Strasbourg, 22 December 2017

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EUROPEAN SOCIAL CHARTER
GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS 2016 OF THE EUROPEAN SOCIAL CHARTER (revised)

(Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Estonia, Finland, France, Georgia, Ireland, Italy, Latvia, Malta, Republic of Moldova, Montenegro, Portugal, "the former Yugoslav Republic of Macedonia", Romania, Russian Federation, Serbia, Slovak Republic, Turkey, Ukraine)

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

Written information submitted by States on Conclusions of non-conformity is the responsibility of the States concerned and was not examined by the Governmental Committee. This information remains either in English or French, as provided by the States.

[1] The detailed report and the abridged report are available on www.coe.int/socialcharter.

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I. INTRODUCTION

1. This report is submitted by the Governmental Committee of the European Social Charter and the European Code of Social Security (hereafter "The Governmental Committee") made up of delegates of each of the forty-three states bound by the European Social Charter or the European Social Charter (revised)[2]. The Governmental Committee regretted that no Albanian delegate attended its meetings since May 2015. Representatives of the European Trade Union Confederation (ETUC) and Representatives of the International Organisation of Employers (IOE) attended the meetings of the Governmental Committee in a consultative capacity.

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

3. The supervision of the application of the European Social Charter is based on an examination of the national reports submitted at regular intervals by the States Parties. According to Article 23 of the Charter, the Party "shall communicate copies of its reports […] to such of its national organisations as are members of the international organisations of employers and trade unions". Reports are made public on www.coe.int/socialcharter.

4. Responsibility for the examination of state compliance with the Charter lies with the European Committee of Social Rights (Article 25 of the Charter), whose decisions are set out in a volume of "Conclusions". On the basis of these conclusions and its oral examination, during the meetings, of the follow-up given by the States, the Governmental Committee (Article 27 of the Charter) draws up a report to the Committee of Ministers which may "make to each Contracting Party any necessary recommendations" (Article 29 of the Charter).

5. In accordance with Article 21 of the Charter, the national reports to be submitted in application of the European Social Charter concerned Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, "the former Yugoslav republic of Macedonia", Turkey and Ukraine. Reports were due by 31 October 2015. The Governmental Committee recalls that it attaches a great importance to the respect of the deadline by the States Parties.

6. Conclusions 2016 of the European Committee of Social Rights were adopted in December 2016 (as regard Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, "the former Yugoslav republic of Macedonia", Turkey and Ukraine). In the absence of a report for the fourth time in a row, once again no conclusions were adopted in respect of Albania.

[2] List of the States Parties on 1 December 2017: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

7. The Governmental Committee took note that no further ratification has been done in the last reporting cycle. It congratulated the Kingdom of Netherlands for Aruba, Curaçao and Sint Maarten, that withdrew its reservation made with respect to Article 6§4, of the European Social Charter and also welcomed the acceptance by Ukraine of additional provisions namely paragraphs 3 and 4 of Article 12 of the Revised Charter.

8. The Governmental Committee held two meetings in 2017 (135th Meeting on 15-19 May 2017, 136th Meeting on 25-29 September 2017) with Mr Joseph FABER (Vice Chair-Luxembourg) in the Chair. In accordance with its Rules of Procedure, the Governmental Committee at its autumn meeting elected Mr Joseph FABER (Luxembourg) as its Chair. It also elected a new Bureau, which is composed of 4 Members: Ms Karolina KIRINCIC ANDRITSOU (1st Vice-Chair, Greece), Ms Odete SEVERINO (2nd Vice-Chair, Portugal), Ms Natalia POPOVA (Ukraine) and Ms Cristel VAN TILBURG (Netherlands). The Chair and the Bureau were elected for a two year period starting on 1 January 2018.

9. The Governmental Committee took note of the current priorities with respect to the Turin Process, which notably refer to:

- The organisation of high-level meetings in the member States with a view to promoting a greater acceptance of the Charter's treaty system;
- The opinion of the Secretary General on the European Union Pillar of Social Rights;
- The need for more synergies and coordination between European Union law and the European Social Charter;
- The possible organisation of events concerning the Charter and the Turin process objectives in the framework of the forthcoming Chairmanships of the Committee of Ministers;

10. The Governmental Committee took note of the initiative undertaken in 2017 with respect to the Turin Process. A Conference has been organised on 24 February in Nicosia (Cyprus), in the framework of the Cypriot Chairmanship of the Committee of Ministers of the Council of Europe, to debate on the role of domestic and European Courts to safeguard social rights in Europe.

11. Following a request from the Committee of Ministers the Governmental Committee on 15 September 2017 adopted an Opinion on the PACE recommendation 2112 (2007) "The Turin Process: reinforcing social rights".

12. The state of signatures and ratifications on 1 December 2017 appears in Appendix I to the present report.

II. EXAMINATION OF CONCLUSIONS 2016 OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

13. The abridged report for the Committee of Ministers only contains summaries of discussions concerning national situations in the eventuality that the Governmental Committee proposes that the Committee of Ministers adopt a recommendation or renew a recommendation. In the current supervisory cycle was made a proposal for a recommendation to Turkey on Article1§2 (see text in appendix VI). The detailed report is available on www.coe.int/socialcharter.

14. The Governmental Committee applied the rules of procedure adopted at its 134th meeting (26 – 30 September 2016). According to the decision taken by the Committee of

Ministers at its 1196th meeting on 2 April 2014, the Governmental Committee debated orally only the Conclusions of non-conformity as selected by the European Committee of Social Rights.

15. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix III to the present report. The detailed report which may be consulted at www.coe.int/socialcharter contains more extensive information regarding the cases of non-conformity.

16. The Governmental Committee also took note of the Conclusions deferred for lack of information or because of questions asked for the first time, and invited the States concerned to supply the relevant information in the next report (see Appendix IV to the present report for a list of these Conclusions).

17. During its examination, the Governmental Committee took note of important positive developments in several State Parties, as also listed by the European Committee of Social Rights 2016 Activity Report. (See Appendix V to the present report).

18. The Governmental Committee asked Governments to continue their efforts with a view to ensuring compliance with the European Social Charter and urged them to take into consideration any previous Recommendations adopted by the Committee of Ministers. It adopted the warnings set out in Appendix VI to this report.

19. The Governmental Committee was informed of the 2016 findings of the European Committee of Social Rights on the follow-up to decisions on collective complaints with respect to 5 States (Netherlands, Sweden, Norway, Slovenia and Cyprus) and concerned a total of 8 decisions on the merits and a total of 21 violations. After an exchange of views the Governmental Committee welcomed the 2016 findings and agreed that reflection should continue with the European Committee of Social Rights with a view to improving the reporting system; it also encouraged the Secretariat to continue to organise training and awareness-raising activities on the complaints procedure aimed at those organisations which are potential users of the procedure.

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

> ***Resolution on the implementation of the European Social Charter during the period 2011-2014 (Conclusions 2016), provisions related to the thematic group "Employment, training and equal opportunities"***
>
> *(Adopted by the Committee of Ministers on ....*
> *at the .... meeting of the Ministers' Deputies)*
>
> *The Committee of Ministers,*[3]
> *Referring to the European Social Charter, in particular to the provisions of Part IV thereof;*

[3] At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those states which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter". The states having ratified the European Social Charter or the European Social Charter (revised) are (1 December 2016):
Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

Having regard to Article 29 of the Charter;

Considering the reports on the European Social Charter submitted by the Governments of Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, "the former Yugoslav republic of Macedonia", Turkey and Ukraine;

Considering Conclusions 2016 of the European Committee of Social Rights appointed under Article 25 of the Charter;

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

Recommends that governments take account, in an appropriate manner, of all the various observations made in the Conclusions 2016 of the European Committee of Social Rights and in the report of the Governmental Committee.

21. With this Resolution, the Committee proposes that the Committee of Ministers adopts the following Recommendation in respect of Turkey Article 1, paragraph 2.

Recommendation xxx

on the application of the European Social Charter (revised) during the period 2011-2014

(Conclusions 2016, thematic group 'employment, training and equal opportunities'- Turkey - Article 1, paragraph 2)

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

The Committee of Ministers[4],

Having regard to the European Social Charter (revised), in particular Part IV thereof;

Whereas the European Social Charter (revised), signed in Strasbourg on 3 May 1996, came into force on 27 June 2007 with respect to Turkey and whereas, in accordance with Article A Part III, Turkey has accepted 91 of the 98 paragraphs contained in the revised Charter;

Whereas the Government of Turkey submitted in 2016 its 8th report on the application of the revised Charter, and whereas this report has been examined in accordance, pursuant to Article C of the revised Charter, with Articles 24 to 27 of the 1961 Charter as amended by the Amending Protocol of 1991;
Having examined Conclusions 2016 of the European Committee of Social Rights, established under Article 25 of the Charter, and the report of the Governmental Committee, established under Article 27 of the Charter;

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

Having noted that the European Committee of Social Rights had concluded that the situation in Turkey is not in conformity with Article 1, paragraph 2 of the revised Charter on the ground that the Martial Law No. 1402/1971 does not adequately protect local government officials and employees;

Following the proposal made by the Governmental Committee;

Recommends that the Government of Turkey takes account, in an appropriate manner, of the conclusion of the European Committee of Social Rights and requests that it provide information in its next report on the measures it has taken to bring the situation into conformity with the Charter.

22. Summary of the Committee discussion on Article 1§2 Turkey

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

(…)

- the Martial Law No.1402/1971 does not adequately protect local government officials and employees.

135th Governmental Committee Meeting (15-19 May 2017)

Fourth ground of non-conformity

The representative of Turkey informed the Committee that following the constitutional referendum held on 16 April 2017, Article 122 of the Constitution on martial law would be removed in 2019, which meant that martial law would be abolished.

She pointed out that Turkey was carrying out reforms in recent years in all areas of life. At the same time, it was fighting terrorism. In this context, all amendments to the legislation should take into account the specific conditions of the country and the related international documents. Following the military coup attempt of 15 July 2016 which targeted democratic institutions and citizens, a state of emergency was declared throughout Turkey on 21 July 2016. The representative of Turkey underlined that the state of emergency did not affect the daily life of citizens or visitors to Turkey and did not include restrictions on fundamental rights and freedoms.

As more than 10,000 civil servants participated in the coup attempt, some of them had to be dismissed. Dismissal decisions could be challenged at crisis centers in each province. On 23 January 2017, the Investigation Commission on State of Emergency Procedures was established to consider applications linked to the state of emergency rulings, in particular the removal or dismissal from public services and educational institutions, as well as the dissolution of organisations. The Commission would act as a court. Its mandate was two years. With this new regulation, persons whose complaint was found to be unjustified would also have the right to appeal to national legal institutions and then to international legal institutions. About 20,000 people who seized crisis centers or the Commission have returned to their positions.

In response to the question raised by the Chair, the representative of Turkey confirmed that more than 100,000 civil servants were dismissed further to the introduction of the state of emergency. They were all submitted to the Investigation Commission.

The representative of ETUC observed that at the end of 2016 available figures show that more than 125,000 civil servants were targeted and more than 92,000 were subject to legal measures. He also noted that, in the past, Turkey has received 3 warnings on the same ground, namely martial law. Now, when this law has actually been applied and given the gravity of the situation, the Committee should apply its working methods and proceed to vote on recommendation or warning.

Representatives of several States, as Austria, Belgium, Greece, Denmark, the Netherlands, Armenia, United Kingdom and Spain supported this proposal.

The result of the vote on a recommendation was the following: 20 votes in favour, 4 against and 6 abstentions. As a result of voting, the recommendation was carried[5].

136th Governmental Committee meeting (25-29 September 2017)

Monday 25 September

The Secretariat indicated that during the May meeting of the GC, a vote on a proposal for a recommendation took place: 20 votes were in favour, 4 against and 6 abstentions. The Committee considered that the proposal for a Recommendation was carried. However, according to the rules of procedure of the GC, 2/3 of the votes cast with a simple majority of the States parties are needed to carry a recommendation, i.e. a minimum of 22 votes in favour out of the 43 member states. Consequently, the proposal for a recommendation was not carried. During the adoption of the Report of the May meeting, the Secretariat invited the GC to decide how to proceed.

The Chair recalled that the conclusion under Article 1§2 comprises several grounds of non-conformity namely the right to protection against discrimination in employment, the upper limits on the amount of compensation that may be awarded in discrimination cases and the restrictions on access of nationals of other States Parties to several categories of employment, and the Martial Law of 1971 which does not adequately protect local government officials or employees. He underlined that this last point was the subject of the discussions during the May meeting, and that the proposal for a recommendation concerned this last ground only. He invited the GC to decide whether to vote again or not on the recommendation.

The representative of France emphasised that three warnings had already been adopted against Turkey on the same ground. She proposed to vote firstly on a recommendation and, in case it is not carried, on a warning.

The representative of the Netherlands supported this proposal and suggested to postpone the vote to Wednesday 27 September to allow all delegations to be prepared.

The representative of ETUC, in line with representatives of the Netherlands and France, invited the GC to apply its working methods, i.e. to vote first on a recommendation and if appropriate on a warning. He underlined that, in the current situation in Turkey, numerous emergency laws had been applied since July 2016 which have led to the dismissals of 100 000 persons.

[5] Note by the Secretariat: when drafting this meeting report, the Secretariat noted that, as a result of voting, the two-thirds majority of votes cast and a simple majority of the Parties were not reached (Article 16 GC rule of procedure). Therefore, it invites the GC to reflect and deal with this issue at the next 136th GC meeting.

The representative of Turkey invited the GC not to misunderstand the situation: the ground of non-conformity focused on a Law dated of 1971, related to Article 122 of the Turkish Constitution. A referendum was held on 16 April 2017 resulting in the repeal of Article 122 of the Constitution. Furthermore, the Turkish delegate indicated that the Law had not been applied since 1987. On the other hand, she emphasized that the state of emergency, referred to by the ETUC, was declared pursuant to Article 120 and 121 of the Constitution. Consequently, the Turkish representative considered that if the GC takes the state of emergency into consideration, it would not decide on this particular case of non-conformity, but would take a political decision regarding the dismissals occurring during the state of emergency.

The Chair concluded that the decision would be taken on Wednesday. He invited the representatives to read again the conclusion regarding Article 1§2 on Turkey, and he invited the Turkish delegate to explain, in particular, on which ground the 100 000 officials were dismissed following the establishment of the state of emergency.

Wednesday 27 September

The Chair indicated that there had been repetitive conclusions of non-conformity since 2002 and the GC adopted three consecutive warnings (in respect of Conclusions XVII-1 (2004), Conclusions XVIII-1 (2006) and Conclusions XIX-1 (2008)) on this specific ground.

The representative of Turkey underlined the difference between the case of the martial law and the one of the state of emergency. He criticized the reference made during the debate concerning dismissals of civil servants as these events occurred in the framework of the state of emergency and not of the martial law, only the latter being the subject of the conclusion and therefore the discussion within the GC. He specified however that the state of emergency is in accordance with Article 15 of the ECHR.

The representative of ETUC accepted that the ground of non-conformity related to the Martial Law of 1971. He stressed that the repeal of the Martial Law would take place only in November 2019, outside the reference period. This means that the situation which lead to the ground of non-conformity is still valid since the Martial Law is currently applicable. In response to the representative of Turkey, the representative of ETUC accepted that the state of emergency happened outside the reference period. He confirmed that the ETUC condemned the tentative coup d'Etat in Turkey but stressed his criticism in relation to the situation of dismissed civil servants and employees. He emphasized that there was a similarity between the legislation relating to the state of emergency and the Martial Law, since both do not provide for sufficient protection of civil servants and employees. More than 100 000 people have been dismissed, or suspended from their functions or even arrested. ETUC is collaborating with ITUC to support colleagues in Turkey in the trial cases under preparation they have. An investigation commission was established to study the way the concerned people can defend their rights. He expressed the doubts of ETUC and ITUC about the effectiveness and the impartiality of the Commission. He recalled that a fund for legal aid had been established by international, European and national trade union movements to ensure the rights of the colleagues that have been dismissed or suspended. He invited the GC to apply its working methods.

The representative of Sweden asked for clarification about the ground on which dismissals were made. In reply, the representative of Turkey repeated that the issue at stake in the conclusion is the existence of a martial law which has not been applied since 1987 and will be removed in 2019 and that the dismissals mentioned in the discussion were made under

a different legislation i.e. the state of emergency. The two types of legislation are based on different provisions of the Constitution

The Turkish delegate argued that the Committee should discuss the situation of dismissals under a legislation different from the Martial Law in the next report period. In reply to the comments of the representative of ETUC, he said that the Inquiry Commission on the State of Emergency Measures was established in January 2017, and was regarded as a competent authority by the Council of Europe for the dismissals of officials from the public offices. He added that the applications made to ECtHR concerning dismissals were found inadmissible due to non-exhaustion of domestic remedies, and stressed that the commission was working effectively. He referred to the recent visit of the senior Council of Europe delegation to Turkey on 7-8 September 2017 and continuing dialogue and close cooperation between Turkey and the Council of Europe. He underlined that the GC needed to take informed decision which was important for its accountability.

The representative of the United Kingdom, in line with the ETUC representative, invited to focus on the reference period, and recalled that, during the May meeting, the Turkish delegate brought up the state of emergency as relevant information to the case, before any other delegates spoke about it.

The representatives of France and the Netherlands, in line with the representatives of the United Kingdom and ETUC, would like to focus on the situation of the reference period. They also invited the GC to take into account the positive and negative developments and to vote on a recommendation.

The Secretariat confirmed that the GC usually considers positive and negative developments during its discussions. Reference was made, for example, to the discussion of the case of Estonia, Article 15§3, were the Committee considered as a positive development the intention of the authorities to repeal the legislation at stake in 2019.

The representative of Austria aligned herself to the representatives of France and the United Kingdom, and ETUC. She emphasized a more legal point of view by comparing the situation with the case of Estonia, which was similar, and encouraged the GC to be as critical. She proposed to proceed to the vote.

The representative of Sweden proposed to the GC to send a message to the Turkish authorities independently to express their concern on the current situation in Turkey.

The Secretariat asked for confirmation on whether the date of the 3rd November 2019 corresponds to an intention of the Turkish Parliament to formally repeal the martial law, or to the entry into force of a decision that has already been taken.

The representative of Turkey recalled that the new constitution which includes the automatic repeal of the martial law will enter into force on 3 November 2019.

The representative of the United Kingdom expressed his concern about the current situation in Turkey and the protection of workers, especially civil servants. Together with the representatives of Austria he asked for more information regarding the protection of workers during the reference period and after.

The representative of Turkey indicated that she will provide all relevant information like the protection of workers against discrimination, the new institution called human rights and equality commission, and relevant articles in the next report. She insisted on the fact that regarding the ground of non-conformity based on the reference period, the abolition of the Martial law will enter into force on 3rd November 2019. This should constitute a positive development.

The Secretariat recalled that the GC observes the same voting rules as the Committee of Ministers, namely a 2/3rd majority of votes cast, and a simple majority of the Parties. When the vote on a recommendation is not carried, the Committee should vote on a warning. When voting on a warning the Committee should vote on the basis of a 2/3rd majority votes cast.

The Committee proceeded to a vote. The recommendation was carried with 27 votes in favour, 2 against and 5 abstentions.

III. EXAMINATION ARTICLE BY ARTICLE[6]

REVISED EUROPEAN SOCIAL CHARTER

Article 1§1 - Policy of full employment

RESC 1§1 BOSNIA AND HERZEGOVINA

135 meeting

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

1. The Secretariat said that the situation was not in conformity since 2012.

2. Due to the absence of the representative of Bosnia and Herzegovina, the GC decided to deal with this situation of non-conformity at its 136th meeting.

136 meeting

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

3. The representative of Bosnia and Herzegovina provided the following information:

The main documents in the field of employment of Bosnia and Herzegovina are a) The Employment Strategy 2010-2014 of Bosnia and Herzegovina and b) employment strategies of the entities (Federation of Bosnia and Herzegovina and The Republic of Srpska). Also, the document called „Disability Policy in Bosnia and Herzegovina" was adopted, in order to provide better job opportunities to people with disabilities.

Since the Committee requested once again the information on the targeting and monitoring of the labour marker measures, the additional explanation to the National report is as follows:
Starting from 2006, in order to obtain internationally comparable data on the labour market, statistical institutions in Bosnia and Herzegovina, such are The Statistic Agency, The Federation Institute of Statistic and The Republic of Srpska's Institute of Statistic, began to carry out the labour force survey on a yearly basis based on the regulations of the International Labour Organisation and Eurostat.

In the Republic of Srpska, the main strategic documents are the Economic Policy of The Republic of Srpska's Government, and the Employment Strategy of 2011-2015. One of the target measurements from the Strategy is so called „Subsidies for employers to create new jobs".

When financial capacity of the implementation on active labour market measures is concerned, the measures of the entities and the District of Brčko are carried out from the Governmental entity budgets and the budget of the District. Some of the measures have been implemented in cooperation with social partners. For example, in the District of Brčko, the first practical steps were taken in 2010. through the youth employability and retention programme in Bosnia and Herzegovina, which was funded by the Government of the Kingdom of Spain in cooperation with United Nations. In 2011 the Centre for Information, counselling and training was open and it started operating by organizing workshops and motivational seminars. These workshops were attended by a significant number of people, but unfortunately, the number of attendants is decreasing because

[6] State Parties in English alphabetic order.

the employment institute cannot provide them a proper working space much needed for larger groups of people.

When it comes to the Federation of Bosnia and Herzegovina, it also adopted the Strategy for Strengthening the mediation, function of the public employment services in the Federation. Its labour market measurement implementation is expected in the coming period up to 2020 depending on strategic activities described in the framework Action plan. Some of them are:

- *To introduce a new organisation of work in the public employment services and to propose a future organisation of work based on:*
  - *• delineation of employment officer and IT jobs from counselling services and mediation services;*
  - *• introducing methods of group information and quickly identification of needs of individuals before individual counselling, which will reduce the time required to perform individual interviews;*
  - *• establishment of supporting IT tools, which will reduce the pressure on the physical form" of information and counselling;*
  - *• introduction of permanent forms of job fairs and other forms of mutual contracts between employers and active job seekers.*

4. The representative of Ukraine in line with the Chair proposed to take note of the information provided by the representative of Bosnia and Herzegovina, and inviting the authorities of Bosnia and Herzegovina to provide all detailed information in the next report.

5. The GC agreed on this proposal and decided to wait for the next assessment.

RESC 1§1 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

6. The Secretariat said that the situation was not in conformity since 2012.

7. The representative of Georgia underlined that matters related to employment formed the most acute social and economic problem for the Government of Georgia. Youth unemployment was particular worrying thus being a threat for the future of the country.

8. To address the challenge, the Government of Georgia took a number of decisions at the policy and legislative level. At the policy level the development and implementation of an active policy in the field of employment was undertaken. This included the development of the labor market infrastructure, the maintenance of the labor force supply-demand balance, vocational trainings for the unemployed as well as encouraging of employment for the less competitive workforce.

9. At the legislative level a number of initiatives were taken as part of a 2013 – 2014 action plan. Amendments to the Labor Code were made, a law on labor migration adopted, a labor mediation mechanism implemented and the tripartite social partnership renewed.

10. In summary, the representative of Georgia said that her Government intended to address the issues regarding fundamental labor standards and employment as well as to bring the labor laws into compliance with international labor conventions and best practices.

11. In reply to question from the representative of the European Trade Union Confederation (ETUC), the representative of Georgia said the labor reforms started back in 2006.

12. The GC took note of the information and explanations provided and invited the Government of Georgia to include all the necessary information into the next report. The GC decided to await the ECSR's next assessment.

RESC 1§1 ITALY

The Committee concluded that the situation in Italy was not in conformity with Article 1§1 of the Charter on the ground that it had not been established that employment policy efforts had been adequate in combating unemployment and promoting job creation (Conclusions 2012).

13. The representative of Italy provided the following information:

In the Conclusions 2016 the European Committee of Social Rights reiterated the case of non-compliance of the Italian situation with respect to the provisions of the revised European Social Charter with reference to Article 1§1 that invites the signatory Governments to "recognize, among themselves main goals and responsibilities, the achievement and maintenance of the highest and most stable level of employment possible with a view to achieving full employment". The reason for the non-compliance of the Italian situation with article 1§1 is that the efforts pursued in the field of employment policies are not sufficient to fight unemployment and support the creation of employment.

In making this conclusion, the Committee, while considering the information received on the effectiveness of employment interventions implemented in the period 2011-2014, highlights the low impact of those interventions on the unemployment rate.

Compared to the trends represented in the Italian National Report 2015, the Italian labour market is gradually improving presenting a trend reversal, for many of the key variables, with respect to the situation recorded at the end of 2013.

In the same time frame the Italian labour market Institutions have been subject to an extensive reform resulting by the implementation of the so-called "Jobs Act", that was launched at the end of 2014. The Labour Reform introduced among others: the revision and re-organization of work contracts establishing the open end work contract with increasing protection and abolishing the most precarious forms of work; and the revision of social shock absorbers both in the case of involuntary unemployment and at the workplace. The Labour market reform is based on a new balance between passive income support policies and active labour market policies. The latter are aimed at the concrete re-integration of the unemployed in the labour market, also through personalized training pathways to acquire new skills.

Legislative Decree n° 148/2015 on social shock absorbers has reformed the system of passive labour market policies by restricting access requirements to shock absorbers by the side of businesses and by limiting the range of shock absorbers themselves. In this way the resources originally intended for income support policies have been released. The legislator in his autonomy has focused those financial resources on the implementation of active labour market policies and on the introduction of tax incentives for new hiring with the new open-end work contract with increasing protections (differentiated in terms of eligibility and amount) over the three-year period 2015-2017. The employment incentive provided by the Stability Law for 2015, consisting of a three-year contribution allowance, has helped stabilize the labour market by creating new jobs and transforming precarious contracts into open-end and fixed-term work contracts.

The following Government's actions have also to be highlighted for the effects they may have on employment in terms of quality:

a) *the **measures taken by the Government to support women's work** aiming to promote not only their entry into the labour market but also their staying after the maternity event. The 'Jobs Act' has expanded the re-conciliation measures and strengthened the protection of those who resign (against the practice of "blank resignation"). Law n° 81/2017, so-called "Jobs Act of self-employed", extended to self-employed workers the maternity allowance already provided for dependent workers. The maternity allowance is recognized regardless of the effective abstinence from work of the self-employed mothers. The period of parental leave increased from three to six months. In addition, vouchers for kindergartens and baby-sitting services were introduced in 2015 to encourage the return to work of mothers (extended until the end of 2018) by allowing the working mother, even autonomous, to ask for the replacement of parental leave (even partial) with an economic contribution (voucher). As foreseen in the Budget Law for 2017 a Decree of the Council Presidency (Feb 2017) established the rules for the provision of the annual voucher of 1000 EUR for the attendance of public/private nurseries. Measures to promote the culture of equality between women and men include compulsory paternity leave for dependent fathers, even adoptive or entrusted. There are two days of compulsory parental leave combined with two days for optional leave already provided by law (in both cases the allowance is equal to 100% of remuneration).*

b) ***innovation in second tier bargaining** aimed at a more effective collaboration in companies between employers and employees in order to increase employees incomes while increasing competitiveness of companies (thanks to the tax benefits associated with productivity awards). The measures for employment levels increase are also at the basis of the Government policies to stimulate growth and productivity. In this context, **the Government considers the role of second level wage bargaining as fundamental to be further enhanced by more targeted interventions in the field of corporate welfare**. The Stability Act for 2016 addresses wages by making important changes to Article 51 of the Act on revenues (TUIR) with the aim of facilitating the offer to workers of benefits/ services for social purposes. The **principle of the replacement between cash and goods/services is fixed under specific conditions.** According to this the worker/employee can now choose between the offering of goods and services or the productivity remuneration (award). In April 2017, **20,908 corporate and territorial contracts** for the reduction of taxation on productivity awards were already filed by the Ministry of Labour and Social Policies. Among these: 16,335 aim to achieve productivity goals; 12,159 aim at greater profitability and 9,323 target quality goals.*

c) *the **tightening of sanctions against employers who employ workers irregularly**. In order to promote the surfacing of undeclared work relationships, the **Government adjusted the amounts of sanctions on the basis of irregular employment days for each undeclared worker** (EUR 195/day, which would become EUR 39/day in case of immediate payment of the penalty). Furthermore the National Labour Inspectorate was created by merging three different Labour Inspectors Bodies (Ministry of Labour and social policies, INAIL and INPS).*

Active labour market policies have also been reshaped and re-organized by establishing the National Agency for Active Labour Policies and the National Network of the Employment Services. Hereafter we will illustrate the legislative measures and actions implemented to activate effective employment policies and to support employment after 2015.

In order to answer to the concerns of the European Committee of Social Rights on this case of non-compliance and to provide updated information on the results achieved to date, the Ministry of Labour and Social Policy has asked ANPAL to process the data relating to employment and unemployment over the last four years, providing, where possible, the first tracking data on the performance of active policy measures managed by the ANPAL itself.

*Therefore, recent data on key labor market indicators (Istat, Ministry of Labor and Social Policies and INPS) and indicators for monitoring occupational and labour policy measures already underway. **The reference period is the four-year period from 2013 to 2016,** with the addition of the latest available data, i.e. the **second quarter of 2017.***

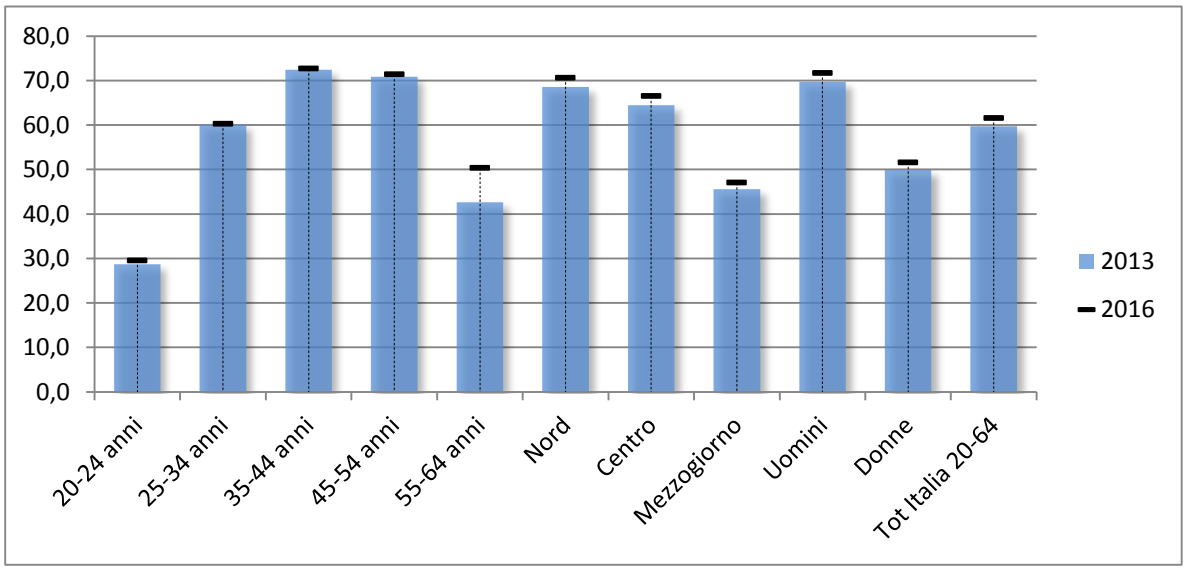
1. DATA ON THE MAIN INDICATORS OF THE LABOUR MARKET IN THE PERIOD 2013-2016

"In line with economic growth, the labour market has also improved, to a greater extent than expected, benefiting from the reforms introduced in recent years. Employment in the first two quarters of 2017 continued to grow driven by that employee. Signs of improvement in business demand continued and continued to reduce the use of the Earnings Charges Fund"(DEF 2017, update note, p.29-30).

The labour market performance showed a weak response to timid GDP growth signals from 2014, but employment increased more than GDP in 2016, recording an annual change of 1, 3%. The employment rate for the 20 to 64-year-olds stands at 61.6% in 2016, up 1.8 percentage points from 2013. According to the second quarter of 2017 data, the number of employed people continues to grow and has surpassed 23 million people, reaching a level only exceeded in 2008, before the start of the long crisis. The increase in employment affects more consistently full-time employees, voluntary part-time employment and the female component.

Returning to the period 2013-2016 and considering individual and geographic features, employment rates increased generally and to a comparatively higher degree in the four-year period for the 55 to 64-year-olds (+7.6 percentage points) thanks also to the persistence of specific incentives for recruitment (contributions relief) (Figures 1 and 1).

Graph. 1 – Employment rate 20-64yrs, by individual and geographic features (2013 e 2016)



Source: Istat data processed by ANPAL – LFS

Table 1 – Employment rate 20-64yrs, individual and geographic features (2013-2016)

	2013	2014	2015	2016	Variazione 2016/2013
20-24 anni	28,8	27,6	27,6	29,5	0,8
25-34 anni	60,1	59,4	59,7	60,3	0,1
35-44 anni	72,4	71,7	72,1	72,7	0,2
45-54 anni	70,9	70,3	70,6	71,4	0,5
55-64 anni	42,7	46,2	48,2	50,3	7,6
Nord	68,6	68,9	69,4	70,6	2,1
Centro	64,5	65,2	65,8	66,5	2,0
Mezzogiorno	45,6	45,3	46,1	47,0	1,4
Uomini	69,7	69,7	70,6	71,7	2,0
Donne	49,9	50,3	50,6	51,6	1,7
Totale Italia 20-64	59,7	59,9	60,5	61,6	1,8

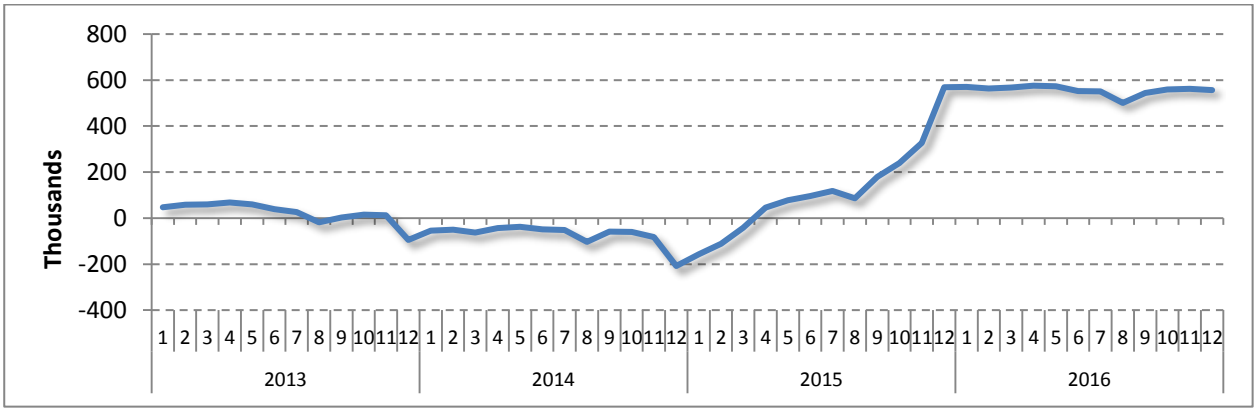
Fonte: elaborazioni Anpal su dati Istat – Rilevazione sulle forze di lavoro

Tax policy measures have influenced the choice of the contract types offered by employers. The granting and/or tax relief measures for open-end work contract in 2015 and, to a lesser extent, in 2016 have led to a marked increase in the number of open-end work contract and a shift to more stable contract types in the volume of recruitments. The incentive introduced by Stability Law for 2015 (Act No. 190/2014) acted both on new hiring and on the conversion of current fixed-term in open-end work contracts. Therefore it led to a sharp increase in the flows of open-end contracts.

By the end of the year, the total balance, determined by the difference between activation and cessation in the year, amounted to more than 277,000 units, reversing the trend of previous years that it had seen markedly negative balances for such contract type (open-end). In the same year, the share of standard jobs (stable recruitment) reached a total of 22.7%, an increase of 6 percentage points compared with 2013 and 2014.

In 2015 this flow was accompanied by an increase in the conversions from fixed-term to open-end work contracts for a total annual volume of 499,152 conversions (about 82percent more than in the previous year). The introduction of these incentives has therefore led to a trend reversal in the trend of net outflows for the flows relating to stable contracts (Figure 2). From the second quarter of 2015 the cumulative balance of activations and transformations is positive and continues to grow until the end of the same year.

Graph. 2 – Cumulative balance of open-end work contract (*). Years 2013-2016 , values in thousands



(*) comprensivi delle trasformazioni da contratti a tempo determinato a contratti a tempo indeterminato.
Fonte: elaborazioni Anpal su dati Ministero del lavoro e delle politiche sociali -Comunicazioni Obbligatorie SISCO

The reformulation of the incentive for the next year (2016), which significantly narrowed the employers' bargain on social security contributions, led to a slowdown in the volume of stable

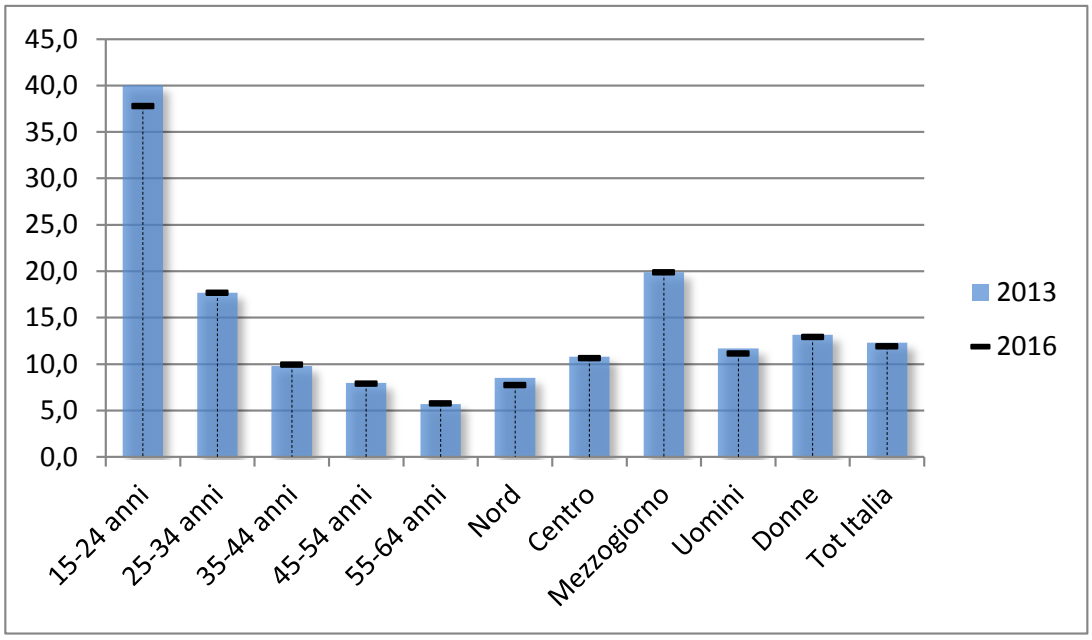
contracts and of conversions, with a consequent stabilization in the trend of the net cumulative balances curve.

In the period 2013-2016, ***a general, though mild, decline in the unemployment rate can be observed equal to 4 tenths of a point.*** *The reasons for this trend can be identified in a number of factors: on the one hand, the scale of the recent recovery has not been strong enough to allow a quick regaining the ground lost during the prolonged crisis; on the other hand, there was an increase in labour market participation, as witnessed by the simultaneous decline in the inactivity rate (1.6 percentage points).* ***The latest available data (second quarter 2017) confirm the downward trend of the unemployment rate which is 10.9%*** *(-0.6 points compared with the same period of 2016).*

Youth unemployment, equal to 37.8%, declined by 2.3 percentage points compared to 2013, *setting the indicator for the first time since 2010 outside the critical threshold established at Community level for the evaluation of macroeconomic imbalances. In this case, data for the second quarter of 2017 also show a further drop in* ***unemployment for young people, which are 34.2% (-1.3 points on a tendency basis****).*

Similar considerations can be observed for long-term unemployment, which, although at a level of 6.7%, shows a negative variation in 2016 compared to 2013 and therefore below the threshold considered for imbalance. Similar considerations can be made for long-term unemployment, which, although at a level of 6.7%, shows a negative variation in 2016 compared to 2013 and thus below the imbalance threshold above quoted.

Graph. 3 – Unemployment rate by individual and geographic features (years 2013 and 2016)



Source: Istat data processed by Anpal – Labour Force Survey (LSF)

Table 2 – Unemployment rate by individual and geographic features (years 2013-2016)

	2013	2014	2015	2016	Variazione 2016/2013
15-24 anni	40,0	42,7	40,3	37,8	-2,3
25-34 anni	17,7	18,6	17,8	17,7	-0,1
35-44 anni	9,8	10,6	9,8	9,9	0,1
45-54 anni	8,0	8,4	8,0	7,9	-0,1
55-64 anni	5,7	5,5	5,5	5,7	0,0
Nord	8,5	8,8	8,2	7,7	-0,8
Centro	10,8	11,6	10,9	10,6	-0,2
Mezzogiorno	19,9	20,9	19,6	19,9	0,0
Uomini	11,7	12,1	11,6	11,1	-0,6
Donne	13,2	13,9	12,8	12,9	-0,3
Tot Italia	12,3	12,9	12,1	11,9	-0,4

Source: Istat Data processed by Anpal – Labour force survey (LFS

With reference to the geographic component, there is a strong gap, about 10 percentage points, between the unemployment rates in the South of Italy compared to the Centre - North. The 2017 focus on the provision of a tax incentive on social security contributions for the employers in the Southern Regions responds to the need to bridge this geographic divergence. The so-called "South Employment Incentive" is specifically geared to stimulating the stable employment of young and adult unemployed (at least 6 months contracts).

Returning to young people, from 2013 onward, young people who are not in employment, education or training have experienced a slight, but continuing, decline, with an incidence that over the previous three years has contracted slightly more than 1.5 percentage point (values in 2013 and 2016 were 26% and 24.3% respectively). At the same time, within the NEET (which in 2016 is still 2,214 000) ***the share of inactive shows a trend reversal, with a slight contraction in the four-year period, from 57.6% to 56.6%.***

The action and efforts of the Youth Guarantee have been directed to the expansion and consolidation of these trends with substantial developments in the last two years (to be noted that the Youth Guarantee is funded partly by the Youth Employment Initiative and partly by the ESIF together with national funds). ANPAL monitoring data show that at March 31, 2017 the enrolments in the Youth Guarantee Programme were over 1 million and 130 thousand, almost 50% more than those recorded at the end of 2015. Public and private employment services took over 80.1% of those enrolled. 47.1% of the youth taken over by the employment services have been involved in one activation policy (extra-curricular traineeship, job bonus, training, job placement and reintegration in vocational education, Civil Service and tutoring for self-employment and self-entrepreneurship). On March 31 2017, ***43.7% of the over 348,000 young people who took part in an activation policy offered by the Youth Guarantee were employed, 18% of which on an open-end contract basis****.*

Besides, it has to be underlined that the implementation of the National Youth Guarantee Programme also had positive effects ***in getting to new ways of managing active labour market policies****. The YG Programme acted as a model for organizing the PES system and strengthening the coordination between national, regional and local structures. ANPAL monitoring data show that the number of users who were took over by the employment centres is considerably higher with respect to the users served by private employment agencies (80% and 20% respectively).*

2. SUMMARY OF THE NORMATIVE ACTS AND MEASURES ADOPTED IN RELATION TO ACTIVE EMPLOYMENT POLICIES AND SUPPORT TO EMPLOYMENT FROM 2015

The governance of active labour policies has been subject to extensive reform since 2014. The Jobs Act (Law N. 183 of 10 December 2014) contains, inter alia, a delegation to the Government to submit a legislative decree on the reform of employment services and of active labour market

policies. The Legislative Decree of 14 September 2015, n. 150 implemented the above quoted delegation.

Below,are indicated the main novelties on the issue of employment services and active labour market policies.

Agreements with the Regions pursuant to Decree Law no. 78/2015 and Legislative Decree n.150/2015.

In order to ensure an inclusive approach to employment policies, with Decree Law no.78/2015 converted from L. 125/2015 and Legislative Decree no. 150/2015, the Government intends to strengthen the entire system of labour services and active labour market policies, recognizing a key role for PES, which represent the indispensable public infrastructure so that active labour policies can be implemented, developed and guaranteed throughout the Country. ***On July 30, 2015, the Government and the Regions signed a framework agreement on active labour policies****, in which the parties jointly committed themselves to ensure continuity in the activity of PES recognizing that they are indispensable public infrastructures for the development of active labour policies.* ***On December 22, 2016, the framework agreement on active labour policies was renewed for 2017, confirming the common aim of enhancing the role of PES*** *with the aim of reaching, by 2018, to a structural operation/financing of the entire system.*

The National Network of Services for labour policies

Legislative Decree n° 150/2015 by re-shaping the employment services and active labour policies establishes the ***National Network of Services for labour policies as a vital governance tool to ensure the enjoyment of essential active labour policy services across the country*** *and the unitary exercise of its administrative functions. This network, coordinated by ANPAL is made up of several partners: Regions, INPS, INAIL, private employment agencies, Inter-professional funds for lifelong learning, bilateral funds for training, research institute (INAPP), ANPAL Servizi S.p.A., Chambers of Commerce, Universities and Secondary Education Institutes.* ***The National Employment Services Network has the task of promoting the right to work, training and professional development****.*

ANPAL – National Agency for Active Labour Policies

The National Agency for Active Labour Policy (ANPAL) is set up with the ***primary aim of enhancing active policies through more efficient and effective national coordination.*** *The agency carries out the role of management coordination of the national network of services for labour policies. The primary interest of ANPAL is the unitary exercise of the functions related to the use of essential services in active policy.* ***ANPAL operates since 1 January 2017, has a staff of approx. 250 employees****. It also carries out important monitoring and evaluation activities in the management of active policies and services for work and on the results achievement by the side of public and private employment services, by means of the "unitary" IT system of ALMPs.*

Accreditation to employment services

Among the main novelties of Legislative Decree n° 150/2015 there is the establishment of a National Register of Private Employment Services entitled to carry out functions and tasks in the field of active labour policies all over the country (Article 12, paragraph 2). The authorization at national level of private employment agencies and other authorized persons coexists with pre-existing regional accreditation in pursuance of the above-mentioned regulatory provision.

The "unitary" information system for labour policies and the electronic work dossier

The Legislative Decree 150/2015 provides for the creation of a unitary information system for labour policies in order to better manage the labour market and to monitor the performance of active and passive employment policies at central and local level. There are four types of information in the Information System: shock absorbers, activation and termination of work contracts, data on active labour policies management by the side of the Employment Services, available data on vocational training. Such information must be included in the citizen/worker's "electronic file" that is accessible online for free. The data of the Information System will be made available to the Regions and the Autonomous Province, for the study of appropriate local labour policies. The information system is still under construction in cooperation with the Regions and the

Autonomous Provinces of Trento and Bolzano for the best sharing of administrative data related to activation policies and labour market conditions of the single worker (DID, SAP, unemployment, work relationships, etc.).

Services and measures of active labour policies and profiling of users (clients).

With the aim ***of building the most suitable paths for job placement and re-integration into the labour market*** *the Legislative Decree n° 150/2015 foresees that PES carry out, at full capacity, the following activities: guidance and profiling of the users; job search assistance within three months of registration, skills/competences and training needs analysis, individualized guidance to self-employment and post- start up tutoring, guidance on training for qualification and re-qualification, work-related support also through re-integration in the labour market, promotion of traineeships, etc. The most appropriate active labour policy is identified through the definition of the* ***individual profile of employability (so-called profiling) measuring the distance of the subject from the labour market****.*

ANPAL (November 2016) adopted a new so-called "quantitative profiling methodology" which calculates, according to the best international standards, the probability of remaining unemployed over the next 12 months. A technical work is underway to build a qualitative profiling procedure, in addition to the quantitative one, for a better and more effective identification of the subject's characteristics, related to the needs of the labour market, and for the delivery of active labour policies more coherent with the aim of re-integrate efficiently and effectively the unemployed persons in the labour market.

Personalised Service Pact (Agreement) and conditionality mechanism

Public employment services summon unemployed workers to confirm their unemployment status and to sign a personalised service agreement. The PES and the unemployed worker agree upon the active labour policies aimed at job re-integration and upon the timing of meetings aimed at verifying the actual active search of work. There is a strong link between income support measures and Personalised Service Agreement given the strengthening of conditionality mechanisms.

The Re-integration Voucher

The re-integration voucher is a labour market policy (introduced by Article 23 of Legislative Decree n.150/2015) targeted to recipients who benefit of the New Social Insurance for Employment ("Nuova prestazione di Assicurazione Sociale per l'Impiego" - NASpI). It's the first active labour market policy coordinated by ANPAL and managed by the public-private network of employment services. It's a customised service supporting jobseekers and aimed to quickly re-integrate them in the labour market. The re-integration voucher is devoted to NASpI recipients who are unemployed longer than four months. The voucher can be spent to the providers of ALM measures, such as: public and private jobcentres and authorized temporary work agencies and job matching services, or other bodies accredited by the Regions. The services to support labour market re-integration involve the Voucher recipients on an intensive job search assistance potentially concerning vocational re-qualification training in line with employment opportunities in the area. The recipient is committed to carry out the activities agreed upon with the tutor and to accept an adequate job offer. The Provider is obliged to report to the CPI and to ANPAL any refusal without justification by the side of the Recipient to participate in any of the agreed activities or to take an adequate job offer. In these cases, conditionality applies as per art. 21, par. 7 and 8 of Legislative Decree 150/2015 (revoking of unemployment subsidy – NASpI).

The re-activation voucher is incompatible with any other ALM policy and it is based on the beneficiary voluntariness, his/her freedom of choice by choosing the provider (among public and private employment services) and his/her strong commitment to be active in the job search.

According to the regulatory principles, the amount of the voucher to be paid to the provider by ANPAL varies on the basis of the results obtained: so the best employment outcome is paid with the voucher highest amount (5,000 EUR for an open-ended contract). If the target is not achieved only a fixed Fee4Service is paid, provided that a minimum percentage of employment results have been attained over the previous 6 months.

It should be noted that this is not a sum that integrates people's income, nor a form of incentive for employers, but an active policy measure that remunerates providers (employment centres and/or

accredited private employment services), when they succeed in re-integrating the unemployed workers on the workplace. From March 2017, a first experimentation of the re-integration voucher started, involving a stack of 30,000 potential beneficiaries. The intention is to make the measure structural by 2018.

Three-year guidelines and annual targets for active labour policies

A technical comparison with the Regions and the Autonomous Provinces of Trento and Bolzano is underway concerning the text of the Ministerial Decree on the 3-year guidelines and the annual objectives for the active labour policies. The primary aim is that of giving to the employment services system a framework for the management by objectives (according to the management by objectives – MBO - logic). According to this logic there will be moments of comparison between the Institutions and within the National Network of Services for the active labour policies to monitor the results already achieved and those to be achieved, with the final aim of a better evaluation on the management of active policies and employment services.

ANPAL Portal and the "Declaration of immediate availability" to work (DID online)

On November 29, 2016, the ANPAL portal (www.anpal.gov.it) was released. It allows the issue of the online availability statement (DID) in the framework of the "unitary" information system. In order to ensure a gradual transition to the new procedure, including the users' protection, a temporary regime has been envisaged for the DID issuing: until November 30, 2017 the DID will be issued online on the ANPAL Portal or on the Regional portals, as well as in presence at the employment centres. As of December 1, 2017, the DID will be issued online on the quoted portals (ANPAL's or Regionals') through existing application co-operation within the unitary information system. It will be characterized by a unique identifier, which will allow Italy to have the administrative data of the unemployed people at the national level.

The skills system and the transition to work of youth

One of the main tools used for accompanying the transitions of young people from education into the world of work is that of apprenticeship, that has recently been reformed. By virtue of the legislative decree N° 81/2015 devoted to the organic discipline of labour contracts and the regulatory revision of tasks the types of apprenticeships for the achievement of professional qualifications, secondary education degrees and university higher education integrate organically, in a dual system, training and employment for youth employment with reference to Vocational Education and Training titles.

- *Systematic consolidation of alternation in Secondary School, enabling apprenticeship of second and third level to attain a degree. This opportunity is offered to young people between the ages of 15 and 25. The maximum duration of the contract is three years with the possibility of length extensions to facilitate training success;*
- *Introduction and consolidation of elements of flexibility in relation to collective bargaining, e.g. maintaining the written form for the contract, the "synthetic form" for the preparation of the individual training plan in the professional apprenticeship, and the stabilization clause for companies with more than 50 employees, which is reduced from 50% to 20% of apprentices hired at the end of three years;*
- *Confirmation on remuneration of the choice of a total remuneration for external training and a 10% measure of time remuneration dedicated to company training.*

Legislative Decree no. 81/2015 provides for the possibility to hire unemployed people as apprentices for the purpose of qualification or retraining, irrespective of the age at the time of recruitment. In such cases, the grant scheme is the same as that provided for in the current discipline of apprenticeship on the basis of ordinary rules, with the exception of the specific derogations expressly provided for by law. Some progress report on apprenticeship contracts in 2016 (Ministry of Labour data): in 2016, 268,217 apprenticeship contracts were activated (+30% compared to the previous year), of which 96.4% were professional/training apprenticeships and 3.3% apprenticeships for qualification and diploma. This last type of contract was the most significant increase compared to 2015 (+ 33%). The highest increase was registered in southern Italy (+66.5%) and in the Central Regions (+27.9%). The reasons for the growth of apprenticeship

contracts are to be found in the slight increase in the 15-34 year-old occupiers (+ 0.9%) and in the reduction of the time-honoured recruitment incentives in 2015 (in fact the lower incidence of allowances has made the total allowance provided for apprenticeship contracts more convenient). The share of apprentices with a contract duration of more than one year increased by 3.4 percentage points from 52.4% in 2011 to 55.8% of 2014.

Experimenting the Dual System

In the context of the experimentation of the dual system in Italy, the State, Regions and Autonomous Provinces have reached an agreement (CSR 158/2015 of 24 September 2015) for the strengthening of the system in the field of vocational education and training (IeFP). This system allows students enrolled in regional Iefp courses to opt for a dual training model in which workplace alternation is "strengthened" by periods of practical application with an employer - not less than 400 hours a year. Alongside the workplace alternation, the experimental project envisages the strengthening of apprenticeship contracts for young people attending regional vocational education and training courses for the purpose of acquiring the relevant title. Started in the first months of 2016, ***the experimentation of the dual system has already yielded some positive results: it involved 1,419 apprentices concentrated in two regions representing 92%*** *of the total (****Autonomous Province of Bolzano and Lombardy****). There are no present in the South of Italy.*

Employment incentives

ANPAL act as Managing Authority of the National Operational Programmes "Youth Employment Initiative" and "Active Employment Policies Systems" co-financed by ESF and YEI funds. It has established some schemes of employment incentives for beneficiaries of the Youth Guarantee (NEET) and the unemployed resident in the "less developed" regions in the Country (South of Italy). Below are the features of these schemes and the first monitoring data on the progress of the ALMP measures are reported.

Employment Bonus (OP YEI)

This incentive provides for the granting of a bonus to private employers consisting in contributing remuneration for the recruitment of young people with one of the following contractual types: contract for an indefinite period (also for the purpose of administration); fixed-term contract (also for the purpose of administration); professional or professional apprenticeship contract. ***Through this measure n. 63,883 work contracts were signed,*** *compared to approximately 237.3 million euros allocated. The total amount of approved incentives amounts to approximately € 223.9 million (as at 21.09.2017).*

Super Job Bonus - Trainee Transformation (PON IOG)

This measure provides that, in the case of a private employer who is engaged in an employment contract for an indefinite period, a young person who has carried out an extra-curriculum funded under the Youth Guarantee Program is granted an amount incentive equal to twice that foreseen for the "Job Bonus". ***Through this measure, n. 10,946 work contracts were activated,*** *with actual use of about 90 million euros, amount corresponding to the total resources allocated (dated 21.09.2017).*

Incentive "Youth Employment"

The Youth Employment Incentive, in substantial continuity with the "Job Bonus", is intended to encourage recruitment of young NEET aged 16 to 29 who have joined the Youth Guarantee Programme (Decree-Law 394/2016, subsequently amended by DD 39/454). The Incentive consists of a contribution allowance that can be used by employers for hiring with: an open-end contract; a professional apprenticeship contract; a fixed-term contract of at least 6 months. ***ANPAL monitoring data show that through this measure 35,694 work contracts were signed,*** *compared to EUR 200 million allocated. The total amount of approved incentives amounts to approximately 74.1 million euro (as at 25.07.2017).* ***50.4% of the incentive hiring concerns professional apprenticeship, followed by fixed-term contract (31.1%) and indefinite (18.6%).***

Incentive Employment SOUTH (PON SPAO)
The incentive set up in November 2016 is recognized for recruitment made between 1 January and 31 December 2017 by private employers who have employment offices located in the so-called "less developed" Italian regions (Basilicata, Calabria, Campania, Apulia and Sicily) and "in transition" regions (Abruzzo, Molise and Sardinia) that are traditionally characterized by high rates of unemployment. Specifically, the incentive is aimed at private employers who, without being held, hire unemployed persons, pursuant to art. 19 of D.lgs. 150/2015, with the following contractual types: contract for an indefinite period, also for the purpose of administering and contract of professional apprenticeship or profession. The measure consists of a grant for a maximum amount of EUR 8,060 per annum for each employee, which is reduced proportionally for part-time contracts. ***ANPAL monitoring data show that through this measure 73,782 work contracts were signed****, compared to 530 million euros allocated. The total amount of incentives granted amounts to approximately 313.8 million euro (as at 25.07.2017).* ***About two-thirds of contracts relate to indefinite recruitment, 27% transformations of previous term contracts and the remaining 5% are apprenticeships****.*

Incentives for apprenticeship and the Dual System
A number of incentives already exist for the three types of apprenticeship regulated by Legislative Decree no. 81/2015: apprenticeship for qualification and professional diploma, diploma of higher education and the certificate of specialty technical superior; professional apprenticeship; apprenticeships of high education and research. Legislative Decree No.150/2015 put particular emphasis on the incentives for the two types of apprenticeship related to the creation of a dual school-workplace alternation system. Until 31 December 2017, employers who offer a top-level apprenticeship contract will have a reduced rate of 5% and the exemption from the payment of the dismissal ticket as provided for in Article 52 of Legislative Decree 150/2015. Also for 2017, the Budget Law (Law No.232 / 2016) introduced a special scheme for the two types of apprenticeships that constitute the dual system. This allowance consists of a three-year exemption from the payment of social security contributions to the employer, up to a maximum of EUR 3,250 per year for recruitment in the two-year period 2017-2018 with a permanent contract of young people same employer, school-workplace alternation or apprenticeship periods for vocational qualification and a higher education or training apprenticeship course. The degree must have been acquired for not more than six months.

14. The representative of ETUC recalled the high unemployment rates before the crisis and that Italy since then has undertaken reforms. He said that the GC could stay in line with other decisions, i.e. to await the next assessment, and to ask the Government to provide all information. He also invited the members of the GC, and the ECSR to look at the annual monitoring reports of the EU institutions, among them the Commission, in the framework of the European semester; and the country specific recommendations, to see to what extend progresses have been made. He explained that youth employment, long term employment, employment services, and rates of poverty, etc. were explicitly mentioned.

15. The representative of Greece in line with the representative of ETUC, proposed to take note of the information and to wait for the next ECSR's assessment.

16. The representative of Denmark, in accordance with the representatives of ETUC and Greece, proposed to urge the Italian authorities to take the appropriate measures, and welcomed the efforts and the progress that have already been made.

17. The GC took note of the information provided by the Italian representative and decided to wait for the next assessment by the ECSR. It however expressed a concern regarding the Italian persistent situation, and invited Italy to adopt efficient measures to remedy the situation.

RESC 1§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

18. The Secretariat said that the situation was not in conformity since 2012.

19. The representative of the Republic of Moldova confirmed that the unemployment rate in her country was indeed not of such a significant importance. This was due to the numerous persons working abroad. As a result, even the economic decline of recent years did not result in an unemployment rate higher that 6 to 7 %.

20. As for employment policy measures, the Government of the Republic of Moldova approved in December 2016 a National Employment Strategy for the years 2017 – 2021. The strategy was meant to increase the level of employment and the competitiveness of the workforce as well as the social inclusion of vulnerable groups.

21. The GC took note of the information provided, asked the Government of the Republic of Moldova to provide the relevant information in the next report and decided to await the next ECSR's assessment.

RESC 1§1 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 1§1 of the Charter on the ground that the employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

22. The Secretariat said that the situation was not in conformity for the first time.

23. The representative of Portugal confirmed that her country underwent an economic crisis with consecutive impact until 2015.

24. Since then, the Government of Portugal had implemented a comprehensive set of labor market reforms. One of the reforms concerned the implementation of a new set of Active Labour Market Policies (ALMP) aimed at promoting access to the labor market of the most vulnerable groups. These reforms led to significant improvements in both employment and unemployment rates of the last two years.

25. These reforms also contributed to the general positive trend as they provided incentives to find work and to promote employability.

26. In summary, the representative of Portugal said that the employment and unemployment indicators had developed positively in her country over the last three years leading to an economic growth and a sustainable development of the labor market.

27. The GC took note of the information provided, asked the Government of Portugal to provide the relevant information in the next report and decided to await the next ECSR's assessment.

RESC 1§1 "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia' is not in conformity with Article 1§1 of the Charter on the ground that the employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

28. The Secretariat said that the situation was not in conformity since 2008.

29. The representative of "the former Yugoslav Republic of Macedonia" stated that the Government was aware of the problems of combating unemployment and the challenges faced by the labor market; there existed in particular high youth unemployment and high long term unemployment. The Government is aware that active labor market policies alone are not sufficient enough to substantially improve the situation of the labor market. So, they are complemented by efforts to stimulate job creation and employment.

30. Consequently, the representative recalled his last intervention within the GC on this particular situation of non-conformity, when he presented the variety of policies, measures and interventions adopted and implemented by the Government, both on the side of the supply, as well as the labour demand. Addressing the problems and challenges of the labour market in the country, was one of the most important priorities for the Government in the past, and it will certainly remain as such in the future. As regards active labor market measures "the former Yugoslav Republic of Macedonia" sought to bring its employment policies as closer as possible to the EU policies and practices.

31. At this occasion, the representative presented some of the results and statistical evidences of the effects in combating unemployment and promoting job creation. In the past period of more than 10 years the situation on the labour market in the country continuously shows positive trends and improvements. The unemployment rate was decreased form 34.9% (in 2007) to 23.7% (2016), i.e. decrease of over 11p.p.; employment rate was increased from 36.2% (2007) to 43.1% (2016); there was also a quite noticeable rate of job creation, with more that 133,000 jobs created in the 10-year period, resulting with the increase in number of employed persons of 22.6%.

32. The GC took note of the information provided, asked the Government of "the former Yugoslav Republic of Macedonia" to provide the relevant information in the next report and decided to await the next ECSR's assessment.

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

RESC 1§2 ARMENIA

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

- *indirect discrimination is not defined and prohibited by the legislation;*
- *discrimination is not prohibited in connection with recruitment in employment;*
- *there is no protection against discrimination in employment on grounds of sexual orientation;*
- *the upper limit on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;*
- *it has not been established that legislation provides for a shift in the burden of proof in discrimination cases;*

- *the duration of alternative civil service amounts to an excessive restriction of the right to earn one's living in an occupation freely entered upon.*

First four grounds of non-conformity

33. The representative of Armenia informed the GC that new legislation for prohibiting discrimination in line with international standards is envisaged. The development of relevant draft law is currently in the process. The adoption of the law is foreseen during this year. At the same time the Government of Armenia has initiated comprehensive changes of the labour legislation. The amendments of the Labour Code should be submitted to the Government's approval within 9 months.

34. The representative of Armenia pointed out that all four non-conformity grounds will be taken into account within the framework of the above-mentioned legislative changes.

35. The Secretariat recalled the existing cooperation projects between the Council of Europe and the Armenian authorities which address some of the reforms announced.

36. The GC took note of the information provided and requested the Armenian authorities to provide all the relevant information in the next report. Meanwhile, it decided to await the next assessment of the ECSR.

Sixth ground of non-conformity

37. The representative of Armenia recalled that the duration of alternative civil service had already been amended in 2013; it was decreased from 42 months to 36 months. The duration of alternative military service was 30 months, so the difference between these two types of alternative services was 6 months.

38. She informed the Committee that the Government Decree No. 245 of 10 March 2016 contained a list of legal acts to be amended, adopted or revised following amendments to the Constitution of the Republic of Armenia. According to this decree, it was expected that the new draft law "On Alternative Service" would be presented for approval by the end of this year. Relevant information on the new regulations for alternative service would be included in the next report, once the new law has been adopted.

39. In response to the question raised by the representative of France, the Secretariat referred to the Statement of interpretation on Article 1§2 on the length of service to replace military service adopted by the ECSR in 2012, in which the Committee stated: "The Committee has in the past stated that alternative service which is not more than 1.5 times the length of military service is in principle in conformity with the Charter. The Committee wishes now to further develop its case law, the question remains one of proportionality and reasonableness but the approach need to be more flexible and holistic. Where the length of military service is short the Committee will not necessarily insist on alternative service being not more than 1.5 times the length of military service. Nevertheless, the longer the period of military service is the stricter the Committee will be in evaluating the reasonableness of any additional length of the alternative service." Consequently, the Committee considered that the overall length of alternative service amounting to three years was too long and therefore remained excessive and not in conformity with the Charter (see Conclusions 2012 Cyprus).

40. The Secretariat informed the Committee that a project of co-operation with the Armenian Ombudsman is envisaged which could assist the authorities in the implementation of the reforms announced.

41. The representative of France encouraged the Armenian authorities to engage with the ECSR in order to clarify its position as regards the accepted duration of the alternative civil service.

42. The GC took note of the information provided and requested the Armenian authorities to provide all the relevant information in the next report. Meanwhile, it decided to await the next assessment of the ECSR.

RESC 1§2 AZERBAIJAN

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

- *it has not been established that it is required for employers to make reasonable accommodation for persons with disabilities;*
- *legislation does not provide for a shift in the burden of proof in discrimination cases;*
- *nationals of the other States Parties to the Charter do not have access to civil service posts.*

First ground of non-conformity

43. The representative of Azerbaijan informed the GC that labour rights of persons with disabilities in the Republic of Azerbaijan are regulated by the Law No. 284 of 25 August 1992 “On prevention of disability and limited health capacities of children, rehabilitation and social protection of people with disabilities and children with limited health capacities”. According to Article 21 of this Law, the State Employment Service under the Ministry of Labour and Social Protection of Population provides vocational guidance services to persons with disabilities and children with limited health capacity who are capable of working, to perform their vocational training and to help with identifying employment opportunities.

44. She further recalled that according to Article 29 of the same Law, the proper working conditions should be established for persons with disabilities and children with limited health capacity under the age of 18 in enterprises, institutions, and organizations in accordance with individual rehabilitation programs. The management of the enterprise has a right to reduce working norms for persons with disabilities and children with limited health capacity under the age of 18 and remunerate their work at increased rates depending on the health condition of workers with disabilities. According to Article 91 of the Labour Code short working hours not exceeding 36 hours per week are set for employees with I and II degree of disability and children with limited health capacity under the age of 18. According to Article 94 of the Labour Code if health and physiological condition of a disabled employee requires part-time employment on the basis of medical reports, the employer shall arrange for a part-time work (workday or work week). According to Article 119 of the Labour Code all disabled employees, regardless of the category, reason, or duration of disability, shall be eligible for a basic holiday of at least 42 calendar days. Holidays of persons with disability are granted at times convenient for them in accordance with Article 133 of the Labour Code.

Second ground of non-conformity

45. The representative of Ukraine suggested that the authorities of Azerbaijan should hold consultations with the Council of Europe and other specialised bodies in order to amend their legislation in the sense of providing for a shift in the burden of proof and bring the situation in conformity with the Charter.

Third ground of non-conformity

46. The representative of Azerbaijan stated that there is no prohibition whatsoever in the legislation on the civil service of the Republic of Azerbaijan concerning the employment of foreigners in the civil service. Thus, according to Article 16 of the Constitution of the Republic of Azerbaijan, foreigners and stateless persons can be admitted to civil service in the order established under the legislation. In addition, in 2014 a draft of Civil Service Code was prepared. In 2015 the draft was under discussion by various Government agencies. However, due to dissolution of the State Civil Service Commission in April 2016 and the establishment of the State Examination Center as a substitute for it, further consideration on the draft has been postponed.

47. The GC took note of the information provided and requested the authorities of Azerbaijan to provide all the relevant information in the next report. The GC invited the Government of Azerbaijan to take the necessary measures to remedy the situations of non-conformity, including by organising consultations and cooperating with the Council of Europe for this purpose. Meanwhile, it decided to wait the next assessment of the ECSR.

RESC 1§2 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§2 of the Charter on the ground that the federal legislation does not prohibit discrimination in employment on grounds of age and disability.

48. The representative of Bosnia and Herzegovina provided the following information:

The matter of freely undertaken work in Bosnia and Herzegovina is applied in The Law on Prohibition of Discrimination, which was adopted at the state level and it sets the framework for implementation of equal rights and opportunities for all persons in the country. This law applies to all public bodies and legal persons with public authorities as well as all legal and natural persons.

The Law on Prohibition of Discrimination prescribes that all laws and delegated legislation will be brought in line with its provisions.

For example, when new laws are drafted at the state level, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina provides their opinion and makes sure the new law is in conformity with the Law on Prohibition of Discrimination.

Referring to the question of the Committee whether age, disability and sexual orientation are prohibited grounds of discrimination at all levels, the amended Law on Prohibition of Discrimination was adopted in 2016, so the disability, age, sex and sexual characteristics were added as grounds of discrimination.

In addition, persons with disabilities have their rights guaranteed on the level on entities and the District of Brčko, based on the UN Convention on the rights of persons with disabilities and the Optional Protocol, which were adopted in 2009.

In cases when a person considers that he or she suffered consequences of discrimination in employment, burden of proof lies with the respondent. The courts are not obliged to give the information on the number and nature of those cases, therefore we do not have that information. The amount of compensation in discriminatory cases is decided for each case individually.

According to the Law on employment of foreigners, non-nationals subject to this law cannot be placed at a disadvantage on the basis of sex, sexual orientation, marital status, family responsibilities, age, pregnancy, language, religion, political or other opinion, national affiliation, social origin, property, birth, race, colour or any other personal characteristic.

When it comes to the issue related to an Anti-discrimination Strategy at state level, its final text had been drafted by the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, but it is still to be adopted by the Council of Ministers of Bosnia and Herzegovina, hopefully this year.

It is still to be provided the information on the circumstances in which contracts are offered to the military personnel in the military personnel in the armed forces, since the Committee asked for these information in the next report.

49. The representative of Bosnia and Herzegovina clarified that federal law is not the state law. The Law on Prohibition of Discrimination was adopted at state level and sets the framework for implementation on equal rights and opportunities for all persons in Bosnia and Herzegovina.

50. The representative of Bosnia and Herzegovina added that there are still no laws at entity level, but the Law on prohibition of discrimination (at state level) prescribes that all laws and delegated legislation will be brought in line with its provisions. She added that additional Annexes to the Law on Prohibition of Discrimination were adopted in 2016 so that disability, age, sex and sexual orientation were added as prohibited grounds for discrimination.

51. In reply to a question addressed by the Secretariat on the legal nature of these Annexes, the representative of Bosnia and Herzegovina confirmed that the law was amended and the age and disability were added as grounds for which discrimination is prohibited.

52. The representative of the ETUC noted that the state law has been amended and has extended the grounds to age and disability, and that in the FBiH a new Labour Law was adopted in 2015 which prohibits discrimination in employment on grounds of, inter alia, age and disability. He asked what the situation was in Republika Srpska and Brcko District. In reply to the question raised by the representative of the ETUC, the representative of Bosnia Herzegovina stated that there are still no laws prohibiting discrimination in employment on grounds of age and disability in Republika Srpska and Brcko District.

53. The GC took note of the information provided and invited the authorities of Bosnia and Herzegovina to provide all the relevant information in the next report. Meanwhile, it decided to wait the next assessment of the ECSR.

RESC 1§2 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§2 of the Charter on the ground that the restrictions on the access of foreign nationals of

States Parties to the European Social Charter, other than EEA, to civil service posts are excessive and therefore constitute a discrimination on grounds of nationality.

54. The representative of Bulgaria recalled that third-country nationals, including citizens of States Parties to the Charter, are entitled to employment, but there are certain requirements for work in public administration, taking into account the specific features of the job.

55. According to the Classifier of Positions in the Administration and the regulation on its application, positions are divided into four groups - managerial, expert positions with analytical and/or control functions, expert positions with support functions and technical positions. Managerial positions and expert positions with analytical and/or control functions are occupied by civil servants, i.e. those in a civil service relationship. Expert positions with support functions and technical positions are occupied by persons under employment contracts. Expert positions with analytical and/or control functions in the municipal administrations can be occupied under an employment contract too.

56. The representative of Bulgaria further emphasized that the existing requirements regarding citizenship provided for in Article 7(1) (l) of the Civil Servants Act apply only to civil service posts which are inextricably linked to the protection of public interest or national security and the exercise of official authority. For persons employed in public administration under an employment contract, Article 107a of the Labour Code does not set out requirements for occupying the respective positions related to citizenship, i.e. the restriction does not apply to persons employed under an employment contract. The representative of Bulgaria further informed the GC that according to the latest annual report on the state administration, the number of staff in public administration as of 31 December 2015 amounted to 130 036 permanent positions. Permanent positions designated for civil contracts amounted to 88 599, i.e. 68.1% /43 557 or 33.5% under the Civil Servants Act and 45 042 or 34.6% under specific laws. Permanent positions for employees under an employment contract amounted to 41 437/including 29 396 under Article 107a of the Labour Code or 31.9% of the total number.

57. The Bulgarian delegation added that a new law on migration envisages a comprehensive approach on labour migration by taking into consideration the access of third nationals to public service posts.

58. The Secretariat noted that according to the data provided by the Bulgarian delegation, 2/3 of the positions in public service are under a civil service contract.

59. The Chair and the representative of ETUC emphasised the need to define and provide more details on the concrete tasks performed by civil servants under civil service contracts. In reply to this request, the Bulgarian representative answered that a Framework containing the civil service posts exists, but there is no exhaustive list.

60. The GC took note of the information provided, invited the Government of Bulgaria to provide more detailed clarifications regarding the list of posts considered to be “civil service posts”, concrete examples of posts which are linked to the protection of public interest or national security and the exercise of official authority, as well as updated statistics of employment of foreign nationals to all civil service posts (both under civil service contracts or employment contracts). Meanwhile it decided to await the next assessment of the ECSR.

RESC 1§2 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 1§2 of the Charter on the ground that the restrictions on access to the profession of advocate imposed on non-EEA nationals are excessive, which constitutes discrimination based on nationality.

61. The representative of France recalled that the profession of advocate is open to French citizens and those of the European Union and member states of the European Economic Area, to refugees and stateless persons as well as to nationals of any state that grants reciprocal treatment to French advocates. She pointed out that this condition of reciprocity is fulfilled when the state of origin of the foreign national wishing to access the profession of advocate is a member of the World Trade Organisation (WTO) (164 members as of 29 July 2016) or has concluded a bilateral agreement with France.

62. The representative of France further mentioned that the Law no. 2016-547 of 18 November 2016, known as the law on the modernisation of justice of the 21st century, in Article 109 empowers the Government to take the necessary measures by decree/regulation to define, on the one hand, the conditions under which lawyers, members of the bars of the non-European Union states may be authorised to provide legal advice and conclude legal acts for others in international law, and on the other hand the modalities of exercising these activities. This new regulation related to the activity of a foreign legal consultant has not established either a condition of nationality or a condition of reciprocity.

63. The Chair asked the representative of France to provide information concerning those WTO member States which are also member States of the Council of Europe, other than EEA Member States, with whom France has reciprocity agreements.

64. The GC took note of the information provided by the representative of France, invited the Government to provide information on the bilateral agreements that are concluded between France and non-EEA States and decided to await the next assessment of the ECSR.

RESC 1§2 IRELAND

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

- *the upper limits on the amount of compensation that may be awarded in discrimination cases (with the exception of gender discrimination cases) may in certain situations preclude damages from making good the loss suffered and from being sufficiently dissuasive;*
- *it has not been established that foreign workers have access to employment in the public service with no discrimination;*
- *army officers cannot seek early termination of their commission unless they repay to the state at least part of the cost of their education and training, and the decision to grant early retirement is left to the discretion of the Minister of Defence, which could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.*

First ground of non-conformity

65. The representative of Ireland stated that the redress provisions in relation to employment discrimination were amended by the Civil Law (Miscellaneous Provisions) Act 2011 (No. 23 of 2011). In the case of an employed complainant, or a prospective employee, the maximum amount that can be ordered by the Workplace Relations Commission is 104 times the amount of the claimant's weekly remuneration (i.e. 2 years pay), or €40,000, whichever is the greater. She further emphasised that Ireland is satisfied that these provisions comply with the requirements of the relevant EU Directives which require that sanctions be effective, proportionate and dissuasive, and that Ireland considers that these provisions are also in conformity with Article 1§2 of the Charter.

66. The Committee took note of the information provided, recalled that the situation is not in conformity with the Charter on this point since Conclusions 2006 of the ECSR and invited Ireland to bring the situation into conformity with Article 1§2 of the Charter. Meanwhile, it decided to await the next assessment of the ECSR.

Third ground of non-conformity

67. The representative of Ireland recalled that service in the Irish Defence Forces was voluntary and the training was based on the system of agreements. Between 2010 and 2012, the Department of Defence reached agreement with the representative bodies for officers and enlisted personnel to reduce the duration and costs associated with certain types of undertakings. The amount refundable to the State in the event that the employee has left before the end of the commitment period was based on the ratio of the total number of days outstanding to the total number of days agreed. According to the military authorities, the vast majority of the courses that attract undertakings were neither mandatory nor necessary to perform duties of an officer. The system of agreements would be reviewed in late 2017 or early 2018, taking into account the findings of non-conformity.

68. As regards the decision to grant early retirement, which was left to the discretion of the Minister of Defence, the representative of Ireland pointed out that this was a decision at first instance. Ultimately, such a retirement required a decision of the Government as the position was granted by the President on the advice of the Government. She added that no request to resign earlier has been refused since 1992.

69. In response to the question raised by the representative of ETUC, the representative of Ireland confirmed that reduction in reimbursement rates depended on the duration, nature and cost of training. The calculation, carried out on a case-by-case basis, was very complex.

70. The representative of ETUC suggested that the next report should contain detailed information on this point.

71. The Committee took note of the information provided and requested the Irish authorities to provide all the relevant information in the next report. Meanwhile, it decided to await the next assessment of the ECSR.

RESC 1§2 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 1§2 of the Charter on the ground that the restrictions imposed on non–EEA nationals to become advocates are excessive, which constitute a discrimination on grounds of nationality.

72. The representative of Latvia indicated that the Ministry of Justice is of the opinion, that treatment of third country nationals according to Article 14 Section 1 Paragraph 1 of the Advocacy Law of the Republic of Latvia (ALRL) does not constitute any act of discrimination. The restriction in Article 14 Section 1 Paragraph 1 of the Advocacy Law of the Republic of Latvia is prescribed by law and is set in order to protect the rights and freedoms of other persons, specially the right to get an effective legal assistance of a lawyer, which means not only an educated or experienced lawyer, but also a professional, who is well aware of national law, jurisprudence and specific national circumstances as an important prerequisite for real implementation.

73. The representative of Latvia added that Article 4 of the Advocacy Law provides that foreign nationals can become advocates in Latvia in accordance with international agreements, with the exception of advocates dealing with criminal procedure. She added that in practice, according to statistics, within the period 2012-2017 only 7 EU nationals have submitted applications to practice as sworn advocates in Latvia.

74. The Chair noted that according to the legislation foreigners may practice law in Latvia in accordance with international agreements.

75. The representative of the ETUC asked for more specific information concerning these international agreements. In particular, he asked which States Parties to the Charter are covered by these agreements. The Secretariat recalled that in the meaning of Article 1§2 of the Charter all nationals of States Parties should be able to become advocates if they fulfill the requirements with regard to language and competencies, without any restrictions on the ground of nationality.

76. The representative of Ukraine indicated that information was needed regarding the States Parties to the Charter which are excluded from the international agreements concluded by Latvia.

77. The Chair invited Latvia to provide information on the States Parties to the Charter which are covered by the above mentioned international agreements.

78. The GC took note of the information provided and invited the Latvian authorities to provide more detailed information on international agreements in the next report. Meanwhile, it decided to await the next assessment of the ECSR.

RESC 1§2 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§2 of the Charter on the ground that restrictions to the employment of nationals of other States Parties in the civil service are excessive which constitutes a discrimination on grounds of nationality.

79. The representative of the Republic of Moldova informed the GC that according to Section 27 of the Civil Service Act and the status of civil servant nr. 158 of 4 July 2008,

persons who are citizens of the Republic of Moldova may apply to public office. She further mentioned that public functions are functions that involve the exercise of public authority prerogatives - the preparation of policy documents, public control and audit, tax administration, etc. At the same time, the public service employs many people who do not have civil servant status, such as: (i) personnel, by virtue of personal confidence, in the office of persons exercising functions of public dignity; (ii) public administration staff working in the secretariat, protocol and administration of information systems, including the processing of information, which ensures the functioning of the public authority; (iii) other categories of personnel whose activity does not involve the exercise of prerogatives of public power. She further mentioned that the citizenship of the Republic of Moldova is not required for all the above mentioned categories. Moreover, under national law, citizenship of the Republic of Moldova does not exclude the possibility of holding the citizenship of other countries in the event of bilateral agreements of dual citizenship. As a result, citizens of other States Parties can access public service in the Republic of Moldova provided that they also have Moldovan citizenship.

80. The Chair noted that for certain categories of civil service posts, Moldovan nationality was required, while other posts were open to foreign nationals. He asked for statistics on the number of persons concerned.

81. The representative of Moldova explained that positions which involve public authority or power to take decisions, to draft policies, to check public accounts were reserved to nationals. There have been no requests by foreign nationals to work in the civil service.

82. The representative of the ETUC mentioned that there was nothing new in the information that the representative of Moldova provided. He asked whether on the basis of bilateral agreements, nationals of other States Parties could also exercise functions which involved public authority. In reply, the representative of Moldova explained that only if the foreigners concerned had also acquired Moldovan nationality (e.g. persons with dual nationality). According to the representative of the Netherlands, dual nationality did not make any difference; it just confirmed that the nationality is a matter of principle. The representative of Moldova reiterated that only Moldovan nationals can exercise public authority functions. For other civil service jobs, there is no nationality requirement.

83. Representatives of several States underlined the importance of receiving information regarding the States Parties with whom Moldova has bilateral agreements.

84. The representative of the ETUC asked whether information can also be provided regarding the proportion of functions in the public service that are public authority jobs. In reply to a question by the representative of Ukraine, the representative or Moldova informed the GC that the ILO Convention No. 151 on public service has not been ratified.

85. The GC took note of the information provided and invited the Government of the Republic of Moldova to provide more detailed information regarding bilateral agreements and statistics on the employment of foreign nationals to civil service posts. Meanwhile, it decided to await the next assessment of the ECSR.

RESC 1§2 MONTENEGRO

The Committee concludes that the situation in Montenegro is not in conformity with Article 1§2 of the Charter on the ground that nationals of the other States Parties do not have access to certain jobs, which constitutes a discrimination on grounds of nationality.

86. The representative of Montenegro informed the GC that the Law on Foreigners deals with the employment of foreigners with temporary residence. However, certain occupations are not accessible to non-nationals as it is the case of teachers. The General Law on Education provides that foreigners with permanent residence in Montenegro may enter into employment as teachers under conditions provided by special law. Article 100a provides that a teacher may enter into employment if, besides general conditions of employment provided in the Labour Law, has the required qualification, Montenegro citizenship and certification for passing the exam for work in the educational institutions i.e. work permit.

87. The representative of Montenegro added that through the Governmental Work Plan for 2017 there are ongoing procedures for changes and amendments to the numerous educational laws, among which is the General Law on Education. In light of the ECSR' findings of non-conformity, the ministry in charge with these changes will reconsider the possibilities of amending the provisions regulating the employment of foreign teachers in order to bring the situation in conformity with the Charter.

88. The representative of Ukraine invited the GC to welcome authorities' intention to change the legislation.

89. The GC took note of the information provided and encouraged the Montenegrin authorities to make the necessary legislative changes to bring the situation in conformity with Article 1§2 of the Charter. Meanwhile, it decided to await the next assessment of the ECSR.

RESC 1§2 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 1§2 of the Charter on the ground that the Merchant Navy Criminal and Disciplinary Code provides for prison sentences against seafarers who abandon their posts even when the safety of the ship or the lives or health of the people on board are not at stake.

90. The representative of Portugal confirmed that the situation remained unchanged – Articles 132 and 133 of the Merchant Navy Criminal and Disciplinary Code, which is from 1943, were still in force. However, she pointed out that provisions concerned have not been expressly repealed in practice, the criminal sanctions resulting from these provisions have not been applied for almost 30 years, that most of the disciplinary and labour regime applied to maritime workers were set out in collective labour agreements which excluded the articles in question that contradicted constitutional principles and established an illegal and / or less favourable treatment for workers. She added that the national situation was in full compliance with the rules of ILO Conventions. Finally, the representative of Portugal advised that the Government of Portugal was studying the option to consider the entire Merchant Navy Criminal and Disciplinary Code, and not only the two articles concerned, in order to update the provisions which were not in compliance with national and international obligations of the State.

91. The representative of ETUC noted that the situation has regressed because a bill prepared beforehand was no longer relevant. He invited the Committee to apply its working methods.

92. The representative of France proposed a vote on a new warning, the previous one having been adopted following Conclusions XVII-1 (2004) (see Report concerning Conclusions XVII-1 (2004) (April 2005)) and confirmed at the meeting following Conclusions 2006 (see Report concerning Conclusions 2006 (July 2007)).

93. The results of the vote: a recommendation rejected unanimously and a warning rejected by 21 votes in favour, 11 against and 1 abstention.

94. The Committee invited the Government of Portugal to take this vote into consideration and to accelerate work on the amendment of the Code. It decided to await the next assessment of the ECSR.

RESC 1§2 RUSSIAN FEDERATION

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

- *indirect discrimination is not expressly prohibited by law;*
- *the legislation does not provide for a shift in the burden of proof in discrimination cases;*
- *discrimination on grounds of sexual orientation in employment is not expressly prohibited by law;*
- *foreign nationals cannot be employed in the municipal and state service, which constitutes a discrimination on grounds of nationality.*

<u>First three grounds of non-conformity</u>

95. The representative of the Russian Federation indicated that having ratified ILO Convention No. 111, Russia presumes the term discrimination as it is defined in Article 1 of this Convention. The Supreme Court of the Russian Federation refers to this Convention in its Resolution on application by courts of Russia of the Labour Code of the Russian Federation. In its Resolution, the Supreme Court clarifies that “while hearing cases connected with refusal to employ, it is essential to take into account that labour in Russia is not obligatory and a person can freely choose his/her occupation or profession and have equal opportunities to make work contract without any kind of discrimination, in other words any kind of direct or indirect limitation of rights or setting direct or indirect preference based on sex, race, skin colour, nationality, language, origin, property, family, social, occupational status; age; place of residence, as well as other factors not related to professional qualifications of workers.”

96. With regard to the burden of proof, the representative of the Russian Federation informed the GC that under Article 12 of the Civil Practice Act, justice is performed on the basis of adversary nature and equality of the rights of parties. Article 56 of the same Act states that each party must prove the circumstances referred to and only the court decides which circumstance is important for the case and which party must prove it.

97. With regard to discrimination on grounds of sexual orientation, the representative of the Russian Federation recalled that it is not expressly prohibited by law. She made reference to the Resolution of the Supreme Court mentioned above which pays special attention to the fact that Russian legislation contains just an approximate list of factors which cannot influence the decision of an employer to enter a labour contract with a person.

98. On a general note, the representative of the Internatioanal Organisation of Employers (IOE) noted that the situation had deteriorated. She referred to the observations from the ILO Committees regarding the cases of compulsory forced labour as a punishment for expressing political views (ILO Conventions No. 29 and No. 105).

99. In the spirit of 17 May, the international day against homophobia, the representative of Denmark asked how the cases of discrimination in employment on the ground of sexual orientation were taken into account in developing national anti-discrimination measures. The representative of the Russian Federation replied that the person concerned can apply to the court and the usual procedure will be applied, irrespective of the alleged ground of discrimination. The representative of the UK asked whether data was collected on cases invoking discrimination on the ground of sexual orientation or on any other ground. According to the representative of the Russian Federation, such cases are dealt with in 'closed hearings' and therefore, no data is available.

100. The representative of France expressed a serious concern and recalled that the Charter is a living instrument. The case from 1999 (Salgueiro Da Silva Mouta v. Portugal) that the representative of Russia referred to is somewhat out-dated. Listing sexual orientation explicitly as one of the grounds of discrimination is crucial as it reflects evolution of the society at large. The representative of the ETUC concurred with the opinion of the representative of France.

101. The Secretariat explained that in 2012 the conclusion was deferred as there were many questions regarding all four grounds of non-conformity. The Chair observed that this was only the second review by the ECSR of the national situation regarding this provision of the Charter and the first findings of non-conformity.

102. The GC decided to address a strong message to the Russian Federation regarding the first three grounds of non-conformity relating to non-discrimination. The GC emphasised that discrimination on the ground of sexual orientation should be enshrined in the domestic legislation. The GC urged the Russian Federation to take measures to bring the situation into conformity with the Charter.

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

103. The representative of the Russian Federation informed the GC that according to Article 160 of the Federal Law No. 79, a person cannot be employed in the civil service if he/she has the citizenship of another state unless based on a specific international treaty concluded by the Russian Federation. The same situation applies for municipal service.

104. The representative of the ETUC asked for more information regarding the international agreements referred to in the information provided by the representative of the Russian Federation. He observed that all previous cases discussed by the GC concerned the EU member states, whereas in the case of the Russian Federation it seemed that only few agreements were concluded with other States Parties, so that the large majority of nationals of other States Parties to the Charter were excluded from taking posts in civil service. The representative of the Russian Federation explained that it was a matter of diplomatic negotiations and the Russian Federation was always open for negotiation on these issues with States Parties.

105. The GC took note of the information provided and invited the Government to provide detailed information regarding the international agreements and statistics on the employment of foreign nationals to civil service posts. Meanwhile, it decided to await the next assessment of the ECSR.

RESC 1§2 "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 1§2 of the Charter on the ground that restrictions on employing foreign nationals of other States Parties to the Charter in the public service are excessive, which constitutes a discrimination based on nationality.

106. The representative of "the former Yugoslav Republic of Macedonia" stated that the situation in the country has not been substantially changed since the last examination. As in many other countries, the Government, in view of protecting the domestic (national) labour market, has established mechanisms where the initial priority in filling the vacancies is granted to the country nationals. There are also exceptions in specific areas (including health, education) where the access to the public sector employment is allowed also to the foreign citizens. The Government was willing to consider allowing any foreign national to work in the public service on the basis of reciprocity. However, he indicated that he was not aware of any bilateral agreement concluded between "the former Yugoslav Republic of Macedonia" and other Member States of the Council of Europe to this aim.

107. According to the representative of the ETUC no real change had occurred since last time when no bilateral agreements were announced by the Government. He asked whether there had been any developments in this regard and whether any progress was made in the framework of the EU accession process. The representative of "the former Yugoslav Republic of Macedonia" stated that there must be an interest shown from both sides to conclude such agreements.

108. In reply to the questions raised by the representative of "the former Yugoslav Republic of Macedonia", the Secretariat recalled that under Article 1§2 States Parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. As regards all other posts, all nationals of other States Parties, legally resident in the State concerned should be able to apply for a job without any restriction on the grounds of nationality.

109. The GC asked the Government to provide data on the number of foreigners in public service, in its widest possible sense, as well as the description of positions reserved to nationals. It also encouraged the authorities to work together with the Council of Europe for finding solutions in order to remedy the violation.

RESC 1§2 TURKEY, 136th meeting

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

- *(…)*
- *the Martial Law No.1402/1971 does not adequately protect local government officials and employees.*

110. The representative of Turkey provided the following information:

I would like to bring some clarification to the issue. The ground of unconformity, the Martial Law and the State of Emergency are two different things.

State of emergency in Turkey was declared after the coup attempt on July 15, pursuant to Articles 120 and 121 of the Constitution, concerning the state of emergency and Law no 2935 on the State of Emergency. But the ground of non-conformity we are discussing is the Law numbered 1402, 1971 and it is the law related to Article 122 of the Constitution. Following the referendum held on 16 April 2017, Article 122 will be removed in 2019. And as a result, 1402 will be abolished as it will be left out of constitutional grounds. It hasn't been applied since 1987 already.

The criticism and the comments are obviously related to dismissals following the failed coup last year, rather than the ground of nonconformity and I think the decision has to be taken accordingly.

I underline once more that the Committee examined the situation about the Martial Law before many times and it resulted with warnings before.

Now, the situation has changed and there is a new development regarding this case of non-conformity. A referendum was held in April for a new Constitution, the Martial Law will be abolished in 2019, November 3.

There is a high number of dismissals since last year, pursuant to the Constitution, the Law on State of Emergency, Decree Laws published in the scope of the State of Emergency and the Law on Civil Servants. And in the meanwhile, a Commission has been established and will serve as the first address to investigate the cases.

Our next report will include a detailed explanation about the dismissals, referring to the related legislation, constitutional and legal grounds but the discussions about the dismissals which will likely take place in the following meetings are not about the Martial Law.

The Government had set up a commission to review the state of emergency decisions. The State of Emergency Commission reviews the dismissals of public servants who claim that they had been dismissed unfairly by a Decree with the force of law. Members of the commission have been appointed and the commission has started functioning this year, as of 22nd of May. Decisions of the commission will be open to judicial review, in administrative courts and the higher court, the last resort being the European Court of Human Rights.

<u>Monday 25 September</u>

111. The Secretariat indicated that during the May meeting of the GC, a vote on a proposal for a recommendation took place: 20 votes were in favour, 4 against and 6 abstentions. The Committee considered that the proposal for a Recommendation was carried. However, according to the rules of procedure of the GC, 2/3 of the votes cast with a simple majority of the States parties are needed to carry a recommendation, i.e. a minimum of 22 votes in favour out of the 43 member states. Consequently, the proposal for a recommendation was not carried. During the adoption of the Report of the May meeting, the Secretariat invited the GC to decide how to proceed.

112. The Chair recalled that the conclusion under Article 1§2 comprises several grounds of non-conformity namely the right to protection against discrimination in employment, the upper limits on the amount of compensation that may be awarded in discrimination cases and the restrictions on access of nationals of other States Parties to several categories of employment, and the Martial Law of 1971 which does not adequately protect local government officials or employees. He underlined that this last point was the subject of the discussions during the May meeting, and that the proposal for a recommendation concerned this last ground only. He invited the GC to decide whether to vote again or not on the recommendation.

113. The representative of France emphasised that three warnings had already been adopted against Turkey on the same ground. She proposed to vote firstly on a recommendation and, in case it is not carried, on a warning.

114. The representative of the Netherlands supported this proposal and suggested to postpone the vote to Wednesday 27 September to allow all delegations to be prepared.

115. The representative of ETUC, in line with representatives of the Netherlands and France, invited the GC to apply its working methods, i.e. to vote first on a recommendation and if appropriate on a warning. He underlined that, in the current situation in Turkey, numerous emergency laws had been applied since July 2016 which have led to the dismissals of 100 000 persons.

116. The representative of Turkey invited the GC not to misunderstand the situation: the ground of non-conformity focused on a Law dated of 1971, related to Article 122 of the Turkish Constitution. A referendum was held on 16 April 2017 resulting in the repeal of Article 122 of the Constitution. Furthermore, the Turkish delegate indicated that the Law had not been applied since 1987. On the other hand, she emphasized that the state of emergency, referred to by the ETUC, was declared pursuant to Article 120 and 121 of the Constitution. Consequently, the Turkish representative considered that if the GC takes the state of emergency into consideration, it would not decide on this particular case of non-conformity, but would take a political decision regarding the dismissals occurring during the state of emergency.

117. The Chair concluded that the decision would be taken on Wednesday. He invited the representatives to read again the conclusion regarding Article 1§2 on Turkey, and he invited the Turkish delegate to explain, in particular, on which ground the 100 000 officials were dismissed following the establishment of the state of emergency.

Wednesday 27 September

118. The Chair indicated that there had been repetitive conclusions of non-conformity since 2002 and the GC adopted three consecutive warnings (in respect of Conclusions XVII-1 (2004), Conclusions XVIII-1 (2006) and Conclusions XIX-1 (2008)) on this specific ground.

119. The representative of Turkey underlined the difference between the case of the martial law and the one of the state of emergency. He criticized the reference made during the debate concerning dismissals of civil servants as these events occurred in the framework of the state of emergency and not of the martial law, only the latter being the subject of the conclusion and therefore the discussion within the GC. He specified for the sake of transparency and to inform the GC however that the declaration of the state of

emergency is “a legitimate right which is” in accordance with Article 15 of the ECHR “and there is no question of legitimacy about it within the Council of Europe system.”7 Furthermore, he added that the Martial Law has not been used since 1987 and will be abolished on 3rd November 2019 following the constitutional referendum held in April 2017.

120. The representative of ETUC accepted that the ground of non-conformity related to the Martial Law of 1971. He stressed that the repeal of the Martial Law would take place only in November 2019, outside the reference period. This means that the situation which lead to the ground of non-conformity is still valid since the Martial Law is currently applicable. In response to the representative of Turkey, the representative of ETUC accepted that the state of emergency happened outside the reference period. He confirmed that the ETUC condemned the tentative coup d’Etat in Turkey but stressed his criticism in relation to the situation of dismissed civil servants and employees. He emphasized that there was a similarity between the legislation relating to the state of emergency and the Martial Law, since both do not provide for sufficient protection of civil servants and employees. More than 100 000 people have been dismissed, or suspended from their functions or even arrested. ETUC is collaborating with ITUC to support colleagues in Turkey in the trial cases under preparation they have. An investigation commission was established to study the way the concerned people can defend their rights. He expressed the doubts of ETUC and ITUC about the effectiveness and the impartiality of the Commission. He recalled that a fund for legal aid had been established by international, European and national trade union movements to ensure the rights of the colleagues that have been dismissed or suspended. He invited the GC to apply its working methods.

121. The representative of Sweden asked for clarification about the ground on which dismissals were made. In reply, the representative of Turkey repeated that the issue at stake in the conclusion is the existence of a martial law which has not been applied since 1987 and will be removed in 2019 and that the dismissals mentioned in the discussion were made under a different legislation i.e. the state of emergency. The two types of legislation are based on different provisions of the Constitution.

122. The Turkish delegate argued that the Committee to should discuss the situation of dismissals under legislation different from the Martial Law in the next report period. In reply to the comments of the representative of ETUC, he said that the Inquiry Commission on the State of Emergency Measures was established in January 2017, and was regarded as a competent authority by the Council of Europe for the dismissals of officials from the public offices. He added that the applications made to ECtHR concerning dismissals were found inadmissible due to non-exhaustion of domestic remedies, and stressed that the commission was working effectively. He referred to the recent visit of the senior Council of Europe delegation to Turkey on 7-8 September 2017 and continuing dialogue and close cooperation between Turkey and the Council of Europe. He underlined that the GC needed to take informed decision which was important for its accountability.

123. The representative of the United Kingdom, in line with the ETUC representative, invited to focus on the reference period, and recalled that, during the May meeting, the Turkish delegate brought up the state of emergency as relevant information to the case, before any other delegates spoke about it.

[7] Note by the Bureau: the part in inverted commas only reflects the position of the Turkish delegate.

124. The representatives of France and the Netherlands, in line with the representatives of the United Kingdom and ETUC, would like to focus on the situation of the reference period. They also invited the GC to take into account the positive and negative developments and to vote on a recommendation.

125. The Secretariat confirmed that the GC usually considers positive and negative developments during its discussions. Reference was made, for example, to the discussion of the case of Estonia, Article 15§3, were the Committee considered as a positive development the intention of the authorities to repeal the legislation at stake in 2019.

126. The representative of Austria aligned herself to the representatives of France and the United Kingdom, and ETUC. She emphasized a more legal point of view by comparing the situation with the case of Estonia, which was similar, and encouraged the GC to be as critical. She proposed to proceed to the vote.

127. The representative of Sweden proposed to the GC to send a message to the Turkish authorities independently to express their concern on the current situation in Turkey.

128. The Secretariat asked for confirmation on whether the date of the 3rd November 2019 corresponds to an intention of the Turkish Parliament to formally repeal the martial law, or to the entry into force of a decision that has already been taken.

129. The representative of Turkey recalled that the new constitution which includes the automatic repeal of the martial law will enter into force on 3 November 2019.

130. The representative of the United Kingdom expressed his concern about the current situation in Turkey and the protection of workers, especially civil servants. Together with the representatives of Austria he asked for more information regarding the protection of workers during the reference period and after.

131. The representative of Turkey indicated that she will provide all relevant information like the protection of workers against discrimination, the new institution called human rights and equality commission, and relevant articles in the next report. She insisted on the fact that regarding the ground of non-conformity based on the reference period, the abolition of the Martial law will enter into force on 3rd November 2019. This should constitute a positive development.

132. The Secretariat recalled that the GC observes the same voting rules as the Committee of Ministers, namely a 2/3rd majority of votes cast, and a simple majority of the Parties. When the vote on a recommendation is not carried, the Committee should vote on a warning. When voting on a warning the Committee should vote on the basis of a 2/3rd majority votes cast.

133. The Committee proceeded to a vote. The recommendation was carried with 27 votes in favour, 2 against and 5 abstentions.

RESC 1§2 TURKEY, 135th meeting

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

- *there is insufficient protection against discrimination in employment, in particular on grounds of sexual orientation;*
- *the upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;*
- *the restrictions on access of nationals of other States Parties to several categories of employment are excessive which constitute a discrimination on grounds of nationality;*
- *the Martial Law No.1402/1971 does not adequately protect local government officials and employees.*

First ground of non-conformity

134. The representative of Turkey informed the GC that the Ombudsman Institution has been established in 2012 by Law No 6328. A person subject to a discrimination based on sexual orientation can also apply to the Ombudsman Institution in order to search his/her rights. Furthermore, the Law on Human Rights and Equality Institution, No. 6701 was enacted on the date of 20 of April, 2016. Turkey had its Human Rights Institution established by Law no. 6332 in June 2012. The Human Rights Institution has now been restructured and replaced by the Human Rights and Equality Institution. The Human Rights and Equality Board is the decision-making body of the Institution.

135. Article 3 of the Law on Human Rights and Equality prohibits discrimination based on gender, race, colour, language, religion, belief, denomination, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability and age. The list of prohibited grounds is exhaustive.

136. The Secretariat noted that Article 3 of the Law on Human Rights and Equality of 2016 provides an exhaustive list of grounds and sexual orientation is not among them.

137. According to the representative of Turkey, courts can expand the definition of discrimination to include sexual orientation, even if it is not expressively provided for in the law. She reiterated that there was no express provision on sexual orientation in the legislation.

138. The representative of Denmark asked whether there was any guidance and information, guidelines for employees as to what protection and rights LGBTI persons have. In reply, the representative of Turkey referred to a call center which provides assistance in case of need.

139. The representative of ETUC emphasised that an exhaustive list cannot be extended by the judiciary but only by the legislator and asked whether there were any prospects of doing so.

140. The representative of France wished to clarify the legislative developments: the legislation had been changed from the previous non-exhaustive list when the sexual orientation could be defined and developed through the decisions of the judiciary, to the law of 2016 with an exhaustive list of grounds, which does not list sexual orientation.

141. The representative of the Netherlands asked what was the reason for not including the ground of sexual orientation in the Law on Human Rights and Equality of 2016, especially after considering that the absence of an explicit prohibition had been the ground of non-conformity many times before.

142. The Secretariat explained that neither in Article 14 of the European Convention on Human Rights, nor in Article 1§2/Article E of the European Social Charter sexual orientation appears explicitly as one of the grounds of discrimination. However, it is the constant case law of the European Court of Human Rights and of the ECSR which confirms that sexual orientation is covered under 'other status'. In the case of Turkey, examples of domestic case law should be provided, in particular from higher courts which bind lower courts and set a precedent for the administration to take into account when devising their activities. It would be important that there is guidance from the national authorities which would indicate that sexual orientation is one of the valid grounds of discrimination.

143. The GC welcomed the establishment of the Equality Institution, took note of the information and invited the Government to provide more detailed information in the next report, including examples of the relevant court decisions. It noted with concern that the new law on Human Rights and Equality provides for an exhaustive list of possible grounds of discrimination where sexual orientation does not appear.

Second ground of non-conformity

144. The representative of Turkey informed the Committee that the Ministry of Labour and Social Security has the intention to modify the provision in question in the Labour Code, inserting the phrase "an appropriate compensation of an amount at least equal to 4 months' salary", instead of the current wording: "appropriate compensation of a maximum amount of not more than 8 months' salary". It means that the limit for the minimum amount will be kept but the maximum amount for calculating the compensation will be deleted. She further mentioned that however she cannot indicate any concrete timetable for this legislative change.

145. The representative of ETUC pointed out that the amendment of legislation had been already announced by the Turkish delegation in 2013 and asked why it had not been pursued. The representative of Turkey indicated that the legislative agenda was very busy and that she had no information on the status of this legislation.

146. The representatives of the Netherlands and Greece proposed that the GC vote on this point.

147. The GC proceeded to vote on a recommendation which was not carried (0 in favour, 5 against and 12 abstentions). The GC then voted on a warning which was carried (19 votes in favour, 3 against and 8 abstentions).

148. The GC urged the Government of Turkey to bring the situation into conformity with Article 1§2 of the Charter.

Third ground of non-conformity

149. The representative of Turkey informed the GC that by Decree Law of 11 October 2011 foreign doctors and nurses can work in Turkey.

150. As regards other professions still closed to foreigners, she pointed out that an inter-ministerial study is currently un-der way. In reply to the observation of the representative of ETUC that the same inter-ministerial study was mentioned in 2013 when this matter was discussed by the GC, the representative of Turkey answered that this is a new study which is designed to address the problems raised under the Charter but also in the context of the liberalisation of service trade between Turkey and the EU under the framework of the Customs Union.

151. The GC took note of the information provided, invited the Government to provide updated information in the next report and decided to await the next assessment of the ECSR.

Fourth ground of non-conformity

152. The representative of Turkey informed the Committee that following the constitutional referendum held on 16 April 2017, Article 122 of the Constitution on martial law would be removed in 2019, which meant that martial law would be abolished.

153. She pointed out that Turkey was carrying out reforms in recent years in all areas of life. At the same time, it was fighting terrorism. In this context, all amendments to the legislation should take into account the specific conditions of the country and the related international documents. Following the military coup attempt of 15 July 2016 which targeted democratic institutions and citizens, a state of emergency was declared throughout Turkey on 21 July 2016. The representative of Turkey underlined that the state of emergency did not affect the daily life of citizens or visitors to Turkey and did not include restrictions on fundamental rights and freedoms.

154. As more than 10,000 civil servants participated in the coup attempt, some of them had to be dismissed. Dismissal decisions could be challenged at crisis centers in each province. On 23 January 2017, the Investigation Commission on State of Emergency Procedures was established to consider applications linked to the state of emergency rulings, in particular the removal or dismissal from public services and educational institutions, as well as the dissolution of organisations. The Commission would act as a court. Its mandate was two years. With this new regulation, persons whose complaint was found to be unjustified would also have the right to appeal to national legal institutions and then to international legal institutions. About 20,000 people who seized crisis centers or the Commission have returned to their positions.

155. In response to the question raised by the Chair, the representative of Turkey confirmed that more than 100,000 civil servants were dismissed further to the introduction of the state of emergency. They were all submitted to the Investigation Commission.

156. The representative of ETUC observed that at the end of 2016 available figures show that more than 125,000 civil servants were targeted and more than 92,000 were subject to legal measures. He also noted that, in the past, Turkey has received 3 warnings on the same ground, namely martial law. Now, when this law has actually been applied and given the gravity of the situation, the Committee should apply its working methods and proceed to vote on recommendation or warning.

157. Representatives of several States, as Austria, Belgium, Greece, Denmark, the Netherlands, Armenia, United Kingdom and Spain supported this proposal.

158. The result of the vote on a recommendation was the following: 20 votes in favour, 4 against and 6 abstentions. As a result of voting, the recommendation was carried8.

RESC 1§2 UKRAINE

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

- *it has not been established that the prohibition of discrimination in employment is effectively implemented in practice;*
- *legislation does not provide for a shift in the burden of proof in discrimination cases.*

159. The representative of Ukraine pointed out that there are no concrete statistics on the number of cases alleging discrimination in employment, because the statistics cover courts decisions alleging discrimination in general on all grounds and areas provided by the national law including in employment. It should be mentioned that according to the Association Agreement between EU and Ukraine, the national authorities must incorporate into national legislation the number of European directives in the field of employment in particular Directive 2006/54/ EC implementing the principle of equal opportunities for men and women and equal treatment of them in the workplace and occupation. Currently, the Ministry of Social Policy has involved experts within the framework of EU Programme "Association for you" to examine compliance of national legislation with the requirements of the above-mentioned Directive and to develop relevant legislative proposals in cooperation with the Ministry of Justice of Ukraine.

160. The GC took note of the information provided, invited the Government to provide updated information in the next report and decided to await the next assessment of the ECSR.

Article 1§3 - Free placement services

RESC 1§3 AZERBAIJAN

The Committee concluded that the situation in Azerbaijan is not in conformity with Article 1§3 of the Charter on the ground that the public employment services do not operate in an efficient manner.
The Secretariat indicated that the Committee has deferred its decision since 2008 due to lack of information.

161. The representative of Azerbaijan stressed that public employment services operate free of charge.

162. In 2015 there were 412 persons working in PES, 84 of them were placement counsellors. The placement rate was 14 %.

[8] Note by the Secretariat: when drafting this meeting report, the Secretariat noted that, as a result of voting, the two-thirds majority of votes cast and a simple majority of the Parties were not reached (Article 16 GC rule of procedure). Therefore, it invites the GC to reflect and deal with this issue at the next 136th GC meeting.

163. In 2016 there were 958 persons working in PES, 200 of them were placement counsellors. In 2016, 41 895 vacancies were notified to PES and 56 631 jobseekers were employed through SEP, the placement rate was higher than in 2015.

164. Lastly, the representative of Azerbaijan, indicated that private services operate independently from public services, under the Regulation Law on Entrepreneurship activities.

165. The GC requested the Azerbaijani authorities to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

RESC 1§3 GEORGIA

The Committee concluded that the situation in Georgia is not in conformity with Article 1§3 of the Charter on the ground that the public employment services do not operate in an efficient manner.
The Secretariat indicated that the Committee has deferred its decision in 2012 due to lack of information.

166. The representative of Georgia indicated that it will be possible to include in the next report the information requested by the ECSR, in detail, for each reference year.

167. The GC requested the Georgian authorities to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

RESC 1§3 SLOVAK REPUBLIC

The Committee concluded that the situation in the Slovak Republic is not in conformity with Article 1§3 of the Charter on the ground that the public employment services do not operate in an efficient manner.
The Secretariat indicated that the Committee has found a non-conformity situation since 2008 due to lack of information.

168. The representative of Slovak Republic accepted that its authorities lacked the relevant information required by the Committee in the previous cycles. He indicated that new reforms have been adopted recently that are expected to give positive results. Offices of Labour and Social Affairs monitor employment services and will soon be able to provide statistics on the quantitative indicators as asked by the Committee. One positive result has been achieved concerning the placement counselors at disposal of jobseekers. The ratio in 2016 is 1 placement counselor for 195 jobseekers.

169. The GC requested the Slovak authorities to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

Article 10§1 - Technical and vocational training; access to higher technical and university education

RESC 10§1 MONTENEGRO

The Committee concludes that the situation in Montenegro is not in conformity with Article 10§1 of the Charter on the ground that the right to vocational education is not effectively guaranteed in practice.

170. The representative of Montenegro provided the following information:

At the end of 2015, the Ministry of Education prepared a Questionnaire on students' monitoring after completion of vocational education, in order to collect data on what is occurring to students who complete vocational education programmes, how long it is required to find a job, whether they do jobs for which they were educated and they submitted the Questionnaire to vocational schools. Schools submitted the Questionnaire electronically to students who completed their education. Replies to the Questionnaire were also processed. Regarding 1994 students who responded to the Questionnaire, 898 students continued their education, 438 students took employment, and 616 persons were unemployed. 42 students ran private businesses - in most cases, continuing their family business. According to the collected data, it is concluded that the greatest number of students continues education, mostly within related higher education institutions.

In the course of 2016 the Ministry of Education has started with the creation of the appropriate software to monitor the professional development of students (tracer study) with applications for surveys (corresponding questionnaire for collecting data) and applications for administration. The demo version of the software has been prepared and set on the server of the Ministry of Education. It is expected that the software will be ready for use by the end of the second quarter of 2017.

Concerning measures for facilitating access to education and their efficiency, we would like to inform that the competition for enrollment of pupils in the first grade of vocational schools is announced pursuant to Article 12, paragraph 2 of the Vocational Education Law (Official Gazette of the Republic of Montenegro 64/02 and 49 / 07 and "Official Gazette of Montenegro", No. 45/10 and 39/13). The number of enrollment positions in the Competition is determined according to the proposal of schools, opinions and recommendations of the Employment Bureau of Montenegro, the number of students who complete primary school in some municipalities and the analysis of the results of the enrollment of the previous years. Schools are obliged to harmonize their proposals with the local community, taking into consideration the development priorities. The number of enrollment positions in the Competition is greater than the number of students who complete primary education in some municipalities, so each student is enrolled. The network of vocational schools in Montenegro is thus designed that there is a vocational or mixed school in each municipality, so vocational education is available to all students who want it. In municipalities where a small number of students complete primary education, the Ministry of Education approves the formation of classes with a small number of students (5-10), thus enabling students to be educated in accordance with their interests and abilities.

The Ministry of Education, in cooperation with relevant institutions and schools, has been continuously working on the melioration of the quality of education and cooperation with employers, primarily concerning implementation of practical education.

171. The representative of France inquired whether the results of the monitoring (based on the questionnaire) concerned the situation globally or just a limited number of respondents. She asked for more precise information on how and whether the results of the monitoring reflect the global situation. The representative of Montenegro noted that more information would be provided in the next report.

172. The GC took note of the information provided, invited the Montenegrin authorities to provide comprehensive information including the results achieved in the next report and decided to await the next assessment of the ECSR.

Article 10§2 – Apprenticeship

RESC 10§2 SLOVAK REPUBLIC

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 10§2 of the Charter on the ground that during the reference period there was no well-functioning system of apprenticeships.

173. The representative of the Slovak Republic provided the following information:

The Slovak Republic would like to refer to the conclusions of the ECSR, more specifically to the part in which the ECSR takes note of the development in the Slovak Republic, even though this development occurred outside the reference period and therefore it was not taken into consideration by the ECSR.

The reference period for the conclusions in question was from 1 January 2011 to 31 December 2014. Several crucial changes related to the system of vocational education and training (VET) and apprenticeship occurred as of 2016 and onwards which is outside the reference period, as was acknowledged by the ECSR. It was initiated by employer representatives, particularly from the car manufacturing industry. The new act 61/2015 Coll. on Vocational Education and Training that was adopted supports closer partnerships between schools and companies and encourages the shift to labour market demand-driven VET. In this new approach, companies take responsibility for training provision. They find students and sign individual training contracts that must be complemented by an institutional contract between the company and a VET school.
In the first school year after the introduction of the new system, newly introduced dual programmes consisting of 50% training within a company have been put into practise. The year after that, programmes based on agreement between companies and a self-governing region were delivered by new VET schools, offering 70% of in-company learning to comply with requirements of the employers. These programmes offer graduates the VET qualification certificate of apprenticeship or the school-leaving certificate while being able to undertake practical training within companies. Employers that participate on the dual VET are then given financial and other reliefs from the state, such as tax reliefs, etc. A new amendment of the dual VET system has been recently adopted and will enter into force from 1 September 2018 which reflects on the comments made by the employers regarding the funding of the programmes and other aspects.

The legislative changes have also been positively evaluated by the European Centre for the Development of Vocational Training.

As was already mentioned, there have been substantial legislative changes related to the VET education in the Slovak Republic outside of the reference period and I believe they should be assessed by the ECSR. Due to the lengthiness of the new legislation, the Slovak Republic will, of course, provide written information in its next report, as is requested by the ECSR in the conclusions and wait for the assessment of the new legislative development.

174. The representative of the Slovak Republic pointed out that several crucial changes related to the system of vocational education and training (VET) and apprenticeship that occurred as of 2016 and onwards. They were initiated by employer representatives, particularly from the car manufacturing industry. The new Act 61/2015 Coll. on Vocational Education and Training that was adopted supports closer partnerships between schools and companies and encourages the shift to labour market demand-driven VET. In this new approach, companies take responsibility for the provision of training. They find students

and sign individual training contracts that must be complemented by an institutional contract between the company and a VET school.

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176. The legislative changes have also been positively evaluated by the European Centre for the Development of Vocational Training.

177. The representative of France expressed her concern that since some of the reforms of the VET system will start to be implemented in 2018, they will again fall outside the next reference period in terms of the results achieved and therefore, only legislative developments will be possible to be taken into account by the ECSR in its next assessment.

178. The representative of the Slovak Republic noted that the dual system has been in place since 2015. The amendment will enter into force next year to reflect the comments made by employers. The system has already been used for three school years.

179. The GC took note of the information provided, invited the Slovak authorities to include detailed information in the next report regarding the outcome of the implementation of the reforms and the legislative developments and decided to await the next assessment of the ECSR.

Article 10§4 - Long term unemployed persons

RESC 10§4 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 10§4 of the Charter on the ground that special measures for the retraining and reintegration of the long-term unemployed have not been effectively provided or promoted.

180. The Representative of Georgia provided the following information:

The Government of Georgia is implementing an active labor market policy, particularly, in order to increase competitiveness of job seekers and promote their employment through vocational training in demanded professions and internships a State Program on Training-Retraining and Qualification Raising for Job-seekers was adopted by the resolution of the Government of Georgia N182, 4 April 2017.

Main objectives of the program have been the following:

a) *Preparing the regulatory legal acts for implementation of the program*
b) *Identification of the vocations demanded by the labour market demanded and prospective vacancies/or prospective work places, based on the analysis of the labour demand survey*

c) *Elaboration of short-term vocational training and re-training programs*
d) *Identification and registration of institutions conducting training short-term*
e) *Identification and registration of job seekers, which are interested in vocational training and re-training*
f) *Organization of the internship program for the job-seekers*

The main target group of the program have been working age adults who are registered as job seekers on www.worknet.gov.ge – and are interested in short-term vocational training and re-training programs. The decree also highlights that in equal conditions preferences will be given to the following groups: people with disabilities, people with special needs, ex-offenders and women who have not completed secondary education. The Social Service Agency (SSA) is the main implementing body of the program. While MoLHSA approves the list of the training areas and the registry of training providers (based on the information provided by the MoES) SSA approves the vouchers and referrals, processes the applications of the job seekers and the list of employers who offer internship placement opportunities. The SSA enters into written agreement with the training providers, as well as with the job seekers.

In 2015-2016 training and retraining program was implemented in Tbilisi and 14 municipal units. 2467 job seekers have been registered at the training providers out of which 252 were socially vulnerable, 114 – PWDs, 208 –IDPs, 11 – ex-inmates, 6 – probationers. Based on the feedback received 363 graduates were employed.

As to the internship component of the program, 106 job seekers were sent as interns out of which 49 were PWDS. After completion of internship 22 job seekers were employed and signed employment agreements.

In 2017 (as of July) 989 beneficiaries have been involved in the training-retraining program at initial stage, including 332 in Tbilisi and 657 in other municipal units. Other 57 beneficiaries will be involved in program at the second stage. Based on initial information there are 61 IDPs, 285 socially vulnerable and 33 PWDs involved in the program.
As to the internship component of the program, 12 organizations were registered as providers adn 59 job seekers as interns out of which 25 were PWDs and 4 - IDPs.

In the frames of employment support program:

2014	387 jobs seekers were employed including 12 PWDs
2015	349 jobs seekers were employed including 9 PWDs
2016	670 jobs seekers were employed including 58 PWDs
2017 as of July	1058 jobs seekers were employed including 35 PWDs

Ministry of Education and Science of Georgia

In 2013, with the involvement of stakeholders Georgian Vocational Education and Training Development Strategy (2013-2020) has been elaborated. Approval of the document has marked a new stage in Vocational Education and Training development. The strategy represents social-economic priorities of Georgian Government and defines the objectives - implementation of which (in accordance with the specific action plan) should promote sustainable development of human resources (capacity development and potential realization, employability or self-employability, opportunity of self-realization), social-economic growth and poverty reduction.

To implement the new public policy and the reform strategy of Vocational Education and Training, it is necessary to create a solid legislative foundation. For this reason, the existing VET legislation has been analysed in 2014 and with a wide-range involvement of stakeholders the new draft law has been elaborated in 2015-2016. During the elaboration process of the draft law the local contexts as well as the best European practices have been taken into account. The document is based on three most important aspects/priorities: Economic Development, Social Inclusion and

Personal/Individual Development. Therefore, it aims to create a solid legislative foundation to support these three priorities. The draft law offers new approaches and principles in relation with a great number of matters and issues including adult education, LLL opportunities and etc. The new law will widen the opportunities related to Vocational Education, Vocational training system will be formalized and ensure accessibility to Vocational trainings for adults in diversified training providers and VET institutions. The flexible mechanisms will be developed in order to move on further levels of education, also the implementation of credit accumulation and transfer mechanisms will be supported, also the validation of non-formal education will be implemented etc.

The draft law has reprocessed several times during the discussion process. On the current stage the final version is developed. The Ministry of Education and Science of Georgia is planning the submission to the parliament by the end of 2017. It will create the legislative bases of new European standard and flexible system of Vocational Education and Training.

Employment service act
With the assistance of EUVEGE experts and involvement of representatives of the Government draft of Employment Service Act has been elaborated. The Act shall govern employment-related activities and institutions competent for employment affairs, Active Labour Market Policy measures, rights and obligations of the unemployed persons and employers, and other matters relevant to employment, in order to raise employment, to combat and prevent long-term unemployment in Georgia.

The Act encompasses various directions that fall within the competencies of different institutions and stakeholders. Accordingly, at this stage the draft is in the process of improving/discussing with different stakeholders.

Since the Act aims to prevent unemployment and to fight against its negative social effects, to ensure equal opportunities on the labour market, to stimulate employers to hire unemployed persons and/or job-seekers to increase labour force mobility in order to respond to structural changes which the national economy is undergoing, etc., impact assessment and analysis is of a vital importance in order for the Government to achieve the set goals. Subsequently, conducting impact assessment within EUVEGE project is planned after completion of the process of discussion and perfection of the act. The adoption of the Employment Service Act depends on the implementation of the above mentioned activities during 2017-2018.

181. The representative of France stated that information provided do not respond to the requirements of this paragraph that covers only the reintegration of long-term unemployed.

182. The GC took note of the information provided, asked the Georgian authorities to remedy the situation and provide all the necessary information in the next report. The GC decided to await the next ECSR's assessment.

RESC 10§4 MONTENEGRO

The Committee concluded that the situation in Montenegro is not in conformity with Article 10§4 of the Charter on the ground that special measures for the retraining and reintegration of the long-term unemployed have not been effectively provided or promoted.

183. The Representative of Montenegro provided the following information:

Information on specific indicators of compliance with this provision, as well as whether there were any requirements for nationals of other States Parties lawfully residing in Montenegro in order to have access to vocational training when long-term unemployed:

Regarding the register of the unemployed persons of Employment Bureau of Montenegro there are, among others, persons with the status of foreigners with a permanent residence permit.

Through the Vocational Training Programme for persons with higher education that has been implemented for the last five years, pursuant to the provisions of the Law on Vocational Training of Persons with Higher Education, 285 unemployed persons with the status of foreigners with a permanent residence permit were engaged. Out of this number, 48 persons have been engaged in the Programme, implemented during 2016/2017. Besides, through active employment policy measures, 15 persons with the status of foreigners with a permanent residence permit were included in 2016.

The Committee asks again the next report for information on: the types of training and retraining measures available on the labour market; the number of persons in these types of training; the special attention given to young long-term unemployed; and the impact of the measures on reducing long-term unemployment.

REPLY:

The priorities and goals of the active employment policy are defined by the National Strategy for Employment and Human Resources Development and the annual action plan concerning employment. In accordance with these documents are defined the measures of interventions or programmes of active employment policy which are being implemented with the aim to increase the employment of certain target groups, increase compliance of supply and demand in the labour market, and enhance the competitiveness of employers.

During 2016, the following active employment policy programmes were implemented:

1. *Public work - socially useful programmes in the field of care for children and young people, the elderly who are in need of social, environmental, educational, cultural and other programmes of public interest. Implemented under the name of public work: Keep it Clean, Teaching Assistants, Personal Assistants, Care of the Elderly, other public works and their duration is limited.*

During 2016, 1096 unemployed persons were involved within public works, of which 69% of women. In 2015, 1383 unemployed persons were included, of which 56.90% of women.

2. *The education and training programme for adults entails the gaining of vocational qualifications and key skills required by the labour market. It is implemented through informal education at adult education providers, pursuant to publicly valid educational programmes. The programme' participants are unemployed persons, preferentially regarding the most common occupations, who are interested in retraining qualification in tourism and hospitality, civil engineering, agricultural and other occupations required by the labour market.*

During 2016, 454 unemployed persons were engaged within the programme of education and training of adults, of which 59.0% were women and they acquired vocational qualifications, that is, the knowledge and skills required for carrying out a particular occupation. In 2015, 978 unemployed persons were engaged, of which 56.0% were women.

3. *The training programme concerning the work at the employer enables employers to train their unemployed persons who have not been employed in the last 12 months, in the shortest period of one month, and give them the jobs for which they have been trained, in the shortest duration of three months, in accordance with their needs. Employers, who, immediately after the completed training, hire unemployed persons, have the right to wage subsidies during the work of these persons for a maximum of eight months. Monthly wage subsidy is in the amount of total expenditures for minimum wage of an employed person.*

During 2016, 250 people were engaged in this programme, of which 46.0% were women. During 2015, 537 persons were engaged, of which 31.0% were women.

4. *The training programme for independent work involves the acquisition of knowledge, skills and competences for independent performance of duties and responsibilities. It is conducted by the employer who concludes an employment contract with the participant of the programme for a definite period of six months and shall be entitled to a subsidy of wages. The monthly subsidy of wages is the amount of total expenditure for the minimum wage of the employee. Programme participants are persons who are less than two years ago acquired secondary education (level III and IV) and have no work experience in the education level.*

During 2016, 71 persons were included in this programme, of which 42.0% were women. During 2015, 123 persons were involved, of which 47.20% were women.

5. *Pilot programme «Young people are our potential, give them a chance «*

This programme was implemented to young people up to 30 years of age, who graduated from the faculties and who had a work experience within education, advanced computer skills and knowledge of English. The goal is to stimulate youth employment in the municipalities of residence. Programme participants acquire entrepreneurial knowledge and specific business skills of development of project applications, management and implementation of projects, organization of clusters and cluster networking benefits of economic entities. Also, the programme enables them the implementation of acquired knowledge to the work.
During 2016, 48 people were included within this programme, of which 60% were women. During 2015, 50 people were included, of which 58 % were women

6. *Programmes of vocational rehabilitation are being implemented with the goal of training the individuals for social and work integration. They include measures and activities allowing persons with disabilities and other difficult-to-employ persons as a target group, to adequately prepare for the labour market, have the capacity to operate, maintain employment, make progress or change professional career...*

Within the scope of these measures and activities, in 2016, 212 persons were included, of which women's participation was 56.13%. During 2015, 196 persons were included, of which 47.95 %were women...

7. *Pilot programme "Stop gray economy" was implemented during 2016. This programme covers up 100 unemployed persons with higher education, up to 29 years of age, having work experience in the shortest period of nine months. The training and employment of young people in the fight against the gray economy contributed to solving the problem of youth unemployment, the suppression of informal business, or the gray economy. Within the real work environment, the participants provided technical support and assistance to the officials of the Directorate for Inspection Affairs, the Police Directorate and the Tax Administration concerning combating informal business. In addition to incessant mentoring, programme participants are employed for a defined period of time, for a period of 3 months, on the following jobs: registration of taxpayers, taxpayers and insurers, control of the correctness of registration applications and registration decisions, application of positive tax regulations, receipt and processing of tax returns, processing and arranging of tax records, in the call center, implementation of the Project "Be Responsible" and regarding other tasks of the inspection services in all segments defined by the operational plan of work.*

The employment rate of women and the differences in wages between women and men in both the private and public sectors:

The quarterly data from the Labour Force Survey:

ARS- 15 -64	*2013*	*2014*	*2015*	*Q4/2016*	*Q4/2015*
Female activity rate	*52,8*	*55,4*	*56,9*	*55,0*	*56,7*
Female employment rate	*42,8*	*45,3*	*46,9*	*45,2*	*47,3*
Female unemployment rate	*18,9*	*18,4*	*17,6*	*17,8*	*16,7*

184. The representative of France stated again that the information provided does not concern the reintegration of long-term unemployed.

185. The GC took note of the information provided, asked the Montenegrin authorities to remedy the situation and provide all the necessary information in the next report. The GC decided to await the next ECSR's assessment.

Article 10§5 - Full use of facilities available

RESC 10§5 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 10§5 of the Charter on the ground that the law establishes a length of residence requirement of three years for students to apply for financial aid.

186. The representative of Andorra provided the following information:

L'article 3 de la loi 9/2014, du 3 juin, d'aides aux études, stipule:
« Article 3. Conditions exigées pour une demande de bourse.

1. Outre les exigences académiques, économiques et patrimoniales établies dans cette loi, pour obtenir une bourse, les élèves, de nationalité andorrane ou étrangère, doivent résider en Principauté d'Andorre de façon permanente et effective.
En ce qui concerne les aides aux études de l'enseignement supérieur, la période minimale de résidence effective exigée afin de bénéficier d'une aide est de trois ans consécutifs juste avant la présentation de la demande. Cette exigence est liée à la petite dimension du pays et à la forte fluctuation de population.

2. En général, il correspond aux parents ou aux tuteurs de soutenir leurs enfants pendant la période d'études, y compris l'enseignement supérieur. Lorsqu'un étudiant, atteignant la majorité et étant indépendant de ses parents ou tuteurs, ne peut pas assumer les responsabilités économiques énoncées, il peut demander une bourse. »

Le critère correspondant à la période minimale de résidence effective de trois ans pour pouvoir bénéficier d'une aide à l'enseignement supérieur est d'application pour les étudiants nationaux et pour les non nationaux.

La structure de l'enseignement supérieur de la Principauté d'Andorre est limitée : il existe une université privée qui propose exclusivement des formations virtuelles (Universitat Oberta La Salle) et une université publique (Universitat d'Andorra) qui propose des diplômes en ligne et un nombre limité d'études présentielles ou semi-présentielles.

Les formations virtuelles de l'Université de la Salle sont : Bacheloren informatique, Bachelor en design numérique, Master en administration des entreprises (MBA), Master en gestion des affaires numériques et études de doctorat.

Les études de l'Université d'Andorre sont: Bacheloren infirmerie, Bacheloren sciences de l'éducation, Bacheloren informatique, Bachelor en administration des entreprises, Bachelor en infirmerie obstétricogynécologique et études de doctorat. Le nombre réduit de diplômes fait que la majorité des étudiants d'enseignement universitaire des 17-30 ans poursuivent leurs études à l'étranger, soit en Espagne, soit en France.

Par conséquent, le programme d'aides aux études a été conçu de façon à ce que les aides soient transportables, c'est-à-dire que les étudiants puissent bénéficier des aides en dehors du territoire national. Ces aides incluent le transport, le logement et la pension alimentaire, et le matériel. Pour pouvoir bénéficier d'une aide aux études à l'étranger, un minimum d'enracinement dans le pays de trois ans a voulu être garanti.

Quant à la formation professionnelle supérieure, la structure est plus réduite que pour l'enseignement universitaire. L'Université d'Andorre propose deux Diplômes Professionnels Avancés, un en Informatique de gestion et un en Administration d'entreprises.

Le système éducatif français offre un Brevet de Technicien Supérieur – Assistant de gestion PME-PMI.

Ces études sont proposées dans des établissements publics et sont gratuites. En ce qui concerne les étudiants de formation professionnelle supérieure poursuivant leurs études à l'étranger, une garantie d'un temps minimum d'enracinement dans le pays est exigée, comme pour l'enseignement universitaire.

A titre d'exemple, en 2014-2015 sur 400 demandes de bourse d'enseignement supérieur, seule une demande d'aide aux études de formation professionnelle supérieure en Andorre a été demandée contre 26 pour l'étranger. Les bourses accordées ont été 1 et 20 respectivement.

En 2015-2016, sur 412 demandes de bourse d'enseignement supérieur, 7 demandes concernaient des bourses de formation professionnelle supérieure en Andorre et 29 à l'étranger. Les bourses accordées ont été de 5 et 23 respectivement.
Le niveau d'octroi est significatif et les motifs de non-octroi étaient dus à des motifs socio-économiques et non pas liés à la durée de résidence.

Aides aux études à l'enseignement supérieur (2011- 2015)

ANNÉE ACADÉMIQUE. BOURSES ACCORDÉES ET MONTANT								
Type d'aide	**2011-2012**		**2012-2013**		**2013-2014**		**2014-2015**	
Crédits	4	30.000,00 €	4	45.000,00 €	0	0,00 €	0	0,00 €
Bourses	196	740.338,27 €	217	951.485,65 €	214	906.267,71 €	233	987.747,31 €
Prix nationaux à l'éducation	15	73.203,42 €	14	73.250,27 €	15	75.431,26 €	16	86.972,36 €
Total	215	843.541,69 €	235	1.069.735,92 €	229	981.698,97 €	249	1.074.719,67 €

Ces données montrent une augmentation du nombre d'aides aux études accordées ainsi que de la dotation économique de 2011 à 2015. Pendant la période de référence les aides aux étudiants ont été suffisantes.

Force est de constater que personne n'a déposé plainte, au Ministère chargé de la formation professionnelle et de l'enseignement supérieur ou à l'Institution de l'Ombudsman, pour des raisons liées à la durée de résidence exigée.

Les ressortissants des Etats parties contractante à la Charte sociale européenne, dès lors qu'ils résident régulièrement sur le territoire national, bénéficient des mêmes droits que les nationaux.

Pour l'enseignement supérieur, les nationaux et les non-nationaux ont les mêmes droits d'accès à l'éducation supérieure.

- *Les personnes doivent répondre aux critères académiques pour l'accès à l'enseignement supérieur.*
- *Toute personne peut demander une bourse.*
- *Les bourses s'accordent selon des critères identiques.*

Le Gouvernement de la Principauté d'Andorre envisage de réviser l'article 3 de la loi d'aides aux études qui fixe une condition de durée de résidence de trois ans pour les ressortissants des autres Etats partis et pour les nationaux, pour demander une aide financière en vue de faire des études.

187. According to the representative of Andorra the Law of 2014 on financial aid in education, which sets a minimum residence period of three consecutive years for students to apply for financial aid equally applies to nationals of Andorra. Therefore, the amendment to this law lifting this requirement would be relatively easy to introduce.

188. According to the representative of France, since it is easy to change the law regarding this particular point, there will most probably be a conclusion of conformity from the ECSR next time.

189. The representative of the ETUC asked Andorra to provide positive news in the next report, precisely indicating the amendments to the law concerned.

190. The GC took note of the information provided, invited the Andorran authorities to provide information in the next report and decided to await the next assessment by the ECSR.

RESC 10§5 AUSTRIA

The Committee concludes that the situation is not in conformity with Article 10§5 of the Charter on the ground that non-EEA nationals are subject to a length of residence requirement of five years to be eligible for financial assistance for training.

191. The representative of Austria provided the following information:

- *Financial support for education is regulated in two different acts in Austria.*

1 <u>Educational grants are regulated by the Austrian Schools Grants Act 1983.</u>

- ***According to latter, the following are entitled to educational grants:***

- *Austrian nationals,*
- *EU/EEA nationals,*
- *third-country nationals as they are so entitled as a result of EU or EEA agreements*

and

- *refugees.*

*In addition, non EU or EEA nationals are also entitled to educational grants when at least one parent was liable to **pay income taxes in Austria for at least five years and had the centre of his or her vital interests in Austria**.*

*Furthermore it should be noted that **special financial assistance** may be granted to **everyone** who attends school in Austria to offset the social hardship occasioned by school attendance.*

- ***Statistical data***
  With regard to the number of non EEA/EU nationals of Member States affected by this law, no reliable data has been available.

2 <u>Financial support for students is regulated by the Austrian Student Support Act 1992</u>

- *Regarding the equivalence of foreign students the Austrian **legal situation is in accordance with the relevant legislation of the European Union** especially*

- *Art 18 and 45 TFEU,*
- *Art 7§2 and §10 Regulation (EU) No 492/2011,*
- *Art 24§1 and §2 Directive 2004/38/EC as well as*
- *Art 11 Directive 2003/109/EC*

***and the jurisprudence of the European Court of Justice**.*

- *In accordance with Directive 2003/109/EC, in Austria **third-country nationals** are entitled to equal treatment as regards study grants when, after a five-year uninterrupted legal residence in the territory, the legal status of a long-term resident has been acquired. **Equalization of third-country nationals is not planned at the moment.***

- *Regarding **stateless persons** a change is currently planned in the law. According to the proposal, stateless persons will have the same legal position as third country nationals.*

- *It should be emphasized that, **a mere legal stay in the host Member State is not sufficient in any case.***

*According to the current European legislation and the jurisprudence of the ECJ, students from **EU / EEA countries are not automatically equated**. Financial support is granted only if they*

- *are **family members of migrant workers,***
- *have a **long-term resident status,** or if they*
- *are **integrated into***
  - ***the labour market (Article 27§2, Article 16 Directive 2004/38/EC),** or*
  - ***the education or social system (C-209/03 Case Bidar).***

Based on this jurisdiction of the ECJ a new paragraph has been added in the Student Support Act of 1992 (Article 4§1a) which expressly specifies the requirements for equal treatment of EEA nationals.

*If there are no circumstances indicating a particular link to the host Member State, the **minimum residence period of five years** as a precondition for equality **also applies to EU / EEA citizens** (Art 24§2 Directive 2004/38/EC).*

*Equalization of third-country nationals solely on the basis of their legal residence would lead to an **unjustifiable better position of third-country nationals** in favour of EU / EEA citizens. Such interpretation of Article 10§5 RESC, would as a result, have to be applied to all Member States, including EU / EEA states.*

Regarding equal treatment there are no such broad schemes known in other European countries.

*The equality of all Member States on the sole basis of their legal residence would result in an **unpredictable number of eligible persons and therefore would entail enormous costs and administrative burdens** that could not be met with the available resources.*

- ***Statistical Data***

*In the academic year 2015/2016 **in total 3,100 foreign students** received financial support. Out of these students, **1,014** were **third country nationals** and **156** were **refugees**.*

3 <u>Interpretation of Article 10§5 RESC</u>

- *According to Article 10§5 RESC the parties commit themselves to encourage full utilisation of facilities provided by **appropriate measures**.*
  - *The granting of financial assistance in **appropriate cases** (lit b) or*
  - *the reduction or abolition of any fees and charges (lit a)*

*are merely given **as an example** of such **appropriate measures**.*

*It needs to be highlighted, that the obligation to grant financial assistance (lit b) does not refer to all cases. Article 10§5 lit b **expressly** states, that financial assistance needs to be granted only **in appropriate cases.***

It thus may be restricted to those persons which have a sufficient degree of integration in the Contracting State concerned.

192. The Chair underlined that the GC cannot discuss the interpretation of the Charter by the ECSR. However, it can note that due to economic reasons it is difficult to comply with the Charter as regards the specific point of access to financial assistance for training.

193. At the suggestion of the representative of the ETUC, it was decided that the issue regarding the interpretation of the notion of 'appropriate' under Article 10§5, point b of the Charter would be added to the points of discussion at the meeting of the joint bureau.

194. The GC took note of the information provided and invited the Austrian authorities to provide information regarding any changes to the situation in the next report and decided to await the next assessment by the ECSR.

RESC 10§5 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 10§5 of the Charter on the ground that the non-EEA nationals are subject to a length of residence requirement of two years to be eligible for financial aid for education.

195. The representative of Belgium provided the following information:

Education is a competence of the communities. In Belgium there are three communities that are defined by language: Dutch-speaking community, French-speaking community and German-speaking community. They are independent of each other and can decide on their own policies. Alongside the communities, there are 3 regions which are defined by the territory: Flemish Region, Walloon Region and Brussels Capital Region and they partially overlap with the communities. Vocational training is a shared competence with the regions exclusively since the last state reform in 2014.

The condition of nationality for financial aid for education is described in the regulations of the Dutch-speaking and French-speaking community. The German-speaking community mentions explicitly that there is no difference in treatment between EEA and non EEA-nationals.

The formulation of the conclusion of the ECSR has changed compared to the other conclusions in previous years. The conclusion of ECSR of 2016 stipulates that non-EEA nationals are subject to a length of residence requirement of two years to be eligible for financial aid for education but this is not correct.

The restriction of the 2 years residence was first mentioned in the XV report in 2004 for the Dutch-speaking community but this was for non-EU nationals and not for non-EEA nationals. However, the decree on financial aid in the Dutch-speaking community of 8 June 2007 describes new conditions of nationality. People who have a permanent resident permit can benefit from financial aid without distinction of nationality. All EEA nationals have to work at least 2 years in Belgium before benefiting from financial aid, unless they are nationals from the EU and live at least 5 years in Belgium. Nationals from outside the EEA without a permanent resident permit can benefit if they reside at least 1 year in the country and if their permit was not delivered for study or work. And if a permit was delivered on the basis of family reunification a person can benefit immediately if the person who they are joining reside at least 1 year in the country to study or work.

The system of financial aid that is subject of this examination is developed by the communities and is related to more general education policies. In this sense I would like to stress that the scope of the article 10 of the European Social Charter is Vocational training and not access to (higher) education generally. The system is designed to provide financial aid for general education and demand a large engagement into the education program (at least part-time). It is not intended for courses on the short term. Numerous other measures for support to vocational training such as the paid educational leave are without any restriction on nationality. Also training opportunities offered by the employment agencies are accessible to all persons residing legally in Belgium.

196. In addition to the information provided by the representative of Belgium, the Secretariat asked the Government to provide full information regarding the situation of EU, EEA and non-EEA nationals in all three communities.

197. The GC took note of the information provided and invited the Belgian authorities to provide full information in the next report and decided to await the next assessment of the ECSR.

RESC 10§5 FINLAND

The Committee concludes that the situation in Finland is not in conformity with Article 10§5 of the Charter on the ground that non-EEA nationals must have resided for two years in order to have access to student financial aid.

198. The representative of Finland provided the following information:

According to the Committee, those States Parties that impose a permanent residence requirement or any length of residence requirement on nationals of other States Parties in order for them to apply for financial aid for vocational education and training are in breach of the Charter.

Finland would like to clarify the relationship between student financial aid and residence permits as follows:

Under Section 1 of the Act on Financial Aid for Students (65/1994), student financial aid can be granted to a foreigner who resides permanently in Finland for other than study purposes. Moreover, three alternative conditions must be met: he/she must have been granted a continuous (A) or permanent (P) residence permit regulated in the Aliens Act (301/2004) or a long term resident's EC resident permit (P - EC).

According to Section 33 of the Aliens Act, a continuous residence permit refers to a fixed-term residence permit issued for a residence of temporary nature. Under Section 47 of the Aliens Act, a continuous residence permit can be issued, for instance, for employment of continuous nature or for pursuing a trade of continuous nature.
Permanent residence permits are valid until further notice. A long-term resident's EC residence permit is considered equal with a permanent residence permit as regards its period of validity. Under Section 56 of the Aliens Act, a permanent residence permit is issued to aliens who, after being issued with a continuous residence permit, have resided legally in the country for a continuous period of four years if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under this Act. Residence is considered continuous if a foreign national has resided in Finland for at least half the validity period of the residence permit. Absence resulting from ordinary holiday or other travel or work at a work site abroad on secondment by a Finnish employer is not considered an interruption of continuous residence.

According to Section 46 of the Aliens Act, an alien who has been accepted into an educational institution in Finland as a student can be issued with a temporary (B) residence permit. A residence permit issued for the grounds of studies is temporary for the entire duration of studies. In practice, the student is issued an extended permit for one year at a time so that the licensing authority can regularly check the amount of studies completed. A residence permit for a student is not replaced by a continuous residence permit after two years of continuous residence in the country as is the case with temporary residence permits for employment or pursuing a trade under Section 54(3) of the Aliens Act. The provision on the two-year residence requirement referred to in the conclusions by the European Committee of Social Rights is thus not concerned with students but, instead, persons whose residence is based on employment and who have been issued a temporary residence permit on the grounds of employment or pursuing a trade.

In order to be issued with a temporary residence permit for the purpose of completing studies, a student must be able to demonstrate that his or her means of support will be secured during the studies. This is a general legal principle in many Member States. In practice, a foreign student must fund his or her studies with student financial aid received from his or her country of origin or other funds. It is the Finnish Government's view that there are grounds to require some degree of integration in the country from the aid applicant in order for him or her to obtain student financial aid financed by state funds, and this can be demonstrated with a continuous or permanent residence permit. The state's expenditure on student financial aid would significantly increase if the criteria for granting student financial aid did not include permanent residence in the country.

It is worth noticing that the two-year time limit is not applied when a person is applying for a continuous residence permit on the basis of family ties. A person who has been issued a continuous residence permit on the basis of family ties is also entitled to receive student financial aid. The Act on Financial Aid for Students thus enables the foreigners permanently residing in Finland on the basis of family ties to have access to student financial aid similarly as Finnish nationals.

Based on Finland's view, the currently valid provisions on the right of foreign citizens to student financial aid are clear and logical from the perspective of the implementation of student financial aid. There have only been few individual cases in which a person has been denied access to student financial aid on the grounds of the person residing and working in Finland does not have a continuous residence permit. No cases are also known in which the Student Financial Aid Appeal Board would have received appeals concerning persons coming to study in Finland from outside the EEA being denied the right to receive student financial aid. This issue is thus largely theoretical.

Continuous monitoring and consideration is carried out in connection with the criteria for student financial aid, but no pressure to change the related prerequisites has emerged in Finland. Nonetheless, Finland may still assess the necessity for amending the provision in the Act on Financial Aid for Students, and the related alternatives and impacts in further detail.

199. The Secretariat pointed out that it would be appropriate to ask the Government to provide more detailed information regarding those nationals of States Parties who enter Finland not for the purposes of training, but for other purposes, such as family reunification or employment. In particular the next report should explain whether individuals who are granted temporary permit under Section 54(3) of the Aliens Act, will have access to financial assistance for studies already on the basis of this temporary permit or they have to wait for two years to first obtain a continued residence permit with a view to gaining access to financial assistance.

200. The GC took note of the information provided by the representative of Finland concerning residence permits and invited the Finnish authorities to provide further detailed information in the light of the discussions and decided to await the next assessment of the ECSR.

RESC 10§5 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 10§5 of the Charter on the grounds that there is a length of residence requirement of two years for non-EEA nationals to qualify for scholarships granted on the basis of social criteria.

201. The representative of France provided the following information:

Nonobstant les conclusions négatives du Comité européen des droits sociaux, la réglementation en vigueur relative aux aides allouées par le ministère chargé de l'enseignement supérieur et de la recherche n'a pas été modifiée concernant les critères applicables aux étudiants étrangers.

La circulaire n° 2017-059 du 11 avril 2017 détaillant les modalités d'attribution des bourses d'enseignement supérieur sur critères sociaux et des aides au mérite et à la mobilité internationale pour l'année 2017-2018 prévoit que les étudiants ressortissants d'un Etat membre de l'Union européenne ou assimilés doivent justifier de la qualité de travailleur communautaire, d'enfant de travailleur communautaire ou d'un certain degré d'intégration dans la société française pour bénéficier de ces aides.

Les autres étudiants étrangers, en dehors du cas particulier des réfugiés ou apatrides, doivent quant à eux justifier d'un titre de séjour, d'une présence en France depuis au moins deux ans et d'un rattachement à un foyer fiscal en France (père, mère, tuteur légal ou délégataire de l'autorité parentale).

Les conditions particulières de résidence ou d'emploi appliquées aux ressortissants communautaires et assimilés sont justifiées objectivement par l'existence d'un ordre juridique communautaire spécifique et par l'instauration d'une citoyenneté de l'Union.

Ces conditions résultent ainsi de l'application des articles 7 et 12 du règlement n° 161-68 (CEE) du 15 octobre 1968 relatif à la libre circulation des travailleurs à l'intérieur de la Communauté, de la directive 2004/38/CE du 29 avril 2004 relative au droit des citoyens de l'Union et des membres de leur famille de circuler et de séjourner librement sur les territoires des Etats membres et des articles 3 et 9 de l'annexe 1 de l'accord entre la Confédération suisse et la Communauté européenne et ses Etats membres sur la libre circulation des personnes signé le 21 juin 1999.

En ce qui concerne les conditions de résidence et de rattachement fiscal imposées aux ressortissants extracommunautaires, il convient de souligner que le Conseil constitutionnel a jugé, de manière constante, que le principe constitutionnel d'égalité, applicable aux Français comme aux étrangers résidant en France, ne fait pas obstacle à ce que le législateur prenne à l'égard des étrangers des dispositions spécifiques sous réserve qu'il respecte les droits fondamentaux de valeur constitutionnelle reconnus à tous ceux qui résident en France ainsi que les engagements internationaux.

En outre, dans une décision du 13 août 1993 (DC n°93-352), il a conclu que la considération de l'intérêt général et des fondements de la solidarité nationale dans la mise en œuvre des dispositifs de redistribution permettait la subordination du bénéfice d'une prestation sociale en faveur d'un ressortissant étranger à une résidence stable et régulière sur le territoire français.

Par ailleurs, la bourse constituant une aide du gouvernement français à la famille de l'étudiant, il apparaît normal que celle-ci justifie d'un lien suffisant de rattachement à la France consistant notamment en une résidence minimale sur le territoire ou un travail effectif pendant une période déterminée. Une prestation sociale non contributive telle qu'une bourse financée par l'impôt justifie, dans l'intérêt général, de telles conditions de résidence et de travail.

202. The GC took note of the information provided and invited the French authorities to provide information in the next report and decided to await the next assessment of the ECSR.

Article 15§1 - Vocational training for persons with disabilities

RESC 15§1 AUSTRIA

The Committee concludes that the situation in Austria is not in conformity with Article 15§1 of the revised Charter on the ground that the right of persons with disabilities to mainstream education is not effectively guaranteed.

203. The Secretariat said that the situation was not in conformity for the first time.

204. The representative of Austria provided the following information:

1 <u>2010 Assessment Regulation</u>

- *The **2010 Assessment Regulation** created modern medical criteria and parameters to determine the extent of a disability during an examination by medical experts. The Assessment Regulation replaced the Indicative Rate Regulation from 1957 – which was excessively oriented towards persons injured during the war – for all new cases. In July, 2012 the regulation had again been adjusted (BGBl. II Nr. 251/2012).*

  ***Disability** as defined by this regulation is "the effect of a non-temporary physical, mental or psychological impairment or an impairment of the senses which makes participation in the life of society, particularly in normal working life, difficult. Non-temporary means a period which is more than (or expected to be more than) six months."*

  *When using the so called **MAS table** (MAS = multi-axial classification system), social aspects are taken into account in medical examinations according to the Assessment Regulation. In this way, social competences are also considered when assessing mental abilities.*

- *We are aware that Austria needs to further improve in this regard, that is why in 2014 a **working group has been established to further amend the social model of the 2010 Assessment Regulation**.*

2 <u>Education and inclusion</u>

- *Students with sensory or physical disabilities are fully integrated into compulsory education as well as into upper secondary schools in Austria.*

- *In the current educational reform, major steps are being taken to enable all pupils, with and without disabilities, to learn in mainstream schools.*
- *It is not the case, that inclusion in Austria is only legally introduced in primary school. Also, it is not the case that school trials are still being carried out on inclusive school models in secondary school of the 10 to 14-year-olds.*

  *In 1993, inclusion of children with a need of special pedagogical support was legally introduced into **Primary School** (Volksschule).*

  *In 1996, inclusion of children with a need of special pedagogical support at **lower secondary school** level was followed (10 to 14-year-olds; Hauptschule/Neue Mittelschule and the lower school years of general secondary schools – AHS).*

  *Regarding upper secondary level, in 2012 inclusion of pupils with special pedagogical support was introduced in the **polytechnic schools** and in the **1-year vocational schools for economic professions**.*

  Additionally certain target groups are entitled to obtain a partial qualification or an extended apprenticeship after the 9th grade. Since 2003 these target groups are:

- *Leavers of special needs schools*
- *Youth who did not successfully acquire qualification at lower secondary level*
- *People with disabilities*
- *People who are not suitable to be placed into a regular apprenticeship relation for "reasons related to the person himself/herself"*

This opportunity has been well established since its introduction in 2003. In 2016, ***7,163*** *adolescents in Austria were attending a* ***partial qualification or extended apprenticeship****.*
Source: WKÖ

year	***total***	***extended apprenticeship (§ 8b Abs 1 BAG)***	***partial qualification (§ 8b Abs 2 BAG)***
2014	*6.475*	*4.905*	*1.570*
2015	*6.787*	*5.149*	*1.638*
2016	*7.163*	*5.558*	*1.605*

Detailed statistical data is available in the governmental report on the situation of disabled persons in Austria, published in August, 2017. The Committee will be provided with all relevant data in our next report.

Special legal provisions have been established which ***enable appropriate deviations from the curriculum and extended special instruction****, in order to ensure continuous support for children with physical or sensory disabilities in vocational secondary schools and the upper school years of general secondary schools (AHS).*

Special educational support helps pupils with disabilities acquiring education suited to their capabilities. The purpose is to enable social integration and participation as well as independent living.

- *It is important to note that many physically or mentally handicapped children are attending general schools* ***without the need of special educational support****. Taking this fact into account it needs to be highlighted, that* ***the number of children with special educational needs is not to be equated with the total number of pupils with disabilities.***

3 Disability Ombudsman

- *The Disability Ombudsman is responsible for providing advice and support to people who feel discriminated against in the meaning of the Federal Disability Equality Act or the Federal Disability Employment Act. If necessary, the Disability Ombudsman advises and supports people with disabilities during conciliation proceedings, and if necessary can also take part in them as a trusted third party. One important focus in the work of the Disability Ombudsman is on the inclusive education of people with disabilities.*

- *In the following we give some overview of cases which demonstrate the important work of the Disability Ombudsman:*

  - ***Voluntary school year after compulsory schooling (2015)***
    Twins with mental retardation, neurological disability and epilepsy attended an inclusive class in a lower secondary school (Neue Mittelschule). After completing a 10th year in an inclusive class, the parents applied for the approval of a voluntary 11th and 12th year of school. The school authorities rejected the request, arguing that this possibility was only provided in a special school (Article 32§2 School Education Act -Schulunterrichtsgesetz), being aware of the fact, that the next special school was 25 kilometres from their place of residence. An intervention of the Disability Ombudsman unfortunately failed.

- ***Refusal of admission to a private school (2012)***
  A girl who was dependent on a wheelchair and had a mild learning disability attended an integrative class in primary school. Because the girl needed to get catheterized twice a day by the mother, the parents applied for a private school which only had morning classes. The school rejected the admission arguing that there was no accessibility for wheelchairs. They refused to install assisting tools like a stair lift either. Unfortunately, the arbitration failed in this case. Although the expanses of the installation of a stair lift would have been within the limits of the interim regulation of the Federal Disability Equality Act, the girl's parents decided not to lodge a claim for discrimination on grounds of disability.

- ***Graduation at a tourism school (2010/2011)***
  In 2010 the intervention against a girl's rejection who suffered from Arthrogryposis Multiplex Congenita (AMC) from a Secondary School for Economic Professions was successful. The girl was allowed to attend the school as a regular student in Catering and Sales Management.
  However, in 2011 the Disability Ombudsman was again involved in that case. In order to graduate from the tourism school, students had to pass the practical examination, where they had to carry four plates with one hand. For the girl it was not possible to pass this examination due to her physical handicap. An exception of the curriculum was not allowed by the school, since catering was a characteristic subject for Catering and Sales Management.
  Finally a solution could be found for the student. In the second year, the subject catering was taken from the curriculum and a modification was made for the practical examination as a pilot project. The girl could therefore successfully graduate from school.

- ***Admission test at universities for hearing impaired persons (2014)***
  A man felt discriminated at the admission test for a university study due to his hearing impairment. Due to the handicap, the concrete test situation, a crowded large hall, had a negative impact on his ability to concentrate and thus on his test performance.
  In the conciliation proceeding it could be agreed that the client will receive a better support for a new examination, including a separated examination room. In addition, the university committed itself to scientifically work on the admission test in consideration of disabilities, in order to avoid possible discrimination in the future.

➢ *Fortunately, there are many positive examples in which the parties reached agreements. But more importantly we need to focus on cases where a positive solution has not been found yet. We are aware of the challenges in this field and will continue striving for better solutions.*

4 Activities and Progress

➢ *In 2011 a participatory strategy was started in the Austrian school system to implement the UN Convention on the Rights of People with Disabilities, ratified by Austria in 2008.*

➢ *The 2012-2020 National Action Plan for Disability formulates the objective of developing the inclusive school system. As a first step the "inclusive region" approach was set. An inclusive region is one that aims to fully implement Article 24 (Education) of the UN Convention on the Rights of People with Disabilities.*

➢ *An inclusive model region is intended to provide the opportunity for all pupils living in this region to be taught in mainstream schools. Therefore special settings have to be created at mainstream schools.*

➢ *One of the key challenges is to establish inclusion in educational institutions on a large scale – mainly it is about changing attitudes and practices. Actions taken in this regard need to be concrete, plausible and they need to gradually improve the situation of children and adolescents with disabilities.*

- *The best possible support of pupils according to their individual needs is an essential goal of the inclusion of children and young people with disabilities.*

- ***Statistical Data***
  Due to the high level of acceptance which has been achieved by joint lessons of pupils with and without disabilities in primary school and at secondary schools, more than 50 % of all pupils with special educational needs have been taught in integrated classes for some years now. Meanwhile this number increased up to 55%. ***The number of educational institutions where pupils and students are being taught inclusively is increasing constantly.***

  When it comes to ***compulsory education*** *the number is even higher. In the school year 2015/2016, 19,717 out of a total of 30,701 pupils with special educational needs received an inclusive education in mainstream schools. This results in some 64% of inclusive education in general schools and 36% education in special schools.*

  Detailed statistical data is available in the governmental report on the situation of disabled persons in Austria, published in August, 2017. The Committee will be provided with all relevant data in our next report.

5 Measures taken to promote Austrian sign language

- *Austrian sign language is currently laid down in the curriculum of special schools for deaf children as mandatory as well as optional subjects.*

- *There are sign language or bilingual (Austrian sign language and German) classes in almost all special schools for deaf as well as in inclusive classes (eg Vienna, Carinthia, Styria).*

- *For deaf pupils who are taught in general higher secondary schools, the curriculum can be modified by the school authority. Furthermore, measures such as additional remedial teaching, support by deaf teachers, etc. shall ensure that deaf pupils successfully graduate from school and therefore have the opportunity to go to university or some higher education institutions.*

- *Since 2013, deaf students have been given access to the teaching profession at educational colleges.*

- *More teachers who are competent in sign language are needed to teach deaf children and young people. Courses at teacher training colleges and universities are being offered for this purpose.*
  - *The College of Education in Lower Austria in cooperation with the Federal Ministry of Education, offers a course for teachers called "Education of the Hearing Impaired".*
  - *The College of Education in Carinthia offers a nationwide course "Sign Language in Education / Bilingual Education".*

- *A nationwide working group, which consist of hearing and deaf pedagogues as well as experts supported by sign language interpreters, works on the development of educational materials for teachers, information brochures and folders for teachers and pedagogues.*

- *A bilingual database was set up for the 1st - 4th grade.*

- *The Federal Ministry of Education is working on a project to further develop the curricula in primary up to higher secondary schools regarding Austrian sign language. (To be finalized in autumn 2018).*

- *At the Federal Ministry of Education, expert meetings are taking place on a regular base. On these meetings, representatives of educational colleges, universities, practitioners and the Austrian Linguistic Institute are taking part. (The previous meeting took place in September 2016).*

- *Unfortunately, currently, no statistical evaluation can be made available, as no central survey of (bilingual) teaching in the Austrian sign language has been taken out.*

205. The representative of France asked if the figure of 55% of children in mainstream education applied to children under the age of 10. She also asked what the percentage was for higher education.

206. The representative of Austria explained that the figure of 55% applied to children of compulsory school age, namely up to 15. No data were available with regard to higher education.

207. The representative of France pointed out that the situation had improved compared to the situation presented in the report and that it was important to change mentalities.

208. The GC took note of the information provided and encouraged the Austrian authorities to continue their work to improve the situation of persons with disabilities with regard to access to general education and vocational training. In the meantime, it decided to await the ECSR's next assessment.

RESC 15§1 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 15§1 of the Charter on the ground that the right of persons with disabilities to mainstream education is not effectively guaranteed.

209. The Secretariat said that the situation was not in conformity for the first time.

210. The representative of Belgium provided the following information:

In Belgium, the three communities, Flemish community, French community (Fédération Wallonie-Bruxelles) and German-speaking community, are competent for education policies. Whereas the French community is competent for educational matters in the Walloon region, the agency AVIQ (former AWIPH) on which the Walloon government depends for matters concerning disabilities, is providing additional support for the intake of people with disabilities into regular education.

Dutch-speaking community
Recently, in the context of the development of a new support model for the ordinary education system, the Dutch-speaking community has taken a basic point of view regarding inclusive education. The Government noted the recent clarification by the UN in the General Comment on article 24 of the Convention on the Rights of Persons with Disabilities which stipulates that countries that ratify the treaty must develop a fully inclusive education system. The Government emphasizes that it wants to focus on the best interests of the child. This means that there is a right to inclusion, but not a duty. For some children, education in a specialized setting will best serve the right to education. This would be the case when the accommodations necessary to enable a student to follow a common or individually adapted curriculum in an ordinary school are unreasonable.

In order to support schools to give effect to the right to inclusive education, additional measures were taken during the schoolyear 2015-2016 and 2016-2017. The existing support scheme for pupils with special educational needs in ordinary schools (integrated education) was supplemented by means of a guarantee scheme. The so-called M-Decree contains a mechanism to ensure that if the number of pupils in special education schools reduces, than the resources, staff and expertise made available will be used as support for ordinary education. Significant effects are already apparent at the level of primary education (age group 6-12 years). The recent count of 1/2/2017

compared to the 1/2/2014 count (reference date prior to the introduction of the M-Decree) shows a decrease in the number of pupils in specialized primary education of 12.3%. Currently preparations are being made to start a new support model from September 2017 which combines the existing support and guarantee scheme.

French community

The French community has undertaken since the beginning of the legislature (June 2014), a major reform of its education system with the aim to make it more efficient and equitable (the Pact for Excellence Education). This systematic reform also concerns specialized education which must be refocused.

There is a clear political will expressed and already reflected in a number of legal and regulatory texts to focus special education on pupils for whom reasonable accommodation in ordinary education is not sufficient. The various measures taken or planned in this context will be further developed.

The latest recommendation of the Working Group of the Pact for a Excellence Education (Monitoring Group for the Reform of the Education System) of March 2017 and which was adopted by the government, plans to put in place very concrete measures. The Working Group considers it "essential to give priority to the inclusion or maintenance of pupils with special needs in the ordinary education, by means of reasonable accommodation, and to encourage the full or partial integration of pupils in specialized education into ordinary education, by means of specific support from special education actors ".

Also Accommodation arrangements to make school buildings accessible, such as the installation of a ramp, a wider door or the adaptation of sanitary facilities, can be financed under certain conditions by the Infrastructure department of the French Community within the framework of the PPT (Public Private Partnership), or possibly by the municipalities. There is also the project "accessible schools", co-funded by CAP48, the French community and the German-speaking Community.

Figures on intake of pupils with disabilities in mainstream and special education in the French community

The concept of disability in the recent United Nations Convention on the Rights of Persons with Disabilities has been updated and imposes some difficulty for extracting statistics of the intake of children with disabilities in the mainstream education.
People with disabilities do not constitute a predetermined legal category of persons, but a "dynamic" category depending on the obstacle present or not in their environment. On the basis of the preamble to the Convention, "disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. " Article 1 of the text, without any specific definition, only specifies that "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

In the French community, many children with disabilities attending school in mainstream education are not counted because only those that are enrolled in special education for the school integration measure are counted. The school integration measure wants to integrate pupils with disabilities into mainstream education on permanent or temporary basis and this can be partial of full. Among those, for school year 2015-2016, 3.016 pupils were integrated into regular schools, of which 1.594 were in primary and 1.308 in secondary education. The majority of the students are fully integrated on a permanent basis. They account for 80%. The rest are partial permanent or temporary integrated in the mainstream education.

An increase in the share of integration in ordinary school can be observed between 2010 and 2016. Overall, the rate of children with disabilities (identified) integrated into mainstream, primary and secondary education has increased significantly from 2010 to 2016: increase from 0.7% to

8.4% in kindergarten, 5.2% to 9.3% in primary education and from 4.4% to 7.3% in secondary education. A cohort effect can be observed: In 2015, primary education was the most represented among the pupils accompanied in the framework of a school integration: it amounts to 55,32%. So it is expected that in a few years these pupils will continue in mainstream secondary education.

These data may be correlated with recent data (of the Walloon Region) showing a significant increase over the period 2015-2016 in the number of the AViQ services conventions signed with mainstream schools or in collaborations with non-convention organizations, to provide as much as possible to students with disabilities an education in an ordinary environment: the number of ordinary schools with which the services have signed a convention(s) has increased from 325 in 2010 to 575 in 2015, and the number of regular schools with which services collaborate (without convention): from 87 in 2010 to 412 in 2015. This shows that the support for the schooling of children in the ordinary education tends to become a preferred option rather than support for special education. Also in the period 2015, in the framework of school integration (with schooling agreement), 634 have been supported in school education in ordinary school education and 203 in specialized school education, which is about three times fewer children than in ordinary education.

Also the number of young people for whom a support agreement for schooling has been signed has increased from 750 in 2010 to 837 in 2015. For the 2015-2016 school year, the AViQ's early assistance and integration services realized 1.567 support interventions in the framework of the schooling of young people and collaborated with 1.334 schools.

211. The GC took note of the information provided and decided to await the ECSR's next assessment.

RESC 15§1 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 15§1 of the Charter on the following grounds:

- *the right of persons with disabilities to mainstream education is not effectively guaranteed and*
- *it has not been established that the right of persons with disabilities to vocational mainstream training is effectively guaranteed.*

212. The Secretariat said that in 2012 the conclusion had been deferred. The situation had already not been in conformity with the Charter in 2008, 2007 and 2003 with regard to the first ground.

213. The representative of Romania read the following information:

In Romania, the educational system is regulated by the Law of education no. 1/2011.
The 12th section of the law offers provisions regarding the education intended to persons with learning difficulties. These provisions were developed and implemented by means of the Methodology for the provisions of the necessary support to persons with learning difficulties approved by Ministerial Order no. 3124/2017.

This methodology regulates the assessment procedures used for the identification of students' learning deficiencies, as well as the type of intervention appropriate to an individualized and personalized kind of learning.

Students with special educational needs benefit from a more flexible and even longer schooling period according to their individual needs, the deficiency type and severity which are regulated by a Ministerial Order.

At the same time, the Ministry of National Education approves the organization of Second chance classes for those students whose age exceeds the regular class age and who haven't finished

primary education studies by the age of 14 out of various reasons. This program works for the lower secondary level as well.

Also, in 2016 and 2017 the Ministry of National Education has undertaken a series of legislative measures in order to support the education of students with special education needs and their integration in mainstream schools:

- ✓ *According to the provisions of the National Education Law no. 1/2011, as amended and supplemented, art. 54, the parent / legal tutor has an important role in reorienting the child from the special school to the mainstream school and vice versa. Depending on the evolution of the child, reorientation proposals from the special school to the mainstream school and vice versa may be made. The reorientation proposal is made by the teacher who worked with the child concerned or by the parents of the child / legal custodian and by the school psychologist. The reorientation decision is taken by the expertise commission of the County Center for Resources and Educational Assistance, with the consent of the family or the legal tutor.*

214. The representative of Romania provided the following information:

- ✓ *By Order no. 6134/2016 on the prohibition of school segregation in pre-university education establishments, the MofNE reiterates that the principles of the inclusive school are promoted ensuring "equity in education, in terms of equal access to all forms of education, but also in terms of quality of education for all children, without any discrimination" "on the basis of the ethnicity, disability or special educational requirements, the socio-economic status of the families, the residence environment and the school performances of the primary beneficiaries of education".*
- ✓ *Art. 5 of the mentioned above order defines school segregation based on disability and / or special educational needs as a physical separation of children with disabilities and / or special educational needs in "groups / classes / buildings / last two desks", so this percentage is disproportionate compared to the other group / class / building / last two desks percentage in the same pre-university school unit, at the same level."*
- ✓ *The Joint Order of the Ministry of Labor, Ministry of Health and Education no. 1985/1305/5805/2016 of October 4, 2016 regarding the approval of the methodology for the evaluation and the integrated interventions for the purpose of the evaluation of children with disabilities, on the scholar and professional orientation, as well as for the empowerment and rehabilitation is intended to provide a "conceptual and operational framework to ensure the right to education, equal opportunities for these children, as well as for their empowerment and rehabilitation, including inter-institutional collaboration and case management" (Article 1 paragraph 2). According to art. 2, paragraph 2, the disability evaluation is carried out only at the request of the parents / legal representative, and the enrollment of children with disabilities and special education needs is made only following the school and professional guidance provided by the School and Professional Guidance Committee.*

- ✓ *Complementary provisions to the above mentioned order are foreseen by the following subsequent legislation:*

- ✓ *According to Order no. 5.574 / 2011, art 5: "the school integration of people with special education needs is carried out in mainstream schools. In order to effectively integrate people with special education needs, it is necessary to create specialized support services for the psycho-pedagogical assistance for children / pupils / young people, as well as consultancy services for inclusive school teachers, other pupils, their families and community members (art. 6). The specialized services needed to integrate children with special education needs are provided by itinerant and support teachers in collaboration with all stakeholders (art 7)".*

- ✓ *The Governmental Decision no. 564/2017 foresees that all children with special educational needs enrolled in the pre-university education system are granted with financial benefits, as follows:*
  - *- children integrated in mainstream education;*
  - *- children from special education units;*

- children requiring periods of hospitalization longer than 4 weeks for which groups or classes are organized, as appropriate, within the sanitary unit where they are interned;
- children who, for medical or disability reasons, follow home schooling for a period.

215. The ETUC representative asked for detailed information on the legislative changes and amendments made.

216. The representative of Romania replied that she had received information on some measures from the Ministry of Education. *These provisions were developed and implemented by means of the Methodology for the provisions of the necessary support to persons with learning difficulties approved by Ministerial Order No. 3124/2017. This methodology regulates the assessment procedures used for the identification of students' learning deficiencies. She informed the Committee that other provisions according to the National Education Law No. 1/2011 will be provided in the next report.*

217. The representative of Romania also informed the CG that, *by Order No. 6134/2016 on the prohibition of school segregation in pre-university education establishments, the principles of the inclusive school are promoted ensuring "equity in education, in terms of equal access to all forms of education, but also in terms of quality of education for all children, without any discrimination".*

218. The GC took note of the information provided and decided to await the ECSR's next assessment.

RESC 15§1 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 15§1 of the Charter on the ground that the right of persons with disabilities to mainstream education is not effectively guaranteed.

219. The Secretariat said that the situation was not in conformity for the first time.

220. The representative of Ukraine provided the following information:

On 23 May 2017 the Parliament of Ukraine adopted the Law of Ukraine "On amendments to the Law of Ukraine "On Education" on the peculiarities of access of persons with special educational needs to educational services". The Law defines the terms "person with special educational needs", "inclusive education", "individual program" etc.

The new Law provides for creation of barrier-free environment and new forms of education – distance and individual.

The relevant statistical data which will demonstrate the implementation of the above-mentioned Law will be provided in the next report.

221. The representative of Ukraine adds some statistical data for: 2016-2017, 4 180 *students attend inclusive classes. As of January 2017, 14 752 persons with disabilities attended high education institutions*.

222. The GC took note of the information provided and decided to await the ECSR's next assessment.

Article 15§2 - Employment of persons with disabilities

RESC 15§2 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 15§2 of the Charter on the ground that persons with disabilities are not guaranteed effective access to the open labour market.

223. The Secretariat said that the situation was not in conformity for the first time.

224. The representative of Romania provided the following information:

The national strategy entitled "A barrier free society for persons with disabilities 2016 – 2020", which was approved by Government Decision in 2016, has strategic objectives to make sure that the societal opportunities are equal for all of its members, without any act of discrimination. The policies that are taken into account have as priority, among others, to:

- *ensure that all the persons have equal opportunities on labour market to develop their real potential, from a psychological standpoint, as well as economic and social. Concretely, the proposed measures aim at a better awareness and more consideration given to the importance of professional trainings programs developed for persons with disabilities.*

Regarding the low employment rate, *the number of persons with disabilities in employment continues to increase: at the end of* ***2014*** *there were* ***30.556*** *and at the end of* ***2016*** *there were* ***33.571*** *persons with disabilities in employment.*

- ***Regarding the anti-discrimination legislation,*** *we can mention the framework law on non-discrimination - Government Decision no. 137/2000 on the Prevention and punishment of all forms of discrimination, chapter II, Section I, Equality in economic activity and matters of employment and profession and it is important to mention that all Romanian legislation is designed on the principle of non-discrimination.*
- ***Regarding the measures taken to combat discrimination on the labor market of persons with disabilities,*** *the measures taken by the National Council for Combating Discrimination are not strictly dedicated to persons with disabilities, they concern all the discrimination criteria covered by Government Decision no. 137/2000 on the prevention and sanctioning of all forms of discrimination.*
- ***Regarding the penalties in the event of failure to comply with the reasonable accommodation obligation****, the reasonable accommodations measures considered in special law 448 (who are mostly connected to accessibility guidelines) provide indeed the favourable context in this sense. Also, at this moment there are not penalties for those who don`t respect this provisions. We may say, that for the future the NAPD will initiate discussions on that matter.*
- *It's important to be mentioned that the national strategy on "A barrier-free society for people with disabilities" for 2016 – 2020 has been approved by Government Decision no. 655/2016.*
- ***Regarding the quota obligation to hire 4% of persons with disability for employers who have at least 50 employees****, there are no concrete information, for the period taken into account because are not centralized informations at NAPD level. Please note that, in addition, from 2016 NAPD started to develop and centralize such a situation. The process is going quite heavy because of the lack of responses.*
- ***Regarding the percentage/rate of transfer from sheltered to ordinary employment,*** *in Romania, authorised sheltered units represent an important process and a constructive measure to increase employment among persons with disabilities. But, in the same time, this units are considered a usual trader and are subject to the same conditions of organization and functioning as a usual trader. This is the reason that this units represent in the same time a part of ordinary employment and not only an exclusive form of that. Therefore, we are not able to provide a concrete situation regarding the rate transfer from sheltered to ordinary employment.*

225. The GC took note of the information provided, asked the Romanian authorities to provide all the additional information requested by the ECSR and decided to await the ECSR's next assessment.

RESC 15§2 SERBIA

The Committee concludes that the situation in Serbia is not in conformity with Article 15§2 of the Charter on the following grounds:

- *it has not been established that the legal obligation to provide reasonable accommodation is respected;*
- *persons with disabilities are not guaranteed effective access to the open labour market.*

226. The Secretariat said that the situation was not in conformity for the first time.

227. The representative of Serbia provided the following information:

Please be notified that the previous reports have not contained the precise information on active employment policy measures implemented by NES, which are focused to involvement of persons with disability in labour market, which we are resending as follows:

1) Measures and activities of occupational rehabilitation – acquisition and development of the active job-search skills, assessment of work capacities and enhancement of work and social skills and competences with an aim to become equipped for suitable job and employment (trainings on how to actively search for job, training for a job, and other further education and training programmes), measures and activities focused to sensitization and promotion of employment for persons with disability, etc;

2) promotion of employment of persons with disability through endorsing subsidies for self-employment, subsidies for employment at newly created jobs which are paid to employers in private sector, wage subsidies for persons with disability without working experience working with an employer for indefinite period, public works hiring and other active employment policy measures focused to promoting employment of persons with disability and

3) support to persons with disability who undertake employment under special terms supported with:

- reasonable accommodation (through technical and technological equipping of work station, devices for work, space and equipment in accordance with opportunities and requirements of an employed person with disability), reimbursement of appropriate costs of accommodation to the employer;

- provision of professional support to newly employed person with disability (through provision of occupational assistance and introduction into the tasks of working place and assignments) by reimbursing to an employer the wage expenses for a person hired to provide professional support and assistance.

Regarding the Committee's question if the obligation to reasonable accommodation has triggered an increase in employment of persons with disability in open labour market, i.e. regarding the Committee's statement that it was not established that legal obligation to secure reasonable accommodation had been complied with; i.e. efficient approach to open labor market is not guaranteed to persons with disability, herewith please find enclosed the table indicating involvement and coverage of persons with disability by active employment labour measures, and ALMs effect and impact upon employment in 2016.

ACTIVE EMPLOYMENT POLICY MEASURE	Persons covered		Employed persons	
	Persons with disability		Employed persons with disability in the period January – December 2016	
	Total	Women	Total	Women
Active job search training	1.402	533	190	71
Self-efficiency training	138	74	40	23
Job Loss Induced Stress Management Workshop	30	11	3	2
Job Clubs	232	119	76	32
Job Fairs	3.205	1.317	851	343
Entrepreneurship training	284	93	52	21
Traineeships	27	14	0	0
Apprenticeships	5	1	0	0
Trainings against the labour market demand	413	226	33	15
Self-employment subsidies	91	33	91	33
Subsidies for employment of harder-to-employ	232	105	232	105
Public works	1.688	754	1.688	754
Wage subsidies for persons with disability without professional experience	446	200	446	200
Support measures for persons with disability	26	10	26	10
TOTAL	8.219	3.490	3.728	1.609

Source: National Employment Service, state of affairs in March 2017

All these measures have resulted with increased employment of disabled people in comparison with 2015. Also, it is clear that out of the total number of the people who have been covered by the active labour market measures, 40% were employed.

According to the statistical data provided by the Statistical Office of the Republic of Serbia, since the adoption of the Law on Professional Rehabilitation nad Employment of People with Disabilities (in May 2009) and its amendments in 2013 , the reasonable accommodation has been provided for ¼ of the total number of the employed people with disabities. The total number of the employed disabled persons is 28000, and the reasonable accommodation has been provided for 7000.

In compliance with Article 23 of Labour Law , in cases of discrimination , including the right of the disabled to reasonable accomodation, the job-seeker or an employes person with disability may start a compensation procedure before a competent court, and reqest indemnification from the employer concerned. At the moment, I do not have data form Serbian courts, but I will have it in October and these data will be included in the next report.

228. The GC took note of the information provided, asked the Serbian authorities to provide all the additional information requested by the ECSR and decided to await the ECSR's next assessment.

RESC 15§2 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 15§2 of the Charter on the following grounds:

- *it has not been established that the reasonable accommodation obligation is effectively respected;*
- *mainstreaming in employment is not effectively guaranteed in respect of persons with disabilities.*

229. The Secretariat said that the situation was not in conformity for the first time.

230. The representative of Ukraine provided the following information:

Articles 26 and 27 of the Law of Ukraine "On Social Protection of People with Disabilities" provide for creation of barrier-free environment for persons with disabilities.

Planning and building of inhabited localities, the formation of micro-districts, the design, construction and reconstruction of objects without reasonable accommodation are not allowed. This activity is carried out by taking into account the opinion of relevant NGOs.

If it is not possible to adopt existing objects for persons with disabilities needs, the reasonable accommodation should be carried out through universal design

2. The National Strategy on Human Rights approved by the Decree of the President of Ukraine in August 2015 and Action Plan for Implementation of the Strategy (Section "Right to work and Social Protection" for the period until 2020 envisage providing reasonable accommodation in employment for persons with disabilities

The Ministry of Social Policy has drafted the Law of Ukraine on amendments to some acts on employment for persons with disabilities by taking into account reasonable accommodation and promoting employers to create new jobs for persons with disabilities. The draft Law has been registered in the Parliament. It should be mentioned that the Government of Ukraine adopted in March 2016 a new Procedure of Competition for all civil service positions which prescribes adherence to the principal of non-discrimination, in particular the obligation to provide reasonable accommodation for people with disabilities who has expressed a desire to take part in the competition,

The more detailed information with relevant statistical data will be provided in the next report of Ukraine.

231. The GC took note of the information provided, asked the Ukrainian authorities to provide all the additional information requested by the ECSR and decided to await the ECSR's next assessment

Article 15§3 - Integration and participation of persons with disabilities in the life of the community

RESC 15§3 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 15§3 of the Charter on the following grounds:

- *during the reference period, there was no anti-discrimination legislation to protect persons with disabilities and explicitly covering the fields of housing, transport, communications and cultural and leisure activities and*

- *it has not been established that persons with disabilities have effective access to housing and transport.*

232. The Secretariat said that the situation was not in conformity for the first time.

233. The representative of Armenia was absent. The following written statement was submitted:

The RA draft law "On protection of rights and social inclusion of persons with disabilities" has already been submitted to the RA National Assembly which includes distinct provisions on the protection of the rights of persons with disabilities and exclusion of discrimination.

At the same time, the RA draft law "On discrimination" is currently at the stage of development.

On January 12, 2017 the Government of the Republic of Armenia adopted a "2017-2021 complex program of social inclusion of persons with disabilities and the list of activities to ensure the implementation of the program" in which the activities to ensure equal conditions for social inclusion for persons with disabilities have been set up through the main directions of public life, and their target results for the next five years were fixed. The provision on ensuring accessibility of vehicles realizing inter- and within-city regular passenger transportations has been defined by this comprehensive program for the next five years.

The complex program also envisages the review and modernization of construction norms ensuring accessibility for persons with disabilities in buildings and constructions. Assessment of available conditions for persons with disabilities in existing buildings and constructions and implementation of activities aimed at ensuring accessibility according to priorities have also been envisaged.

On December 16, 2016, the RA law "On making amendments and supplements to the RA law "On automobile transport" was adopted, in which a provision was made to include buses adapted for people with disabilities in regular passenger transportation.

Persons with disabilities of the first and second groups have the right to free access to electric transport.

234. The representative of France wished to emphasise that the situation in Armenia seemed to be improving.

235. The representative of Spain noted that the situation with regard to Article 15 seemed to have improved in most member states outside the reference period, particularly in 2016 and 2017.

236. The GC took note of the information provided and decided to await the ECSR's next assessment.

RESC 15§3 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 15§3 of the Charter on the ground that the Brussels-Capital Region does not have legislation prohibiting discrimination in all the areas covered by Article 15§3 of the Charter.

237. The Secretariat said that in 2012 the conclusion had been deferred. The situation had not been in conformity with the Charter in 2008 and 2007.

238. The representative of Belgium provided the following information:

There was a gap in the legislation on discrimination of disabled people that has been eliminated by new regulations. Also in accordance with European Union law, the Brussels-Capital Region is asked to apply, the EU Directives of 29 June 2000 on implementing the principle of equal treatment between people irrespective of racial or ethnic origin; and of 13 December 2004 on implementing the principle of equal treatment for men and women in the access to and supply of goods and services.

The Brussels-Capital Government transposed these two directives through 5 "sectorial" ordinances:

- *the Ordinance of 4 September 2008 to promote diversity and combat discrimination in the Brussels Regional Public Service,*
- *the Ordinance of 4 September 2008 on combating discrimination and equal treatment in employment,*
- *the Ordinance amending the Ordinance of 14 July 2011 concerning the mixed management of labour market in the Brussels-Capital Region,*
- *The Ordinance of 29 March 2009 amending the Ordinance of 17 July 2003 on the Brussels Housing Code,*
- ***The Ordinance to combat certain forms of discrimination and to promote equal treatment**, which now completes anti-discrimination legislation (vote and approval parliament 19/9/2017 and publication soon in BOJ)*
    - *before, the anti-discrimination legislation was only applicable to public service, employment and housing. With the adoption of this new anti-discrimination ordinance, the following areas are covered: social protection, social benefits, access to goods and services and access to economic, social, political and cultural activities.*
    - *So with this last ordinance all areas of Article 15§3 that are within the competence of the Brussels-capital region are covered*

Additionally, I like to mention also as regards to the policy for disabled persons, 3 legal texts were approved:

- *Ordinance of 8 December 2016 on the integration of the disability dimension into the policies of the Brussels-Capital Region*[9]
- *Implementation Decree of 8 December 2016 on the integration of the disability dimension into the policies of the Brussels-Capital Region (approved on 1/6/2017)*
- *Ordinance du 2 février 2017 relative to the obligation of engaging persons with a disability in the administration of the local authorities.*

239. The ETUC representative confirmed that the law in question had been adopted the previous week. He asked the representative of Belgium for more detailed information on the new law and, in particular, whether it also increased the number of grounds for discrimination.

240. The representative of Belgium said that all the relevant information would be provided in the next report.

241. The representative of Ukraine invited the GC to welcome the positive changes in legislation and in practice.

242. The GC took note of the information provided, asked the Belgian authorities to provide all the necessary information in the next report and decided to await the ECSR's next assessment.

RESC 15§3 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 15§3 of the Charter on the ground that there is no anti-discrimination legislation for persons with disabilities which specifically covers the areas of housing, transport, communications, culture and leisure.

243. The Secretariat said that the situation had not been in conformity on this ground since Conclusions 2007.

244. The representative of Estonia provided the following information:

It is with regret that we have to recognize that the situation has not been in conformity with Article 15§3 of the Charter on the ground that there is no anti-discrimination legislation for persons with disabilities which specifically covers the areas of housing, transport, communications, culture and leisure.

The Government of the Republic of Estonia is fully aware of these shortages and is making great efforts to change the situation for people with disabilities. We strongly believe that people with disabilities need to be able to equally participate ***in all areas of life*** *and the Government of Estonia has put disability issues high in its agenda and continues the work of previous governments to comprehensively promote the opportunities to involve people with disabilities in the society. The related goals, objectives and strategies of the government have been framed in the Social Welfare Development Plan.*

Regarding the anti-discrimination legislation, Estonian Government has been preparing the changes in the Equal Treatment Act since 2014. Without a doubt it has taken us longer than we estimated and hoped for, but the work has been in the progress and the changes are planned to come into force in January 2019 (the discussions in the parliament are planned to begin within this year).

The planned changes in the Equal Treatment Act widen the scope of protection for people with disabilities notably, adding a ban on discrimination on the ground of disability in the areas of education; access to the services of social welfare, social security and healthcare (including social benefits) and access to and supply of goods and services which are available to the public, including housing. With these additions, the mentioned fields of housing, transport, telecommunications and cultural and leisure activities will then be covered with the Equal Treatment Act. All ministries, within their area of responsibility, are obliged to monitor compliance with the requirements of the Equal Treatment Act and to co-operate with other persons and entities in promotion of the principle of equal treatment. It is important to note that in order to ensure the equal treatment of people with disabilities, the use of positive measures (such as reasonable accommodations) to ensure access and equal treatment will be required from all stakeholders.

Also, it is important to note that Estonia ratified the Convention on the Rights of Persons with Disabilities in 2012. In addition to widening the scope of protection against discrimination on the ground of disability, the planned changes in the Equal Treatment Act also set up the Gender Equality and Equal Treatment Commissioner as the independent monitoring mechanism of the convention. We believe that setting up the official independent monitoring mechanism will help improve the equal treatment of the people with disabilities and ***give people with disabilities the assurance that proper monitoring mechanisms are in place*** *for situations, where the principles of the convention and of equal treatment have been violated.*

In addition to equal treatment legislation, there have been several other relevant policy changes concerning people with disabilities. Firstly, in 2016 the Government of Estonia launched a comprehensive work ability reform, which has entailed a paradigm shift in the approach to disability and employment and the participation of people with disabilities in ***all areas of life****. An important part of the reform has been the increase of availability and access to labour market and supportive social services such as rehabilitation, assistive technology, assistive services by local governments etc. Adjustments are constantly made to shorten the waiting lists for services, increase the quality of services and make services more tailor-made and fitted for those in need.*

In relation to the reform, extensive campaigns have been carried out to raise awareness and change stigmas still existent in our society. One of the crucial parts of the reform is finding the balance between the rights and obligations of people with disabilities and ***offer sufficient support to achieve maximum levels of independence and active involvement in the community, including in the labour market.*** *To achieve this kind of involvement and person-centred support, representatives of people with disabilities have been actively involved in the decision making processes and* ***elements of co-creation; service design and social innovation*** *have been progressively used and promoted. These elements have been used while redesigning rehabilitation, special care, social transportation and many other services. We hope that in the coming reports we are already able to share the results of these processes.*

We will be explaining these developments in more detail in the next report and continue the efforts to improve the situation for people with disabilities.

245. The Chair summarised the situation and asked for confirmation that the most substantial amendments were expected by 2019.

246. The representative of Estonia confirmed this.

247. The ETUC representative congratulated the Estonian Government on the action it had taken at various levels and in various areas. He asked what the probability was that the law would be adopted and enter into force by 2019.

248. In reply, the representative of Estonia said that her authorities were very confident that the law would come into force on 1 January 2019.

249. The Secretariat asked if pressure from the GC could help with the adoption of the law.

250. The representative of Estonia answered that she believes this kind of pressure was not needed, as the consultations with main stakeholders have been successful..

251. The Chair asked for information on the timing of the adoption of the law by parliament.

252. In reply, the representative of Estonia said that the law is expected to move to the parliament in 2017, if passed the law is planned to enter in to force from January 2019.

253. The representative of France pointed out that it was not certain that the law would be adopted and that the GC could not be sure of this at this stage. She noted that the situation was very serious and stressed that Estonia had ratified the United Nations Convention on the Rights of Persons with Disabilities, which was very demanding, five years previously.

254. The representative of Denmark invited the GC to take note. The Estonian Government was committed to changing the situation.

255. The ETUC representative wondered why it would take so long for the law to enter into force (in 2019) if it was such a strong probability that it would be adopted by the end of 2017.

256. In reply, the representative of Estonia said that consultations with the social partners were nearly complete. As a result, changes would be adopted by the end of the year and then the bill would be forwarded to parliament. Estonia specified that different stakeholders need some time to make needed adjustments and investments to be in accordance with the new law – that is why the new law cannot enter in to force before January 2019.

257. The representative of Austria agreed with the representatives of the ETUC and France.

258. The representative of Spain stressed how confident she was and explained that according to the Programme of the Estonian Presidency of the Council of the European Union (The Presidency Programme for the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO)), which she quoted ["… we will continue working on the draft accessibility act. The legal framework that will be created with the directive will help the EU and the Member States to meet their obligations arising from the UN Convention on the Rights of Persons with Disabilities"], the Estonian Government was making every effort to honour its commitments.

259. The representative of the United Kingdom supported the representatives of Denmark and Spain. He highlighted how motivated the Estonian Government was to adopt the law.

260. The representative of Estonia said that s she was confident that the law would be adopted, as issues related to people with disabilities are high in the agenda of the Government of Estonia..

261. The representative of Ukraine invited the GC to welcome the positive change in the situation and to encourage the Estonian Government to take all the necessary measures to bring the situation into conformity with the Charter as soon as possible.

262. The Chair wished to point out that the CG had not reached full consensus on this point.

263. The representative of Sweden suggested that a strong message should be addressed to Estonia concerning the ground of non-conformity.

264. The GC took note of the information provided and sent a strong message to the Estonian authorities calling on it to bring the situation into conformity with the Charter. In the meantime, it decided to await the ECSR's next assessment.

RESC 15§3 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 15§3 of the Charter on the grounds that: (…) persons with disabilities are not guaranteed effective access to transport.

265. The Secretariat recalled that Article 15§3 required States to ensure the removal of barriers to the effective integration of persons with disabilities in all different aspects of society, in particular as regards communication and media, transport, housing, cultural activities and leisure. As regards France, the ECSR had noted the adoption of legislation which set 2015 as a deadline to achieve certain accessibility objectives. However, already out of the reference period these objectives were very far from being achieved. The ECSR had noted for example that only 20% of stops served by urban transport networks were accessible and none of the stops served by non-urban transport was accessible yet. It therefore found, for the first time in 2012, that the situation was not in conformity at least as regards the effective accessibility of transports.

266. The French representative stated that Law No. 2005-102 of 11 February 2005, the "Act on the rights of persons with disabilities", was a major overhaul of the previous law of 1975 carried out in response to the collective complaints lodged against France. In particular, the law concerned all types of disabilities, it established the principle that "every person with a disability shall be entitled to solidarity from the national community" and it gave, for the first time, a legal definition of disability: disability arises from the interaction between an individual's physical, hearing, visual, cognitive and psychological capacities and the requirements of the environment for carrying out an action. In this context, the law of 2005 set a 10-year deadline for ensuring the accessibility of the entire transport and mobility sector which, under Article 45, comprised the built environment, highways, adapted public spaces, transport systems and their intermodality. The accessibility of all existing public buildings (établissements recevant du public (ERP)) (such as businesses, independent professions, schools, government offices, stadiums, restaurants, cinemas, libraries, etc.) and other public facilities had been scheduled for 1 January 2015, and the deadline for public transport had been set at 13 February 2015.

267. Despite some progress between 2013 and 2015, the French representative admitted that the law had not been implemented in full: only less than 50 000 of the existing public buildings had met their accessibility obligation by 1 January 2015. In view of this, in October 2013, the Government had launched a vast nationwide consultation involving associations representing persons with disabilities, representatives of local elected representatives, representatives of the trade and hotel sectors, architects and consultancies, in order to identify realistic ways in which the policy of accessibility in France could be revived while bearing in mind the budgetary and economic realities.

268. Order No. 2014-1090 of 26 September 2014 (ratified by Law No. 2015-988 of 5 August 2015) had introduced a budgetary programming tool, the planned accessibility schedule (agenda d'accessibilité programmée (Ad'AP)), to make it possible to pursue the accessibility goals beyond 1 January 2015. This document specified the nature of the works (and the required financing) that the managers of public buildings undertook to carry out within three, six or nine years, depending on the circumstances. Furthermore, the law provided for proportionate financial penalties for failure to submit an Ad'AP and if a building was not accessible by the end of a schedule, as well as for criminal penalties. Information campaigns for the general public had also been carried out. Finally, the state had stepped up its oversight of national accessibility policies with the validation of Ad'APs by prefects, the monthly monitoring of the statistics by the ministerial accessibility task

force and with the requirement that, under Ad'APs of four years or more, the owners and operators of buildings provide regular feedback on progress made as concerns accessibility.

269. Following the same logic, the Order of 2014 had given the authorities responsible for organising transport (autorités organisatrices de transports (AOTs)) the possibility of ensuring the accessibility of their transport networks by drawing up service accessibility master plans – planned accessibility schedules (schéma directeur d'accessibilité-agenda d'accessibilité programmée (SD'APs)) comprising an analysis of the actions needed to ensure the accessibility of the public transport services (indicating the priority stops), time-frames for implementation and relevant financing plans. After 13 February 2015, the AOTs had been given another three, six or nine years.

270. On 1 January 2015, there had been 350 000 accessible public buildings (50 000 existing and 300 000 new ones), on 1 July 2017, there had been an additional 625 000 public buildings included in the planned accessibility schedules, of which 53 000 had since carried out the scheduled alterations and were therefore accessible. Efforts were being made to improve the accessibility of local facilities (5th-category public buildings).

271. The accessibility of public transport had also been improved: in August 2017, the 12 regions of mainland France (as well as Corsica) had joined the SD'AP scheme, at least with regard to rail transport; for the road transport sector, out of the 87 AOTs/départements outside the Ile-de-France region, 60 département SD'APs had been submitted and 20 départements had been granted deadline extensions. Following the transfer of powers regarding transport from the départements to the regions on 1 January 2017, it was now up to the regions concerned to deal with the département networks which had not yet been the subject of an SD'AP; finally, for the urban transport sector, 188 SD'APs had been submitted and 19 had been granted an deadline extensions, out of a total of 337 authorities responsible for organising mobility.

272. Regarding the infrastructure of the road transport sector, according to the French representative, 50% to 70% of urban priority stops (i.e. 20% to 35% of all stops) as well as 15% to 30% of coach stops were accessible. As concerns the rail transport sector, the national accessibility schedule for regional rail services, which had been validated by the order of 29 August 2016, set out the commitments made by the national rail operator (SNCF) to ensure accessibility between 2016 and 2024. In addition to the adaptations made to national railway stations, the regional accessibility schedules were also currently adapting regional railway stations and stops in the 13 regions of metropolitan France. For underground transport networks, the law of 2005 had specified that the networks in place by 12 February 2005 were exempt from the requirement that they be accessible in 2015, as long as they put in place alternative transport. In Paris, therefore, although the underground railway network remained inaccessible, the bus network was accessible (90% of the stops and all the vehicles). Adaptations had nonetheless been made to the stations (for example, the 10 stations which extended the commuter lines were equipped with lifts) and all new dedicated public transport routes built since 2005 were accessible. Substantial progress had been made concerning the accessibility of urban transport rolling stock: 97% of urban buses had low floors in 2017, 90% had been fitted with retractable ramps, 81% had audio stop announcement systems and 87% had visual stop announcement displays. As for coaches used for non-urban public transport, 79% of the vehicles aged less than five years had been fitted with systems for access by persons with disabilities, respectively 50% and 46% had a visual or audio stop announcement system, and 47% had reserved seats. In the case of rail transport, rolling stock purchased after

2008 complied with the relevant European regulations, the TER local train fleet was being renewed and the oldest rolling stock was being brought up to standard as part of major refurbishment.

273. The French representative said that detailed information on these measures would be presented in the next report in the context of the procedure for following up collective complaints.

274. The GC took note of the progress made, noting that the measures at issue required a relatively long time-frame for their implementation, and decided to await the next ECSR's assessment.

Article 18§2 - Simplifying existing formalities and reducing dues and taxes

RESC 18§2 IRELAND

The Committee concluded that the situation in Ireland is not in conformity with Article 18§2 of the Charter on the ground that the fees to obtain work permits are excessive.

275. The Secretariat explained that during the reference period, fees have not been reduced. However, it notes that new fees have been introduced in 2015, a situation that will be assessed in the next cycle.

276. The Representative of Ireland provided the following information:

Ireland believes it is now in full conformity with Article 18 of the Revised European Social Charter. Significant reductions in employment permit fees in 2011 – not reflected in the Committee's reporting - coupled with on-going enhancements of the Irish employment permit system means we have fully complied in both simplifying existing formalities and reducing fees.

Fees are charged in Ireland on a cost recovery basis. This was accepted by the OECD in its OECD Economic Surveys: Ireland 2015 who reported that -
"The principle underpinning the charging of fees for employment permits in Ireland is cost recovery, both processing and compliance costs. Making further use of IT in employment permits processes would deliver efficiency gains and savings, which should be passed on in lower fees."

We continue to invest in systems that deliver Permits in a quicker and in a more efficient way to our customer. We strive, again also in accordance with A.18.2 to "continue to simplify existing formalities" to make the system as simple as possible while still preserving the integrity of the process.

Our Trusted Partner Initiative has delivered significant improvements in issue times and greatly simplified the process both for applicants and processors. Entry into this system in Ireland is free to users, unlike in some other countries with similar systems where significant sign-up fees are charged. Again the OECD commented that this (not charging sign-up fees) would encourage the uptake up of such a scheme among Small and Medium Enterprises.

While using a cost recovery model we also take into account the balance between community benefit and individual benefit when setting our fees for particular permit types. In cases where the benefit is more on the community side, for example for charities or spouses or other dependents of existing permit holders we do not charge a fee. Such permits accounted for approx. 25% of permits issued in 2015 and latest indications put this now at approx. 1/3 of permits issued.

We refund 90% of the relevant fee where an application is unsuccessful. While on a strict cost recovery basis this is a significant loss to us we would not wish to finance overall fee reductions through significant reductions in such refunds. Nor indeed would we wish to fund the suggested fee reductions through having to charge fees to charities or other community based applicants.

Our charges as they stand are not significantly different to other comparable jurisdictions. When comparing Ireland's fees with other countries consideration must in any event be given to the different processes used in administering permits in each country. Ireland's employment permit system requires a high level of case-by-case consideration by officials. This facilitates a relatively straightforward regime where the applicants need only concern themselves with completing a form, submitting a fee, and detailing the job offer along with employer and employee details. As such, there are few hidden costs to applicants in terms of requiring third party advice.

Accordingly Ireland does not believe its existing employment permit fee structures compare unfavourably with those of other comparable European economies, based on 2015 OECD data. Nonetheless Ireland remains committed to our current approach of pursuing a simplified and cost-effective system in line with our obligations in the Revised European Social Charter.
In Summary our current position is;

1/ We have reduced fees.
2/Unsuccessful applicants receive a 90% refund of fees.
3/We don't charge fees to Charities.
4/We don't charge employers a sign-up fee to the Trusted Partner initiative
5/ We are due to have a fees review in 2018.

277. The representative of OIE stated that according to employers fees have been reduced and the current fees are not excessively high.

278. The representative of Denmark invited Ireland to give detailed information en fees introduced in 2015.

279. The GC took note of the information provided, asked the Irish authorities to remedy the situation and provide all the necessary information in the next report. The GC decided to await the next ECSR's assessment.

RESC 18§2 SERBIA

The Committee concluded that the situation in Serbia is not in conformity with Article 18§2 of the Charter on the ground that formalities to obtain the residence and work permits have not been simplified.

280. The Representative of Serbia provided the following information.

At the moment, legislation of the Republic of Serbia is not fully harmonized with the European Social Charter provisions in the Article 18.2.

However, I would like to let you know that harmonization of Serbian legislation covering this subject will be done by the Employment of Foreigners Law Amendments. This amendments are already scheduled in the Action Plan for Negotiating Chapter 24, in Subchapter Migration,, Activity 1.1.3.

These amendments , as well as all necessary institutional and staff-related changes have been planned to be carried out by the end of 2019. This change in the legislation will allow the issuance of one unified work and residence permit for foreigners (single permit).

The Action Plan for Chapter 24 (of the EU legislation) is an integral part of the Governmental Agenda for the period 2017-2020.

281. The GC took note of the information provided, asked the Serbian authorities to remedy the situation and provide all the necessary information in the next report. The GC decided to await the next ECSR's assessment.

Article 18§3 - Liberalising regulations

RESC 18§3 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 18§3 of the Charter on the ground that early termination of the employment relationship of a foreign national results in the automatic withdrawal of that person's residence permit with no possibility of seeking new employment.

282. The Secretariat recalled that Article 18§3 requires States Parties to liberalise regulations governing the employment of foreign workers. In assessing the compliance with this provision, it was recalled that the ECSR examines the conditions for access of foreign workers to the labour market, which should not be too restrictive, in particular as regards conditions related to quotas (priority rules etc.), to the recognition of qualifications and competences, to the level of investment required for self-independent workers etc. Furthermore, it was recalled that, under Article 18§3, the premature revocation of the work permit of a foreign worker should not entail the automatic expiry of his/her residence permit without providing him/her with a sufficient time to look for a new job. This latter requirement was the one which the ECSR found not to be respected in the case of Belgium since 2012 (Conclusions 2012, 2016). The ECSR noted that some draft legislation was being prepared to amend the provisions at issue, but that it had not been adopted yet.

283. The representative of Belgium informed the GC that, as a result of the sixth state reform, certain federal competencies relating to foreign workers had been transferred to the federated entities. The Regions have become competent for the legislation on foreign workers (Work Permit A and B). The Federal State retains the competence for the development of standards for work permits issued according to the particular residence situation of the persons concerned (permit C). The federal authority also has jurisdiction over matters relating to the administrative status of foreigners (entry, residence, settlement and removal of foreigners).

284. In the framework of the transposition of the Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 (this Directive establishes a single application procedure for the issuing of a single permit authorizing third-country nationals to reside and work in the territory of a Member State and a common set of rights for workers from third countries legally residing in a Member State), a bill was drafted amending the law of 15 December 1980 on entry, residence, settlement and removal of foreign nationals. According to the representative of Belgium, the draft would bring the law into conformity with Article 18§3 of the European Social Charter, since it provides that the residence of the third-country national shall not be automatically terminated, unless there were exceptional circumstances which, under Article 19§8 of the Charter, authorize expulsion.

285. The Article 61/27 § 2, section 4 and 5, in draft, provides that "if the third-country national is no longer authorized to work, his stay shall terminate automatically three months after the end of the authorization to work irrespective of the authority of the Minister or his delegate to terminate the stay […]. The Sovereign shall determine the residence document issued to the third-country national and the members of his family [...] if the validity of their residence permit expires during the three-month period referred to in section 4 ". In essence, according to the representative of Belgium, the three-month period granted would allow the third-country national to seek a new employer, irrespective of the right of the Minister or his delegate to terminate the stay and issue, in this case, an order to leave the territory when the third-country national no longer satisfies the conditions relating to his stay. The same goes for the members of his family. If the duration of three months exceeds the validity of their residence permit, a provisional residence document will be issued.

286. The representative of Belgium stated that the bill had been validated in the Council of Ministers on 20th of May 2016 and submitted to the Council of State, which considered that 'in view of the division of competences in the matters covered by the EU Directive, its transposition into Belgian law can only result from a cooperation agreement between the Federal Authority, the Flemish Region, the Brussels-Capital Region, the Walloon Region and the German-speaking Community ...".

287. As a result, the adoption of the draft law depends now on a cooperation agreement which will allow a coordinated and harmonized application of the granting of a combined residence and work title as prescribed by the aforementioned Directive. Such a draft cooperation agreement has therefore been drafted. However, pursuant to Article 92bis (1) (2) of the Special Act, the consent of all the parties to the cooperation agreement is needed. After the opinion of the Council of State on the legislative projects of acceptance to the agreement, all the projects relating to the single permit will be subjected to them again. Once the cooperation agreement has been validated, the competent authorities will be able to make the legislative and regulatory changes required for the transposition of the Single Permit Directive. The draft law amending the Act of 15 December 1980 on entry, residence, settlement and removal of foreign nationals may be submitted to the Federal Parliament from that moment.

288. As an indication, the representative of Belgium said that the draft cooperation agreement was expected to be approved by the Councils of Ministers and Consultative Committee, before submission to the Council of State in September 2017. After receiving the opinion of the Council of State (end of October/beginning of November 2017), the draft cooperation agreement could be submitted to the parliaments in November 2017 for discussion and could be adopted between December 2017 and January 2018. In response to a specific question by the Chair, the representative indicated that, as of end September 2017, there was no information as to whether the draft cooperation agreement had already been submitted for approval as scheduled. She also confirmed that the draft law, once adopted, would extend the validity of residence permits by three months.

289. The GC took note of the information provided concerning the new legislation under way and decided to await the ECSR's next assessment.

RESC 18§3 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 18§3 of the Charter on the ground that the regulations governing access to the labour market by

foreign workers who are nationals of non-EEA States Parties to the Charter are too restrictive.

290. The Secretariat recalled that in the case of Italy the ECSR had noted the drastic reduction in the quotas of access for foreigners. For example, the quota for seasonal workers had been reduced by 75% during the reference period and even for non-seasonal workers the conditions of access had become more restrictive, furthermore the number of work permits granted to nationals of non-EU states parties to the Charter had significantly dropped, as noted also under Article 18§1 (where the ECSR found that it had not been established that the situation was in conformity). For these reasons, the ECSR had concluded, for the first time (Conclusions 2016), that the situation was not in conformity with Article 18§3.

291. The representative of Italy explained that the entry of non-EU foreign nationals was subject to the issuance of the "Entry flows Decree", as provided by Article 21 of the Legislative Decree of 25 July 1998, No. 286, which regulates the procedures for entry into the national territory, by establishing annual quotas, for subordinate employment, seasonal employment or self-employment, regarding workers belonging to non-EU countries. Such decrees, she explained, often provide a reserve of quotas for citizens from countries with which Italy has signed a bilateral agreement for the regulation of entry flows and readmission procedures. Italy has signed such bilateral agreements with Albania and the Republic of Moldova. In order for these agreements to be applied, the Ministry of Interior and the Ministry of Labour are expected to sign a Memorandum of Understanding with the main Employers' associations, Workers Trade Union Organisations and Workers Patronage Immigration Associations and Firms. The Memorandum of Understanding will provide for collaboration and operational guidance to the one-stop shops of the Immigration Office for obtaining the necessary permits and certain categories of workers (managers, university professors, highly qualified staff) will get access to a simplified procedure for requesting a residence permit, instead of a work permit, through the one-stop shops. By signing the Memorandum, the employers undertake to ensure compliance with the provisions in force concerning the recruitment of non-EU workers.

292. The representative of Italy pointed out that several categories of workers were exempted from the quotas restrictions, for example domestic workers who already reside abroad, in an EU country, translators and interpreters, executives or highly specialized personnel, university professors or researchers, artists, news correspondents officially accredited in Italy, sport professionals, professional nurses.

293. According to the representative of Italy, the electronic recruitment procedure for non-EU workers residing abroad, within the quotas, ensured the maximum simplification and speed, as well as compliance with the required obligations for both the employer and the worker. Employers have to request the authorization to hire a foreign worker living abroad from the Immigration Single Desk and the worker may sign the proposed contract and receive the necessary documentation through the same Desk. She added that the procedure might be improved, taking into account the constant evolution of migration flows.

294. The representative of Italy noted that the complexity of the migratory phenomenon required that the occupational needs be regularly monitored in order to meet the demands and ensure effective integration and decent work for all. She also pointed out that the reduction in the quotas during the reference period had been the effect of the crisis, but that there were now some positive signs of economic recovery, allowing for a new increase in the quotas: for 2017, the Decree had provided for a total of 30850 entry quotas (compared with 17850 in 2016), of which 17000 would concern seasonal contracts for workers from Albania, Bosnia-Herzegovina, "the former-Yugoslav Republic of Macedonia", the Republic of Moldova, Montenegro, Serbia and Ukraine.

295. Furthermore, she pointed out that according to statistical data (ISTAT 2016), Italy was the third country in Europe for number of visas issued, in particular following an increase in the number of requests for family reunification and conversion of permits held for other purposes. According to the data of 2016, the nationalities the most present in Italy were from Albania (491 000), Ukraine (241 000), Republic of Moldova (142 000), "the former Yugoslav Republic of Macedonia" (82 000), Serbia and Kosovo (each with more than 48 000). Further data concerning the number of residence permits issued during 2015-2017 for the purpose of subordinate employment or self-employment to citizens from the Republic of Moldova, Albania and Ukraine were provided in writing.

296. In response to a question of the Secretariat, the representative of Italy indicated that the new Memorandum of Understanding referred to had not been signed yet, and would be signed as soon as the labour market situation would allow it. She also clarified, in response to a question from the representative of Denmark, that bilateral agreements establishing preferential quotas had not been signed with all non-EU States Parties to the Charter.

297. The GC took note of the information provided and decided to await the ECSR's next assessment.

RESC 18§3 REPUBLIC OF MOLDOVA

The Committee concluded that the situation in Moldova is not in conformity with Article 18§3 of the Charter on the ground that termination of the employment contracts of foreign workers leads to cancellation of their temporary residence permits, thus obliging them to leave the country as soon as possible.

298. The Representative of Moldova provided information relating to a draft law that will simplify employment proceedings expected to enter into force in October 2018.

Un projet de loi a été élaboré venant modifier la Loi 200/2010 sur le régime des étrangers et de la Loi 180/2008 sur la migration de travail que le Parlement a déjà examiné en première lecture.

Le projet en cause prévoit des simplifications essentielles de procédure, exclusion de l'obligation d'obtenir de l'avis positif de l'Agence de l'Emploi sur le fait d'inviter au travail des travailleurs étrangers, la réduction des délais nécessaires pour obtenir le titre de séjour. En même temps le projet de loi a inclus la norme qui prévoit qu'avant l'expiration du titre de séjour provisoire aux fins de travail, l'étranger a le droit d'être engagée a un autre emploi et de renouveler le titre de séjour en vertu de la Loi 180/2008 sur la migration de travail.

Donc après l'approbation finale par le Parlement de ces modifications des normes le cas de non-conformité avec l'article 18p.3 sera remédié et le rapport suivant fournira des informations à ce sujet.

299. The GC took note of the information provided, asked the Moldovan authorities to remedy the situation and provide all the necessary information in the next report. The GC decided to await the next ECSR's assessment.

RESC 18§3 TURKEY

The Committee concluded that the situation in Turkey is not in conformity with Article 18§3 of the Charter on the grounds that:

- *regulations governing access to self-employment of foreign workers have not been liberalised, and*
- *loss of employment leads to the cancellation of the residence permit.*

300. The Representative of Turkey stated that recent legislation has remedied to the violation found by the Committee, in particular to the removal of the existing restrictive conditions (5 years of residence and number of workers to be employed) on access to self-employment of foreign workers.

Turkey is invited to provide information on two grounds of nonconformity in the scope of Article 18, paragraph 3.

First, the Committee concludes that the situation is not in conformity with the Article 18, paragraph 3 of the Charter on the ground that regulations governing access to self-employment of foreign workers have not been liberalised. And the Committee wishes to be kept informed on the adoption of the draft legislation.

There are new developments in Turkey since 2013, regarding migrant workers and work permits: Law on International Labour Force, 2016 and The Law on Foreigners and International Protection, 2013.
First, regarding the first ground of non-conformity, I'd like to give some information about the new Law on International Labour Force, entered into force in 2016.

Previously, access of migrant workers in our country to labour market was provided with the Law on the Work Permit for Foreigners (No. 4817). The new Law on International Labour Force (No. 6735) entered into force in 2016, the previous law (no. 4817) was abrogated and the access of foreigners to labour market began to be provided according to the new law.

The new Law (no. 6735) involves foreigners who apply for work or those currently working, those apply for occupational training or internship and are currently undergoing occupational training or internship in Turkey, and foreign cross-border service providers who are in Turkey for rendering temporary services, and also real and legal entities which employ or apply to employ foreigners.

With the new Law, new regulations were realized regarding the processes and types of work permits.

Within the scope of the new Law, definite, indefinite and independent work permits can be granted for the foreigners, following the evaluation of the applications.

Work permit for a definite period of time: If the application is approved, a work permit for maximum one year is granted at the first application, provided that this period does not exceed the duration of the labour or service contract to be employed at a certain job in a certain work place.

If an extension application is submitted and approved, a work permit for maximum two years at the first extension application and maximum three years in the following applications shall be granted for the same employer.

Work permit for an indefinite period of time:
Foreigners who have long term residence permit or legal work permit for minimum eight years can apply for work permit for indefinite period of time. Foreigners with indefinite work permit shall have all the advantages of long term residence permit. Foreigners with indefinite work permit benefit from the rights granted to the Turkish citizens in the Labour Market.

Self- employment or Independent work permit:
In the previous Law on Work Permits, independent work permit used to granted on the condition of five years of legal and interrupted residence in Turkey. Now, this condition has been abolished. Foreigners with professional occupations may be granted independent work permit on the condition that they fulfil the requirements set in other laws.

During the evaluation of independent work permit in accordance with the international labour policy; foreigner's education, professional experience, contribution in science and technology, the impact of his/her activity or investment in Turkey on the economy and employment in the country, his/her capital share if he/she is a company partner as well as other matters to be determined by the Ministry. The International Labour Policy Advisory Board has been established with the Law with members from various Ministries and its recommendations will be taken into consideration in this decision.

And Turquoise Card has been introduced with the new law. Turquoise card, regardless of the nationality of foreigners, will be granted in line with the international labor force policy of Turkey.

Turquoise Card:
In accordance with international labour policy, Turquoise Card is given to the foreigners whose application is approved according to their education, experience, contribution in science and technology, the impact of their activity or investment in Turkey on the economy and employment in the country. Turquoise card is granted provided that first three years are transition period.

A document shall be given to the spouse and dependent children of the Turquoise Card holders, indicating that they are relatives of a Turquoise Card holder and it can be used as residence permit.

Turquoise Card holders benefit from the rights granted by indefinite work permit issued within this Law. In the application of Turquoise Card; those who have internationally accepted studies in the field of academy and science, industry and technology or those contributing or are stipulated to contribute significantly to the national economy as a capacity of export, employment or investment are evaluated as a qualified.
Lastly, I'd like to underline that we have a new law on work permits on Law on International Labour Force (No. 6735) entered into force in 2016 and details about the new law will ve explained in our next report.

> ***Second, the Committee concludes that the situation is not in conformity with the Charter on the ground that loss of employment leads to the cancellation of the residence permit.***

First let me give some brief information about work permits and residence permits.

The Law on Foreigners and International Protection, (no. 6458) was accepted in 2013.

Under Article 27 of the Law, a valid work permit as well as work permit exemption confirmation document shall be considered as residence permit.

As the work permit is considered as a residence permit, migrant workers shall not need to take residence permit after they arrive in the country with a work permit.

For the same reason, when the work permit of the migrant worker is cancelled, then the residence permit is interrupted as well, unless there is a valid residence longer than the work permit taken before.

In this case the migrant worker should apply to the Ministry of Interior, Directorate General of Migration Administration to take a valid residence permit relevant to the "purpose of stay" within 10 days as of cancellation of the permit. If the migrant worker does not apply then he/she should leave the country within 10 days.

In this case application for residence permit is facilitated by the General Directorate of Migration Administration for migrant workers and can be made to the Governorships in Turkey. Exceptional residence permit applications that can be made to Governorships are articulated in Article 22. Although there is no type as residence permit for the purpose of seeking employment among the types of residence permits, the worker can apply easily for the other types of permits.

Law on Foreigners and International Protection provides 6 types of residence permits, which are:

a. *short-term residence permit;*
b. *family residence permit;*
c. *student residence permit;*
d. *long-term residence permit;*
e. *humanitarian residence permit;*
f. *victim of human trafficking residence permit.*
g.

Conditions for issuing these permits are explained in the same same Law.

Each migrant worker working in Turkey entitles all the rights and responsibilities which the Labour Law No. 4857 granted for the Turkish citizens. ***The Ministry of Labour and Social Security has an intention to make a joint study with the Ministry of Interior, Directorate-General of Migration Administration on the existing legislation in order to follow-up the legal rights of the migrant workers arising from the Labour Law and especially for those suffering from unjust termination of the labour contract, to make his or her residence possible and get a residence permit.***

On the other hand, he can apply for work permit in Turkey if has 6 months of residence permit.

We will provide all developments regarding facilitation of residence permits for migrant workers in our next report.

301. The GC took note of the information provided, asked the Turkish authorities to provide all the necessary information in the next report. The GC decided to await the next ECSR's assessment.

RESC 18§3 UKRAINE

The Committee concluded that the situation in Ukraine is not in conformity with Article 18§3 of the Charter on the ground that loss of employment leads to the cancellation of the residence permit.

302. The Representative of Ukraine stated that foreign workers are entitled to stay 90 days on the territory of Ukraine after the loss of employment and the cancellation of the residence permit.

Our previous report stated that working in Ukrainian company gives a foreign citizen reliable grounds for getting a temporary residence permit in Ukraine. Work permit is issued to the

employer (legal entity or self-employed) and not to the foreigner as an individual for up to one year corresponding to the term of respective employment agreement. The work permit may be continued an unlimited number of times for the same term.

The regime to Ukraine for foreign citizens (without permanent or temporary residence) varies depending on citizenship). For citizens of EU Member States and other countries that are parties to the Charter, visa is not required for a stay up to 90 days within a period 180 days.

Thus, if an employer does not extend the validity of the work permit under different circumstances, a foreign worker can take the possibility of visa-free stay in Ukraine on general grounds for up to 90 days. This time he or she can use to find a new job but the procedure will be the same.

303. The Representative of France expressed doubts on the title allowing foreign workers to stay on the territory of Ukraine and asked more information on the applicable legislation on that issue.

304. The GC took note of the information provided, asked the Ukrainian authorities to provide all the necessary information in the next report. The GC decided to await the next ECSR's assessment.

Article 18§4 – Right of nationals to leave the country

RESC 18§4 RUSSIAN FEDERATION

The Committee concluded that the situation in the Russian Federation is not in conformity with Article 18§4 of the Charter on the ground that there are still restrictions on the right of Russian citizens to leave the country.

305. The Representative of the Russian Federation provided the following information:

We speak about 2 categories of grounds of prohibition to leave the country:

1) access to some types of state secret
2) suspicion of having committed a crime or being accused of such

The first one.

The Committee considered that there was a blanket prohibition.
That is not totally correct.

There are several degrees of state secret information. The prohibition to leave the country is applied only to people who have access to top secret data or data of particular importance.

Unfortunately it is impossible to provide the information on how many people have access to these 2 categories of state secret

We explain this prohibition by the character of state secret information, which is important in the interest of national security. Art 15 of Federal Law 114 is considered as a part of legislation on security.

As for 5 year period, this period can be explained by the fact that according to Art 13 of the Federal law on State Secret 5 years is a maximum period state bodies are obliged to review the contents of the lists of information subject to classification as state secret and degree of it.

The Commitee asked for the judicial decisions on this issue. Supreme Court of the RF replied that in 2016 one case was considered in the appellate procedure in Supreme Court of the RF and

the Supreme Court did not change previously adopted decision. At the same time Supreme Court noticed that the court is guided not only by the fact of access to state secret information but also by the nature of information, the degree of its secrecy at the time of the appeal to the court (because it may have recently be changed, for instance) and reasons for leaving the country.

We remember that there were 2 judgments of the European Court of Human Rights against Russia on this issue, where the Court drew special attention to the test of proportionality.

All courts inside the country were made aware of the texts of these judgements to keep them in mind, to take into account requirements of proportionality when awarding a judgement.

2-nd ground: suspicion of having committed a crime.
In this case measures of restraint are applied only if there is reasonable anticipation, based, according to Criminal Procedure Code of the RF, only on data verified during the court session, that the person under suspect may try to encumber the criminal proceeding in any ways (he may abscond during the investigation or threaten to witnesses, destroy the evidence or even continue his criminal activity).

It is unquestionable that detention of a person is possible only if legal classification of delict, character of crime and penal measures are determined.

Therefore all conditions are met to be in compliance with paragraph 1c Art 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Besides, in case of restriction to leave the country, federal or territorial migration body gives a person a notification indicating the basis of such decision, data, registration number of the decision and full name and address of the body which undertakes responsibility to restrict the person's right to leave the country.

Unit 22 of Administrative Procedure Code of the RF provides the opportunity of appealing these decisions in court. In addition, according to p.11 Art. 226 of the Code, the burden of proof of legitimacy of restrictions is on the state body who has decided to restrict the person's right.

306. The Representative of Greece asked information on the number of persons that are not allowed to leave the country

307. The Representative of the Russian Federation replied that this information is not available.

308. The Representatives of Denmark and CES ETUC stressed the importance to have more detailed information on the current situation.

309. The GC took note of the information provided, asked the Russian Federation authorities to remedy the situation and provide all the necessary information in the next report. The GC decided to await the next ECSR's assessment.

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

RESC 20 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 20 of the Charter on the following grounds:

- *the limits imposed on compensatory awards in gender discrimination cases may prevent such violations from being adequately remedied and effectively prevented ;*

- *the unadjusted pay gap is manifestly too high.*

310. The representative of Armenia was absent. The following statement was submitted in writing:

1. First ground of non-conformity

Article 265 of the Labor Code of the Republic of Armenia stipulates:

1. An employee who disagrees with the changing of the working conditions, suspension from work upon the employer's initiative, dismissal from work, shall be entitled to apply to the court of law within two months from the day of receipt of the appropriate notice (document). If it is established that the working conditions were changed, the employee was suspended from work without valid grounds or in violation of the procedures prescribed by the legislation, then the violated rights of the employee shall be restored. In this case employer shall recover the average work pay for the entire time period the employee was in forced outage, or the difference of the salary for that period, during which the employee was employed in a lower paid job. The average wage is calculated through multiplying the amount of the average daily wage of the employee with the number of corresponding days.

2. If the court establishes that the employee may not be reinstated in his/her previous job due to economic, technological, organizational reasons or when the restoration of further relations appears to be impossible, then the court of law may not restore the employee in his/her previous job, obliging the employer to pay compensation for the whole duration of the forced outage in the amount of average wage, until the court decision enters into legal force and compensation for not restoring the employee in his/her job, but not more, then twelve times of the average wage. The employment contract shall be considered as terminated starting from the day, when the decision of the court had entered into legal force.

It should be emphasized that according to Article 265 part 2 of the RA Labor Code the maximum size is set for the compensation paid by the employer to the employee, which may comprise not more than twelve times of the average monthly wage paid to the employee for the forced outage.

If the court establishes that the employee may not be reinstated in his/her previous job due to economic, technological, organizational reasons or when the restoration of further relations appears to be impossible, then the court of law may not restore the employee in his/her previous job, obliging the employer to pay compensation for the whole duration of the forced outage in the amount of average wage, until the court decision enters into legal force and compensation for not restoring the employee in his/her job, but not more, then twelve times of the average wage. The employment contract shall be considered as terminated starting from the day, when the decision of the court had entered into legal force.

2. Second ground of non-conformity

According to the data of the statistical journal "Women and Men in Armenia, 2016" published by the National Statistical Service of the Republic of Armenia:

- *The difference between the average monthly nominal wages (earnings) of women and men has been reduced by 10.8 percentage points over the last 10 years.*
- *In 2015 the average earnings of women were 66.5% of men's earnings in the Republic of Armenia or sexual severance of remuneration was 33.5%.*

The minimum salary increase in Armenia, which was implemented in 2011-2015 also contributed to the reduction of the difference of average monthly nominal wages (salaries) of women and men. In this regard, we consider it necessary to inform that by the 2017-2022 program of the Government of the Republic of Armenia the minimum wage increase is envisaged for the reporting period too that will contribute to the reduction of sexual severance of remuneration, especially due to increase of low wages.

311. The representatives of France, Denmark, Greece and Austria emphasised that, despite the Armenian legislation prohibiting discrimination in employment, the gender pay gap in Armenia remains high in comparison to the situation in other member states of the Council of Europe.

312. The representative of Austria, who is chairing the Gender Equality Commission of the Council of Europe, explained that the Commission does not examine individual countries, but the general situation. One of the Commission's roles is to analyse the causes of the gender pay gap such as horizontal segregation on the labour market with women employed more in care and service sectors and part time jobs etc. The Commission considers this issue as a common and structural problem of all member states.

313. The representative of Greece highlighted that gender discrimination and gender pay gap relate to problems in practice and not necessarily in the legislation. She encouraged Armenia to take practical steps to reduce the gender pay gap. The Secretariat confirmed that under Article 20, the European Committee of Social Rights is looking at measures taken to eliminate de facto inequalities between men and women.

314. The GC took note of the information provided, but expressed concerns about the high gender pay gap. The GC invited the Armenian authorities to take measures to reduce the gender pay gap and to bring the situation in conformity with the Charter.

RESC 20 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 20 of the Charter on the following grounds:

- *legislation does not provide for a shift in the burden of proof in gender discrimination cases;*
- *women are not permitted to work in all professions which constitutes discrimination based on sex;*
- *the unadjusted gender pay gap is manifestly too high.*

315. The representative of Azerbaijan provided the following information:

To promote women's involvement in political, social, economic and cultural life of our country, a decree #727 was signed on the 14th of January 1998, to implement measures aimed at promoting women in Azerbaijan.

According to Article 16 of the Labour Code of Azerbaijan discrimination in employment based on citizenship, sex, race, nationality, language, place of residence, economic standing, social origin, age, family circumstances, religion, political views, affiliation with trade unions or other public associations, professional standing, beliefs, or other factors unrelated to the professional qualifications, job performance, or professional skills of the employees is prohibited. Special measures in favour of women, disabled persons, minors and other persons in need of social protection do not constitute discrimination.

Based on Article 9 of the Law on Gender Equality equal pay should apply to employees working in the same company with the same specialisation fulfilling work of the same value, irrespective of their gender.

***With regard to the second ground**, Paragraph 6 of Article 241 of the Labor Code of the Azerbaijan Republic has been drafted up in compliance with the requirements of Article 20 of the European Social Charter. A document drafted and submitted on the 28th of November 2013 to the Cabinet of Ministers, in order to abolish the list of production areas, occupations (positions), including underground workplaces with harmful and arduous work conditions in which female labor is prohibited, provided in Article 241 of the Labor Code of Azerbaijan. Furthermore, the draft provides for the abolishment of paragraphs 3 and 4(lifting and carrying heavy items) of article 241 of the Labour Code. This list is intended to apply only to pregnant women and the women with a child under 16 months old.*

This issue was also discussed during 26 May, 2017 meeting of the Tripartite Commission on Social and Economic Issues in the Republic of Azerbaijan created in 2016, 30 September between the Cabinet of Ministers of the Republic of Azerbaijan, Confederation of Trade Unions of Azerbaijan and National Confederation of Entrepreneurs (Employers) Organizations of the Republic of Azerbaijan. After the discussions, it was decided to carry out fast works on the project.

***With regard to the third ground**, regardless of gender, everyone has the right to be recruited to the civil service and this right is secured under the legislation on civil service. Salaries on civil service positions were determined by single act and the same salary was determined for the same position. There is no difference between job salaries depending on sex.*
Some examples of representation of women in political post, civil service and judicial system:

- *The first vice president of the Azerbaijan Republic is a woman;*
- *In the present convocation of Parliament (Milli Majlis)of Azerbaijan, or the national assembly, one out of the three vice speakers is woman, and 21 out of 125 MPs (16.8 per cent) are women;*
- *Human rights commissioner (Ombudsman) is woman;*
- *One state committee chairman, the chairman of the Board of Directors of the State Examination Center, three deputy ministers, one state committee deputy chairman, and one deputy chairman of the Chamber of Auditors is woman;*
- *Deputy chairman and one judge of the Constitutional Court are women;*
- *Five university rectors are women;*
- *One vice president of the State oil company, the country's largest corporate entity, is a woman;*
- *Women constitute 35 per cent or 5,236 members of the municipality institutions, and 302 such institutions are chaired by women;*
- *There are 181 female diplomats in the diplomatic service;*
- *As of the 1st January 2016, women had 29.3-per-cent share (30,123 people) in the overall number of civil servants;*
- *There are more than 200 women NGOs operating in the country and etc.*

316. The Chair noted that according to the Conclusion of ECSR, the average wage of women constituted 47.5% of the average wage of men. The Chair asked whether the situation has changed in the meantime.

317. The representative of Azerbaijan confirmed the figures mentioned by the Conclusion of ECSR. She added that there is however an increase in the number of women in decision making positions in political posts, civil service and judicial system. The exact figures on the average wage of women will be given in this year`s report.

318. The representative of Sweden asked for clarification: on a first hand concerning the existence of legislation that comprises a list prohibiting women to access certain professions; and on a second hand concerning the burden of proof in gender discrimination cases.

319. The representative of Azerbaijan confirmed the absence of shift in the burden of proof in Azerbaijani legislation. However discrimination is prohibited under the Constitution and legislation. Regarding the second ground, a document, abolishing the list of prohibited professions for women, is in process of preparation; and it should be completed at the end of the year or the end of the following year.

320. The representative of Denmark expressed his concern on the unadjusted gender pay gap being manifestly too high in Azerbaijan.

321. The representative of the Netherlands stressed the importance of having a shift in the burden of proof in discrimination cases.

322. The representative of Poland invited Azerbaijan to continue their reflection on a new legislation that will provide for a shift in the burden of proof, and whether any changes are envisaged soon.

323. The representative of Azerbaijan indicated that there have been discussions in the tripartite commission meeting with social partners on providing for a shift in the burden of proof in the labour court. The changes are planned for 2019.

324. The representative of ETUC highlighted that the first ground of non-conformity was concluded by the ESCR for the second time. He welcomed the discussions undertaken by the tripartite commission, but underlined the lack of details on a concrete change in the near future. With regard to the second ground of non-conformity, the representative of ETUC indicated that the conclusion is negative since 2008. In 2012 the GC took note of the political will to change the situation. He pointed out again the absence of concrete information on whether the problem will be tackled. He invited the GC to consider its working methods and proceed to vote for the first two grounds of non-conformity.

325. The representative of the Netherlands proposed that the GC proceed to vote with regard to the first ground of non-conformity.

326. The representative of Georgia explained that she is not an expert on the issues discussed by the GC and therefore she decided not to vote.

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

327. The GC proceeded to vote on a recommendation which was not carried (3 votes in favour, 14 against, 13 abstentions). The GC then voted on a warning which was carried (25 in favour, 3 against, 5 abstentions).

328. The GC urged the Government of Azerbaijan to bring the situation in conformity Article 20 of the Charter.

Second ground of non-conformity

329. The GC proceeded to vote first on a recommendation which was not carried (0 in favour, 21 against, 13 abstentions). The GC then voted on a warning which was carried (20 in favour, 10 against, 3 abstentions).

330. The GC urged the Government of Azerbaijan to bring the situation in conformity Article 20 of the Charter.

Third ground of non-conformity

331. The GC expressed concerns about the high gender pay gap and invited the authorities of Azerbaijan to take measures to reduce the gender pay gap and to bring the situation in conformity with Article 20 of the Charter.

RESC 20 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 20 of the Charter on the following grounds :

- *women are not permitted to work in all professions which constitutes discrimination based on sex;*
- *the right to equal opportunities in employment without discrimination on grounds of sex is not guaranteed in practice.*

332. The representative of Bosnia and Herzegovina provided the following information:

The conclusion of the Committee regarding article 20 was that the situation in Bosnia and Herzegovina was not in conformity with this article on the ground that the right to equal opportunities and equal treatment in employment are not guaranteed in practice, as well as the discrimination on grounds of gender.

There are several institutional mechanisms for promoting gender equality which have been adopted, such as the state level Agency for Gender Equality, entity gender centres and commissions for gender equality in the Parliament of Bosnia and Herzegovina and in entity assemblies. All these institutions are cooperating in order to make women aware of their rights, and providing legal assistance to the parties who suffered violations of the rights guaranteed by the Gender Equality Law.

The Gender Equality Agency and entity gender centres are monitoring violations of the rights guaranteed by the Gender Equality Law. The procedure of receiving and processing applications for examination of violations has already been described in the previous national report. The positive fact is that the Agency for Gender Equality received only three requests during 2014. The outcome of those cases will be provided in the next national report.

We cannot provide the full information on the number of gender discrimination cases brought before the courts, with specific indications on their outcome and sanctions applied on employers and compensation granted to victims, because the courts are not obliged to give such a detailed information to the other institutions/members of Government.

When compensations are concerned, there are no restrictions on the amount of compensation granted to victims, but the court determines the amount of the damage in each case individually.

Regarding the legal guarantees for equal pay for work of equal value, the Federal Labour Law prescribes that the employer is obliged to pay wages to workers for work of equal value,

irrespective of their national, religious, gender, political and other affiliation, as well as other discriminatory grounds.

The situation at the labour market is slightly different, and reason for that is the women are usually seeking jobs in the customer and social services, while men are more interested in management and marketing positions, which are better paid. That leads women to a smaller wages, and smaller pensions.

In 1993 Bosnia and Herzegovina ratified the International Labour Organisation's Convention no. 45 concerning the employment if women on underground work in mines of all kinds. Bosnia and Herzegovina has taken an initiative to denounce this Convention, but it may be denounced after the expiration of ten years after its coming into force. Since the Convention got into force on 30 May 2007, Bosnia will denounce it probably by the end of 2017.

333. The representative of Sweden expressed her concern whether there was a political commitment to change the situation in order to guarantee the right to equal opportunities in employment without discrimination.

334. The representative of ETUC asked for clarification regarding the first ground of non-conformity. He asked whether any amendments of the domestic legislation are envisaged and what is the status of such amendments in the Parliament.

335. The representative of Bosnia and Herzegovina stated that in fact the question is a matter of political will and practice, and not of legislation. The next national report will contain more details on both issues: first and second ground of non-conformity.

336. The representative of France replied to the Bosnian representative by underlining that there is a list of prohibited occupations for women in the law, therefore it is a matter of legislation. Thus, the national legislation has to be changed, irrespective of the denunciation of the ILO Convention.

337. The representative of Bosnia Herzegovina recalled that the prohibition for women refers only to work in underground mining and it is envisaged to denounce the ILO Convention No. 45 in 2017 or 2018.

338. The representative of Sweden recalled the critics of the ECSR for the second ground of non-conformity, which is related to the practice. Together with the Danish representative, they asked whether any active measures, that required structural reforms and costs, were undertaken by the government in order to promote equal opportunities, and to develop a general perception that it is possible to choose your profession (management, science, etc.) regardless of your gender.

339. The representative of the ETUC expressed his concern that insufficient active measures are being taken and asked when the situation of non-conformity will be remedied. He suggested that Bosnia and Herzegovina could first amend its domestic legislation to be in line with the European Social Charter and then denounce the ILO Convention 45.

340. The representative of Austria confirmed that Austria indeed denounced ILO Convention 45 because it was against gender equality law and Bosnia and Herzegovina could do the same.

341. The representative of the Netherlands supported the suggestions made by the representatives of ETUC and Austria by stressing that there is no risk in doing so. Moreover, she added that the ILO Convention No. 45 may be denounced within the period May 2017 - May 2018.

342. The representative of Bosnia Herzegovina stated that it is expected that the ILO Convention 45 be denounced by the end of 2017.

First ground of non-conformity

343. The GC proceeded to vote first on a recommendation which was not carried (0 in favour, 25 against, 7 abstentions). The GC then voted on a warning which was not carried (7 in favour, 15 against, 8 abstentions).

Second ground of non-conformity

344. The GC proceeded to vote first on a recommendation which was not carried (0 in favour, 29 against, 3 abstentions). The GC then voted on a warning which was not carried (2 in favour, 20 against, 10 abstentions).

345. The GC invited the authorities of Bosnia and Herzegovina to clarify the situation, to denounce the ILO Convention 45 and take all necessary measures to bring the situation in conformity with Article 20 of the Charter.

RESC 20 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 20 of the Charter on the ground that the unadjusted pay gap is manifestly too high.

346. The representative of Estonia provided the following information:

While the employment rate of women is high, Estonia faces remarkable unadjusted gender pay gap. Research has shown that the gender pay gap is a complex phenomenon influenced by various factors like gender stereotypes, gender segregation, sharing of care responsibilities, legal framework and its implementation and gender mainstreaming (specifically in education and by employers).
There have been many activities to decrease the gap over the years, which I will not go into detail now. But we agree that the actions taken by the state have not been effective enough to significally decrease the gap. The gap has been decreasing now for the past 3 years, but the change has been rather slight and we hope that action taken now and in the future will help reduce the gender pay gap with a higher speed.

The Welfare Development Plan is the main action plan for gender equality and foresees a variety of activities to tackle gender inequality. The plan targets issues of equal economic independence of women and men; reducing gender pay gap; balanced participation of women and men in all levels of decision-making and management in politics and public and private sectors; reducing negative impact of gender stereotypes on decisions and everyday life of women and men; enhancing rights protection concerning equal treatment of women and men and guaranteeing institutional capacity to promote gender equality, including gender mainstreaming. The measures vary from awareness raising to legislative changes.

Measures specifically planned to decrease gender pay gap in the coming years include equal pay audits in public sector by providing the Labour Inspectorate with a right to exercise state supervision over implementation of the requirement of equal pay. Although legislation that requires equal pay for women and men has been in place since 2004, we see that the problems lies with

the implementation of the gender equality act and the amendments thus result from the need for clearer supervision over the implementation of equal pay and more explicit expectation for the employers.

In order to keep the administrative burden as low as possible, an IT tool will be developed. The tool will use data that the employers already provide to the state and evaluate whether the employers pays women and men fairly. The IT tool and relevant guidelines will also be available for use for all the employers in the private sector. The guidelines will also include a better understanding of work of equal value and thus will be a helpful tool for the employers'. Labour inspectorates will also have relevant training on gender equality and will provide support for the employers. The draft is expected to be in cabinet fall 2017.

In addition, the government of Estonia is in the process of elaborating changes to the parental leave and benefits system. For those of you, who are not aware, the parental leave system in Estonia is rather generous allowing a parent to stay home with a child up to 1, 5 years that is fully paid. Although both parents of the child can take out parental leave, it is usually the mother who does so and the leave is often taken out to the maximum amount. This however creates once again gender inequalities, since although women do return to work, staying away that long, usually, has negative consequences for their careers.

The changes to the system include developing flexible possibilities for families to combine the leave and working with lengthening the time period when parental leave can be taken out up to 3 years. The length of the leave will remain the same, but the time period when it can be taken out will be longer. Another aim of the changes is to encourage a more balanced distribution of parental leaves and benefits between parents. Thus, one of the main aims is to encourage more fathers to take out parental leave and participate in child upbringing with a period reserved specifically for fathers. At the moment the fathers leave is 10 days, but it will we lengthened to 30 days. We believe that responsibilities related to family should be equally shared between parents and the amendments will help brake stereotypes associated with the roles of mothers and fathers and help reduce the gender pay gap. The changes will be established gradually in the years 2018-2020. I am also very happy to say that the amendments to the parental leave system were approved today by the government of Estonia.

This year, the Ministry of Social Affairs is also for the first time giving out Family friendly employer labels. The labels acknowledge employers who have made efforts to ensure a family friendly environment and equal treatment of their employers. In September, the first 43 organisations were awarded with this label.

On April 10th 2017, Estonia celebrated Equal Pay Day. For the second time in the context of Equal Pay Day a youth literature contest was held, where high school aged youth could submit their essays, poems and short stories on the topic of equal pay and other gender equality issues. Best texts were awarded. In addition, a panel discussion was held and podcasted as it has been for many years. The aim was to raise awareness on the gender pay gap and encourage teenagers as well as the society as a whole to think about the matter.

To raise awareness from another angle during Estonian Equal Pay Day, the Ministry of Social Affairs together with the Gender Equality Council organised a meeting between the Unemployment Insurance Fund, job mediation organisations, NGO-s working with gender equality and personnel companies to discuss pay transparency. It was agreed that all parties will try to ensure pay transparency to the best of their ability and advise their clients and partners on the important of pay transparency in ensuring equal pay for men and women. Although this is not a legislative initiative, it helps bring the topic of pay transparency into media and raise awareness.

To tackle stereotypes, the Ministry of Social Affairs organized a pilot tailor made training for career counsellors working with young people. The idea is to give career counsellors basic training of gender and gender equality in order to help them understand gender aspects in their work and give

them gender mainstreaming skills with the aim of tackling gender stereotypes in career counselling and education. The first training took place May 2017 and was well received by the participants.

Starting from August with the initiative from the Ministry of Education and Research, Estonia is changing its career counselling system. The amendments will among other things bring gender aspect into career counselling basic system and training more efficiently, so that all career councillors working with young people will know how to take gender aspect into account in their work. This will hopefully encourage young men and women to choose more diverse career patterns and help reduce gender segregation, one of the main reasons behind gender pay gap.

In November 2016, the fourth Gender Equality Monitoring was conducted in order to obtain a better overview of the attitudes and opinions of men and women concerning their situation and position in society. The aim of this national survey is to measure opinions and attitudes regarding gender equality. It covers different topics and areas of life, such as power, economy, working life, private life, education and violence. The results are used to assess existing gender equality policies and to develop new policy measures to reduce gender inequalities.

As we are very much aware of the inequalities between women and men in Estonia, in particular the gender pay gap, during our presidency of the council of the European Union and in cooperation with European Institute for Gender Equality, Estonia has chosen to draft Council Conclusions on gender segregation in education, training and the labour market and the links between the gender pay gap and gender segregation. This document is expected to give more insight on how to better tackle gender segregation and through that reduce the gender pay gap.

347. The Secretariat indicated that according to Eurostat the gender pay gap was 30% in 2012, 29.9% in 2013 and 28.3% in 2014. Among the EU countries, Estonia had the highest pay gap during the reference period examined by the ECSR.

348. The representative of Ukraine welcomed the positive efforts undertaken by Estonia, and encouraged the Government of Estonia to continue its work to bring the situation into conformity with the Charter.

349. The representative of Estonia added that the actual gender pay gap according to Eurostat stood at 26.9%.

350. The Chair welcomed the positive efforts of the Estonian authorities to bring the situation into conformity with the Charter.

351. The GC took note of the information provided and invited the Estonian authorities to provide all relevant information in the next report. Meanwhile, it decided to await next assessment of the ECSR.

RESC 20 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 20 of the Charter on the ground that there is no explicit statutory guarantee of equal pay for work of equal value.

352. The representative of Georgia provided the following information:

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

a access to employment, protection against dismissal and occupational reintegration;
b vocational guidance, training, retraining and rehabilitation;
c terms of employment and working conditions, including remuneration;
d career development, including promotion.

The Constitution of Georgia recognises the equality of all people before the law. In accordance with Article 14 of the Constitution, everyone is free by birth and equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.

This article protects the legal equality of people regardless of their racial, ethnic, religious or other affiliation, as well as protects people against unlawful discrimination.

In addition, in accordance with Article 38 of the Constitution, citizens of Georgia are equal in social, economic, cultural and political life, irrespective of their national, ethnic, religious or linguistic affiliation (Article 38(1)). The range of rights with respect to which equality under Article 38 is applicable, includes the entire cultural, social, economic, political and civil rights that have all people under the legislation of Georgia.

However, Article 30 of the Constitution specifies that the protection of labour rights, fair remuneration of labour and safe, healthy conditions and the working conditions of minors and women are determined by the organic law (Article 30 (4)).

The fundamental principles, defined in the Constitution, in terms of content and structure are extended in different legal acts: the laws of Georgia on Gender Equality and the Elimination of All Forms of Discrimination.

Law of Georgia on Gender Equality of 26 March 2010 defines the fundamental guarantees for equal rights, freedoms and opportunities, provided for in the Constitution and determines legal mechanisms and conditions for their implementation in relevant aspects of public life (Article 1).

This law aims to ensure non-discrimination in all spheres of life, to create favourable conditions for realisation of equal rights, freedoms and opportunities for men and women, as well as to promote the prevention and elimination of discrimination (Article 2).

In accordance with this Law, for the purpose of protecting gender equality, equal treatment in evaluation of the quality of work of men and women is ensured without discrimination (Article 4(i));

The Law of Georgia on Gender Equality strengthens gender equality in labour relations, and Article 6 specifies that the following shall be prohibited in labour relations:
a) harassment and/or coercion of a person with the purpose or effect of creating an intimidating, hostile, humiliating, degrading, or offensive environment;
b) any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating for him/her an intimidating, hostile, or offensive environment.
2. The state shall provide equal employment opportunities for men and women.
3. During recruitment and in the course of employment persons may be put in unequal conditions and/or given priority over others on the basis of sex due to the substance and specificity of work or due to specific conditions required for its performance, and also if it serves a legitimate purpose and is appropriate and necessary for achieving that purpose.
4. The legislation of Georgia shall ensure creation of favourable working conditions for pregnant women and nursing mothers which excludes their work in hard, harmful and dangerous environment, as well as at night.
This Law specifies the agencies monitoring the protection of gender equality.
Pursuant to Article 12 of this Law, the Parliament of Georgia, in accordance with the Constitution of Georgia, the international agreements and other legislative acts and subordinate normative acts of

Georgia, shall define basic trends of the state policy in the gender-related area, ensure the development and implementation of the legislative framework in the field of gender equality, review and approve appropriate strategy and monitor the activities of the bodies accountable to the Parliament of Georgia in the field of gender equality (Article 12(1)).
2. The Parliament of Georgia, according to its Rules of Procedure and the legislation of Georgia, shall set up the Gender Equality Council to ensure systematic and coordinated work regarding gender issues. The composition, status, functions and powers of the Council shall be determined by this Law, the Rules of Procedure of the Parliament of Georgia and the Statute of the Gender Equality Council approved by the Chairperson of the Parliament of Georgia (Article 12(2)).
The Gender Equality Council shall be authorised to:
a) develop and submit for approval to the Parliament of Georgia an action plan on providing gender equality and ensure coordination and monitoring of its implementation;
b) perform analysis of the legislation of Georgia and develop proposals to eliminate existing gender inequality in legislation;
c) ensure expert examination of draft legislative acts submitted as legislative initiatives, in terms of gender equality assessment;
d) develop and plan certain activities to achieve gender equality and provide equal rights for men and women;
e) develop and introduce a monitoring and assessment system for activities aimed at ensuring gender equality, and produce appropriate recommendations;
f) request and receive any information and document related to the study of gender issues, except for documents the confidentiality of which is protected under the legislation of Georgia;
g) examine statements, documents and other information on violations of gender equality and respond to them within the scope of its authority, as well as produce appropriate recommendations;
h) invite representatives and/or experts of international or local organisations working in the relevant field to discuss gender equality issues;
i) exercise other powers granted by the legislation of Georgia (Article 12(3)).
The Gender Equality Council shall submit to the Parliament of Georgia a report on gender equality in Georgia once a year, and prepare reports on performance of obligations assumed under international agreements with respect to gender equality. The Gender Equality Council shall be authorised to represent the Parliament of Georgia on gender equality issues in international relations, based on the relevant decision of the Chairperson of the Parliament of Georgia (Article 12(4)).
Organisational structure, rules of operation and relationships with state bodies of the Gender Equality Council shall be determined by the Rules of Procedure of the Parliament of Georgia and the Statute of the Gender Equality Council (Article 12(5)).

Gender Equality Council has developed a National Action Plan on Gender Equality 2014-2016, which was adopted by the Parliament of Georgia on 24 January 2014 by the Resolution on Approving 2014-2016 National Action Plan for the Implementation of Gender Equality Policy in Georgia. This plan provides measures for 8 priority issues, such as:

- *development and implementation of the State Policy on Gender Equality;*
- *education and awareness-raising;*
- *ensuring Gender Equality in the economic sphere;*
- *ensuring Gender Equality in the field of health and social affairs;*
- *ensuring Gender Equality at the local self-government level;*
- *women and politics;*
- *ensuring Gender Equality in the field of environment protection;*
- *ensuring Gender Equality in the field of law enforcement and penitentiary.*

Ensuring Gender Equality in the economic field implies conducting a gender analysis of employment in the public and private sectors, promoting an equal participation of men and women in professional training and education programmes, identifying needs for increasing women's participation in business activities, as well as developing appropriate programmes and business-education of employed women to strengthen their economic potential, etc.
The work of all government agencies in regard to the mentioned Action Plan was positively evaluated by the Parliament of Georgia in the Performance Report of 2014.

(http://www.parliament.ge/ge/saparlamento-saqmianoba/komisiebi-da-sabchoebi-8/genderuli-tanasworobis-sabcho/sabchos-shesaxeb-2044/sabchos-angarishebi)

For many years lack of institutional mechanism on gender equality on the executive level has been a major concern and an important advocacy milestone for gender equality in Georgia. First progress in this regard was made in 2012 by introducing the position of an Assistant to the PM on Human Rights and Gender Equality Issues. Another step forward was made in November 2014 by re-establishing the Inter-Agency Council Implementing Measures to Combat Domestic Violence chaired by the Assistant to the PM on HR and GE issues. Nevertheless, in its most recent concluding observations on Georgia issued in July 2014, the CEDAW expressed concern that there is no comprehensive mechanism in the executive branch for the coordination, implementation and monitoring of gender equality policies and recommended to establish such mechanism with adequate human, technical and financial resources. [1] (United Nations, Convention on the Elimination of All forms of Discrimination against Women: Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Georgia, CEDAW/C/GEO/CO/ 4-5, July 2014, paragraph 15.) At Global Leader's Meeting in NY, former Prime Minister Mr. Garibashvili inter alia committed to further improve Georgia's agenda on gender equality and women's empowerment policy framework by setting up an Inter-Ministerial Commission on Gender Equality and Women's Empowerment. Since then with the assistance of the UN Country Team in Georgia, considerable work has been done by the Government of Georgia to develop relevant legal framework which will be approved in the nearest future.

Labour Code

***Since 2013 no amendments have been made to the Code but after concluding** EU-Georgia Association Agreement Georgia took commitment to approximate its legislation to EU acquis meaning that EU directives envisaged in Annex XXX (Association Agreement) will be transposed into Georgian legislation. Ministry of Labor, Health and Social Affairs of Georgia was tasked to amend labor Code (in compliance with ILS) by TSPC and the working group under the tripartite commission was set up. The initial drafts are made in compliance with the EU directives in 2017: Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;*

The legislative package consists of drafts of amendments to the following organic laws and laws of Georgia:

1. *Organic Law of Georgia "Georgian Labor Code";*
2. *Organic Law of Georgia on " Public Defender";*
3. *Law of Georgia on the "Elimination of All Forms of Discrimination";*
4. *Law of Georgia on "Public Service";*
5. *Law of Georgia "Administrative Offences Code".*

The amendments allow Public Defender of Georgia to issue a fine for not fulfilling recommendations on the facts of discrimination in labor and pre-contractual relations for public institutions, organizations, private and legal entities.

Pursuant to EU DIRECTIVE 2006/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation the principle of equal pay for equal work or work of equal value constitutes an important aspect of the principle of equal treatment between men and women and an essential and indispensable part of the acquis communautaire. The directive defines that for the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated. As already mentioned Georgia is working on step by step transposition of EU directive into its legislation. Following the transposition timeline Ministry of Labour, Health and Social Affairs of Georgia will work on the amendments to legislation based on this directive in 2018. Though it is worth mentioning the following:

On 27 October 2015 a new Law of Georgia on Public Service was adopted, which stipulates that a remuneration system for public servants is based on the principles of transparency and fairness, which means the implementation of equal pay for equal work (Article 57(1)).
In accordance with the same Law, the Government of Georgia was mandated to prepare and submit for approval to the Parliament of Georgia a draft law of Georgia on Labour Remuneration in Public Institutions before 1 September 2016.

353. The representative of Georgia confirmed that Georgia has the intention to harmonise its legislation with the EU acquis in 2018 in the context of the Association Agreement with the EU.

354. The representative of France welcomed the positive developments in the public sector brought by the new Law on Public Service of 27 October 2015.

355. The representative of the Netherlands took note that according to the Conclusion of the ESCR on Article 20, legislation provides that women who believed they have been subject to gender discrimination may take their case to court. She stressed the importance of the shift in the burden of proof in discrimination cases and asked whether legislation provides for a shift in the burden of proof in Georgia.

356. The Chair recalled that the conclusion of non-conformity of the ECSR concerned the equal remuneration for work of equal value. The Secretariat clarified that indeed the ESCR in its Conclusions asked whether the legislation provides for a shift in the burden of proof and requested the Government to address this issue in their next national report.

357. The GC took note that Georgia is in process of harmonising its legislation with the EU acquis by 2018 and invited the Georgian authorities to provide all information in the next report. Meanwhile, it decided to await the next assessment of the ECSR.

RESC 20 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 20 of the Charter on the ground that not all professions are open to women, which constitutes discrimination based on sex.

358. The representative of the Republic of Moldova provided the following information:

Par la Loi 155 du 20.07.2017 le Code du Travail (article 248) a été modifié limitant l'interdiction d'engager les femmes aux travaux de sous- sol seulement aux femmes enceinte, celles qui viennent d'accoucher et celles qui allaitent

En plus la Décision du Gouvernement nr. 259 du 28.04.2017 a approuve la ***Stratégie de l'assurance de l'égalité entre les femmes et les hommes pour les années 2017-2021 et le Plan d'action sur sa mise en œuvre.***

Le but de cette Stratégie este d'assurer la réalisation réelle de l'égalité entre les femmes et les hommes.

L'un des domaines d'intervention de la Stratégie est l'égalité sur le marche de travail.

L'objectif spécifique de la Stratégie est l'harmonisation de la législation nationale aux standards européens, dont la Charte Sociale mais également la Directive de l'UE 2000/78/CEE du 27 novembre 2000 de création d'un cadre général pour l'égalité de traitement en matière d'emploi.

Tout cela sera fait pour dépasser y compris la persistance de la ségrégation professionnelle en fonction du genre sur le marche du travail.

Donc, nous estimons que les nouvelles documents adoptes apporteront ses résultats constructifs et nous pourrons communiquer des informations pertinentes dans le rapport suivant.

359. The representative of ETUC asked for a time table regarding the further process of harmonization of the national legislation with international standards, including the Charter.

360. The Chair recalled that the negative conclusion concerned only the fact that some professions were prohibited to women.

361. The representative of the Republic of Moldova explained that, through the amendment brought to the Article 248 of the Labour Code in July 2017, the prohibitions criticised by the ESCR were abolished. According to the amendment, only pregnant women, women who have given birth and women who are breastfeeding are now prohibited to work in underground. She also mentioned the strategy for gender equality 2017-2021 and the Plan of action among others.

362. Following the proposal by the representative of France, the GC decided to take note of the information provided and to await the next assessment of the ECSR.

RESC 20 MONTENEGRO

The Committee concludes that the situation in Montenegro is not in conformity with Article 20 of the Charter on the ground that legislation prohibits women from performing certain occupations, which constitutes a discrimination based on sex.

363. The representative of Montenegro provided the following information:

The Programme of the Government of Montenegro stipulates the adoption of the new Labour Law for the fourth quarter of 2017.

The most significant reason for creating the new Labour Law is the harmonization of labour legislation with the EU acquis under the Action Plan for Chapter 19 Social Policy and Employment, conventions and recommendations of the International Labour Organization, which was ratified by Montenegro and other sources of the international law.

The working group in charge of preparation of the Law established a draft of the same Law and the Ministry of Labour and Social Welfare has given to a public discussion the draft of Labour Law and a public call was sent to the authorities, organizations, associations and individuals to get involved in public discussion and contribute to consideration of a draft of Labour Law.
The new draft of Labour Law foresees the deletion of Article 104 which stipulates that an employed woman and employees under the age of 18 cannot work in a workplace where predominantly difficult physical jobs are carried outs, works underground or under water, or jobs which could be detrimental and which have increased risk of affecting their health and life, which the European Committee of Social Rights has considered discriminatory.

Regarding prohibition for women to night work in the industry which is stipulated in Article 105 of the Labour Law it is still on negotiation stage within the Working group in charge of drafting the new Labour Law. On its outcomes ECSR will be informed in our next report.

364. The representative of ETUC welcomed the positive information concerning Article 104 of the Labour Code. He asked whether the working group in charge of preparation of

the new Labour Law is considering also amending Article 105 of the Labour Code (prohibition to work at night).

365. The representative of Montenegro underlined that negotiations were still in process concerning the amendment of Article 105 of the Labour Code prohibiting night work for women. She confirmed that the working group will look to address all restrictions criticised by the ECSR.

366. The GC took note of the information provided, invited the Montenegrin authorities to provide information in their next report on the draft law that will be submitted to the Parliament at the end of 2017 in relation to Article 104 of the Labour Code, and on any progress concerning the abolition of the prohibition of night work for women. It decided to await the next assessment of the ECSR.

RESC 20 RUSSIAN FEDERATION

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 20 of the Charter on the following grounds:

- *women are not permitted to work in all professions which constitutes discrimination based on sex;*
- *the legislation does not provide for a shift in the burden of proof in cases of discrimination based on sex.*

367. The representative of the Russian Federation provided the following information::

1st ground.
When the Government of the Russian Federation adopted the list of professions prohibited for women, it was guided by security risk assessment.

But we have to admit that this list has not been reconsidered for 17 years. Technologies, however, have developed a lot.

Besides, in 2014 a new system of working conditions assessment was adopted.

So, Demographic Policy Conception of the RF requires reconsidering this list.

That is why Ministry of Labour and Social Protection together with trade unions, associations of employers, NGOs, scientists, including those working in the field of occupational medicine, is now working on the updating of this list according to new assessments of working conditions, which became much better due to new technologies and can be no longer harmful to women's health.

2nd ground.

It does not depend which ground of discrimination is considered, according to Art 12 of the Civil Practice Act justice is performed on the basis of adversary nature and equality of the rights of parties. Art 56 of the same act states that each party must prove the circumstances referred to and only the court decides which circumstance is important for the case and which party must prove it.

368. The representative of Sweden and the representative of ETUC asked for clarification on the updated version of the list of prohibited professions for women. They asked whether all 456 occupations are considered and what the new version of the list will consist of. Finally, they expressed their concern about the absence of a shift in the burden of proof.

369. The representative of the Russian Federation stated that she did not know the content of the final list, but she was of the opinion that all occupations mentioned in the actual list will be researched and discussed by scientists and medical experts. Regarding the burden of proof, she confirmed that legislation does not provide for a shift in the burden of proof in discrimination cases in the Russian Federation.

370. The representative of the Netherlands expressed a serious concern with regard to the fact that there is no shift in the burden of proof in discrimination cases in general, in line with the representatives of Sweden and the ETUC. She proposed that the GC proceed to vote with regard to both grounds of non-conformity.

First ground of non-conformity

371. The GC proceeded to vote first on a recommendation which was not carried. The GC then voted on a warning which was carried (17 in favour, 3 against, 10 abstentions).

372. The GC urged the Government of the Russian Federation to take all necessary measures to bring the situation in conformity with Article 20 of the Charter.

Second ground of non-conformity

373. The GC proceeded to vote first on a recommendation which was not carried. The GC then voted on a warning which was carried (17 in favour, 7 against, 7 abstentions).

374. The GC urged the authorities of the Russian Federation to take all necessary measures to bring the situation in conformity with Article 20 of the Charter.

RESC 20 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 20 if the Charter on the following grounds:

- *women are not permitted to work in all professions, which constitutes discrimination based on sex;*
- *the limits imposed on compensatory awards in cases of discrimination based on sex may prevent such violations from being adequately remedied and effectively prevented.*

375. The representative of Turkey provided the following information:

Turkey is invited to provide information on two grounds of nonconformity in the scope of Article 20.

> ***First, the Committee concludes that the situation is not in conformity with the Article 20 of the Charter on the ground that women are not permitted to work in all professions, which constitutes discrimination based on sex.***

More clearly, on the ground that the employment of all women in certain underground or underwater occupations was prohibited.

According to Article 20, "All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex."

And additionally, "Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions."

In Turkey, the legislation prohibiting women to work in mines and certain underground and underwater positions is still in force, excluding administrative positions, trainees and positions that do not require physical work.

According to Article 72 of the Labour Law, "Boys under the age of eighteen and women irrespective of their age must not be employed on underground or underwater work like in mines, cable-laying and the construction of sewers and tunnels." The main perspective of this article is coherence to Article 2 and 3 of ILO Convention 45 which indicates that "No female, whatever her age, shall be employed on underground work in any mine." And National laws or regulations may exempt from the above prohibition females holding positions of management who do not perform manual work; those employed in health and welfare services and similar positions.

11 Council of Europe members have ratified the Convention and 18 of them have denounced it.

More than 40 thousand workers are working in the coal mines in Turkey and in most of the mines; except only one coal mine, mechanized systems cannot be used due to the geological structure of the coal seams underground. The law aims to protect women from labour intensive mining but they are employed in surface units, offices and laboratories, also in administrative positions. Women engineers and technicians can work underground in the scope of research, planning and project designing. University students in Mining Engineering Departments can also go underground during their training. According to the Regulations on Heavy and Dangerous Work, published in the Official Gazette dated June 16, 2004, "the women, who have graduated from schools providing vocational education and expertise and acquired profession in this field, may be employed in heavy and dangerous work related to their profession." In line with the regulation, actually, mining engineers have been working in mines.

Occupational health and safety and risk assessment studies have been carried on in the mines, and inspections by the Labour Inspection Board are made regularly. 273 inspections were made in the mines in 2015 and 108 of the workplaces were underground coal mines, while 75 of them were surface mine workplaces. The high proportion of the coal mines inspected demonstrates the hard conditions of the work done underground due to geological formation.
So, underground works have been prohibited for women by the Labour Law, taking into account the nature of the mining activity. Otherwise, "No discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons is permissible in the employment relationship", according to Article 5 of the same law. And the prohibition of employment of women in the underground positions had been comprehended as protection of women in the law.

> ***Second, the Committee concludes that the limits imposed on compensatory awards in cases of discrimination based on sex may prevent such violations from being adequately remedied and effectively prevented.***

Labour Law is the main law regarding the prohibition of discrimination in the labour relations. According to Article 5, titled the Principle of Equal Treatment, No discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons is permissible in the employment relationship. And if the employer violates the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up his/her four months' wages plus other claims of which he/she has been deprived. Social benefits, bonus and wage increases on equal basis can be cited.

If the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him/her in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him/her by the employer.

In cases of discrimination, the employee may request the compensation not only on the basis of the Labour Code but also the Code of Obligations. The provisions in Civil Code and Code of

Obligations should be taken into account also in the employment relations. Since compensation is not a means of enrichment, the damage of an illegal behaviour is compensated once. Therefore, compensation for discrimination cannot be demanded together with compensation for job security. But it is possible for the employee to demand financial and moral compensation due to the attacks arising from the employment relationship to his/her personal rights within the framework of general provisions of the Civil Code and Code of Obligations. The employee who was exposed to discrimination can demand compensation according to the general provisions.

Any of the severance pay, notice pay or compensation for bad faith damages in the Labour Law has the purpose of protection against attacks directed towards personality or recovery of material-moral damage arising from the attack. In this respect, the provisions in Civil Code and Code of Obligations which should be applied in case of attacks of personality should be taken into account also in employment relation.

In this regard, the ceiling calculations stipulated in Articles 17 and 21 of the Labour Law are not valid for material and moral damages. It also means that there is no upper limit for the compensation for financial and moral damages under the framework of the Civil Code and Code of Obligations.

Another law in the field of anti-discrimination is Law on the Human Rights and Equality Institution of Turkey, no 6701, accepted in 6 April 2016. It is prohibited under this Law to discriminate against persons based on the grounds of sex, race, colour, language, religion, belief, sect, philosophical or political opinion, ethnical origin, wealth, birth, marital status, health status, disability and age. According to Article 6 titled Employment and self-employment, "An employer or a person authorized by an employer; shall not discriminate against an employee or a person applying to be employed, a person acquiring practical work experience at an undertaking or a person applying for this purpose or against a person wishing to receive information on the undertaking or the work for the purpose of working or acquiring practical work experience there in any stage of the work including getting information, application, section criteria, hiring criteria and working and termination of the employment."

In the scope of the same law, procedure for applications is regulated in Part Five and the details of the sanctions in case of violation are regulated in Article 25. In case of violation of non-discrimination principle, an administrative fine depending on the gravity of the effects and consequences of such violation, financial situation of the perpetrator and aggravating effect of the multiple discrimination, shall be imposed on the relevant public institutions and agencies, professional organizations with public institution status, natural persons and legal persons established under private law responsible for the violation. In case of repetition of the discriminatory act of the individual or institution against whom a warning has been issued, then the fine to be declared shall be increased by fifty per cent.
Members of the Human Rights and Equality Board, the decision-making body of the Institution, were appointed in 2017 and will start receiving applications after the establishment process is completed.

On the other hand, the Ministry of Labour and Social Security has intention to modify the provision in question in the Labour Code, inserting the phrase "an appropriate compensation of an amount at least equal to 4 months' salary" without indicating any upper limit and we will provide information on the developments in the next report.

First ground of non-conformity

376. In reply to a question by the representative of the Netherlands, the representative of Turkey indicated that the ILO Convention No. 45 is still in force in Turkey, and there is no plan to denounce it. She added that the ILO Convention No.176 was ratified by Turkey in 2015.

377. The representative of the ETUC expressed his concern about the fact that there is no intention to denounce the ILO Convention No.45, consequently no plan to amend the domestic legislation on the matter and no positive development.

378. The representative of Turkey recalled that 11 member states of the Council of Europe are still bound by the ILO Convention No. 45. She further stated that measures have been taken on safety and health in mines, and thus the ILO Convention No.176 was ratified in 2015. She mentioned that it could be the time to re-evaluate.

379. The Chair mentioned that the purpose of the ILO Convention No.176 is to replace the ILO Convention No. 45, because the latter is out dated.

380. The representative of the IOE explained that the ILO Convention No. 45 is still valid. She indicated that in 2012 the ILO Governing Body asked its member states to ratify the Safety and Health in Mines Convention (No.176), while denouncing the ILO Convention No.45. Furthermore, the latter has an interim status and will be reviewed by the Standards Review Mechanism in the near future.

381. The representative of the Netherlands added the ILO Convention No. 45 may be denounced within the period May 2017 - May 2018, and this opportunity occurs every ten years.

382. The representative of Sweden emphasised that there is a duty for all member states to respect its international obligations, among them the European Social Charter. She added that the need for protection and safety for a certain group of workers can be ensured through other means than a discriminatory prohibition.

383. The GC proceeded to vote first on a recommendation which was not carried (0 in favour, 5 abstentions, and 28 against). The GC then voted on a warning which was carried (12 in favour, 14 abstentions, and 6 against).

384. The GC urged the Turkish authorities to take all necessary measures to bring the situation in conformity with Article 20 of the Charter.

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

385. In reply to a question by the Chair, the representative of Turkey underlined that currently there is an indication of a limit for the amount of the compensation, but it is envisaged to change the provision as an appropriate compensation of at least 4 months' salary without indicating any upper limit.

386. The GC took note of the information provided and invited the Turkish authorities to provide all relevant information in the next report. Meanwhile, it decided to await next assessment of the ECSR.

RESC 20 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 20 of the Charter on the following grounds:

- *the legislation does not provide for a shift in the burden of proof in sex discrimination cases ;*
- *it has not been established that the right to equal treatment in employment without discrimination on grounds of sex is guaranteed in practice.*

387. The representative of Ukraine provided the following information:

Concerning the first and second grounds of non conformity it should be mentioned that there are no concrete statistics on the number of cases alleging discrimination in employment, because the statistics cover the court's decisions alleging discrimination in general on all grounds and areas provided by the national law including in employment.

At the same time the Ministry of Social Policy sent a request to the High Specialized Court of Ukraine concerning a shift in the burden of proof. The Court informed us that according to Art. 137 of the Civil Procedure Code the Court may make securing of evidence or vindication of evidence.

It is planned to invite the High Specialized Court to study with us the Directive 2006/54/ EC implementing the principle of equal opportunities for men and women and equal treatment of them in the workplace and occupation.

In April 2017 the State Programme Concept on ensuring equal rights and opportunities for women and men until 2021 was approved by the Government.

The Concept goal, approved by the Government – aimed to the implementation of gender approaches in all areas of society. In particular, the document seeks to implement comprehensive measures at national and regional levels to improve the situation in employment, carrying out systematic work on safeguarding gender equality, combating gender stereotypes, conducting awareness campaigns involving the media, culture and education establishments to educate gender equality culture.

The detailed information will be provided in the next report.

388. The Secretariat indicated that only the first ground of non-conformity will be discussed by the GC and concerns the burden of proof in discrimination cases. Like in the cases of Azerbaijan and the Russian Federation which were previously discussed by the GC, the legislation does not provide for a shift in the burden of proof in discrimination cases. The second ground of non-conformity is not discussed by the GC since it concerns a conclusion of non-conformity for lack of information on which the state has to provide information in its national report due in October 2017.

389. The Chair and the representative of the Netherlands asked for clarification whether the complainant has still the burden of proof in discrimination cases.

390. The representative of Ukraine underlined that, according to Article 137 of the Civil Procedural Code, when a request of the parties and persons involved in the case of discrimination is made to the High Specialized Court, this court then may make secure evidence or vindication of evidence. She added that the Directive 2006/54/EC was in process of being incorporated in national legislation. She assured that this information will be integrated in the next national report.

391. The representative of Austria understood that the high court in Ukraine normally collects evidence proved by the parties in a private procedure; however it might be an exception in a penal case for instance, where the public prosecutor can itself secure evidence. According to the Austrian representative, it does not mean that there is a shift in the burden of proof, but it is another method within the court procedure to obtain evidence.

392. The Secretariat indicated that in its last Conclusions, the ECSR took note of the information provided in the national report of Ukraine which stated that, in accordance with Article 60§1 of the Civil Procedural Code in cases of discrimination, the claimant must provide evidence proving that discrimination took place. According to the ECSR's understanding of the national report, there is no shift in the burden of proof. In line with the Austrian representative, the secretariat indicated that Article 137 of the Civil Procedural Code could refer to another procedure related to securing evidence for instance.

393. The representative of Ukraine added that Article 137 is complementary to Article 60§1.

394. The Chair concluded that there is no shift in the burden of proof, and Ukraine is analysing how to implement the Directive 2006/54/EC into national law.

395. The GC proceeded first to a vote on a recommendation which was not carried (0 in favour, 33 against and 1 abstention). The GC then voted on a warning which was carried (20 in favour, 8 against and 3 abstentions).

Article 24 - Right to protection in case of dismissal

RESC 24 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 24 of the Charter on the ground that the termination of employment at the initiative of the employer on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.

396. The Secretariat presented the Conclusion of the European Committee of Social Rights (ECSR). In ESCR's Conclusions 2012, the situation in Armenia was not in conformity on the same ground and, at the time, the Governmental Committee did not examine the situation.

397. The contents of the following written statement were communicated to the Governmental Committee as the representative of Armenia was absent:

According to the HO-96-N law "On making amendments and supplements to the Labor Code of the Republic of Armenia" adopted on June 22, 2015, (entered into force on October 22, 2015) a large-scale amendments and supplements have been made to the RA Labor Code (hereinafter, the Code).
According to the HO-96-N law, amendments were made in Article 113 of the Code too (Termination of an employment contract upon the initiative of an employer). In particular paragraph 11 of part 1 of Article 113 of the Code has been edited in new edition, according to which an employer shall have the right to terminate an employment contract signed for an indefinite term and one signed for a definite term prior to the expiry of the contract in case the employee who is eligible for age pension reaches sixty-three years and employee who is not eligible for age pension reaches sixty-five years, if appropriate basis is envisaged by the labor contract.

By fixing this regulation, the termination of an employment contract upon the initiative of an employer on the abovementioned basis is possible only in the case when appropriate basis is envisaged in the labor contract signed with employee, and if such basis is not envisaged in the labor contract, the employer shall not have the right to terminate an employment contract signed for an indefinite term as well as one signed for an definite term prior to the expiration of the contract in case the employee who is eligible for age pension reaches sixty-three years and employee who is not eligible for age pension reaches sixty-five years.

At the same time, we consider it necessary to inform that the regulation of paragraph 11 of part 1 of Article 113 of the Code does not oblige the employer to compulsorily solve the employment contract, but provide possibility to terminate the employment contract in case the employee who is eligible for age pension reaches sixty-three years and employee who is not eligible for age pension reaches sixty-five years.

In case of termination of labor contract on the basis of paragraph 11 of part 1 of Article 113 of the Code the employer shall be obliged to notify in writing no later than: 14 days before - to an employee who is working up to one year, 35 days before - to an employee who is working from one to five years, 42 days before - to an employee who is working from five to ten years, 49 days before - to an employee who is working from ten to fifteen years and 60 days before - to an employee who is working more than fifteen years.

We also consider it necessary to inform that according to Code there are no restrictions on employment for persons of an employee who is eligible for age pension reached sixty-three years and of an employee who is not eligible for age pension reached sixty-five years.

398. The Chair said that it was understood that the termination of an employment contract upon the initiative of an employer was possible only in case the labour contract signed with an employee had a specific clause on the expiration of the contract - in case the employee who is eligible for age pension reached sixty-three years and employee who is not eligible for age pension reached sixty-five years. It seemed that the clause could be in the contract and was not compulsory. As this situation was following the 2015 amendment, he would have liked to ask the representative of Armenia, how many contracts of this kind existed and how many were not including this clause.

399. The representative of the IOE stressed that:

The Digest states that dismissals on ground of age will not constitute a valid reason of termination except in accordance with a valid retirement age justified by the operational requirements of the undertaking, establishment or service.

From our understanding of the Armenian legislation such dismissal will be done at the initiative of the employer → who does take in account the operational requirements of the undertaking, establishment or service to justify the dismissal. No sound employer will want to dismiss a valuable employee just because of him/her reaching a pensionable age. In terms of the employers' community what you want is to have growth in terms of productivity, job creation and sometimes keeping an old worker is impeding new entries to find their way.

In our opinion, this provision is not contrary to the Charter.

400. The representative of ETUC was wondering if the amendment was really changing the situation and if all the contracts had to be re-written to include the new requirement for a specific clause. Also, to what extent the amendment was really changing the situation.

401. The representative of the IOE recalled that Digest states that dismissals on ground of age will not constitute a valid reason of termination except in accordance with a valid

retirement age justified by the operational requirements of the undertaking, establishment or service. From their understanding of the Armenian legislation such dismissal would be done at the initiative of the employer who does take in account the operational requirements of the undertaking, establishment or service to justify the dismissal. No sound employer would want to dismiss a valuable employee just because of him/her reaching a pensionable age. In terms of the employers' community what was wanted was to have growth in terms of productivity, job creation and sometimes keeping an old worker was impeding new entries to find their way. Therefore, in their opinion, this provision is not contrary to the Charter.

402. The representative of ETUC questioned the situation, now clause should be included in the contract; those spending long time: are these contracts re-written; to what extent the amendment really changes the situation?

403. The representative of the United Kingdom shared the concern expressed as it was hard to judge the scale of the impact of the amendment without the necessary information.

404. The GC took note of the information provided, expressed its concern on the possibility to include in the contract a clause of dismissal by the employer in case the employee (eligible or not eligible for age pension) reached a specified age. The GC asked the Armenian authorities to include in its next report information on the number of contracts comprising this clause and what happen on long-term contracts not having such a clause.

RESC 24 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Charter on the grounds that employees undergoing a probationary period of 6 months are not protected against dismissal.

405. The Secretariat presented the Conclusion of the European Committee of Social Rights (ECSR). In Conclusions 2012, among the grounds of non-conformity was that 'employees undergoing a probationary period of 6 months were not protected against dismissal'. The Governmental Committee decided, at the time, to take note of the information provided and urged the authorities to bring the situation into conformity and to await the next assessment of the ECSR.

406. Relevant contents of the following written statement were communicated to the Governmental Committee as the representative of Bulgaria was absent:

On the scope of Article 24 and the conclusion of an employment contract with a period of probation

The provision of Article 24 ESCh regulates the right to protection in cases of termination of employment and requires that there have to be valid reasons for termination of employment at the initiative of the employer. In this respect, it should be mentioned that the Labour Code (LC) regulates explicitly and exhaustively the grounds for termination of employment.

1. Where employment arises from the conclusion of an employment contract, the final admission to employment under an employment contract of an indefinite duration or a fixed-term employment contract may be preceded by a contract for a period of probation of up to 6 months (Article 70 and Article 71 LC). The purpose of this period is to ***test the ability of the wage or salary earner to perform the work. A period of probation may be agreed only once for the same position or work****. Where the contract is not terminated within the period of probation, it turns into final contract.*

In the case of termination of the employment contract within the period of probation, only the party to whose benefit the period of probation has been agreed may terminate the contract without notice on the grounds of unsuccessful probation. The period of probation is agreed at the conclusion of the contract, the idea being that the employer (if the period is agreed to employer's benefit) or the employee (if the period is agreed to employee's benefit), or both parties (if the period is agreed to the benefit of both parties) should have the right to "swift" termination of the contract. Thus, if the period of probation is agreed to the ***benefit of the employee****, only the employee shall have the right to terminate the contract without notice on the grounds of ascertaining that the work* ***is not suitable for him/her****. Where the period of probation is agreed to the benefit of the employer, such employer shall have the right to terminate the contract without notice on the grounds of believing that the employee* ***is not fit for the job assigned.*** *The employee has failed to demonstrate in practice the necessary knowledge and skills for the performance of the respective type of work and, in that sense, there exists a valid reason for termination of the employment contract because the employee is not fit for the job assigned, i.e. the employee's qualification and abilities to perform the job assigned are the basis for termination of employment. In such case, the termination of the employment contract by the employer may be contested before the employer or before the court on a general basis (Article 344 LC) if procedural or other rules have been violated. The only thing on which the court does not rule is the assessment of the work because this is an expert matter for which the court does not have the necessary expert knowledge. Moreover, in the period 2011—2014, the Supreme Court of Cassation (SCC) issued in cassation procedures 203 decisions regarding the termination of employment contracts on the grounds of unsuccessful probation. Dozens of decisions issued by regional and appellate courts have taken effect without reaching the SCC.*

In light of this, we take the view that the procedure under LC is in line with Article 24 ESCh, because there exists a valid reason for termination of the contract relating to employee's fitness (qualification, technical and manual skills, etc.) to perform the requirements of the job. This reason is specified in the instrument of termination which can be attacked but not with regard to the content of the assessment.

2. As mentioned above, the grounds for termination of employment are regulated expressly and exhaustively in LC – Articles 325--330.
It is noted that the employer may terminate any employment contract ***only if there are legal grounds for that (Article 325, Articles 328—330 LC).***
Paragraph 2 of the Appendix to Article 24 of ESCh (rev.) specifies two other categories of employed persons – workers engaged under a contract of employment for a specified period of time or a specified task (a.) and workers engaged on a casual basis for a short period (c.) who may be excluded from the scope of protection.

The Bulgarian labour legislation regulates different types of fixed-term employment contracts (Article 68, Paragraph 1 and Paragraph 6; Articles 114--114a and others of LC) as follows:

1. *for a definite period, which may not be longer than three years, insofar as a law or an act of the Council of Ministers does not provide otherwise;*
2. *until completion of specific work;*
3. *for temporary replacement of a wage or salary earner who is absent from work;*
4. *for work in a position, which is to be occupied through a competitive examination – for the time until the position is occupied on the basis of a competitive examination;*
5. *for a certain term of office, where such has been specified for the respective body;*
6. *for work on particular of the month;*
7. *for short-term seasonal farm work;*
8. *for a period of a long-term commissioning;*
9. *with agreed in-service training;*
10. *for traineeship;*
11. *for temporary work.*

As a rule, the above types of fixed-term contracts are terminated at the end of the period (event) for which they have been concluded. In such cases termination may be appealed in court (Article 344 LC) in the event of violation of any of the rules for termination.

Early termination of any of the above types of employment contracts by the employer is possible only if there is a valid reason (ground), which is expressly regulated in LC – Article 325, Articles 328--330. *There is a legal basis of the legal grounds for termination of employment contracts, the employer may terminate such contracts early only in the cases specified in the legislation. In all such cases, the employee may contest the termination before the employer or before the court with the claims under Article 344, Paragraph 1--2 LC.*

Given the above, there are no categories of workers which are excluded from the protection against dismissal.

Obligation to provide valid reasons for termination of employment

According to Article 328, Paragraph 1, Items 10—10a LC, the employer may terminate the employment contract with a notice upon entitlement to a contributory-service and retirement age pension. The employer may but is not obligated to terminate employment. The employer will not terminate employment if the employee is doing his/her job well. Moreover, there is no need to terminate the employment relationship in order the employee to exercise his/her right to retire.

In the light of the above, we cannot accept that there are enough arguments to arrive at the conclusion that the situation is not in conformity with the Charter.

Prohibited dismissals

1. Regarding the protection against dismissal in case of illness. It is important to emphasize above all that illness is not a self-standing reason for dismissal. Other requirements established by law, as mentioned hereunder, also have to be met.
According to LC, an employer may dismiss an employee in relation to illness in several hypotheses:
First, ***under certain illness-related conditions for dismissal.*** *These include disability which has led to permanently reduced working capacity, where the employee refuses does not agree to perform another job which is suitable according to the medical prescription (Article 325, Paragraph 1, Item 9 LC); health contraindications, where the employee does not agree to perform another job which is suitable according to the medical prescription (Article 325, Paragraph 1, Item 9 LC); where the employee refuses to accept a suitable job offered thereto upon occupational rehabilitation (Article 330, Paragraph 2, Item 2, in relation to Article 314 LC). In such cases the reason for dismissal exists until the grounds provided by law exist.*
Second, ***under certain conditions which require advance permission from the labour inspectorate*** *(Article 333, Paragraph 1 LC). These grounds include: closure of part of the enterprise, downsizing of personnel, reduction in the volume of work, where the employee lacks the capacity to perform the job assigned, upon change in the requirements for performance of the job, and dismissal for disciplinary reasons (Article 328, Paragraph 1, Items 2—3, 5 and 11; Article 330, Paragraph 2, Item 6 LC). The protection covers three categories of employees:*

a. employees suffering from a disease designated in an ordinance of the Minister of Health *(Article 333, Paragraph 1, Item 3 LC). The protection covers the period of illness without any limit on the duration;*

b. occupational-rehabilitee employees *(Article 333, Paragraph 1, Item 2 LC). The protection covers the whole period of occupational rehabilitation without limitation;*

c. employees who have commenced the use of a leave permitted thereto *(Article 333, Paragraph 1, Item 4 LC). This hypothesis includes also temporary disability leaves under Article 162 LC which are authorised by the work capability assessment authorities. There is no upper limit on the duration of the leave to which the protection applies.*
For the persons under a. and b., the preliminary opinion of the territorial work capability assessment commission is required (Article 333, Paragraph 2 LC). According to the case law,

where the order for dismissal is served to the employee at a time when he/she is at work (at his/her workplace), such employee does not enjoy protection even if he/she presents a sick note for the day concerned. In light of this, Committee's understanding that there is no full protection against dismissal in case of illness is not correct, given the case law of the Supreme Court of Cassation information whereon was presented in the previous report.

2. Regarding the "retaliatory dismissal" rules:
LC regulates the right of the wage or salary earners to approach the labour inspectorate for violations of the labour legislation by the employer. The control bodies must keep secret the source of the alert about violation of laws and regulations in the field. Given that the grounds for dismissal are exhaustively regulated in LC, the employer cannot dismiss an employee on the ground that the employee has filed a complaint or participated in proceedings against the employer involving alleged violation on the part of the employer.

The provision of Article 187, Paragraph 1, Item 8 LC qualifies as a violation by the employee "abusing the confidence and damaging the reputation of the enterprise, as well as disclosure of data which is confidential in respect of the enterprise". The new Paragraph 2 of Article 187, effective 30.12.2016, expressly provides that ***the submission of reports for violation*** *to the Financial Supervision Commission* ***cannot be qualified as a violation by the employee*** *giving grounds to the employer to dismiss the employee.*

Article 17 of the Application of Measures against Market Abuse with Financial Instruments Act provides that ***persons****, working under employment legal relations,* ***having submitted reports for violations****, are* ***entitled to protection against dismissal for disciplinary reasons.***

<u>Remedies and sanctions</u>

According to LC, the wage or salary earner is entitled to compensation for wrongful dismissal for the period of unemployment caused by such dismissal, but not more than 6 months.

There is no deadline and upper limit on the amount of the compensation for non-material damage which the wage or salary earner is entitled to claim under the Obligations and Contracts Act pursuant to the Civil Procedure Code. The court may award compensation for non-material damages which are a direct and immediate consequence of the tort.

The Labour Code further regulates the entitlement of the wage or salary earner ***to reinstatement*** *in addition to compensation in cases of unlawful dismissal. The wage or salary earner is entitled to contest the legality of the dismissal thereof before the employer or before the court and to claim (Article 344, Paragraph 1 LC):*

1. *that the dismissal be pronounced unlawful and be revoked;*
2. *that the wage or salary earner be reinstated to the previous work;*
3. *that the wage or salary earner be paid compensation for the period of unemployment due to the dismissal.*

The employer, acting on his or her own initiative, may revoke the order of dismissal before the wage or salary earner brings a legal action before the court (Article 344, Paragraph 2 LC).

According to Article 345, Paragraph 1 LC, upon reinstatement of the wage or salary earner to the previous work thereof by the employer or by the court, the said wage or salary earner may take the said work if the said wage or salary earner reports to work within two weeks after having received the notice of reinstatement, unless this time limit be exceeded for valid reasons.

Article 172, Paragraph 2 of the Penal Code provides for ***criminal liability*** *for officials* ***fail to carry out*** *an order or a court decision that has entered into force for re-instating at work a wrongly dismissed wage or salary earner. The penalty is imprisonment of up to three years.*

Criminal liability *is provided also for any person who* ***intentionally compels another to leave a job*** *on account of his nationality, race, religion, social origin, membership in a trade union or another type of organisation, political party, organisation, movement or political coalition, or because of his or of his next-of-kin political or other beliefs.*

Legal protection in cases of unequal treatment, including in the field of employment relations, is provided by Article 71, Paragraph 1 of the Protection against Discrimination Act.

In accordance with the general practice, the employer may be imposed administrative and criminal liability (a fine or penalty payment) in the amount from BGN 1500 up to BGN 15000 (750—7500 EUR) for wrongful violation of the provisions of the labour legislation.

407. The Chair was wondering what meant the "swift" termination of the contract mentioned in the written statement.

408. The representative of France considered also that the situation and the Conclusion were not clear, at least in the French version. Was the problem linked to the fact of not having a notice? What period exactly was considered?

409. The representative of the United Kingdom would have also liked to know where the period of six months came from. She added that the individual had the possibility to apply to the court to review the case, but that it was not clear what the court was ruling for, as it could not determine where the employee failed to fulfil his job role. A clarification on what the court can rule was needed.

410. The Secretariat replied that, according to the written statement, the only thing the court did not rule was the assessment of the work, because the court did not have the necessary expert knowledge.

411. The representative of the IOE highlighted the IOE's position, which was sent in written to the European Committee of Social Rights, but no reply was received from the ECSR. The IOE was of the view that this interpretation of "reasonable duration of probation period" clashes with the reality in the majority of the Council of Europe member States, where the probation period is set at six months or more. Most importantly, it was not clear what had been the legal basis for the ECSR determination. Therefore the IOE considered that the situation in Bulgaria was not contrary to the Charter.

412. The representative of Ireland said there was an issue around the interpretation by the ECSR of the scope of article 24 on dismissal during the probation period, because there was no definite time mentioned in the Appendix or the article itself.

413. The GC took note of the information provided and invited the Bulgarian authorities to provide more information on the possibilities of dismissal and period of notice during probationary period. The GC decided to discuss the issue further, including the interpretation of the probationary period - as no precise period was stated - and the motivation for negative Conclusions concerning dismissal during the probationary period, at the next GC-ECSR joint Bureau meeting.

RESC 24 FINLAND

The Committee concludes that the situation in Finland is not in conformity with Article 24 of the Charter on the ground that:

- *with the exception of civil servants, the legislation does not provide the possibility of reinstatement in case of unlawful dismissal;*
- *the upper limit on compensation for unlawful dismissal may not be adequate to cover the loss suffered, in certain circumstances.*

414. The Secretariat presented the Conclusions of the European Committee of Social Rights (ECSR) and recalled that, following the decision on the merits of 8 September 2016 on the collective complaint Finnish Society of Social Rights v. Finland (No. 106/2014) on violation of Article 24, a report had to be submitted by Finland before 31 October 2017. This report would provide information on the follow-up given to the decision of the ECSR relative to this collective complaint and will be examined next year by the ECSR. This decision was on the same grounds as the 2016 Conclusion of the ECSR on Article 24.

415. The representative of Finland provided the following information:

REINSTATEMENT
The Government would like to thank for the opportunity to explain the situation to the Governmental Committee.

Article 24 of the Revised European Social Charter guarantees the right to protection in cases of termination of employment. All workers have the right not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service. The Charter also guarantees the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

Article 24 makes no direct reference to a requirement for reinstatement of employment. If correctly understood by the Finnish Government, according to the interpretation stated by the Committee on Article 24, it would suffice to give the courts the possibility to consider the reinstatement of the employment relationship.

As the Committee states in its conclusion, Finland's Employment Contracts Act makes no provision for reinstatement. The previous Employment Contracts Act did contain a provision on alternative compensation, according to which courts were obliged to examine on request whether it was possible to continue an employment relationship or to reinstate an already dismissed employee. However this provision turned out to be ineffective in practice and was repealed in 2001 when the new Employment Contracts Act was drafted.

Finland has interpreted Article 24 to mean that the purpose of the Article is essentially to secure the continuity of employment relationships and that other ways of protecting the status of employees and the continuity of employment relationships may also be applied. Finland aims at securing the continuity of employment relationships and the status of employees through legislation both in the situation in which employment is terminated and after it in many different ways.

The threshold for terminating an employment contract is fairly high in Finland. As regards the grounds for termination of employment, the grounds arising from the employee and the grounds arising from a lack of work should be examined separately.

Termination of employment on individual grounds
Termination of an employment relationship on individual grounds, i.e. on grounds related to the employee's person, always requires a proper and weighty reason, such as serious breach or neglect of obligations. Termination of employment on individual grounds is often concerned with a lack of trust between the parties and there no longer being conditions for continuing the employment relationship. Employees whose conduct has been reprehensible shall not be given notice on individual grounds, however, before they have been warned and heard. Termination of an employment contract is the last resort in a situation in which continuing the employment relationship is not possible by offering the employee other work and the training possibly required to perform it.

Termination of employment on collective grounds
An employment contract may be terminated on collective grounds if the work to be offered has diminished substantially and permanently for financial or production-related reasons or for reasons arising from reorganisation of the employer's operations. However, the employment contract may not be terminated if the employee can be placed in or trained for other duties.

If work has not diminished permanently, the employer may adapt its need for workforce through lay-offs, which is a special feature of Finland. Employment relationships remain in force during lay-offs, although the main obligations related to the employment relationship, i.e. working and the obligations regarding the payment of salary, are dormant during the lay-off. Lay-off is an excellent way to secure the continuity of employment in situations in which it is anticipated that employment will be available at the end of the lay-off period.

Termination of employment on collective grounds also includes an obligation to re-employment, i.e. the employer is obligated to offer work to a former employee whose employment it has terminated on collective grounds if it needs employees to do the same or similar tasks within a certain period of time from the termination of the employment relationship. Co-operation negotiations and change security training are also aimed at speedy re-employment of employees whose employment relationships have been terminated on collective grounds. During unemployment, employees are protected by a collective unemployment security system as well as public employment services.
Resolving disputes over termination of employment relationships
Disputes over termination of employment contracts are processes dealt with either in a general court or in the Labour Court. Before a matter is transferred to a court, in most cases, negotiations are conducted on whether the ground for terminating the employment relationship has been sufficient. It is possible to settle disputes concerned with termination of employment relationships during the period of notice, and even later during an on-going court process. The courts are also obligated to promote reconciliation.

Before a dispute is brought to the Labour Court, negotiations regarding the dispute must be conducted in accordance with the regulations concerning the order of the negotiations in the applicable collective agreement. In practice, this means that the reasons behind the termination of employment and the adequacy of the grounds for terminating the employment relationship are first negotiated at the level of the workplace and then between the employer and employee organisations concerned. A significant part of disputes over termination of employment relationships are resolved in these negotiations and the employment relationships continue if the conditions for them exist. However, it is not possible to put an exact figure on the number of settlements reached.

In addition, collective agreements comprehensively regulate the employment security in Finland. Collective agreements contain regulations concerning for example the amount of compensation in case of an unlawful dismissal.

Disputes over termination of employment relationships are processed in various bodies and courts of law. Processing times are long particularly in general courts and reaching the final decision may take several years depending also on whether the decision made by a lower court is appealed

against. Long processing times would in practice affect the possibility to reinstate the employment relationship.

The Government is of the opinion that these earlier mentioned practical and legislative details should be taken into account when assessing the questions at hand. More extensive examination of the employment security regulations would be required for possible changes in legislation.

Finland will submit a more extensive report on the labour legislation affecting the matter to the secretariat in writing.

COMPENSATION FOR GROUNDLESS TERMINATION OF EMPLOYMENT
As regards the coverage of compensation, the Committee states that the upper limit on compensation for unlawful dismissal may not be adequate to cover the loss suffered, in certain circumstances.

According to the Employment Contracts Act the exclusive compensation for unjustified termination of the employment contract must be equivalent to the pay due for a minimum of three months or a maximum of 24 months. In practice this means that when an employer terminates an employment contract without a valid reason, the Act obligates the employer in all cases to pay the employee compensation equivalent to the pay due for a minimum of three months. Thus, the employee is always entitled to compensation equivalent to the pay due for a minimum of three months, even if he or she had not suffered any material damage.

Compensation under the Employment Contract Act covers both material and immaterial damage. The Government notes in this connection that if the amount of the compensation were proportional to the amount of the real damage caused to the employee – as the decision of the Committee seems to require − the sums of compensation could in fact be lower than they are at present. If the compensation were determined in proportion to the amount of the real damage, courts would have a narrower margin of discretion in determining the amount of the compensation. Now, in contrast, the Employment Contracts Act obligates courts to take account of a number of circumstances when determining the amount of compensation.

The Employment Contracts Act does not list exhaustively the factors to be taken into account. In determining the amount of compensation, the damage already incurred by the employee for the groundless termination of employment must be taken into account, but his or her possible future financial losses must also be assessed. The amount of compensation is also determined by whether the grounds for terminating an employment contract or the termination procedure include features violating the employee's person. The compensation for non-material damage should be the greater, the more features violating the employee's person emerge or the greater the employer's disregard for the law in the matter.

When assessing the amount of the compensation, a stance must always be taken on the extent of the employer's liability to compensate, i.e. the causal relationship between the termination and the damage it has caused. Instead of setting an upper limit for the compensation, Finnish legislation determines a maximum period for which the employer is liable for the damages it has caused.

The Government is of the view that because a wide range of different factors are already taken into account in determining the amount of compensation, abolishing the upper limit of the compensation would have no relevance to the real coverage of the costs incurred by the employee. Abolishing the upper limit of the compensation would be problematic from the perspective of causality, too. In practice, this would mean that the employer's responsibility might continue even years after the termination of employment. The employee's passive attitude to job seeking cannot be a ground for increasing the employer's liability for compensation.

According to the Employment Contracts Act compensation for a groundless termination of employment must be claimed within two years of the date on which the employment ended. Thus,

the maximum compensation, contributes to encouraging the parties to refer the dispute to a court within a reasonable period.
In addition as the Government has previously explained, the Employment Contracts Act is not the only piece of legislation that needs to be considered when assessing the situation. The employee may also seek compensation under the Act on Equality between Women and Men and the Non-Discrimination Act if an unlawful termination of employment relationship also fulfils the criteria of discrimination. Furthermore, if an unlawful termination of an employment relationship is found to fulfil the essential elements of a work discrimination offence under the Criminal Code, damages under the Tort Liability Act may be imposed in criminal proceedings. All these Acts do not bind the ceiling of the damages to a maximum.

Taking into account what has been stated above, the Government is still of the opinion that the current provision on compensation for groundless termination of employment in the Employment Contracts Act – taking into consideration possible compensation for damages on the basis of other legislation – can be considered sufficient in terms of the employee's legal protection.

416. The representative of the IOE commented the finding of the Committee regarding the Finland not being in conformity with Article 24 of the Charter on the ground that the upper limit of on the compensation for unlawful dismissals may not be adequate to cover the loss suffered in certain circumstances.

We would like to recall the interpretation of the Article 24 of the ECSR regarding the valid reasons for justifying dismissals. In order to assess whether the reasons regarded as justifying dismissal constitute valid reason under Article 24, the ECSR examines "the national courts' interpretation of the law and their leading decisions and judgments"

However, the ECSR does not operate the same assessment of national practices when considering whether the compensation has been adequate (Article 24 b). Despite the text contained in point 4 of the Appendix to the Charter, the ECSR analysis focuses on the fact that: "Compensation systems are considered appropriate if they include: a) the reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body; b) the possibility of reinstatement c) and/or compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee" and the three categories for appropriate compensation systems are considered all together. In practice, this translates to the ECSR considering not in conformity with Article 24 of the Charter ***all regulation/jurisprudence that fixes upper limits to compensation in the event of termination of employment without valid reason.***

The ECSR interpretation on the meaning to be given to "adequate compensation" is simply clashing with the reality in a significant number of Council of Europe member States and contrasts with the text of paragraph 4 of the Appendix to the Charter.

The direct consequence of the ECSR interpretation is that all countries bound by the terms of this provision are in practice required to eliminate the upper limits to compensation in the event of termination of employment with no apparent valid reason.

We have several times highlighted this point and stated that the principle of uncapped compensation should be replaced by an assessment of the "compensation of high enough level to dissuade the employer and make good damage suffered by the employee". Such a consideration of a level that is high enough to dissuade the employer should be based on "national laws or regulations, collective agreements or other means appropriate to national conditions" (paragraph 4 of the Appendix – Article 24). This focus is preferable to the current ECSR interpretation for the following reasons:

a) In many European Union countries "adequate compensation or other relief" can be obtained through a financial reimbursement, aimed at dissuading the employer and making good the

damage suffered by the employee. Upper limits are not in themselves meant to be in violation of Article 24 of the Charter;
b) Legal certainty is fundamental for companies when making a decision on establishing or restructuring a business. It allows for adequate risk management and for more accurate financial management. This is especially the case in judicial systems with a very slow response. Legal uncertainty in systems without upper limits to compensation for unfair dismissals could be highly prejudicial and particularly damaging for SMEs;

c) If law and practice allow compensation to be set inadequately high, it can become a significant financial risk for enterprises. Enterprises may be discouraged from implementing the lay-offs necessary to staying competitive and viable, or may refrain from creating new jobs and hiring workers. Therefore, in determining adequate compensation in law and practice, the needs of sustainable enterprises, in particular SMEs, should be fully taken into consideration. A useful instrument is the provision of reasonable maximum amounts for compensation.

417. The Chair recalled that this was the second time that there was a Conclusion of non-conformity on the same grounds.

418. The GC took note of the information provided by the Finnish authorities and decided to wait for the next assessment.

RESC 24 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 24 of the Charter on the ground that employees undergoing probation or training for one year or apprentices during the first six months are excluded from protection against termination of employment, which is not reasonably justified.

419. The Secretariat presented the Conclusion of the European Committee of Social Rights (ECSR) and recalled that in Conclusions 2012 one of the grounds of non-conformity was also that legislation permitted the exclusion of employees from protection against dismissal for one year during the probationary period. At the time, the representative of Ireland provided information in writing, but the Governmental Committee did not examine the situation.

420. The representative of Ireland provided the following information:

Ireland notes the European Committee of Social Rights Conclusion in relation to Article 24 and welcomes this opportunity to outline its response to the Governmental Committee.

We consider that the issue may arise primarily from a difference in the interpretation of the scope of Article 24 and in particular the provisions contained in Article 24.2.b. of the Appendix to the Revised European Social Charter.

Article 24.a. of the Revised European Social Charter refers to:
the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service.
Ireland argues that employers are entitled to a measure of flexibility in the early stages of an employment contract. The operational requirements of running a business necessitate some discretion in this regard and the provisions of the Article allows for that.
One of the key aims of the European Social Charter is to improve workers standard of living and their social well-being as expressed in its Preamble. In this context, Ireland is focussed on creating employment and enforcing employment protections that strike the appropriate balance.

Reduced legal protections under the Unfair Dismissals Acts for employees working for less than twelve months and apprenticeships working for less than six months are long-standing, reasonable measures in the context of a balanced approach to employment law in Ireland. However, importantly, Irish employment law provides for a significant number of exemptions from this general provision and these were referenced in Ireland's last report on the implementation of certain provisions of the Social Charter. Examples of circumstances where such enhanced protections arise include protected disclosure, pregnancy, maternity and adoptive leave, carer's leave and trade union membership or activity. In all these situations, employees on probation or training for up to a year and apprentices during the first six months of their apprenticeship have the full protection of the provisions of the Unfair Dismissals Acts.

In law, Irish probationary workers and apprentices have a broad range of legal rights including protection against discrimination on the grounds of age, gender, race, sexuality and other equality criteria as well as legal protection of their trade union activities and against unfair selection for redundancy. The option of redress through the civil courts is also available for these employees.

In its commentary on Ireland's last report on the implementation of Article 24, the Committee makes reference to the application of Ireland's qualifying time period not being considered reasonable if it is applied indiscriminately, regardless of the employee's qualifications. The Committee will appreciate that employment rights in Ireland are not dependent on criteria such as the employee's level of qualifications.

In light of the foregoing, Ireland considers that its law and practice complies with the terms of Article 24 as qualified by the provisions of 24.2.b. of the Appendix to the Social Charter which expressly provides that a Party to the Social Charter may exclude from some or all of its protection employed persons who are:
Workers undergoing a period of probation or a qualified period of employment, provided that this is determined in advance and is of a reasonable duration.

In contending its compliance with Article 24 of the Social Charter Ireland considers that the current level of employment protection for the categories of workers covered by this provision is appropriate and reasonable. In fact, with respect to apprenticeships, the provisions of the Unfair Dismissals Acts apply after six months of the apprenticeship commencing – a situation more favourable than any other form of employment.

Finally, Ireland notes the specific requests of the Committee for certain information in its commentary on Ireland's last report and such information will be provided in the next report on the implementation of the provisions of the relevant articles of the Social Charter.

421. The Representative of the IOE informed the Committee that, with regard to Ireland's compliance with Article 24, the IOE representing the Employers of Ireland had the following points to make:

For the avoidance of doubt, under Irish law, all employees faced with termination of employment whether they have 12 months' service with the employer or not, can pursue a remedy for wrongful dismissal in breach of contract at common law, and be awarded compensation pursuant to the terms of that contract. There are other additional remedies available to employees who are faced with termination of employment before they have served 12 months with an employer, including those under the Employment Equality Acts 1998 to 2015 for cases of discriminatory dismissal, where the employee can demonstrate that the reason for the dismissal was based on the employee's membership of one of the nine grounds set out in that legislation.

Employees with less than 12 months' service may also bring a claim under the Industrial Relations Acts 1946 to 2015 in the event of dismissal. While it is true that decisions arising from such claims are not legally enforceable, they tend to receive public attention in industry magazines and in the media generally, with the result that the employer faces some unwelcome public attention and industrial relations pressure if they are found to have treated the employee unfairly. Finally,

employees with less than 12 months' service who believe that they are soon to be dismissed may apply to the High Court for an injunction, (usually against the backdrop of a civil claim) restraining the employer from terminating their employment until the matters in issue have been resolved.

In light of the above, it is clear that Irish employees with less than 12 months' service are not left without a remedy. We believe that there is a misleading picture of the legal remedies available to Irish employees in the event of dismissal is presented.

Probation periods

In addition to our comments made in the previous cases which we said that the "reasonable duration of probation period" clashes with the reality in the majority of the Council of Europe member States we would like to point specific issues related to Ireland. In Ireland all employees can avail of the protections of the Unfair Dismissals Acts 1977 to 2015 when they have completed 12 months' service with the employer and accordingly section 3 of the Unfair Dismissals Acts allows for a probation period of up to 12 months in duration. According to the experience of the Irish Employers in Ireland that most employers insert a shorter probation period of 6 months, which is usually extendable to 9 months. We strongly believe that a period of up to 12 months' duration is needed, particularly in cases where there remains a doubt about the employee's competence to do the work for which they were recruited. This timeframe is useful for both employer and employee. There is a generally held view that the Constitutional entitlements to natural justice and fairness of procedures applies to management of the probation period.

This has been interpreted by the Irish Labour Court (in cases brought before them under the Industrial Relations Acts 1946 to 2015, the outcomes of which are non-binding) as meaning that when performance issues or low grade conduct issues are put to a newly recruited employee, they must be afforded sufficient time and support to allow them to improve. If the probation period is rigidly restricted to a timeframe of 6 months' duration or less, it will prove very challenging for employers to afford their new employees sufficient time to address any performance issues which have been identified. There is a real risk that, if the probation period is shortened, employers will be advised to simply ensure that they have terminated the employment before the six month period has elapsed, even if it means that they have not really had sufficient time to allow the new employee to improve. We respectfully submit that the current position under Irish legislation, which restricts access to the Unfair Dismissals Acts 1977 to 2015 until the employee has completed 12 months' service is the correct one, and shortening that timeframe would disadvantage employees as well as employers.

422. The Chair wondered if there was a term of notice in case of dismissal during the probationary period - and what its length was - and considered the situation similar to the Bulgarian one.

423. The representative of Ireland replied that usually the contract included a term of notice.

424. The GC took note of the information provided and invited the Irish authorities to include the possibilities of dismissal and period of notice during probationary period in its next report. The GC decided to discuss the issue further, including the interpretation of the probationary period - as no precise period was stated - and the motivation for negative Conclusions concerning dismissal during the probationary period, at the next GC-ECSR joint Bureau meeting.

RESC 24 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 24 of the Charter on the ground that employees undergoing a probationary period of 6 months are not protected against dismissal.

425. The Secretariat presented the Conclusion of the European Committee of Social Rights (ECSR) and recalled that in 2012 the Conclusion of non-conformity was on the same ground and that, at the time, the GC examined the situation.

426. The representative of Italy provided the following information:

As far as the Italian situation is concerned, first of all we have to stress that the employee's fundamental rights are not in question here: in fact, during the probation period he/she has full right to pay, holidays, severance indemnity, just like the other workers, this being in perfect compliance with article 36 of the Italian Constitution, whose aim is to guarantee the worker's dignity.

According to Article 2096 of the Italian civil code, "Once the trial period has been completed, the employment relationship becomes definitive and services already rendered count towards the employee's length of service".

It is important to point out that the purpose for the trial period agreement is the common interest of the contracting parties: it allows the employer to verify the professional abilities of the worker and the latter to assess the conditions of the working relationship. For this reason, during the probation period, also the employee (not only the employer) has the right to resign without any notice, while the worker who has already passed the probation period is subject to the burden of notice (for example, metal workers have from two months to ten days' notice, depending on the level; service industry from 45 to 15 days).

As we said in our previous report, although the dismissal of the worker at the end of the probationary period does not oblige the employer to provide a reason for the withdrawal, it should be noted that the withdrawal can never be arbitrary and the employee has always the right to act against the illegal dismissal, for instance in case of discriminatory dismissal. Case law has elaborated over the years, a number of limits to the power of withdrawal from the employment relationship of the employer. In 1980 the Constitutional Court, with judgment no. 189 stated that the dismissal is null and void if the worker clearly demonstrates (in court) the positive performance of his probationary period. The Supreme Court, with judgment n. 12379/1998, and again n. 22637/2004 also reiterated the same principle, ruling that when previously an employment relationship was established between the contracting parties, subsequently the same employer cannot oblige the same employee into a new probation period.

In addition, the dismissal must be considered null and result in a definitive recruitment of the employee if the employer did not actually allow the trial period to be carried out by not assigning to the worker the specific tasks to be performed (Supreme Court, judgement n. 5404 /2013) or by performing tasks other than those identified in the probationary period agreement (Supreme Court, judgement n. 21698/2006).

Regarding dismissal, our last Reform of the labour market (the so called Jobs Act) hasn't changed the general rules regarding the probation period, because of two main reasons:

1. *The duration of the aforementioned trial period is always **widely valued and agreed upon** in the collective bargaining sector, both by employers' and workers' representatives, in relation to the complexity of the job;*
2. *That a **six-month trial period in Italy is a rare case**, foreseen only for a specific category of workers (e.g., executives, managers in the tertiary sector) that fill high-level professional positions with duties of responsibility in production units. Otherwise, tertiary service workers*

who carry out autonomous and / or coordinating and controlling tasks, with specific technical and / or scientific expertise, have a trial period of 60 days.

***For public administration officials**, the National collective agreement provides a probationary period of 4 months, having reduced it from 6 months in 1998 to 4 months in 2006 for public servants.*
Besides, we have to point out that for all workers (blue and white collar workers, managers) employed from March 7, 2015 with open-ended contracts, in case of unlawful dismissal the protection scheme is that provided for in Legislative Decree no. 23/2015 (in implementation of the Jobs Act), and no longer that in Law n. 92/2012.

Although this labour Reform has – generally speaking – replaced reinstatement in the work place with a safeguard compensation, on the other hand it has strengthened reinstatement for some, typical cases (art. 3, 2nd paragraph, of Legislative Decree n. 23/2015): this article provides that in the event of dismissals for a justified subjective reason – and case law in this regard has included also the "supposed probationary period failure" (Court of Torino, September 16th 2016) – in which the judge ascertains the absolute absence of the facts allegedly causing the termination of the employment relationship, the court cancels the dismissal and condemns the employer to reinstate the worker in the workplace and pay an indemnity equal to the salaries due from the date of dismissal up to the reinstatement.

Bearing in mind the above mentioned considerations, we can conclude that the specific issue of dismissal at the end of a six-months' probation period is not perceived as one of the most relevant not even by the social partners on the political agenda, because in Italy it is a residual hypothesis which has already been limited by case law. Therefore, we can affirm that the Italian system (both in its legislation and in the principles laid down in the case law) perfectly protects the employee's rights, as they are contemplated in Article 24 of the Social Charter.

427. The Chair recalled that in 2013 the Governmental Committee proceeded to vote on a recommendation which was not adopted (0 votes in favour, 33 against). It then held a vote on a warning which was also not carried (4 in favour, 28 against). There was a need of clarification by the ECSR.

428. The representative of the IOE repeated the point that the interpretation of 'reasonable duration of probation period' was clashing with the reality of the member States and especially that there was no clarity on the legal basis of such determination.

429. The representative of the Netherlands asked if the probation period of six months was only for specific employment contracts.

430. The representative of Italy said that the probation period of six months was very rare because usually it was less than six months.

431. The GC took note of the information provided and invited the Italian authorities to include all relevant information in the next report. The GC decided to discuss the issue further, including the interpretation of the probationary period - as no precise period was stated - and the motivation for negative conclusions concerning dismissal during the probationary period, at the next GC-ECSR joint Bureau meeting.

RESC 24 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 24 of the Charter on the grounds that:

- *employees undergoing a probation period of six months are not protected against dismissal;*
- *termination of employment at the initiative of the employer on the sole ground that the person has reached the pensionable age, which is permitted by law, is not reasonably justified.*

432. The Secretariat presented the Conclusion of the European Committee of Social Rights (ECSR) and recalled that in 2012 the Conclusion of non-conformity was on the same grounds and in Conclusion 2008 the situation was not in conformity on the ground of probationary period.

433. The representative of Malta provided the following information:

Employees undergoing a probation period of six months are not protected against dismissal – Not in conformity since conclusions 2008

Right to dismissal during probation

Currently discussions are on-going through the Employment Relations Board for the review of Maltese labour law.

The Employment Relations Board is made up of representatives of the Government, employers, and Unions (Social partners) and meets at least every month to discuss labour law related issues. Both unions and employers' associations represented on the Board can raise issues and propose amendments to be discussed at the Board.

Latest changes to Labour law connected to the probation period targets instances of a termination during probation when a person is pregnant takes place; now an employer is required to justify the reason for termination, and such justification cannot be due to pregnancy.

Employers and Unions on the Board have never considered the review of the issue of dismissal during probation, the primary reason being that no claims to change this article in Labour Law have ever been lodged.

It must be underlined that where an employee has reason to believe that he was dismissed due to race, sex, religion and other factors that go against the provisions of any of the equality acts under Maltese Law, such a person has the right to refer his/her case to an industrial tribunal where the burden of proof is on the employer. Furthermore, the aggrieved may also refer his/her case to a Civil Court.

In view of the above although no changes to this particular article of Maltese Labour Law were carried out, one cannot argue that the Maltese Government is ignoring this issue, as it has been raised during all tripartite discussions on the review of Maltese legislation with the social partners at the Employment Relations Board.

Termination of employment at the initiative of the employer on the sole ground that the person has reached the pensionable age, which is permitted by law, is not reasonably justified – Not in conformity since 2012

Termination of employment at Pension Age

This issue was on the agenda of the Pensions Strategy Group that includes various stakeholders, that meets regularly to discuss reforms to the Maltese pension system and other related issues such as termination of employment due to pension age.

Although there is agreement that changes should be carried out to Maltese Labour Law, on-going discussions are still being carried out in order to find a way that is acceptable to all stakeholders.

It is interesting to note that only 47% of persons who reached pension age at 62, opted to claim a pension at 61 during these last 4 years. Furthermore, statistical data gathered indicates that more

persons of pension age are opting to remain in employment with the number of such persons increasing on a yearly basis.
The above confirms that Government is committed to finding ways that are acceptable to stakeholders so that this part of Maltese legislation is duly amended and in conformity with RESC.
The representative of France thought that there were positive developments in Malta thanks to the discussions associating social partners.

434. The Representative of the IOE provided the following written statement:

Regarding the non-conformity of Employment and Industrial Relations Act of Malta, which according to the report gives an employer a right to terminate employee's relationship upon the employee's reaching the national retirement age but does not preclude retirement of a person of pensionable age, we would like to reiterate our point.

We find it logical for an employer to have the option of terminating a relationship when the employee reaches the retirement age. As an employer you want a sustainable enterprise, which has growth in terms of productivity and job creation. Sometimes keeping an old worker is impeding new entries to find their way in to the job market. Therefore, such decision by the employer always takes in consideration the operational requirements of its undertaking, establishment or service. The law does not automatically asks employers to dismiss the workers who reaches the retirement age but gives the employers the option take this decision if it is necessary for the company.

Second, is the repetition of our previous point regarding the interpretation of 'reasonable duration of probation period'? Nearly all of the cases we discussed under Article 25 have this observation which shows that this limit clashes with the reality of the member states. Also, we still don't have clarity on the legal basis of such determination is made.

435. The GC took note of the information provided and of the on-going talks and invited the Maltese authorities to take all necessary measures to be in conformity with Article 24 of the European Social Charter.

Article 25 - Right of workers to protection of their claims in the event of the insolvency of their employer

RESC 25 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 25 of the Charter on the ground that the average time to satisfy workers' claims in case of insolvency of their employer is excessive.

436. The representative of Belgium provided the following information:

The situation of the Business Closing Fund has not changed. The justifying reasons for the payment period by the Fund remain unchanged and are still valid. We do not have any new elements. The closure fund is aware of the negative comments and thinks internally to find a solution. It envisages the elimination or replacement of the transitional allowance.

The committee of social rights asked in their conclusions to provide information on the unemployment benefits and the time it takes to receive a benefit.

Within 15 days after the termination of the employment contract, a curator will give the employees a document that entitles them to an unemployment benefit. With this document the worker can go to an unemployment agency and the normal procedure for application is followed.

The Unemployment benefit payment starts immediately. The unemployed are entitled to 65 per cent of the previous salary (brut) but there is a maximum of 2.619 euro a month. After 3 months it decreases to 60 per cent.

437. The GC took note of the information received, asked the Belgian authorities to improve the situation with regard to payments of workers claims within an acceptable time limit and decided to wait for the next assessment.

RESC 25 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 25 of the Charter on the ground that the average time to satisfy workers' claims in case of insolvency of their employer is excessive.

438. The representative of Portugal, absent to the GC 136th meeting, delivered the following written information:

The Wage Guarantee Fund ensures the satisfaction of the employees` labour credits, such as wages, allowances, damages, and other benefits pursuant to the law in the event of the insolvency of their employer, where such insolvency has been declared by a court, or a special revitalization procedure (PER) or an extrajudicial recovery procedure (SIREVE) are pending.

The excessive average time to satisfy workers' claims in case of insolvency of their employer (between 11-12 months) is a concern to the Wage Guarantee Fund, but it cannot be dissociated from the volume of outstanding claims under the Wage Guarantee Fund.

In this regard, measures have been developed to reduce the number of pending cases that have resulted in a significant decrease in the volume of outstanding claims of the Fund, as evidenced below.

Evolution of Pending Claims		
YEAR	31/12/2015	31/12/2016
NO. CASES	20.560	12.671

Source: Financial Management Institute of Social Security

This decrease was accompanied by a decrease in the average processing time of the claims, a central objective in the scope of the Fund's activity, as shown in the table below:

Average time to satisfy workers' claims		
YEAR	2015	2016
AVERAGE TIME (days)	164	159

Source: Financial Management Institute of Social Security

It appears that the downward trend in the number of cases creates conditions for a greater focus on the average processing time of the Fund's processes so that it will be at the desirable level.

439. The GC took note of the positive development in Portugal and decided to wait for the next assessment.

RESC 25 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 25 on the grounds that:

- *holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred are not covered by Turkish legislation;*
- *the amounts due in respect of other types of paid absence relating to a prescribed period which shall not be less than three months under a privilege system and eight weeks under a guarantee system are not covered by Turkish legislation.*

440. The representative of Turkey provided the following information:

First, I would like to give a brief explanation about the application of the Wage Guarantee Fund.

The Fund has been established with Annex Article 1 of Unemployment Insurance Law no 4447. Accordingly, "a separate Wage Guarantee Fund within the coverage of Unemployment Insurance Fund is accumulated in order to ensure repayment of workers' unpaid three month wages arising from their employment relation including situations when employers are suffering payment issues as result of bankruptcy or its suspension, certificate of insolvency is issued for the employer or declaration of bankrupt certificate by the employer employing persons deemed as insured under this law according to service agreement"

In the payments under this article, payment is done taking the basic wage as basis and with the requirement of worker' being employed in the same workplace in the year before the employer's insolvency. And the daily upper limit is 6,5 times of the daily minimum wage.

Wage Guarantee Fund corresponds to one per cent of annual sum of payments made by employers as unemployment insurance premium. It is provided that "Principles and procedures regarding the formation of Wage Guarantee Fund and its implementation are determined under regulation" and in the Regulation on Wage Guarantee Fund Basic Wage is defined as the worker's net wage calculated over earning in which insurance premium is taken as basis in accordance with the Law on Social Insurances and General Health Insurance and Wage Claim is defined as worker's claims regarding three month basic wage at maximum, unpaid due to problems of payment difficulty as results of bankruptcy or insolvency for the employers, arising from their employment relation with the workers.

The Wage Guarantee Fund is within the coverage of Unemployment Insurance Fund in order to ensure repayment of workers' unpaid three month wage claims arising from their employment relation including situations when employers are suffering from financial difficulties, as result of bankruptcy or insolvency of the employer, employing persons deemed as insured ones under Law no 4447 as subject to service agreement.

According to the abovementioned law, "In the payments under this article, payment is done taking the basic wage as basis" and the provision of "their claims on maximum three months of basic unpaid wages" it is clear that under Wage Guarantee Fund, workers shall be paid only their basic wage claims from the employer incapable to make payments to workers.

Considering provisions of existing legislation, holiday payments arising from works during the year when state of insolvency or end of employment occurred and claims for other paid leaves are not covered under Wage Guarantee Fund.

In order for workers to be entitled to payment of benefits from Wage Guarantee Fund, there are some requirements:
1. They must be insured under the law no 4447 in the time period regarding the wage claims,

2. The employers must declare bankrupt, certificate of insolvency must be issued or they must be incapable of payment as result of bankruptcy or its suspension
3. Workers must be employed in the same workplace in the year before the employer's insolvency
4. Workers must have wage claims from employers incapable of payment
5. Wage claims shall not expire due to prescription. (five years)
As for the requirement of working in the same work place in the year before the employer's insolvency for entitlement to Wage Guarantee Fund, it is provided in Annex Article 1 of the Unemployment Insurance Law no 4447 that "In the payments under this article, payment is done over the basic wage taking as basis the requirement of worker' being employed in the same workplace in the year before the employer's insolvency" and in Article 9 of Regulation on Wage Guarantee Fund entitled " Principles and Procedures on Payment" it is provided that "workers must be employed in the same workplace in the year before the employer's insolvency."

Bu in practice, as reported by Turkish Employment Agency, which is responsible for the application of the Regulation, the Article is interpreted in favor of insured ones and the requirement of "being employed in the same workplace in the year before the employer's insolvency" and the workers are able to benefit from Wage Guarantee Fund even though they worked only one day in the workplace in the year before the date of employer's insolvency.". The reason of this interpretation is obviously to increase the rate of workers benefiting from the Fund, and the wording of the Law leaves a space for interpretation in favor of the workers.

So, the scope of the law involves a large category of workers although the paid leaves are not prioritized but the regulation is planned to be revised as to bring clarification to the conditions.

Detailed information about the calculation of the wages regarding the Wage Guarantee Fund will be provided in our next report.

441. The GC took note of the information received, asked the Turkish authorities to provide additional information to remedy the situation and decided to wait for the next assessment.

APPENDIX I

List of participants

(1) 135th meeting, Strasbourg, 15-19 May 2017
(2) 136th meeting, Strasbourg, 25-29 September 2017

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Appendix II

Table of signatures and ratifications – situation at 1 December 2017

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00	12/11/04	
Armenia	18/10/01	21/01/04	
Austria	07/05/99	20/05/11	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04	07/10/08	
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	06/11/09	**26/02/03**	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	**03/11/99**	04/04/12
Denmark *	03/05/96	**03/03/65**	
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98 **X**
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00	22/08/05	
Germany *	29/06/07	**27/01/65**	
Greece	03/05/96	18/03/16	18/06/98
Hungary	07/10/04	20/04/09	
Iceland	04/11/98	**15/01/76**	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	29/05/07	26/03/13	
Liechtenstein	**09/10/91**		
Lithuania	08/09/97	29/06/01	
Luxembourg *	11/02/98	**10/10/91**	
Malta	27/07/05	27/07/05	
Republic of Moldova	03/11/98	08/11/01	
Monaco	05/10/04		
Montenegro	22/03/05	03/03/10	
Netherlands	23/01/04	03/05/06	03/05/06
Norway	07/05/01	07/05/01	20/03/97
Poland	25/10/05	**25/06/97**	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/00	16/10/09	
San Marino	18/10/01		
Serbia	22/03/05	14/09/09	
Slovak Republic	18/11/99	23/04/09	
Slovenia	11/10/97	07/05/99	07/05/99
Spain	23/10/00	**06/05/80**	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland	**06/05/76**		
«the former Yugoslav Republic of Macedonia»	27/05/09	06/01/12	
Turkey	06/10/04	27/06/07	
Ukraine	07/05/99	21/12/06	
United Kingdom *	07/11/97	**11/07/62**	
Number of States 47	**2**+ 45 = 47	**9** + 34 = 43	15

The **dates in bold** on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

***** States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.

Appendix III

List of Conclusions of non-conformity examined orally following the proposal of the European Committee of Social Rights

Article 1 - Right to work

Article 1.1 - Policy of full employment

RESC 1§1 BOSNIA AND HERZEGOVINA
RESC 1§1 GEORGIA
RESC 1§1 ITALY
RESC 1§1 MOLDOVA (REPUBLIC OF)
RESC 1§1 PORTUGAL
RESC 1§1 'THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

Article 1.2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

RESC 1§2 ARMENIA *(grounds 1 to 4 and 6)*
RESC 1§2 AZERBAIJAN *(grounds 2 and 3)*
RESC 1§2 BOSNIA AND HERZEGOVINA
RESC 1§2 BULGARIA *(1st ground)*
RESC 1§2 FRANCE
RESC 1§2 IRELAND *(grounds 1 and 3)*
RESC 1§2 LATVIA
RESC 1§2 MOLDOVA (REPUBLIC OF)
RESC 1§2 MONTENEGRO
RESC 1§2 PORTUGAL
RESC 1§2 RUSSIAN FEDERATION
RESC 1§2 'THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"
RESC 1§2 TURKEY
RESC 1§2 UKRAINE (2nd ground)

Article 1.3 - *Free placement services*

RESC 1§3 AZERBAIJAN
RESC 1§3 GEORGIA
RESC 1§3 SLOVAK REPUBLIC

Article 10 - Right to vocational training

Article 10.1 - *Technical and vocational training; access to higher technical and university education*

RESC 10.1 MONTENEGRO

Article 10.2 - Apprenticeship

RESC 10§2 SLOVAK REPUBLIC

Article 10.4 - Long term unemployed persons

RESC 10§4 GEORGIA
RESC 10§4 MONTENEGRO

Article 10.5 - *Full use of facilities available*

RESC 10§5 ANDORRA
RESC 10§5 AUSTRIA
RESC 10§5 BELGIUM
RESC 10§5 FINLAND
RESC 10§5 FRANCE *(1st ground)*

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Article 15.1 - *Vocational training for persons with disabilities*

RESC 15§1 AUSTRIA
RESC 15§1 BELGIUM
RESC 15§1 ROMANIA *(1st ground)*
RESC 15§1 UKRAINE

Article 15.2 - Employment of persons with disabilities

RESC 15§2 SERBIA *(2nd ground)*
RESC 15§2 ROMANIA
RESC 15§2 UKRAINE *(2nd ground)*

Article 15.3 - Integration and participation of persons with disabilities in the life of the community

RESC 15§3 ARMENIA *(1st ground)*
RESC 15§3 BELGIUM
RESC 15§3 ESTONIA
RESC 15§3 FRANCE (2nd ground)

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Article 18.2 - *Simplifying existing formalities and reducing dues and taxes*

RESC 18§2 IRELAND
RESC 18§2 SERBIA

Article 18.3 - Liberalising regulations

RESC 18§3 BELGIUM
RESC 18§3 ITALY
RESC 18§3 MOLDOVA (REPUBLIC OF)
RESC 18§3 TURKEY
RESC 18§3 UKRAINE

Article 18§4 - *Right of nationals to leave the country*

RESC 18§4 RUSSIAN FEDERATION

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

RESC 20 ARMENIA
RESC 20 AZERBAIJAN
RESC 20 BOSNIA AND HERZEGOVINA
RESC 20 ESTONIA
RESC 20 GEORGIA
RESC 20 MOLDOVA (REPUBLIC OF)
RESC 20 MONTENEGRO
RESC 20 RUSSIAN FEDERATION
RESC 20 TURKEY
RESC 20 UKRAINE *(1st ground)*

Article 24 - Right to protection in case of dismissal

RESC 24 ARMENIA
RESC 24 BULGARIA
RESC 24 FINLAND
RESC 24 IRELAND
RESC 24 ITALY
RESC 24 MALTA

Article 25 - Right of workers to protection of their claims in the event of the insolvency of their employer

RESC 25 BELGIUM
RESC 25 PORTUGAL
RESC 25 TURKEY

Appendix IV

List of deferred Conclusions

ANDORRA	RESC 1§4,10§3,10§4
ARMENIA	RESC 18§2, 22
AUSTRIA	RESC 15§3, 20
AZERBAIJAN	RESC 1§1, 6§1
BELGIUM	RESC 10§4
BULGARIA	RESC 1§4, 6§1, 20
FINLAND	RESC 1§3, 1§4, 10§3
FRANCE	RESC 1§1, 1§3, 10§3, 24
GEORGIA	RESC 15§3
HUNGARY	RESC 1§3, 1§4, 9
IRELAND	RESC 1§4, 10§1,10§3,10§5,15§1
ITALY	RESC 1§2, 1§3, 1§4, 6§4, 10§3, 10§4
LATVIA	RESC 1§4, 10§3, 10§4, 10§5, 15§1, 15§2, 15§3, 18§4, 20
LITHUANIA	RESC 1§4, 6§2, 9, 10§2,10§3,10§5
MALTA	RESC 1§3, 10§4, 10§5
MOLDOVA (REPUBLIC OF)	RESC 5, 6§2
MONTENEGRO	RESC 7§4, 7§5, 7§9, 19§12, 27§1, 27§3
NETHERLANDS	RESC 4§1
PORTUGAL	RESC 18§3, 20
ROMANIA	RESC 1§2
RUSSIAN FEDERATION	RESC 10§1, 15§1
SERBIA	RESC 1§2, 18§4
SLOVAK REPUBLIC	RESC 1§1, 10§3, 15§2
‘THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	RESC 1§3, 15§2, 20, 24,
TURKEY	RESC 10§3,10§5, 24
UKRAINE	RESC 10§3, 18§4

Appendix V

Examples of positive developments in State Parties:

Andorra

Article 20

In its decision of 27 March 2014, the Civil Division of the Supreme Court of Justice held that it was for the company to prove that the dismissal of one of its employers was not an act of discrimination.

Armenia

Article 15

Law on Employment, which came into force on 1 January 2014 and sets out measures to be taken to help persons with disabilities integrate into the labour market.

Article 20

On 20 May 2013 the National Assembly of the Republic of Armenia adopted the “Law on ensuring equal rights and equal opportunities for women and men”, which prescribes guarantees for ensuring equal rights and equal opportunities for women and men in political, social, economic, cultural and other areas of public life.

Austria

Article 15

The Insurance Law Amendment Act (Versicherungsrecht-Änderungsgesetz) of 2013 introduced special protection against discrimination for people with disabilities into the Insurance Contract Act (Versicherungsvertragsgesetz).

Article 18

The quota system (Bundeshöchstzahl) was repealed as of 1 January 2014. The Red-White-Red Card and the EU Blue Card systems were introduced in 2011, has simplified the formalities for obtaining the documents needed for engaging in a professional occupation, in that it has established a combined residence and work permit (administered through a “one-stop shop”).

Article 20

The legislation was amended as of 1 August 2013 to expressly address court proceedings, specifying that the awarded compensation must be effective and proportionate as well as suited to preventing discrimination.

Belgium

Article 1§2

On 19 March 2012, the German-speaking Community adopted a decree on the fight against certain forms of discrimination, which prohibits direct and indirect discrimination based on “nationality, alleged race, colour, descent or national or ethnic origin; age, sexual orientation, religious or philosophical belief or disability; sex and related criteria such as pregnancy, childbirth and maternity or transsexualism; civil status, birth, wealth, political ideas, trade union affiliation, language, current or future state of health, physical or genetic characteristics or social background”. It applies to all persons, both in the public and in the private sector, including in public bodies, with regard to labour and employment relations.

Article 15

The Brussels-Capital Government adopted on 19/9/2017 the Ordinance to combat certain forms of discrimination and to promote equal treatment, which now completes the anti-discrimination legislation.

With the adoption of this new anti-discrimination ordinance, the following areas are covered: social protection, social benefits, access to goods and services and access to economic, social, political and cultural activities.

Three legislative Acts were adopted in the period 2016/17 by the Brussels Capital Region regarding the right of persons with disabilities:

- Ordinance of 8 December 2016 on the integration of the disability dimension into the policies of the Brussels-Capital Region.
- Implementation Decree of 8 December 2016 on the integration of the disability dimension into the policies of the Brussels-Capital Region (approved on 1/6/2017)
- Ordinance du 2 février 2017 relative to the obligation of engaging persons with a disability in the administration of the local authorities.

Article 20

At federal level, the law on combating the gender pay gap was adopted on 22 April 2012 and requires measures to combat the wage gap to be negotiated at interoccupational, sectoral and company level.

Estonia

Article 9

Since 2012, the Unemployment Insurance Fund provides counselling also to persons who are not registered as unemployed. Accordingly, under the programme "Increasing the availability of career services" funded by the European Social Fund, career counselling is now available to all people, regardless of their labour market status.

Article 10§4

The Reform programme "Estonia 2020" expressly targets the integration and skills development of 'long-term unemployed'. This strategy aims to decrease the longterm unemployment rate to 2.5% by 2020.

Finland

Article 18§2

The procedure allowing foreign nationals to receive a personal identity number has been simplified: as a result, as from the end of 2014, they do no longer need to apply for their personal identity number but can receive it together with their first residence permit.

France

Article 20

Act 2012-1189 of 26 October 2012 on establishing "jobs for the future" strengthens the role of collective bargaining between women and men with regard to occupational equality and equal remuneration.

Georgia

Article 1§2

Law on the Elimination of All Forms of Discrimination, which was enacted by the Georgian parliament on 2 May 2014 and entered into force on 7 May 2014. Its purpose is to eliminate discrimination on various grounds including health and disability (Article 1). The law prohibits all discrimination, both direct and indirect (Articles 2 §2 and 2 §3), and also introduces the notion of positive action in the context of promoting gender equality and in certain specific cases involving, inter alia, disability.

Hungary

Article 10§1

With the Act CLV of 2011 on Vocational Contribution and Support to Training Development, the new vocational contribution system introduced in 2012 strengthens the dual approach to practical education in vocational training provided in schools.

Article 20

The report indicates that Section 12 (1) of the Act I of 2012 on the Labour Code (the new Labour Code) states that the requirement of equal treatment must be complied with in relation to employment. The Act defines the concept of wages (as any remuneration in cash or in kind provided to employees directly or indirectly based on their employment), as well as the factors that need to be taken into account when calculating the equal value of work.

Italy

Article 1§2
The legislative decree 150/2011 widened the range of possible forms of discrimination covered by Article 44 of the Consolidated Immigration Act, by adding to the list discrimination on grounds of national origin, language or skin colour. Discrimination cases involving any of the prohibited grounds are now dealt with under urgent/fast-track procedure rather than under the ordinary procedure. Amended legislation brought national law into line with the requirements of ILO Maritime Labour Convention No. 186.

Article 10§1
The Law on the Labour Market Reform of 2012 introduced different types of education, such as formal, non-formal and informal with a view to consolidating the system of life-long learning.

Article 15
In 2012, a clause was added to Law No. 68/99 stating that employers must make reasonable accommodation for employees with disabilities wishing to work from home or telework (Decree-Law No. 179 of 18 October 2012). Under Legislative Decree No. 76/2013, public and private employers are required to make reasonable accommodation to ensure compliance with the principle of equal treatment of persons with disabilities at work.

Lithuania

Article 25
The Law on the Guarantee Fund (Recast) which came into effect on 1 January 2013, establishes a better regulation in order to simplify the calculation of allowances from the Guarantee Fund and to speed up the allowances allocation process.

Malta

Article 15
The Equal Opportunities (Persons with a Disability) Act, amended in 2012, prohibits discrimination in all areas including employment. Under this law employers must not discriminate against persons with disabilities in procedures relating to job applications, recruitment, promotion, dismissal, remuneration, vocational training or other areas linked to employment conditions. It is not permitted for employers to use tests or procedures designed to exclude persons with disabilities unless they can prove that these tests are crucial to the work concerned.

Republic of Moldova

Article 15
Legislation which came into force on 1 January 2013, prohibits all forms of discrimination, including discrimination based on disability, and applies to all individuals and legal persons in the public and private domains.

Montenegro

Article 15
The Law on Professional Rehabilitation and Employment of Persons with Disabilities (Official Gazette of Montenegro, no. 49/08, 73/10 and 39/11), as amended in 2011, sets out the arrangements and procedures for applying the right to vocational rehabilitation of persons with disabilities. The amendments made to the Law change the system of employment quotas for persons with disabilities. Exercise of the right to medical and technical aids is governed by the “Regulation on exercising the right to medical and technical aids” (Official Gazette of Montenegro, no. 24/2013 and 26/2014). The Law on Spatial Planning and Construction as amended in 2014 (Official Gazette of Montenegro, no. 51/08, 40/10, 34/11, 35/13, 33/14) provides that public buildings must be accessible.

Portugal

Article 1§3
Within the framework of the Programme to Relaunch the Public Employment Service approved by the Council of Ministers Resolution n°. 20/2012 of 9 March 2012, public employment services have been restructured. Following this restructuration, the Institute of Employment and Professional Training (IEFP) is supported by a network of 29 employment and vocational education centres, 23 job centres, and one vocational training and professional rehabilitation centre, for a total of 53 local units.

Romania

Article 20
In April 2014 the Department for Equality of Opportunities between Women and Men (DEOWM) was established to monitor the enforcement of the Gender Equality Law.

Russian Federation

Article 1§3
Following the amendment in 2012 of Federal Act No.1032-1 “On employment in the Russian Federation” of 19 April 1991, the subjects of the Federation are entitled to conduct active policies to promote employment. Act No. 116-FZ “ On Amendments to Certain Legislative Acts” of 5 May 2014, set the rules for accreditation and operation of private employment agencies in the Russian Federation.

Article 10§3
The Order of the Ministry of Labour of Russia № 262 of April 17, 2014 approved the Federal state standards of public services, including vocational training and education for the unemployed.

Article 15
The Law on the Protection of Disabled Persons, as amended by Federal Law no. 168-FZ of 2 July 2013, provides that employers must supply equipment for special jobs for persons with disabilities, regard being had to their disability. With effect from 2013, Law No. 183-FZ of 2 July 2013 entitles public authorities to set quotas for the employment of persons with disabilities within organisations which have more than 35 members of staff. With regard to the activities of the National Employment Service, standards for public services and public functions in the field of promotion of employment have been drawn up (Federal Law no. 361-FZ of 30 November 2011) in order to guarantee employment and encourage access to the inclusive employment market for persons with disabilities.

Article 20
In 2011 the Council on Gender was created at the Russian Ministry of Labour whose main tasks are to prepare proposals on improvement of legislation in order to ensure gender equality.

Serbia

Article 15
Law on the Professional Rehabilitation and Employment of Persons with Disabilities (Official Gazette Nos. 36/2009 and 32/2013), which came into force on 23 May 2009 and was amended on 16 April 2013. It prohibits all discrimination against persons with disabilities and aims to create the conditions for equal access for persons with disabilities to the open labour market and to promote professional rehabilitation.

Slovak Republic

Article 10§1
Act 184/2009 Coll. on Vocational Education and Training is one of the pillars of the reform of the educational system. The Act was amended in September 2012 and the amendment strengthened the coordination of vocational training and education to be better suited to the needs of the labour market. The amendment also introduced the obligation to publish information about the employability of graduates in each

individual self-governing region, according to the fields of study and type of the secondary education facility.

Article 20
The Anti-Discrimination Act was amended in 2012 to cover the definition of indirect discrimination and it now enables public administration bodies and legal entities, including employers, to adopt temporary compensatory measures to eliminate disadvantages due to gender.

“The former Yugoslav Republic of Macedonia”

Article 15
The Committee notes that the Law on Prevention of and Protection against Discrimination (the Anti-Discrimination Law), which was adopted in 2010, entered into force on 1 January 2011. It prohibits any direct or indirect discrimination on grounds including disability in areas such as education, science and sport.

Article 20
Law on the Equal Opportunities of Men and Women No. 6/2012 was adopted on 13 January 2012, which additionally promoted the principle equal opportunities and equal treatment of men and women.

Ukraine

Article 15

Law No. 5207-VI on Principles of Prevention and Combating Discrimination in Ukraine which was enacted on 6 September 2012 forbids direct and indirect discrimination, based, among other things, on disability and applies in particular to the field of education, public services and relations between employers and employees. By its Decision No. 872 of 15 August 2011, the Cabinet of Ministers approved the rules governing the organisation of inclusive education in secondary schools. Law No. 1324 of 5 June 2014 on amendments to some of the laws on inclusive education was enacted to ensure continuity and consistency in the integration of children with special needs into general education.

Appendix VI

Warning(s) and Recommendation(s)

Warning(s)[10]

Article 1 – Right to work

Article 1 paragraph 2 – To protect effectively the right of the worker to earn his living in an occupation freely entered upon

Turkey

- The upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the ground of sex

Azerbaijan

- The legislation does not provide for a shift in the burden of proof in gender discrimination cases;
- Women are not permitted to work in all professions which constitutes discrimination based on sex

Russian Federation

- Women are not permitted to work in all professions which constitutes discrimination based on sex
- The legislation does not provide for a shift in the burden of proof in cases of discrimination based on sex

Turkey

- Women are not permitted to work in all professions which constitutes discrimination based on sex

Ukraine

- The legislation does not provide for a shift in the burden of proof in cases of discrimination based on sex

Recommendation

Article 1 – Right to work

Article 1 paragraph 2 - To protect effectively the right of the worker to earn his living in an occupation freely undertaken

Turkey

- The Martial Law No.1402/1971 does not adequately protect local government officials and employees.

Renewed Recommendation(s)

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