4, para.2, in conjunction with § 1, section 7 of the Additional Provisions of PADA against Prof. Dr. P. I. I. on the basis of health status. By the same decision, the Commission imposed a fine of BGN 250 on the offender on the grounds of Art.78, para.1 of PADA, provided him with order issued in accordance with the procedure laid down in Art. 76, para.1, section 1 of PADA, and made a recommendation to the Commission trade union leader in Varna Free University Chernorizets Hrabar pursuant to Art. 47, section 11 of the same act.

The appeal alleges that the decision is unlawful due to the lack of competence of the authority which issued it, serious violation of the administrative and procedural rules, and conflict between the substantive provisions and purpose of the law. The applicant considers that the Commission has ruled on an inadmissible employment dispute which has been resolved by a final decision and does not fall within the scope of PADA. He requests from the Court to repeal the decision and to award the costs in the case. The appeal also contains request to suspend the enforcement of the appealed administrative act, in particular, of its part imposing the coercive administrative measure (CAM) and fine.

The defendant - Commission for Protection against Discrimination (CPD/ the Commission) - acting through its procedural representative, the legal advisor G, challenges the appeal. It objects to the

inadmissibility of the dispute, in particular of its part against the operative part of the decision which gives the recommendation under Art. 47, section 11 of PADA. Based on the substance of the dispute, it considers that the application is unfounded and requests for its rejection. The Commission also claims for reimbursement of the costs.

The interested party - Prof. Dr. P. I. I. residing in [locality] - expresses an opinion that the appeal is unfounded. He presents arguments on the legality of the appealed administrative act. In the verification of appeal admissibility, the three-member panel of Supreme Administrative Court found that its part challenging the recommendation given by CAD decision to the Commission trade union leader in Varna Free University Chernorizets Hrabar was inadmissible due to the lack of judicial review and legal interest of the applicant.

According to Art.47, para.11 of PADA the Commission is entitled to make recommendations on all discrimination related issues. By exercising this power and issuing the contested decision the Commission has made a recommendation to the Commission trade union leader in the university, in his capacity as a representative of the employees, to prevent any future violation of Art.18 of PADA, Art. 8 of the Labour Code (LC), and European Social Charter united rights in order to prevent discrimination and unequal treatment in the area under consideration. The analysis of CPD powers conferred by Art.47 of PADA and the comparison of this legal text with the provisions of Art.65 and Art.76, para.1 of the same act leads to the conclusion that the part of CPD decision appealed by the rector of the university does not have nature of challengeable administrative act. The Commission statement in this part is of a recommendatory nature, does not create rights or obligations, and does not affect rights, freedoms or legitimate interests of the addressee, such as the extent to which the compliance of the latter with the recommendation depends only on his will. Unlike the mandatory prescriptions which are considered as CAM, the recommendations referred to in Art.47, section 11 of PADA have no legally binding effect and their enforcement does not depend on state coercion. Moreover, the recommendations and proposals can be assimilated to a sanction (an adverse effect in the legal area of sanctions related to the unilateral compulsory limitation of his subjective rights) which can only be imposed on the offender if the violation has been well-established. The recommendation is a proposal to improve the activity of the relevant addressee and reflects the Commission's legal preventive function in the area of equal treatment in implementation of the labour rights and obligations.

Given the absence of any inherent features of the administrative act, the operative part of CPD decision, in particular the part used by the Commission to exercise its power conferred by Art. 47, section 11 of PADA is not subject to judicial review and the appeal against it is inadmissible. Secondly, the challenge of the recommendation contained in the decision is also inadmissible due to the lack of direct and immediate legal interest of the applicant. The administrative act must affect the person who challenges it, i. e. to create obligations or to violate or endanger his rights and legitimate interests, so as to enable the creation of the right to appeal against it. In this case, the section of the operative part of the decision disputed by the university which makes a recommendation to another legal entity (trade union representative) in view of its functions and specific role in the employer-employee legal relation does not affect in any way the disputed legal effect which occurs in respect of the contesting party. The contesting party does not have legal interest in bringing proceedings against it, since he is not an addressee of this part of the act and therefore cannot rely on its own violated right or legitimate interest.

This legal interest does not affect his legal area - it does not create rights and obligations and does not affect his personal and direct subjective rights and legitimate interests. Since no direct legal consequences from the part of the administrative act which makes, according to Art.47, section 11 of PADA, a recommendation to another person in another capacity arise for the university, in its capacity as an employer, then the university does not have legal interest to challenge it.

In view of the above and on the grounds of Art.159, section 1 and section 4 of APC the appeal of Varna Free University Chernorizets Hrabar, in particular its part against the CPD decision which, pursuant to Art. 47, section 11 of PADA, makes a recommendation to the Commission trade union leader in the university, should have been dismissed as inadmissible and the proceedings in the case should be terminated in this part.

The remaining parts of the appeal are admissible.

As regards the applicant's request to suspend the preliminary enforcement of CPD decision, in particular its part which imposes on the university rector a fine of BGN 250 for violation of Art.4, para.2 of PADA and CAM - mandatory prescription under Art.76, para.1, section 1 of PADA - in his capacity as an employer to comply with the rule of Art.18 of PADA and to take in cooperation with the trade unions effective measures to prevent all forms of discrimination in the educational institution and to restore the situation of equal treatment as regards Prof. Dr. P. I. I irrespective of his health status, the court finds the following:

The request to suspend the enforcement of the contested individual administrative act, in particular its part which imposes a fine on the employer is devoid of purpose and should be dismissed as inadmissible.

According to Art.84, para.2 of PADA, penalties (pecuniary sanctions) are imposed by CPD decision which can be appealed according to the procedure laid down in APC, and the appeal suspends the application of the contested decision. This rule of the substantive law which governs the disputed legal relation reproduces the general rule of Art.166, para.1 of APC which provides for suspensive effect of the appeal against the administrative act so as to ensure that the execution of the measure takes place. The case of immediate enforcement, irrespective of the appeal, provided for in Art.77, para.2 of PADA relates only to coercive administrative measures. Therefore, the provisions of Art.68, para.1 and Art.84, para.2, sentence 2 of PADA and Art.166, para.11 of APC apply to this case. In this case, the legal effect sought by the request has arisen by lodging the appeal with the Court, and thus the interest of the university in providing temporary protection against the adverse effect of the sanctioning part of the contested decision should be considered satisfied. Once the appeal suspends the execution of the contested act (except for its part which imposes coercive administrative measures, namely, the Commission's prescriptions under Art. 76, para.1, section 1, in conjunction with Art. 77, sentence 2 of PADA), special form of order sought for suspension of the execution is inadmissible. Furthermore, the decision itself does not contain the admitted preliminary execution of the imposed fine referred to in Art.60, para.1 of APC and therefore it cannot be suspended with specific court order.

The request for suspension of the preliminary execution under Art.166 of APC, in conjunction with Art.77 of PADA contained in the part concerning the CPD decision which imposes on the rector of the university CAM under Art. 76, para.1, section 1 of PADA is admissible and, in essence, unfounded.

According to Art.166, para.2 of APC the Court may, at the request of the contesting party, suspend the preliminary enforcement rendered by final order of the body issuing the act at any time in the course of the proceedings before the court decision enters into force, if it could cause to the contesting party significant damage or damage which would be difficult to repair. In this sense, the provision of Art.166, para.2 of APC requires that the contesting party should prove that there is a risk of harm which may occur as a result of the preliminary execution of the administrative act. In substantive aspects, the damage to him must be significant or must be difficult to repair. These requirements are alternative, and in the presence of each of the above grounds, the Court considers whether the protection of the private interest of the contesting party may be enforced against the public interest presumed by law and whether it may be overcome.

In this case, the request submitted to the Court does not contain any arguments that would justify the presence of the preconditions referred to in Art. 166, para.2 of APC - i.e. they do not contain the type, nature and extent of any damage which would occur for the employer as a result of preliminary execution of CPD decision or of the circumstances which would hinder their repair. The arguments put forward by the appellant on his claim to suspend the preliminary execution of the contested measure do not meet the legal criteria for immediate suspension of the act. The evidence in the case does not lead to the conclusion that there is a risk for the appellant to be caused damage which would be difficult to repair as a result of the admitted preliminary enforcement of the CAM which involves the obligation of the employer to comply with the requirement to avoid non-discrimination in the workplace and to restore the violated right to equal treatment of the person affected by the discrimination, i.e. to implement the law. The allegation that prof. P. I. I does not report to his place of work despite being restored to the position occupied by

court order does not indicate a real risk of damage for the addressee due to the preliminary enforcement of the measure by law and cannot be opposed to the imperative principle of non-discrimination applicable to all legal entities. Therefore, the request for suspension of the preliminary enforcement of CPD decision, in particular its part which imposes the appellant CAM should be dismissed as unreasonable and unproven.

In order to rule on the merits of the appeal, after considering the parties' arguments and the evidence in the case, individually and collectively, the current panel of Supreme Administrative Court adopts the following facts and law:

The proceedings against CPD are initiated based on an appeal filed by Prof. Dr. P. I. I against the rector of Varna Free University Chernorizets Hrabar claiming direct discrimination against him on the basis of disability in the exercise of his right to work.

Pursuant to Art.55 et seq. PADA, CPD has implemented the examination procedure provided for by the special law, requiring and attaching to the file statements and evidence obtained from the participants in the proceedings described and discussed in the contested administrative act. Pursuant to Art.59, para.3 of PADA, the parties are given the opportunity to become familiar with the documents in the file. According to Art.60 - Art.63 of PADA, an open meeting is scheduled and held. The parties are duly summoned to participate in the meeting. In fact, CPD found that Prof. Dr. P. I. I was a lecturer in Varna Free University based on an employment contract of an indefinite duration. Due to a sickness, by expert decision No 4745 of 12 December 2006 Work Capability Assessment Commission assessed that the working capacity of the above named person was reduced by 80%, put forward a diagnosis of chronic ischemic heart disease and determined the contraindicated working conditions, but failed to recommend his job placement on another position. In connection with the above expert decision of Work Capability Assessment Commission received officially by the employer, the rector of the university offered to Prof. Dr. P. I. I, on his own initiative and without the opinion of the competent health authority on the need of rehabilitation, to reassign him to one of the following posts: accountant; informer (storing and distributing of keys for the university halls) or the post of a teacher with reduced annual number of classes and monthly salary, warning him that if he failed to comply with the time limit to notify the employer of the decision taken by the employee on the proposal or if he refused to occupy any of the proposed posts, his employment contract would be terminated. By Order No 5 of the rector of Varna Free University of 23 January 2007 the employment contract of Prof. Dr. P. I. I. is terminated on the grounds of Art. 325, section 9 of LC due to the refusal contained in letter having ref. No 119 / 22.01.2007 of the person to occupy the posts proposed by the employer and suitable for his health status. By final court decision, the dismissal is recognised as illegal and is revoked, and P. I. I has been restored to the position occupied before the dismissal. Based on this data, CPD has concluded that the defendant in the administrative proceedings, in his capacity as an employer from the time of acquisition of knowledge of the disputed expert decision of Work Capability Assessment Commission of 12 December 2006 by the date of issue of the order terminating the employment relationship with Prof. Dr. P. I. I, has violated the prohibition of discrimination, treating him unequally precisely because of his health status which has led to adverse effect for him - his deprivation over an extended period from the opportunity to exercise the selected profession and to benefit from it. The Commission has considered that the employer's actions on rehabilitation of the lecturer and his dismissal have violated PADA which aims to provide each person with the right of equality before the law and equal treatment (Art.2 et seq.). In the Commission opinion, the behaviour of the employer in this case contradicts the provisions of the revised European Social Charter ratified by law and promulgated in the State Gazette. It has estimated that the job informer proposed for rehabilitation does not respect the dignity of the lecturer in the higher school and is obviously humiliating, since the proposed post does not require special professional qualification and diametrically opposed to the qualifications of the person concerned, and the academic posts and academic degrees Professor and Doctor. It is accepted that, in violation of the substantive and procedural rules regulating the rehabilitation of employees, the employer has unequally treated Prof. Dr. P. I. I. within the meaning of § 1, section 7 of the Additional Provisions of PADA on the basis of his health status. Taking into account the distribution of the burden of proof according to Art.9 of PADA, the Commission has concluded that the

defendant has not provided any evidence to suggest that the right of equal treatment has not been violated in this case.

By issuing the decision appealed to the Supreme Administrative Court, CPD has upheld the appeal of Prof. Dr. P. I. I., having established that Prof. A. N., Doctor of Economic Sciences, rector of Varna Free University Chernorizets Hrabar has directly discriminated, in his capacity as an employer, within the meaning of Art. 4, para.2, in conjunction with § 1, section 7 of the Additional Provisions of PADA Prof. Dr. P. I. I., treating him unfavourably, and deciding, on his own initiative, to rehabilitate him without having been issued a prescription for his rehabilitation by a competent health authority according to the Ordinance on Rehabilitation which has led to unilateral termination of his employment relationship by Order No 5 / 23.01.2007 due to his health status. The actions on rehabilitation and dismissal are performed in violation of Art.18 of PADA, Art.8 of LC, and Art.15, section 2 and Art.27 of the revised European Social Charter. The Commission has imposed a fine of BGN 250 (two hundred and fifty leva) to the rector of the university and has provided him with mandatory prescription under Art.76, para.1, section 1 of PADA to comply with the rule of Art.18 of PADA and to take in cooperation with the trade unions effective measures to prevent all forms of discrimination in the educational institution and to restore the situation of equal treatment as regards Prof. Dr. P. I. I., irrespective of his health status.

Upon completion of the own motion of the administrative act under Art.168, para.1, in conjunction with Art.146 of APC the court finds the appeal against it unfounded. The decision is issued by a competent state authority in accordance with the powers conferred on it by law. As is apparent from the provision of Art.40 of PADA, the Commission for Protection against Discrimination is an independent specialised state authority for prevention of discrimination, protection against discrimination and ensuring equal opportunities. Being such an authority, it controls the implementation and compliance with this law or with other laws governing the equal treatment. Using its powers specified in Art. 47 of PADA, the Commission finds violations of this or of other laws governing the equal treatment, perpetrator of the offence and affected person. It rules on the prevention and cessation of the violation and on restoration of the initial situation, imposes the stipulated sanctions and coercive administrative measures, provides mandatory prescriptions on compliance with this law or with other laws governing the equal treatment, etc. These powers are exercised by CPD on an individual basis by virtue of its functions for protection against discrimination.

The proceedings against the Commission are specific and are conducted independently of the legal remedies for protection of violated rights provided for by other laws. Therefore, contrary to the allegation in the appeal on the Commission's ruling beyond its competence, the Court finds that the disputed decision which establishes direct discrimination by the employer against an employee in the exercise of the right to work, for which the employer is fined and is provided with a mandatory prescription, is issued by a competent administrative authority.

The administrative act is issued in the form provided for by law and in compliance with the administrative procedure rules. As is apparent from the conducted study, the authority has fully, objectively and comprehensively clarified the facts relevant to the case. The factual situation established by CPD is supported by the evidence and is therefore considered by this court panel as proven and consistent with the facts.

The decision sets out reasons justifying the legal result. The content of the act shows that CPD has verified and assessed the evidence on the file, as an aggregate, and has duly considered the parties' explanations and objections, ensuring their right to protection.

There is likewise no foundation for complaint that the Commission has substantially violated the procedure due to its ruling upon expiry of the time limit referred to in Art.63, para.3 of PADA. This provision provides for that CPD shall rule within fourteen days upon completion of the meeting.

This time limit is not of a peremptory character. It is indicative in nature and therefore its expiration does not preclude the authority's power to rule on the issue referred to it. The failure to comply with the time limit is not a significant procedural violation, since it does not affect the statement content and final legal result. Therefore, the ruling upon expiry of the time limit referred to in Art. 63, para.3 of PADA does not make the decision unlawful.

The appellant's argument that the administrative proceedings are inadmissible since the dispute concerning the dismissal of Prof. Dr. P. I. I. is examined and resolved by a Court is irrelevant. The main objection set out in the appeal is that the dismissal concerns fully an employment dispute which is settled by applying the appropriate legal procedure, and that the ruling of the Commission on the same dispute is devoid of purpose and beyond the scope of its competence. In this case, there is no identity between the dispute referred to the court on the lawfulness of the termination of the employment relationship and that subject to the proceedings against CPD. The Court finds that the negative procedural precondition for admissibility of the administrative proceedings referred to in Art. 52, para.2 of PADA does not exist. To rely on this precondition, complete identity between the dispute referred to the administrative body and that referred to the court must exist - i. e. an objective and subjective identity between the submitted claims (Art.27, para.2, section 6 and Art. 130, para.2 of APC). In this case only, the proceedings initiated to the Court constitute a de facto fact regarding the opportunity to conduct administrative proceedings between the same parties based on the same application and on the same ground. The comparison of the subject-matter of the case and that of the administrative file leads to the conclusion that such identity does not exist. The evidence in the case shows that there is no legal obstacle for CPD to rule on the application referred to it, since the court decision on the issue of the legality of the employer's activities on the rehabilitation and termination of the employment relationship in terms of the labour law does not derogate the Commission's competence to consider the employer's behaviour in the light of PADA on the presence or absence of unequal treatment against the dismissed employee. The procedure referred to in PADA applies to all cases of discrimination against all entities and is aimed at establishing and sanctioning the act of discrimination. The court decisions referred to by the applicant, i. e. the decisions on challenging the dismissal and rehabilitation of the employee issued by the Court, do not exclude the protection against discrimination sought based on PADA which does not overlap with the protection against unfair dismissal provided for by LC. The two types of protection have a different subject, intensity and legal effect. In this case, the Commission does not consider a labour dispute within the meaning of Section IV, Chapter XVI of LC, but ascertains whether the specific actions of the employer violate the prohibition of discrimination and monitors the compliance with the principle of equal treatment, as the applicant's arguments to the contrary do not find support by the law.

The verification of the lawfulness of the disputed decision shows that the substantive law is properly applied in accordance with the objectives set therein.

The provision of Art.4 of PADA prohibits any direct or indirect discrimination based on sex, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, belief, political affiliation, personal situation or social status, disability, age, sexual orientation, family status, financial situation or any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party.

The law seeks to identify and eliminate any unequal treatment based on the legally protected grounds which places individuals or a category of persons at a disadvantage compared to others in comparable and similar conditions. Within the meaning of the defined provision of § 1, section 7 of the Additional Provisions of PADA unfavourable treatment is any act, action or omission which affects directly or indirectly rights or legitimate interests.

The conclusions of the administrative authority on direct discrimination of the rector of Varna Free University against Prof. Dr. P. I. I. in his rehabilitation and subsequent dismissal, based solely on his health status are lawful.

The violation of the principle of equal treatment based on a protected ground is an objective fact which must be proven on a case-by-case basis. This case concerns the unilateral initiation of procedure for rehabilitation and termination on the part of the employer of the employment relationship with Prof. Dr. P. I. I. upon receipt of the expert decision of Work Capability Assessment Commission of 12 December 2006 which specifies that his working capacity is permanently reduced by 80%. In order to dismiss the lecturer employed under employment contract, the rector of the university has relied on the opportunity to terminate it due to the refusal of the employee to take the other nominated position offered to him as suitable because of his impossibility to perform

the job assigned to him due to an illness resulting in permanently reduced working capacity, or due to health contraindications (Art. 325, para.9 of LC).

It is clearly established in the file that the preconditions referred to in Art. 325, section 9 of LC used as a basis for the employee dismissal do not exist, since there is neither conclusion of the competent health authority which prohibits the person to occupy the position of lecturer in the university, nor evidence that he is unable to practice the profession of teacher for health reasons. There is no dispute that the employee is not rehabilitated within the meaning of LC and the regulations for its implementation.

The actual reason for application of Art.317 of LC and for termination of the employment relationship based on a discriminatory ground which cannot be bound by a real assessment of the employee's health fitness to perform the assigned job within the meaning of Art.325, section 9 of LC is relevant to the proceedings against CPD.

The exercise of the right to unilateral termination conferred on the employer without notice cannot be based on the health status, being an element of the person's personal situation, disability or any other ground referred to in Art.4, para.1 of PADA.

Pursuant to Art.18 of PADA and Art.8 of LC the employer shall respect the principle of equal treatment.

The documents in the case, as an aggregate, show less favourable treatment by the rector of the university in respect of Prof. Dr. P. I. I in connection with the fact that the employer has been provided with a medical expertise (certification) which shows that the employee's working capacity is reduced by 80%, disability period 1 December 2007 and contraindicated working conditions - highly labour-intensive work, physical and emotional stress and night work. The employer's actions on offering other positions to rehabilitate Prof. Dr. P. I. I. are performed on his own initiative, without receipt of the relevant prescription and request from the employee in this regard. After becoming aware of the employee's disability, the employer has created a prejudice that he cannot perform his duties under the employment contract. Contrary to the prohibition of discrimination, the health status of the person is used to remove him from office without the existence of the relevant substantive preconditions. The proposed positions which obviously seem to be inappropriate or unnecessary, with a view to his health status, adversely affect the person and show his unequal treatment on the basis of a ground protected by law.

The fact that the lecturer is removed from office upon receipt of the expert decision of Work Capability Assessment Commission is evidence of the fact that he is placed in a less favourable position only because of his health status. That is why, by accepting that the appellant is involved in direct discrimination against Prof. Dr. P. I. I and imposing a fine on him for violation of Art.4, para.2 of PADA, the Commission has properly applied the substantive law.

This court panel finds that the employer's actions on offering the employee rehabilitation and the unilateral termination of his employment contract due to his refusal to be reassigned to one of them result in discrimination in the form of harassment according to Art.5 of PADA. As is apparent from the legal definition laid down in § 1, section 1 of the Additional Provisions of PADA, harassment means any unwanted conduct based on the grounds referred to in Art. 4, para.1 expressed physically, verbally or otherwise with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

The behaviour of the employer arising from the fact of becoming aware of the expert decision of Work Capability Assessment Commission which reflects the health status of the employee is undoubtedly aimed at violating his authority and dignity and creating an offensive environment. Once the employer has become aware of the employee diagnosis and evaluation of his working capacity he has taken a number of actions against him aimed at his removal from office on the basis of his health status.

The Commission's assessment that the position of informer offered to Prof. Dr. P. I. I as suitable for his health status, which includes storing and distributing of keys for the university halls, does not seem to correspond to the education, qualification, scientific degree, title and teaching activities performed by him in the higher school is proper. The described actions of the employer show undesired, unfavourable and humiliating treatment of the employee which

constitutes harassment within the meaning of PADA. The very fact of offering the employee to be reassigned to another position or to the same one with significantly reduced number of classes and salary due to his health status without any justification and under the threat that the lecturer will be dismissed if he disagrees with the proposal is determining factor for creation of hostile, offensive and threatening environment and affects the dignity of the person.

The conclusions of CPD in this regard are not based on the internal subjective perception of the affected person, as claimed by the appellant, but are based on an objective assessment of the facts which requires a conclusion on the use of the elements of the facts referred to in Art. 5, in conjunction with Art.4 and § 1, section 1 of the Additional Provisions of PADA to be made. The allegation of unlawfulness of CPD decision, in particular of its part whereby the rector of the university, in his capacity as an employer, has been provided with mandatory prescriptions on the grounds of Art.76, para.1, section 1 of PADA is unfounded.

The above provision empowers CPD to apply CAM in order to prevent or terminate violations of this or of other laws governing the equal treatment and to prevent or to counter its harmful effects. The rule of Art.47, section 2 and section 4 of PADA shows that CPD is entitled to order restoration of the original situation and to give mandatory prescriptions for compliance with this law or with other laws governing the equal treatment. Taking into account the nature of violation of PADA, the specific measures prescribed by the administrative authority for compliance with the employer's obligation to prevent and avoid discrimination in the workplace and to restore the situation of equal treatment in terms of the discriminated person correspond to the substantive law and ensure the law purpose.

By imposing the disputed CAM on the offender, the Commission has promptly applied, within its competence, the provision of Art.76, para.1, section 1 of PADA.

In the light of the foregoing considerations, the Court considers that the contested decision is lawful. The appeal against it is unfounded and therefore it should be dismissed due to the lack of grounds for dismissal under Art.146 of APC.

In view of the outcome of the case at this stage and the request of the defendant's procedural representative for awarding litigation costs, such as the legal advisor fees, on the grounds of Art.78, para.4 of CCP, in conjunction with Art.144 of APC, in conjunction with Art.8 and Art. 7, para.1, section 4 of Ordinance 1 of 9 July 2004 on the minimum rates of attorney's fees, the appellant, Varna Free University Chernorizets Hrabar, should be ordered to pay to CPD a legal fee of BGN 150 (one hundred and fifty leva).

Given the above and on the basis of Art. 172, para.2 of APC, the Seventh Section of Supreme Administrative Court

DECIDED

TO REJECT the appeal filed by Varna Free University Chernorizets Hrabar on suspension of the preliminary enforcement of Decision No 163 / 13.07.2010 of the Commission for Protection against Discrimination rendered on case file No. 230/2009, in particular its part whereby Prof. Dr. A. N., Doctor of Economic Sciences, rector of Varna Free University Chernorizets Hrabar has imposed, in his capacity as an employer, a fine of BGN 250.

TO REJECT the appeal filed by Varna Free University Chernorizets Hrabar on suspension of the preliminary enforcement of Decision No 163 / 13.07.2010 of the Commission for Protection against Discrimination rendered on case file No. 230/2009, in particular its part whereby Prof. Dr. A. N., Doctor of Economic Sciences, rector of Varna Free University Chernorizets Hrabar, in his capacity as an employer, has been provided with mandatory prescription to comply with the rule of Art.18 of PADA and to take in cooperation with the trade unions effective measures to prevent all forms of discrimination in the educational institution and to restore the situation of equal treatment as regards Prof. Dr. P.

I. I., irrespective of his health status.

TO REJECT the appeal filed by Varna Free University Chernorizets Hrabar against Decision No 163 / 13.07.2010 of the Commission for Protection against Discrimination rendered on case file No 230/2009, in particular its part whereby, pursuant to Art. 47, para.11 of PADA, the Commission trade union leader in Varna Free University Chernorizets Hrabar is recommended to prevent, in his capacity as a representative of the university employees, any future violation of Art.18 of PADA, Art. 8 of LC, and the revised European Social Charter united rights.

TO TERMINATE administrative proceeding No 10544/2010 in this part.

TO REJECT the appeal filed by Varna Free University Chernorizets Hrabar against Decision No 163 / 13.07.2010 of the Commission for Protection against Discrimination rendered on case file No 230/2009, in particular its remaining part.

TO SENTENCE Varna Free University Chernorizets Hrabar to pay to the Commission for Protection against Discrimination the costs incurred in the case, in particular the legal advisor fee of BGN 150 (one hundred and fifty leva).

The decision may be appealed to a five-member panel of the Supreme Administrative Court, filing an appeal within 14 days of its communication to the parties and its part which has a nature of ruling - through submission of private appeal within 7 days.

Dissenting opinion:

O R D E R

No 1013

city of Sofia, 3 September 2015

In its closed session held on the eighteenth day of June, year two thousand and fifteenth, Fourth Civil Division of Supreme Court of Cassation (SCC) of the Republic of Bulgaria with the following members:

CHAIRPERSON: BOYKA STOILOVA
MEMBERS: MIMI FURNADZHIEVA
VELISLAV PAVKOV

heard the report of the judge Furnadzhieva on civil proceedings No 3074 as per the docket of Fourth Civil Division of the Court for the year 2015 and in order to rule took into account the following:

The proceedings are conducted according to the procedure laid down in Art.288 of the Code of Civil Procedure (CCP).

They are initiated based on appeal filed by T. H. R. residing in [locality], acting through his procedural representative F., R. and Partners Law Firm, against Decision No. 60 of 6 January 2015 rendered on civil proceedings No 14883 as per the docket of Sofia City Court for the year 2014 which confirms decision No III-87-117 of 25 July 2014 on civil proceedings No 12375 as per the docket of Sofia Regional Court for the year 2014 concerning the rejection of the claims brought by R. against [company name], with its headquarters and registered office in [locality], for cancellation of his dismissal, return to the position occupied before the dismissal, award of damages amounting to BGN 4,657.94 and for becoming unemployed due to the dismissal for the period 7 January - 7 July 2014. The appeal states that the decision is inaccurate based on all grounds of Art. 281, section 3 of the CCP. It is alleged that the appellate court has failed to discuss all arguments of the appellant set out in his appeal, for example the violation of the provision of Art.1, para.3 of the Labour Code (LC), contradiction between the dismissal and requirement for fairness and lack of verbal assessment in the contested order on the appellant's qualities. The appellant claims that Article 71 of LC is contrary to Art. 24 of the revised European Social Charter (ESC) and that the same provision is unconstitutional on the grounds of Art. 5, para.4 of the Constitution of the Republic of Bulgaria since it is in contradiction with Art.4, § 4 and Art.24 of the

revised ESC. According to the practice of the European Committee of Social Rights, a probationary period of 6 months is obviously unreasonable period to apply the exclusion from protection referred to in Art. 24, § 2 (b) (b) of the annex to the revised ESC and does not meet the conditions referred to in the same. The appellant also claims that in 2012, the European Committee of Social Rights made a conclusion on Bulgaria periodic report, finding that the employees in Bulgaria are not entitled to protection against dismissal in the six-month probationary period which is not in line with Art.24 of the revised ESC. It is pointed out that Article 71 of LC also contradicts Art. 4, § 4 of the revised ESC, since according to the decision of the European Committee of Social Rights the right of all employees to a reasonable period of notice in the event of dismissal applies to all categories of employees, irrespective of their status, and to probationary employees. The statement of the reasons for admission of appeal in cassation contains a request for its admission on the basis of Art.280, para.1, sections 1 and 3 of CCP.

The defendant [company name], having its headquarters and registered office in [locality], does not take a position on the appeal.

By the contested decision, the Court accepts that the revised European Social Charter is ratified by the Republic of Bulgaria by an Act ratifying the revised ESC of 2000 and the annex to the Charter specifies that any contracting party may exclude from the total or partial protection referred to in Art.24 several categories of employees, including probationary employees or trainees, provided that the exclusion has been agreed in advance and has a reasonable duration. Therefore, the Court concludes that the Charter confers to the states which have ratified it the right to decide how to arrange the opportunity to restrict the scope of its prescriptions in accordance with the national traditions and practices. In this sense, Article 70 of LC specifies special type of employment contracts in view of the particular purpose of their conclusion - verification of the employee's fitness to do his job. It is considered that if the employee believes that the agreed duration of the probationary period is unreasonable, he could have requested for conclusion of a shorter term labour contract or could have disagreed with the signing of the contract with six-month probationary period. The SCC pays attention to its mandatory practice according to which the employer's assessment of the employee's fitness to do his job is not subject to judicial review and therefore there is no need to state reasons for termination of the legal relation. In addition, the provision of Art.30 of the Charter is not found to be in violation with the national legislation, since the specific arrangement of certain type of employment relationships contained in the domestic law of the Member States may be different, depending on the specifics and concepts of their national law.

The SCC considers that the appellant's request to terminate the proceedings and to refer to the Constitutional Court the issue of establishing the unconstitutionality of the provision of Art.71 of LC due to its contradiction with Art.4, § 4 and Art. 24 of the revised European Social Charter is unfounded, since the first wording provides for relations other than the disputed ones (Art. 4 of Part II of the revised ESC concerns the right to equitable remuneration based on which the requirement referred to in section 4 for recognition of the right of all employees to a reasonable period of notice in the event of dismissal is created) and the rules of Art. 24 of the Charter should take into account those of the Annex thereto regarding its scope, and in particular those affecting Art.24 which give an opportunity to the contracting parties to arrange different rules on the protection of certain categories of employees, including probation employees.

The SCC finds that the legal issues put forward by the appellant do not justify the admission of the appeal in cassation.

As regards the first of the raised issues, namely: the obligation of the appellate court to discuss all arguments and objections of the parties and to give reasons why it considers them to be unfounded, it must be held that the issue referred is not the determining factor in the outcome of the dispute, although both the appellate court and court of first instance have not set out considerations on the arguments of the appellant, in his capacity as a claimant, for violating the principle of justice enshrined in Art.1, para.3 of LC in his dismissal. That is because, as indicated in the application, the alleged allegations of violation of the above wording concern the fact that the applicant has had no opportunity to be informed by the employer whether and why he does not

meet his expectations and job requirements, claiming that if the claimant have had such information, he would do his utmost to pay attention to and to eliminate his weakness or omission indicated by his employer. On this basis, it is concluded that in the absence of any mechanisms enabling the assessment of the employer's performance, it is not fair to dismiss the claimant without any reason and without giving him an opportunity to comply with the employer's expectations, if there was any discrepancy. Thus motivated, the considerations show that the appellant actually states that there is a gap in the law in terms of the employer's need to state in detail requirements for performance of the respective job and to inform on a periodic basis the employee on the probation period, methods to do the job, and level of satisfaction of the employer's requirements in this regard.

Since these considerations have no direct connection with the disputed dismissal in its specific applicable legal regime, the violation of the proceedings made by the appellate court, i.e. its failure to rule on an argument promptly indicated by the party in its appeal, is not a determining factor in the outcome of the dispute, and therefore does not lead to leave to appeal in cassation.

Secondly, the appellant asks whether the provisions of Art. 70 and Art.71 of LC contradict the revised European Social Charter, in particular the provision of Art. 24, whether the conclusions on the protection referred to in Art. 24 (b) (b) of the Annex to the revised ESC are applicable and whether in the conclusion of the employment contract the employee's consent to the clause concerning the probationary period is relevant to the answer of the above two questions. As regards the issue raised, the Court of Cassation considers that the provisions in question of the Bulgarian legislation should comply with the overall context of the revised ESC. Thus, Art.24 of Part II of the Charter accepts the right to protection in case of early termination of employment and the contracting parties undertake to recognise the right of all employees not to be dismissed without good reason related to their abilities and behaviour or based on the current requirements of the undertaking, institution or service.

Undoubtedly, Bulgaria is bound by Art.24 of the revised ESC. This is apparent from the Act ratifying it of 2000. However, according to the explanation of the scope of the Charter with regard to the protected persons given in the Annex thereto, Art.24 of the Charter explicitly states that this applies to all employees, and that each contracting party may exclude from its total or partial protection probationary employees provided that such exclusion has been agreed in advance and has a reasonable duration ((b) b)). It is not disputed that the type of legal relations in question relates to condition stipulated in advance in the contract and that the reasonable duration of the verification of the employee's employability for the various types of work is different, as the LC provides for probationary period of up to six months precisely in accordance with the provision of Art. 1, § 1, part V of the Charter. Finally, the reasonable duration of the six-month probationary period within the meaning of the rules laid down in the Charter should be assessed taking into account the characteristics of the relevant job, rather than the appellant's assertion that the agreed probationary period applicable to his job is unreasonable.

In these circumstances, the answer to the question of the significance of the employee's consent to the conclusion of a labour contract containing probationary period clause is irrelevant. It should also be noted that the conclusion of the European Commission of Social Rights on 2012 periodic report of Bulgaria that six-month probationary employees are not protected from dismissal according to Art. 24 of the Charter should result in the acceptance on the part of the state of appropriate measures within the meaning of Art. 1, part V of the Charter rather than in recognition of the dismissal as unlawful in the presence of agreed six-month probationary period in favour of the employer.

Motivated by the above, the Fourth Civil Division of Supreme Court of Cassation

R U L E D:

that it will NOT ALLOW appeal in cassation of Decision 60 of 6 January 2015 rendered on civil case No 14883 as per the docket of Sofia City Court for the year 2014 TO BE BROUGHT.

CHAIRPERSON:

MEMBERS: