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EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS XX-4(2015) OF THE EUROPEAN SOCIAL CHARTER

**(Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia,
Luxembourg, Poland, Spain, “The former Yugoslav Republic of Macedonia”
and United Kingdom)**

*Detailed report of the Governmental Committee
established by Article 27, paragraph 3, of the European Social Charter¹*

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. Representatives of the European Trade Union Confederation (ETUC) attended the meetings of the Governmental Committee in a consultative capacity. Representatives of the International Organisation of Employers (IOE) were also invited to attend the meetings in a consultative capacity, but declined the invitation.

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 Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Luxembourg, Poland, Spain and the United Kingdom. Reports were due by 31 October 2014. The Governmental Committee noted with regret that Croatia has not submitted a national report since 2012 and consequently did not comply with its reporting obligations under the European Social Charter for three consecutive cycles.

6. Conclusions XX-4 (2015) of the European Committee of Social Rights were adopted in December 2015 (Czech Republic, Denmark, Germany, Greece, Iceland, Luxembourg, Poland, Spain and the United Kingdom). In the absence of a report for the third time in a row, once again no conclusions were adopted in respect of Croatia.

² List of the States Parties on 1 December 2016: 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 congratulated Greece which ratified the Revised Charter on 18 March 2016 and invited States Parties still bound by the 1961 Charter to follow suit in the near future.

8. On 2 April 2014, the Committee of Ministers adopted at its 1196th meeting a new procedure of the reporting system on the European Social Charter entitled 'Ways of streamlining and improving the reporting and monitoring system of the European Social Charter'. To bring its Rules of Procedure in line with this new procedure, the Governmental Committee approved a revised version at its 134th meeting (26-30 September 2016).

9. The Governmental Committee held two meetings in 2016 (9-13 May 2016, 26-30 September 2016) with Ms Kristina VYSNIAUSKAITE-RADINSKIENE (Lithuania) in the Chair. In accordance with its Rules of Procedure, the Governmental Committee elected at its autumn meeting Ms Karolina KIRINCIC ANDRITSOU (Greece) as 2nd Vice-Chair in replacement of Ms Lis WITSØ-LUND (Denmark) as from January 2017 for one year. Ms Karolina KIRINCIC ANDRITSOU was elected due to her knowledge and expertise of the European Code of Social Security.

10. 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 organisation of events concerning the Charter and the Turin process objectives in the framework of the forthcoming Chairmanships of the Committee of Ministers;
- The improvement with respect to the contents of the European Social Charter web-pages.

11. The state of signatures and ratifications on 1 December 2016 appears in Appendix I to the present report.

II. Examen des Conclusions XX-4 (2015) du Comité européen des Droits sociaux

12. 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. No such proposals were made in the current supervisory cycle. The detailed report is available on www.coe.int/socialcharter.

13. The Governmental Committee applied the rules of procedure adopted at its 125th meeting (26 – 30 March 2012). 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.

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

15. 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 III to the present report for a list of these Conclusions).

16. During its examination, the Governmental Committee took note of important positive developments in several State Parties.

17. 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.

18. The Governmental Committee was informed of the 2015 findings of the European Committee of Social Rights on the follow-up to decisions on collective complaints with respect to Greece. In accordance with the decision taken by the Committee of Ministers at its 1196th meeting on 2 April 2014, this country submitted in 2014 a simplified report for the first time. After an exchange of views the Governmental Committee agreed that reflection should continue with the European Committee of Social Rights with a view to improving the reporting system.

19. 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 2010-2013 (Conclusions XX-4 (2015)), provisions related to the thematic group “Children, families, migrants” “

*(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;

Having regard to Article 29 of the Charter;

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.

Considering the reports on the European Social Charter submitted by the Governments of the Czech Republic, Denmark, Germany, Greece, Iceland, Luxembourg, Poland, Spain and the United Kingdom;

Having regard to the repeated failure to submit a report by Croatia;

Considering Conclusions XX-4 (2015) 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 XX-4 (2015) of the European Committee of Social Rights and in the report of the Governmental Committee.

1961 EUROPEAN SOCIAL CHARTER

Article 7§3 – Prohibition of employment of children subject to compulsory education

ESC 7§3 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 7§3 of the 1961 Charter on the ground that the daily and weekly duration of light work for children who are still subject to compulsory education during school holidays is excessive.

20. The situation is not in conformity on this ground for the first time.

21. The Representative of the United Kingdom provided explanations on the legislative background. Children in England and Wales were of compulsory school age until the last Friday in June in the school year in which they reached the age of 16; children who reached the age of 16 during July, August and early September (i.e. after the last Friday in June, but before the beginning of the next school year) ceased to be of compulsory school age at the end of the last Friday in June before their 16th birthday. The details were slightly different in Scotland and Northern Ireland, though similar rules applied.

22. The employment of children who were not over compulsory school age was regulated by long-established legislation, both national and local. The main national legislation for England and Wales was the Children and Young Persons Act 1933, compliance with which was monitored by local authorities. The legislation also introduced sanctions for employers breaching the legislation.

23. The Representative of the United Kingdom provided information on the rules applicable in England and Wales. Different legislation applied in Scotland, though the

maximum hours permitted were the same. There was also different legislation in Northern Ireland, where the limits were slightly different.

24. Children may undertake light work from the age of 14 or, under local authority byelaws, from the age of 13. In most local authority areas there were byelaws requiring employers to report to the local authority details of every child of compulsory school age whom they employ. The 1933 Act, as amended by later legislation, set out the maximum time that children of different ages may undertake light work in term time and during school holidays.

25. During term time, children may work for:

- Up to 2 hours on school days or Sundays;
- Up to 5 hours (if aged 13 or 14) or eight hours (if aged 15 or 16 and of compulsory school age) on Saturdays;
- Up to 12 hours in any one week.

26. During holiday periods, children may work for:

- Up to 25 hours per week (if aged 13 or 14) or 35 hours per week (if aged 15 or 16 and of compulsory school age);
- Up to 5 hours (if aged 13 or 14) or 8 hours (if aged 15 or 16 and of compulsory school age) on weekdays or Saturdays;
- Up to two hours on Sundays.

27. Children must also have at least 2 consecutive weeks within the year when they were neither working nor attending school.

28. Where children may be employed, such children may only perform 'light work' within these periods of employment.

29. The Representative of the United Kingdom stated that the UK Government would give careful consideration to any questions arising from the ECSR's consideration of these issues and would, if required, provide further information in due course.

30. The Representative of Romania emphasised that this was a first time situation of non-conformity and that the UK Government should take steps to remedy the situation.

31. The GC took note of the information and explanations provided and invited the Government of the United Kingdom to include the updated information in its next report. The GC asked the UK Government to take the necessary measures to remedy the situation and decided to await the ECSR's next assessment.

Article 7§5 – Fair pay

ESC 7§5 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 7§5 of the 1961 Charter on the grounds that:

- *the minimum wage of young workers is not fair;*
- *it has not been established that the apprentices' allowances are adequate.*

32. The situation is not in conformity on these grounds for the first time.

33. The Representative of the Czech Republic said that the relevant section of Government Regulation No 567/2006 Coll. stipulated that an employee under 18 years was entitled to at least 80% of the statutory minimum wage. On 1 January 2013, the lowest level of guaranteed wage had been abolished by Government Regulation No 246/2012. According to the legislation in force, no differences on age grounds existed any longer with respect to remuneration.

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

Article 8§1 – Maternity leave

ESC 8§1 UNITED KINGDOM

35. The Committee concludes that the situation in the United Kingdom is not in conformity with Article 8§1 of the 1961 Charter on the ground that the standard rates of Statutory Maternity Pay, after six weeks, and Maternity Allowance are inadequate.

36. The situation is not in conformity on this ground since Conclusions XI-1 (1989). The Committee of Ministers adopted a Recommendation in this respect in 1993 (Recommendation No. R ChS (93)3).

37. The Representative of the United Kingdom stated that the UK Government had no current plans to change the level of maternity benefits, because an increase in the spending on earnings related benefits alone was considered socially regressive, as it would mainly profit to the higher earners.

38. He pointed out, however, that other UK benefits and credits available to those on maternity leave should be taken into consideration as, according to the Charter, “the modality of compensation is within the margin of appreciation of the States Parties and may be either a paid leave (continued payment of wages by the employer), social security maternity benefit, any alternative benefit from public funds or a combination of such compensations”.

39. In this connection, he explained that, in addition to the benefits assessed by the ESCR (Statutory Maternity Pay and Maternity allowance) other forms of financial support, such as Tax Credits and the Sure Start Maternity Grant (a lump sum payment of £500), were available to lower income families.

40. He indicated that the vast majority of women took all their paid leave, which was now 39 weeks, and that the standard rates of Statutory Maternity Pay and Maternity Allowance had been progressively increased, up to £139.58 per week currently. He recalled that for the first six weeks Statutory Maternity Pay is paid at 90% of the woman's average weekly earnings (with no upper limit), then for the following 33 weeks at the lower of either the standard rate or 90% of the employees average gross weekly earnings. Maternity allowance is paid at 90% of the woman's average weekly earnings subject to the maximum weekly rate.

41. The Representative of the United Kingdom furthermore expressed his Government's commitment to do more to further improve the system and to make employment practices in the UK more flexible and family friendly. He referred in this context to the introduction, in 2014, of a system of shared parental leave and pay.

42. The Secretariat confirmed that other forms of financial support might be taken into account in the ECSR assessment, provided that the authorities would clearly indicate their nature and amount, and provided that they prove that such additional support was available and effectively granted to the targeted group of women and that the combined effect of the benefits available meets the Social Charter's criteria, namely that the compensation was not lower than 70% of the previous salary, and that it did not fall below the poverty threshold defined as 50% of median equalized income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

43. The Secretariat also recalled that a ceiling on the amount of compensation for high salary earners was not, in itself, contrary to Article 8§1. Various elements were taken into account in order to assess the reasonable character of the reduction, such as the upper limit for calculating benefit, how this compared to overall wage patterns and the number of women in receipt of a salary above this limit.

44. The Representative of the United Kingdom indicated that the difficulty in providing data on the additional support available resulted inter alia from the fact that the system was complex and that different packages of benefits were available to women in different situations. He expressed the view that it was not so much an issue of compliance with the Charter, but rather an issue of how to measure such compliance. He accordingly suggested that, in the framework of a constructive dialogue with the ECSR, the reporting methodology be reviewed.

45. The Chair noted that the issue of UK non-conformity with Article 8, paragraph 1, on the ground of the inadequate level of maternity benefits was a long-standing one, and that previous attempts at solving the problem through bilateral contacts between the UK authorities and the ECSR had not been fruitful..

46. Upon a proposal made by the Representative of France, the GC voted on a Recommendation, which was rejected. The GC then voted on a warning, which was not carried (16 votes in favour, 15 against).

47. The GC took note of the information provided which should be included in the next report. The GC urged the Government of the United Kingdom to take the necessary measures to remedy the situation as soon as possible and to get in contact with the ECSR prior to its next assessment.

Article 16 - The right of the family to social, legal and economic protection

ESC 16 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 16 of the 1961 Charter on the ground that the length of residence requirements for ordinary and special child allowances for nationals of States Parties are excessive.

The situation is not in conformity on this ground since Conclusions XVIII-1 2006.

On the previous occasion, the Governmental Committee voted on a Recommendation, which was rejected (0 votes in favour, 27 against). The Governmental Committee then voted on a warning, which was also rejected (5 votes in favour, 19 against).

48. The Secretariat said that the situation was not in conformity on this ground since Conclusions XVIII-1 2006.

49. On the previous occasion, the GC voted on a Recommendation, which was rejected (0 votes in favour, 27 against). The GC then voted on a warning, which was also rejected (5 votes in favour, 19 against).

50. The representative of Denmark said that the government of Denmark wished to reiterate its position on this matter. At the same time, the government of Denmark wished to outline the details on the ways in which the Danish system of child related benefits supported and protected families in general and in particular vulnerable families.

51. The representative of Denmark said that the situation could not be assessed properly by looking in isolation at the length of residence-requirements for child allowances. It was important to take into account the whole system of financial support for children. The government of Denmark wished to point out three essential elements of this system.

52. First, the Danish system of public financial support to families with children consisted of a wide range of benefits. In this context child allowances only made up a relatively small share of the combined benefits available to vulnerable families. Moreover, several other child and family related benefits would often in themselves exceed the level of child allowance. Main examples of such benefits were social assistance and housing benefits which were both awarded at significantly higher levels to families with children. Another important example were the subsidies towards day care expenses.

53. In general, these other child related benefits are not associated with length of residence requirements. These benefits are therefore available to newly immigrated families regardless of their length of residence. Furthermore, all of these types of benefits are fully tax funded and generally universal. So entitlement to the vast majority of child and family related benefits is not subject to prior contributions.

54. In summing up, the representative of Denmark said that ordinary and special child allowance and the associated length of residence requirements were not adequate or sufficient measures of Denmark's level of economic protection of families in general or vulnerable families in particular.

55. In Denmark, public financial support to families that could not fully support themselves consisted of a wide range of child and family related benefits, of which child allowances only made up a relatively small part. As a general rule, these child and family related benefits were awarded regardless of the family's length of residence and did not require prior contributions as they were part of the generally tax funded universal social welfare system.

56. Finally, the representative of Denmark confirmed that the conclusion of non-conformity as regards the length of residence had not been met (2 years of residency requirement before getting the entitlement to child allowance was considered by the ECSR excessive). However, the government of Denmark believed that the variety of benefits payable to both Danish nationals and not nationals living in Denmark fully encompassed the intention of Article 16 as far as financial support was concerned.

57. Having said that, the representative of Denmark wished to point out that some specificities of the Danish social benefits system, (i.e. that it was universal and not subject to social security contributions, or that it was fully funded by taxes), could explain why the Danish government believed that there must be certain limits and restrictions and that child benefits and family allowances should be payable based on a needs assessment.

58. In conclusion child benefits were payable to children with Danish nationality, but non-Danish nationals might qualify if one of the parents had been resident in Denmark for one year. Moreover, refugees who had been granted residence permit under Danish legislation of immigration were not obliged to meet the conditions of nationality.

59. The Secretariat clarified that since the situation remained unchanged, as pointed out by the representative of Denmark, the position of the ECSR would lead at the next cycle again lead to the conclusion of non-conformity. The discussion that followed confirmed the concern of several representatives (Ukraine, France, and Belgium) that the Danish government should introduce some changes in their legislation in order to bring the situation into conformity with the Charter. The representative of Greece proposed to vote for a recommendation since this was a situation of non-conformity since Conclusions XVIII-1 2006.

60. The GC voted on a recommendation which was rejected (0 in favor, 30 against). Then the GC voted for a warning (10 in favor, 15 against) which was also rejected.

61. The GC sent a strong message to the Danish government in order to bring the situation in to conformity and decided to await the next ECSR's assessment.

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

ESC 17 – CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 17 of the 1961 Charter on the ground that all forms of corporal punishment are not prohibited in the home and in institutions.

62. The Secretariat said that the situation was not in conformity on this ground since Conclusions 2005.

63. The Representative of the Czech Republic informed the GC of the amendment to the Act 200/1990 on Contraventions to be adopted in October 2016, which increased protection of children against violence including corporal punishment. The amendment imposed an obligation to start proceedings in case of an administrative delict or offense in which the affected person was a child. It included corporal punishment, verbal abuse of a child, insult or humiliation.

64. The GC took note of the positive development, urged the Government of the Czech Republic to proceed with the amendment and decided to await the next ECSR's.

ESC 17 – UNITED KINGDOM

The Committee concludes that the situation in United Kingdom is not in conformity with Article 17 of the 1961 Charter on the grounds that not all forms of corporal punishment are prohibited in the home.

65. The Secretariat said that the situation was not in conformity on this ground since Conclusions 2015.

66. According to the Representative of the United Kingdom, the Government did not sanction violence that could be likely to affect the physical integrity, dignity, development or psychological wellbeing of children. The United Kingdom had clear laws to deal with any violence against children.

67. In some circumstances, parents may be able to claim a defense of 'reasonable chastisement'. However,

- This defense was only available to parents and those acting *in loco parentis*; and legislation prevented the use of this defense by those working in schools if their only claim to be *in loco parentis* arose from their provision of education;
- The defense could only be used if the charge was one of common assault. Parents who hit a child and caused injury could be charged with actual bodily harm, grievous bodily harm or child cruelty. The reasonable chastisement defense could not be used if any of these charges was brought.
- Even where the charge was one of common assault, the defense would only succeed if the court was satisfied that the punishment was 'reasonable'.

68. The Representative of Sweden noted that the margin of interpretation of violence might undermine the protection of children. It was hard to distinguish which forms of corporal punishment should be prohibited and which could be tolerated. There needed to be a law that was clear and prohibited all forms of punishment.

69. According to the representative of the United Kingdom the trend showed that fewer choose corporal punishment over other forms of discipline. The representative of France noted that there was no evolution. Despite the fact that the society had evolved (fewer cases of corporal punishment), the Government of the United Kingdom had not. The Representative of ETUC underlined that there was no intention to change anything should be noted.

70. The GC voted on a recommendation (7 in favor; 21 against, not carried). It then voted on a warning (19 in favor; 3 against, which was carried).

Article 19§6 - Family reunion

ESC 19§6 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- *the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;*
- *the requirements to prove language proficiency for family reunion of spouses and children over 16 present an obstacle to family reunion.*

First ground of non-conformity

71. The Secretariat said that this specific situation was not in conformity for the first time. However, Germany was not in compliance with Article 19§6 of the Charter on related grounds since the year 2000.

72. The Representative of Germany said that migrant workers must have a permanent residence permit for two years in order to be able to arrange a family reunion. That is equally true when the sponsor intended to get married. However, if the sponsor was already married, or was entitled to asylum or recognized as a refugee or was a researcher, such a minimum period did not apply. Consequently, the Government of Germany continued to consider this provision to be necessary in order to prevent possible abuse of the reunion of a migrant worker with spouses.

73. Replying to a question from the Chair, the Representative of Germany confirmed that the two-year residence requirement for the sponsor before family reunion was not under discussion for change. He repeated that this requirement was meant to prevent abuse of the system.

74. The GC took note of the information provided, asked the Government of Germany to include all the necessary information into the next report. The GC urged the Government of Germany to remedy the situation and decided to await the next ECSR's situation.

Second ground of non-conformity

75. The Secretariat said that this situation was not in conformity on this ground since Conclusions 2011.

76. The Representative of Germany said that regarding the requirement of proving language proficiency, the legal situation had now changed in Germany in favor of the spouses.

77. In fact, proving language knowledge was no longer required if the spouse requesting the reunion was a resettlement refugee, entitled to asylum, recognized as a refugee, entitled to subsidiary protection or to asylum status - provided the marriage pre-dated the sponsor's transfer of his or her center of interests to Germany.

78. Furthermore, no language skills were not to be proven if the spouse requesting the reunion entered the territory of Germany without requiring a visa, even for a residence period that was not short, because of his or her nationality and was permitted to reside there; or he or she was in possession of an EU Blue Card.

79. A proof of language skills was also not required if the spouse willing to be reunited with his or her partner was unable to demonstrate a basic knowledge of the German language because of a physical or mental illness or disability. Other individual reasons may apply which made it not possible or reasonable to make efforts to acquire a basic knowledge of German before entering the country.

80. The Representatives of Greece and ETUC recognized that the number of exceptions to the general language requirement rule had been extended. However, the ground of non-conformity was based on the ECSR case-law which considered the language skills requirement as such problematic.

81. The GC took note of the information provided, asked the Government of Germany to remedy the situation and decided for the next ECSR's assessment.

ESC 19§6 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 19§6 of the 1961 Charter on the grounds that no provision is made in law or in practice for the family reunion of dependent children of migrant workers aged between 18 and 21 who do not have a disability and do not require the assistance of a third party because of their state of health.

82. The Secretariat said that this specific situation was not in conformity since Conclusions 2011. However, Spain was not in compliance with Article 19§6 of the Charter on related grounds since the year 2002.

83. The Representative of Spain said that there were no changes to be shared compared to the information given in the national report leading to the Conclusion above. However, it was important to note that children between 18 and 21 years were not generally excluded from access to health care. In fact, access to health care and in more general terms access to social protection services were guaranteed by the State to the beneficiaries provided that the yearly revenue did not exceed 100 000 Euros.

84. The Representative of Spain referred to a judgment of 21st of July 2016 issued by the Spanish Constitutional Court. The court ruled that access to health and social protection schemes was from now on also possible when the yearly revenue of a beneficiary exceeded 100 000 Euros.

85. Replying to a question from the Chair, the Representative of Spain confirmed that family reunion of children aged 18 to 21 was possible in certain cases. The Representative of Luxembourg specified that the 1961 Charter children were defined children as such as long as they were below 21 year old.

86. The GC took note of the information provided, asked the Government of Spain to include all relevant information into the next report and decided to await the next ECSR's assessment.

ESC 19§6 UNITED KINGDOM

The Committee concludes that the situation in United Kingdom is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- *family members may be expelled following the deportation of their sponsor, without proof that they are a threat to national security, or offend against public interest or morals;*
- *the language requirements imposed on the family members of migrant workers are likely to hinder family reunion;*
- *the income requirement for migrants who wish their families to join them is too high and is likely to hinder family reunion.*

87. The Secretariat said that the situations were deferred in the years 2000 and 2011. The situations were not in conformity in 2002, 2004 and 2006 although not necessarily on the same grounds.

First ground of non-conformity

88. The Representative of the United Kingdom distinguished two family reunification regimes, namely the non-EEA national family members of a non-EEA national, admitted to the United Kingdom specifically for the purpose of work and the non-EEA family members of a British citizen or other person who has a permanent right of residence in the United Kingdom.

89. As for the first regime, which was of particular interest for the ECSR, the dependents of a non-EEA worker would qualify and stay for entry and stay provided that the UK Government was satisfied that there was a subsisting qualifying relationship and a sufficient level of funds available to the applicant.

90. Reply to a question from the Representative of Greece, the Representative of the United Kingdom replied that only 5 % of the requests for family reunification were refused. No information could be given on the number of family members expelled following deportation of the sponsor.

91. The Representative of Turkey deplored that the United Kingdom had no intention to change law and/or practice in response to this situation of non-conformity.

92. The GC took note of the information provided, asked the Government of the United Kingdom to remedy the situation and decided to await the ECSR's next assessment.

Second ground of non-conformity

93. The Representative of the United Kingdom referred to the ECSR's concern that language requirements were applied where a non-EEA national was seeking entry under the rules which govern family reunion with a British citizen or non-EEA national who had a permanent right of residence. An application for the temporary stay would not be subject to a language requirement. Such a person would in turn qualify for the removal of the time limit once he/she had completed a period of five years as dependent of the sponsor. A language requirement would apply for applications for indefinite stay, but the family member would be able to qualify for a further period of limited stay if the language requirement had not been met. The ECSR's concern only arose where the family members sought entry to the United Kingdom after the migrant worker had acquired permanent residence.

94. Replying to a question from the Representative of the Netherlands, the Representative of the United Kingdom confirmed that there were no language requirements for children below the age of 18.

95. Replying to a question from the Chair, the Representative of the United Kingdom confirmed that those seeking a temporary stay did not have to undergo a language test.

96. The Representative of Turkey deplored that non-EEA nationals were discriminated against. The Representative of France considered that language skills to be obtained abroad were difficult to meet given the costs involved.

97. The GC took note of the information provided and asked the Government of the United Kingdom to give the necessary explanations in the next report. The GC asked the Government of the United Kingdom to remedy the situation and decided to await the next ECSR's assessment.

Third ground of non-conformity

98. The Representative of the United Kingdom explained in detail the different categories of sponsors such as non-EEA nationals seeking entry under the rules which govern family reunion with a British citizen or non-EEA nationals who have a permanent right of residence and the different immigration rules which apply accordingly.

99. He insisted on the position of principle of the UK Government meaning that both a migrant admitted for the purpose of work and his/her family members continued to be subject to a time limit on their stay. This principle was also in line with the EU free movement rules as far as they relate to the family members of an EU-national migrant worker. The family members of an EU national who ceased to have a right to reside may themselves cease to have a right to reside and be liable to

expulsion if they could not demonstrate that they had a right to reside in their own right.

100. The Representative of the United Kingdom confirmed his country's view that the interests of immigration control would fall within the scope of any public interest rationale for such a policy and that it would not be in the interests of immigration control for there to be no presumption that the family members of a migrant worker should be required to leave in the event that their sponsor was expelled.

101. Several State Party Representatives took the view that the income threshold of 18 600 British Pounds (20 688 €) was difficult to meet by those wishing to enter the United Kingdom.

102. The GC took note of the information provided, asked the Government of the United Kingdom to remedy the situation and decided to await the next ECSR's assessment.

Article 19§8 - Guarantees concerning deportation

ESC 19§8 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 19§8 of the 1961 Charter on the ground that recourse to social welfare, homelessness and substance abuse remain grounds for expulsion.

103. The Secretariat said that this situation was not in conformity since the year 2000.

104. The Representative of Germany said that meanwhile the part of the Act dealing with the requirements related to expulsion came into force on 1 January 2016. The new legislation no longer differentiated between offences leading to compulsory, routine and discretionary expulsion. Rather, the focus was now on the examination of individual cases and weigh up as to whether expulsion served the public interest or whether the person's wish to remain prevailed.

105. The Representative of Germany emphasized that the grounds for discretionary expulsion represented by long-term homelessness and claims for social assistance were no longer laid down in the Act as reasons for expulsion in the public interest.

106. By contrast, the possibility of expelling a foreigner if he or she used heroin, cocaine or a comparable dangerous narcotic and was not willing to undergo a necessary training course of rehabilitation treatment or evaded such treatment had been included into the new Act. The Government of Germany considered that the new regulation was in conformity with Article 19§8 of the European Social Charter.

107. The GC congratulated the Government of Germany for removing all grounds of non-conformity and decided to await the next ECSR's assessment.

Appendix I

List of participants

- (1) 133rd meeting, Strasbourg, 9-13 May 2016
(2) 134th meeting, Strasbourg, 26-30 September 2016

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Appendix II

Table of signatures and ratifications – situation at 1 December 2016

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	10 + 33 = 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

ESC 7§3 UNITED KINGDOM

ESC 7§5 CZECH REPUBLIC

ESC 8§1 UNITED KINGDOM

ESC 16 DENMARK

ESC 17 CZECH REPUBLIC

ESC 17 UNITED KINGDOM

ESC 19§6 GERMANY

ESC 19§6 SPAIN

ESC 19§6 UNITED KINGDOM

ESC 19§8 GERMANY

Appendix IV

List of deferred Conclusions

CZECH REPUBLIC	ESC 8§3
GERMANY	ESC 7§10, 19§2
LUXEMBOURG	ESC 19§3, 19§6, 19§8, 19§9
POLAND	ESC 19§3, 19§8
SPAIN	ESC 7§3, 8§2, 19§8
UNITED KINGDOM	ESC 19§2, 19§4, 19§8

Appendix V

Warning(s) and Recommendation(s)

Warning(s)⁴

Article 17 (Right of mothers and children to social and economic protection)

– *United Kingdom*

Legislation does not prohibit all forms of corporal punishment against children in the home

Recommendation(s)

–

Renewed Recommendation(s)

–

⁴ 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.