



Strasbourg, 23 March 2010

T-SG(2010)6

**EUROPEAN SOCIAL CHARTER**  
**GOVERNMENTAL COMMITTEE**

**REPORT CONCERNING CONCLUSIONS 2008 OF  
THE EUROPEAN SOCIAL CHARTER (revised)**

**(Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus,  
Estonia, Finland, France, Georgia, Ireland<sup>1</sup>, Italy, Lithuania, Malta,  
Moldova, Netherlands (Kingdom in Europe), Norway, Portugal, Romania,  
Slovenia and Sweden)**

*Detailed report of the Governmental Committee  
established by Article 27, paragraph 3, of the European Social Charter<sup>2</sup>*

---

<sup>1</sup> As no report was submitted by Ireland, no conclusions were adopted in respect of this State.

<sup>2</sup> The detailed report and the abridged report are available on [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

## CONTENTS

	<i>Page</i>
I. Introduction .....	3
II. Examination of national situations on the basis of Conclusions 2008 of the European Committee of Social Rights.....	4
 <i>Appendix I</i>	
Chart of signatures and ratifications .....	71
 <i>Appendix II</i>	
List of Conclusions of non-conformity.....	72
 <i>Appendix III</i>	
List of Conclusions deferred - for lack of information for the second time - because of questions asked for the first time or additional questions (first reports and others).....	75
 <i>Appendix IV</i>	
Warning(s) and recommendation(s) .....	77

## I. Introduction

1. This report is submitted by the Governmental Committee of the European Social Charter made up of delegates of each of the forty two states bound by the European Social Charter or the European Social Charter (revised)<sup>1</sup>. Representatives of international organisations of employers and workers (presently the European Trade Union Confederation (ETUC) and the International Organisation of Employers (IOE)) attend meetings of the Committee in a consultative capacity. The Confederation of European Business (BUSINESSEUROPE) is also invited to attend but did not participate.

2. 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 published on [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

3. 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, the Governmental Committee (Article 27 of the Charter) draws up a report to the Committee of Ministers which may "make to each Contracting Party any necessary recommendations" (Article 29 of the Charter).

4. In accordance with Article 21 of the Charter, the national reports to be submitted in application of the European Social Charter (revised) concerned Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Moldova, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia and Sweden. Reports were due on 31 October 2007 at the latest; they were received between October 2007 and October 2008; no report was submitted by Ireland. The Governmental Committee repeats that it attaches a great importance to the respect for the deadline by the States Parties.

5. Conclusions 2008 of the European Committee of Social Rights were adopted in October and December 2008 (Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Italy, Lithuania, Malta, Moldova, Netherlands (Kingdom in Europe), the Netherlands Antilles and Aruba), Norway, Portugal, Romania, Slovenia and Sweden). In the absence of a report, no Conclusions were adopted in respect of Ireland.

6. The Governmental Committee held two meetings (25-28 May 2009, 5-8 October 2009), which were chaired by Mr Gyorgy KONCZEI (Hungary) for the May meeting, and by Mrs Alexandra PIMENTA (Portugal) for the October meeting.

7. Following a decision in October 1992 by the Ministers' Deputies, observers from member states of central and eastern Europe having signed the European Social Charter or the European Social Charter (revised) (Montenegro, the Russian Federation, Serbia)

---

<sup>1</sup> List of the States Parties on 1 December 2009: 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, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

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

8. The Governmental Committee was satisfied to note that since the last supervisory cycle, the following signatures and ratifications had taken place:

- on 20 April 2009, Hungary ratified the European Social Charter (revised);
- on 23 April 2009, the Slovak Republic ratified the European Social Charter (revised);
- on 27 May 2009, "the former Yugoslav Republic of Macedonia" signed the European Social Charter (revised);
- on 10 June 2009, Turkey ratified the Amending Protocol to the European Social Charter;
- on 14 September 2009, Serbia ratified the European Social Charter (revised);
- on 16 October 2009, the Russian Federation ratified the European Social Charter (revised);
- on 6 November 2009, Croatia signed the European Social Charter (revised).

9. The state of signatures and ratifications on 1 December 2009 appears in Appendix I to the present report.

## **II. Examination of Conclusions 2008 of the European Committee of Social Rights**

10. 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](http://www.coe.int/socialcharter).

11. The Governmental Committee continues the improvement of its working methods by applying the new rules of procedure adopted at its 117th meeting (16 May 2008). In applying these measures, it deals with Conclusions of non-conformity in the following manner:

Conclusions of non-conformity for the first time: States concerned are invited to provide information on the measures that have been taken or have been planned to bring the situation into conformity. This information appears *in extenso* in the reports of the meetings of the Governmental Committee (see Appendix II to the present report for a list of these Conclusions);

Renewed Conclusions of non-conformity: These situations are debated in Committee with a view to taking decisions regarding the follow-up (see Appendix II to the present report for a list of these Conclusions);

The Governmental Committee also takes note of Conclusions deferred for a second time for lack of information as well as conclusions deferred because of questions asked for the first time, or due to additional questions, and invites the States concerned to supply the relevant information in its next report (see Appendix III to the present report for a list of these Conclusions).

12. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix II to the present report, it used the voting procedure for 3 of them, and adopted 1 warning (see Appendix IV). The detailed report which may be consulted at [www.coe.int/socialcharter](http://www.coe.int/socialcharter) contains more extensive information regarding the cases of non-conformity.

13. During its examination, the Governmental Committee took note of important positive developments in several States Parties. It also asked governments to take into consideration any previous Recommendations adopted by the Committee of Ministers.

14. The Governmental Committee urged governments to continue their efforts with a view to ensuring compliance with the European Social Charter (revised).

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

**Resolution on the implementation of the European Social Charter (revised) during the period 2005-2006 (Conclusions 2008, provisions related to employment, training and equal opportunities)**

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

The Committee of Ministers,<sup>1</sup>

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

Having regard to Article 29 of the Charter;

Considering the reports on the European Social Charter (revised) submitted by the Governments of Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Italy, Lithuania, Malta, Moldova, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia and Sweden (concerning the reference period 2005-2006); with the exception of conclusions for Ireland, which did not submit a report;

Considering Conclusions 2008 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,

---

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

Recommends that Governments take account, in an appropriate manner, of all the various observations made in the Conclusions 2008 of the European Committee of Social Rights and in the report of the Governmental Committee.

## **EXAMINATION ARTICLE BY ARTICLE<sup>1</sup>**

### **Article 1§1 – Policy of full employment**

#### **RSC<sup>2</sup> 1§1 ROMANIA**

“The Committee concludes that the situation in Romania is not in conformity with Article 1§1 of the Revised Charter on the ground that the measures taken to remedy long-term unemployment and youth unemployment are inadequate for achieving substantial improvement of the situation.”

16. The representative of Romania emphasised her government's efforts to activate unemployed persons in the most vulnerable categories, particularly via the national employment programme. Some measures aim in particular at encouraging the employment of disabled persons and young graduates. Other measures intend to enable the long-term unemployed to enter or re-enter the labour market, such as the creation of temporary jobs, and to encourage the participation in training sessions.

17. As a result, 506 804 persons had found employment in 2007 under the national employment programme, representing 58.7% of all those benefiting from active measures (862 225 persons). Of these 506 804, 27 127 were long-term unemployed who had found work, 5.4% of the total.

18. The representative of Romania also referred to certain specific initiatives, such as the "caravan for employment" operation launched by the national employment agency in 2005. The aim of this programme was to offer improved information and guidance to persons living in rural areas and the Roma population on active measures from which they might benefit. A total of 31 234 Roma had taken part in this operation in 2008, of whom 2 259 – 7.2% compared with 4% in 2007 – had subsequently found employment. Of persons living in rural areas, 8 458 persons had found work in 2008 after taking part in the operation, about 15% of all those taking part, compared with 33% in 2007.

19. The Governmental Committee noted the developments in Romania. It invited the Government to supply all relevant information in the next report and decided to await the ECSR's next assessment.

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

#### **RSC 1§2 CYPRUS**

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

- nationals of States Parties legally residing in Cyprus can only be employed if no Cypriot is available and willing to fill the particular vacancy, which constitutes direct discrimination based on nationality;
- the duration of alternative service is a disproportionate restriction on workers' right to earn their living in an occupation freely entered upon.”

---

<sup>1</sup> States in English alphabetic order.

<sup>2</sup> RSC : European social Charter (revised).

### First ground of non conformity

20. The representative of Cyprus explained that since the entry of Cyprus into the EU all EU nationals may work in Cyprus on an equal footing with nationals. Third country nationals have to obtain a work permit for a specific job with a specific employer before their arrival in Cyprus. These workers are temporary and their stay is usually limited to the period of their employment which is usually for 2 years renewable for four years. Apart from this group of temporary workers, all other third country nationals residing legally have the right of access to employment. Limitations and conditions for access to employment are only applied for temporary workers from third countries whose entry and stay in Cyprus is closely linked with their employment in a specific occupation.

### Second ground of non conformity

21. The representative of Cyprus explained that the legislation governing alternative service for conscientious objectors was amended in 2007 and the duration of alternative service had been reduced. Currently military service is of 24 months duration, alternative service has been reduced from 42 to 34 months and special military service from 34 to 30 months.

22. The Governmental Committee took note of the information provided and decided to await the next assessment of the ECSR.

### **RSC 1§2 ESTONIA**

“The Committee concludes that the situation in Estonia is not in conformity with Article 1§2 of the Revised Charter on the grounds that the length of alternative service to military service is excessive and restricts the right to earn a living in an occupation freely entered upon.”

23. The representative of Estonia informed the Committee that all conclusions of the ECSR were discussed annually by all relevant Ministries, and were sent to the relevant Parliamentary Commissions and Office of the Prime Minister.

24. Between 2007 and 2010, there will be an overhaul of the Military Code and the length of alternative service will be reviewed as part of this.

25. The representative of Estonia gave further information on the situation; regular military service is of either 8 months or 11 months duration, more than 50% of conscripts are called up for 11 months. Alternative service is rare in Estonia; 3 persons had completed alternative service by the end of 2007 and 11 were currently engaged in alternative service.

26. On the proposal of the Lithuanian, Czech and Portuguese representatives, the Governmental Committee urged the Government of Estonia to take all necessary steps to bring the situation into conformity with the Charter. Meanwhile it decided to await the next assessment of the ECSR.

### **RSC 1§2 FINLAND**

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

- the law establishes a ceiling on the compensation payable in cases of unlawful discriminatory dismissal;

- the length of alternative civilian service constitutes a disproportionate restriction on the right to earn a living in an occupation freely entered upon.”

#### First ground of non conformity

27. The representative of Finland explained to the Committee that in cases of unlawful discriminatory dismissal the Employment Contracts Act provides for compensation of a minimum of 3 month's and maximum of 24 months' pay. In case of a shop steward, it is 30 month's pay. In addition the victim may seek redress under other legislation such as the Non-discrimination Act, the Act on Equality between Women and Men or the Tort Liability Act provided that the special requirements in regard to each act are met.

28. Under the Non-Discrimination Act, the victim is entitled to compensation for suffering caused by the discriminatory action, the maximum amount of which is 15 000 €. This, however, may be exceeded for special reasons as outlined in the working document.

29. The amended Act on Equality between Women and Men provides for unlimited compensation in case of discrimination based on gender except in cases of recruitment where the maximum amount is 3 000 €.

30. Under the Tort Liability Act, the victim may be compensated for material losses due to the employer's negligence or fault as well as for any suffering experienced if the employer is found to have committed a crime. It is to be noted that an unlawful dismissal may meet the requirements of work discrimination which is criminalized in Penal Code.

31. According to the representative of Finland, Finnish legislation, as outlined above, does not establish a ceiling for compensation; it only defines the maximum amount of the time over which the employer is responsible for the damages caused by his/her unjustified actions. It provides a system where the victim has several possibilities of seeking redress and which are not mutually exclusive; an employer may be obliged to pay the employee a sum of 24 months' pay and compensation under the Non-Discrimination Act (max 15 000 euro which may, however, be exceeded for special reasons) and under the Act on Equality between Women and Men (limitless) and under the Tort Liability Act (material losses and suffering) .

32. In addition, the non discrimination Act is under review and it is possible that the 15,000 euro limit may be abolished.

#### Second ground of non conformity

33. The representative of Finland explained that the new amendment to the Non Military Service Act reduced alternative service to 362 days, 33 days shorter than previously stipulated and equivalent to the longest period of military service.

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

#### **RSC 1§2 FRANCE**

“The Committee concludes that the situation in France is not in conformity with Article 1§2 of the Revised Charter because interpreter guides and national lecturers with a state diploma are the victims of discrimination as regards their freedom to conduct guided tours particularly at some of the principal tourist sites.”

35. As regards the first ground of alleged discrimination (see Collective Complaint *Syndicat national des Professions du tourisme v. France* (No.6/1999) – Decision on the merits of the ECSR on 10 October 2000), the representative of France explained that the difference in treatment between approved lecturer guides and interpreter guides and national lecturers with a state diploma was based on their qualifications.

36. As regards the second ground of alleged discrimination (*ibidem*), the representative of France informed the Committee that in fact there was no discrimination between the guides/lecturers in matters of fee conditions. Entrance fees are identical for all tourist guides.

37. Lastly, concerning the third ground of alleged discrimination (*ibidem*), the French representative stated that only certain parts of certain monuments were restricted to between approved lecturer guides and interpreter guides and that this was due to security reasons.

38. The representative of the ETUC was of the opinion that now only the third ground of discrimination posed a problem.

39. Several representatives (Czech Republic, Lithuania, Romania) noted that some of this information was new information and thus should be examined by the ECSR.

40. The Governmental Committee urged the government of France to provide all relevant information in the next report and decided to await the next assessment of the ECSR.

## **RSC 1§2 ITALY**

“The Committee concludes that the situation in Italy is not in conformity with Article 1§2 of the Revised Charter for the following reasons:

- foreign nationals’ access to public service employment is excessively restricted and constitutes discrimination on grounds of nationality;
- the Navigation Code provides for criminal penalties against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where there is no threat to the safety of the vessel or aircraft, thus constituting excessive coercion to work.”

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

41. The representative of Italy provided the following information:

“It must be underlined that in Italy to work for the public administration you have to go through a public examination according to the domestic legislation. In this regard, we have to differentiate between EU and non EU nationals. By national regulation (see art. 38 Legislative decree n. 165/2001; DPR 487 of 9 may 1994), EU nationals have the right to enter public employment, though only to posts which don’t involve direct or indirect participation in the exercise of public authority or the protection of the general interests of the State.

It is not possible to access posts of the public employment that involve direct or indirect participation in the exercise of public authority or the protection of the general interests of the State irrespective of the nationality.

Domestic law n. 174/1994 (see art. 1) stipulates these posts as reported in last report. Moreover, according to the EC Treaty, the principle of free movement of persons of the European Community shall not apply to employment in the public service. However, in this regard the European Court by the judgment of 17 December 1980 (case 149/79) has clarified that this is not a total exclusion, but it involves only a range of posts connected with the exercise of powers conferred by public law and with the protection of general interests.

Such posts in fact presume the existence of a special relationship of allegiance to the State, on the part of those occupying them, and reciprocity of right and duties which form the foundation on the bond of nationality. In this regard, the Committee considers that domestic law places excessive restrictions on access to public service employment with respect to foreign nationals. In contrast to the ECSR, Italy considers that public employment posts limited only to nationals according to domestic law N° 174/1994 are strictly related to national security or the exercise of public authority for the protection of law and order, and are thus in conformity with the Revised Charter.

In respect of non-EU nationals, domestic law prescribes a general ban from public service employment. Nevertheless, in the light of the growing presence of immigrants in Italy, we have to take into consideration the issue related to access to the public employment by regular immigrants. In effect, on the one hand we have to highlight that the legal framework, in particular art. 2 of the legislative decree N° 286/1999 –Immigration Consolidation Act, provides the principle of equal treatment between nationals and foreign nationals; by the Legislative decree n. 215/2003 – implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

According to the article 3 of the law N°215, a difference of treatment, which is based on a characteristic related to racial or ethnic origin, shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, the objective is legitimate and the requirement is proportionate. On the other hand, over the last few years, several judgments were issued in favour of non-EU nationals that wish to have access to public employment. In fact, according to some sections of case law, the exclusion principle of the foreign nationals from the public service employment constitutes discrimination, especially in the light of art. 2 Immigration Consolidation Act. According to this interpretation, the position of non-EU nationals and EU nationals is equalised.

There are many judgments in favour of foreign nationals. Moreover, a specific judgment demonstrates a significant change in this direction. This case law involves an Albanian doctor. In 2005 he took legal action against a hospital in Careggi (Florence) that decided to exclude him from the competition to fill a post as civil manager. Following legal action, both the judge of first instance and the justice of appeal concluded in favour of the doctor. This can be seen as an important step toward access to civil manager positions for foreign nationals.”

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

### Second ground of non conformity

43. The representative of Italy announced that a bill to amend the Navigation Code was currently being prepared. It would do away with the criminal penalties against seafarers and civil aviation personnel who deserted their posts or refused to obey orders, except in cases where the safety of the vessel or aircraft was at risk. More information would be provided in the next report.

44. The representatives of Belgium, the Czech Republic, France and the ETUC submitted that a bill had been announced in the past but had still not yet been referred to parliament for adoption. The representative of Romania, by contrast, saw this as a positive sign and said that the Government should be encouraged to speed up the adoption process.

45. The Secretariat pointed out that many States Parties had been in this situation and had now brought it into conformity with the Charter. Furthermore, the Committee had already adopted proposals for Recommendations in the past where legislation had been announced but its eventual adoption seemed only to be a possibility (Recommendation No. R Chs (94) 4, adopted by the Committee of Ministers on 8 April 1994 against Italy with regard to Article 1§2).

46. The representative of France said that during the previous discussion of this situation (Detailed report on Conclusions 2006, §§ 42 and 43), the Committee had voted

on a proposal to renew the Recommendation and that a proposal to adopt a simple warning would amount to a concession on the Committee's part.

47. The representative of the ETUC supported the proposal made by the representative of France.

48. The Chair called for a vote on a proposal for a Recommendation, which was not adopted (10 votes for, 3 against and 17 abstentions).

49. The Governmental Committee recalled that a Recommendation had already been adopted against Italy and urged the Government to take all the necessary steps to bring the situation into conformity with Article 1§2 of the revised Charter.

### **RSC 1§2 LITHUANIA**

"The Committee concludes that the situation in Lithuania is not in conformity with Article 1§2 of the Revised Charter on the ground that the Act on the evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the present activities of former permanent employees of the organisation entails restrictions which go beyond the scope of Article G of the Revised Charter."

50. The representative of Lithuania stated that these restrictions were no longer in force as they were intended from their inception to expire on 1 January 2009.

51. The Governmental Committee took note of the information provided and decided to await the next assessment of the ECSR.

### **RSC 1§2 MALTA**

"The Committee concludes that the situation in Malta is not in conformity with Article 1§2 of the Revised Charter on the ground that access to posts in the public service and public sector is too restricted for nationals of other States Parties."

52. The representative of Malta provided the following information:

"Article G of the European Social Charter states that restrictions to the rights and principles set out by the Charter are permissible if those restrictions are prescribed by law and are necessary in a democratic society for, among other things, the protection of public interest.

It is submitted that the nationality requirements applying to recruitment to the Maltese Public Service meet these two criteria of admissibility and should not, therefore, be regarded as contravening the Charter.

The current employment situation vis-à-vis non-Maltese nationals in the Maltese Public Service is regulated by the Public Service Commission Regulations (LN121/77), which have the status of law under Article 121(1) of the Constitution of Malta. Regulation 12 of these Regulations presupposes that in the first instance, vacancies in the Public Service should be open to Maltese nationals. By virtue of the Treaty of Accession governing Malta's entry to the European Union, the same procedure became applicable to the nationals of other EU Member States and members of the European Free Trade Area (EFTA) on Malta's accession to the EU. This position is allowed for by Article 49(f) of the recently enacted Public Administration Act (Cap. 497), which has yet to come into force. This situation is, in fact, very similar to employment practices in other countries party to the Charter."

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

### **RSC 1§2 MOLDOVA**

"The Committee concludes that the situation in Moldova is not in conformity with Article 1§2 of the Revised Charter on the ground that, during the reference period, the length of alternative service excessively restricted the worker's right to earn a living in an occupation freely entered upon."

54. The representative of Moldova explained that Act No. 156-XVI on the organisation of (alternative) civil service entered into force on 7 September 2007. It reduces the length of alternative civil service from 24 to 12 months. She added that a Government Decision on the organisation and functioning of civil service was adopted in July 2008.

55. The representative of ETUC welcomed the new developments, in particular since Moldova managed to bring the length of alternative service in line with that of the military service. This is an interesting reference point, in particular with regard to discussions on this topic for other Contracting Parties and some of the reasons that are provided by others in sticking to different periods of service.

56. The Governmental Committee noted these developments and decided to await the next assessment of the ECSR.

### **RSC 1§2 PORTUGAL**

“The Committee concludes that the situation in Portugal is not in conformity with Article 1§2 of the Revised Charter because the Merchant Navy Criminal and Disciplinary Code provide for prison sentences against seafarers who abandon their posts.”

57. The representative of Portugal explained that a Bill seeking to remove the impugned provisions from the Merchant Navy Criminal and Disciplinary Code was currently before the Parliament. In light of upcoming elections, she indicated that the parliamentary procedure will be slowed down but that adoption is likely to take place within the following twelve months.

58. The Governmental Committee did not take any steps but urged the Government to bring the situation into conformity with the Article 1§2 of the Charter as soon as possible and decided to await the next assessment of the ECSR.

### **RSC 1§2 ROMANIA**

“The Committee concludes that the situation in Romania is not in conformity with Article 1§2 of the Revised Charter on the ground that, during the reference period, the length of alternative service excessively restricted the worker’s right to earn a living in an occupation freely entered upon.”

59. The representative of Romania informed the Committee that Act No. 395/2005 provides for the phasing out of compulsory military service, opting for professional armed forces composed of voluntary recruits. Therefore, alternative service will also disappear.

60. The Governmental Committee noted these developments and decided to await the next assessment of the ECSR.

## **Article 1§3 – Free placement services**

### **RSC 1§3 BELGIUM**

“The Committee concludes that the situation in Belgium is not in conformity with Article 1§3 of the Revised Charter on the ground that it has not been established that the right to free employment services is guaranteed.”

61. The representative of Belgium supplied new information on the Walloon Region that it had not been possible to include in the report. The total number of positions reported vacant by FOREM had risen from 85 833 in 2005 to 100 533 in 2006, while the placement rate had risen from 85% in 2005 to 86% in 2006. The average time taken to fill vacant

posts had been 36 days in 2006, compared with 34 in 2004. However, she had no information on the German-speaking Community.

62. The Governmental Committee noted the information supplied by the representative of Belgium. It urged the Government to supply all relevant information in the next report, in particular with regard to the German-speaking Community and decided to await the ECSR's next assessment.

### **RSC 1§3 ITALY**

"The Committee concludes that the situation in Italy is not in conformity with Article 1§3 of the Revised Charter on the grounds that the Government has not established that the right to free placement services is guaranteed."

63. The representative of Italy said that the public employment services (so called "*Centri per l'impiego*") are absolutely free of charge by law. They operate throughout the national territory and fall within the competence of the Regions and local authorities (Provinces). The main functions of such services are job placement, mediation between labour supply and demand, active employment policies.

64. It could be useful to assess the real effectiveness of free public employment services that in 2008 more than 4 million job seekers registered as unemployed and used the services of active policies. Moreover, according to the results of a sample survey, the public employment services annual placement rate had been 3% during the reference period. In particular In 2005, 3.2% in 2005; 3.7% in 2006; 3.2% in 2007.

65. The representative of Italy sought to underline that these figures should be assessed taking into account the different ways that one can enter the labour market in Italy, not only by means of the public employment services. For example to work for the public administration one must go through a public examination; in the private sector one may be recruited directly by the employer without going through employment offices, or by means of Employment Agencies (public or private actors) that favour the employment of the weakest groups in the labour market. The structure and functioning of these Agencies are laid down by Interministerial Decree (any information regarding this kind of Agency we have provided in the last report).

66. Private agencies were under no obligation to notify the public services of job vacancies. In future, a new procedure designed to make it easier to monitor the placement process and the various partners involved should be set up. More information would be provided in the next report.

67. In reply to the comments by the representatives of Poland and the ETUC on the particularly low placement rate announced by the representative of Italy, the secretariat pointed out that the ground for non-conformity in this instance had been the lack of information.

68. The Governmental Committee urged the Government to supply all the relevant information in the next report to enable the European Committee of Social Rights to assess the situation.

### **RSC 1§3 ROMANIA**

"The Committee concludes that the situation in Romania is not in conformity with Article 1§3 of the Revised Charter because it has not been established that the right to free employment services is guaranteed."

69. The representative of Romania provided new information on the geographical coverage and staffing of the public employment services. As well as the national employment agency, there were local agencies and adult training centres throughout the country in the counties, The national employment agency currently employed 2 882 persons and another 1 066 were employed in the local agencies and adult training centres.

70. The Governmental Committee urged the Government to supply detailed statistics in the next report and decided to await the ECSR's next assessment.

## **Article 1§4 – Vocational guidance, training and rehabilitation**

### **RSC 1§4 BELGIUM**

“The Committee concludes that the situation in Belgium is not in conformity with Article 1§4 of the Revised Charter.”

71. See Articles 9, 10§3 and 15§1.

### **RSC 1§4 BULGARIA**

“The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§4 of the Revised Charter on the ground that nationals of other States Parties lawfully resident or working regularly in Bulgaria are subject to a length of residence requirement for entitlement to vocational guidance, training or rehabilitation.”

72. The representative of Bulgaria provided the following information:

“According to art. 18, par. 3, pt. 1 from the Employment Promotion Act, persons entitled to registration in regional divisions of the Employment Agency seeking work and enjoy rights under the Employment Promotion Act including information services, vocational orientation, mediation, training for adults (motivational training, literacy training, vocational training and training for obtaining key competences) and inclusion in programmes and measures for employment and training, except for Bulgarian citizens, are:

1. foreigners holding a permanent residence permit for the Republic of Bulgaria;
2. persons who have been granted the right of asylum;
3. persons who have been granted refugee status or humanitarian status;
4. persons enjoying such rights as provided for in an international treaty whereto the Republic of Bulgaria is a party.
5. persons, citizen of third countries that are members of families of a Bulgarian citizen or citizens of a member-country of the EU, or of member-country of the The Agreement creating the European Economic Area, or of the Swiss Confederation.

As job seeking persons can be registered unemployed and employed persons, students and persons that have acquired the right of pension.

**Unemployed persons**, registered in the divisions of the Employment Agency, have access to the full range of services, organized and financed with resources from the state budget for active policy on the labour market. This includes the making use of: information on programmes and measures for retaining and promotion of employment; psychological support; professional orientation; inclusion in training for adults (training for acquiring professional orientation, motivational training, literacy training, training for key competences); inclusion in programmes and measures for employment and training; grants for training, resources for transportation and accommodation for the time of the training.

**Employed persons**, registered in the divisions of the Employment Agency, as job seekers, can make use without payment of the information about the announced free work places, mediation on informing and hiring to work, psychological support and professional orientation. Training for employed persons for acquiring of a professional qualification and training for key competences, organized by the Employment Agency, is given to the workers in micro- and small enterprises and to workers, for which the qualification requirements have changed due to changes in the requirements for holding the working place with the same employer. This training is co-financed with resources from the state

budget for active labour market policy up to half of the maximum determined amount, determined by the National action plan on employment for the relevant year. The rest of the financing for the training is given by the employer.

Training for adults and vocational orientation as an employment service, is aimed at insuring conditions for continuous support and amelioration of the quality of the work force and its readiness for employment in accordance with the requirements of the labour market and the economy of knowledge in the country. In this sense, a foreign citizen that is permitted to the national labour market for performing limited and specialized employment through a system of issuing work permits must already possess the required specialized knowledge, skills and professional experience for the corresponding work. Moreover, the ground for permission of a foreigner on the territory of the country is exactly the issued work permit which term corresponds to the necessary for completing the relevant work term foreseen in the labour contract. After the fulfillment of the obligations under the labour contract the foreigner leaves the country. Under this hypothesis the foreigner performs specialized work for a determined period and does not intend to settle permanently in the country and realize on the labour market, thus it is not foreseen to be given training and professional qualification to him/her for future realization on the labour market in the country. In case that the person has the intent to settle permanently in Bulgaria then he/she may acquire a permanent residence permit on the ground of nine hypotheses stipulated in the Foreigners in the Republic of Bulgaria Act one of which is the 5 years of uninterrupted lawful residence. Permanent residence permit guarantees access to all economic and social rights including the described employment service. It should be taken into account that the requirements does not apply for citizens of another member country of the EU or another member country of the European Economic Area that have a status equal to the one of the Bulgarian citizens in this relation.”

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

#### **RSC 1§4 CYPRUS**

“The Committee concludes that the situation in Cyprus is not in conformity with Article 1§4 of the Revised Charter.”

74. See Article 10§3.

#### **RSC 1§4 ESTONIA**

“The Committee concludes that the situation in Estonia is not in conformity with Article 1§4 of the Revised Charter.”

75. See Articles 9 and 15§1.

#### **RSC 1§4 LITHUANIA**

“The Committee concludes that the situation in Lithuania is not in conformity with Article 1§4 of the Revised Charter.”

76. See Articles 9 and 10§3.

#### **RSC 1§4 MALTA**

“The Committee concludes that the situation in Malta is not in conformity with Article 1§4 of the Revised Charter.”

77. See Articles 9 and 15§1.

#### **RSC 1§4 MOLDOVA**

“The Committee concludes that the situation in Moldova is not in conformity with Article 1§4 of the Revised Charter.”

78. See Articles 9 and 15§1.

### **RSC 1§4 ROMANIA**

“The Committee concludes that the situation in Romania is not in conformity with Article 1§4 of the Revised Charter.”

79. See Article 15§1.

### **RSC 1§4 SLOVENIA**

“The Committee concludes that the situation in Slovenia is not in conformity with Article 1§4 of the Revised Charter.”

80. See Article 10§3.

## **Article 9 – The right to vocational guidance**

### **RSC 9 BELGIUM**

“The Committee concludes that the situation in Belgium is not in conformity with Article 9 of the Revised Charter on the ground that it has not been established that the right to vocational guidance in the education system and in the labour market is guaranteed.”

81. The representative of Belgium said that the information requested, which had been sent to the Committee in writing in May 2008 following the first non-compliance conclusion, was not in the second report on the revised Social Charter, submitted by Belgium in February 2008, but in the addendum to this report supplied to the secretariat in May 2008. However the information requested did not cover the whole of the reference period (01/01/2005 to 31/12/2006), but mainly concerned 2007. Appropriate figures would appear in the next report.

82. The Governmental Committee noted this information, invited the Government to supply detailed information in the next report and decided to await the ECSR's next assessment.

### **RSC 9 ESTONIA**

“The Committee considers that the situation is not in conformity with Article 9 of the Revised Charter on the ground that vocational guidance services in the labour market are accessible only to unemployed persons and workers given notice of redundancy.”

83. The representative of Estonia said that the interval between the two examinations (Conclusions 2007 and Conclusions 2008) had been very short, because of the transition between the two report presentation systems. Guidance services in Estonia were supplied under legislation and a programme that would expire in 2013. The programme was financed by the European Social Fund and targeted certain groups, such as the unemployed and persons given notice of redundancy. This was a means of offering these services to a larger number of people. Amendments to the legislation would be passed at the end of the programme, in 2013, when other employed persons would then become eligible for vocational guidance services.

84. The representative of Lithuania thought that progress should be assessed the next time to see whether the results were satisfactory.

85. The representative of ETUC said that the main ground for non-compliance was that these services were only available to unemployed persons and those given notice of redundancy.

86. The representative of Estonia said that persons given notice of redundancy were concerned, but that all those who contacted the guidance services could benefit from them.

87. The Governmental Committee noted the information supplied and decided to await the ECSR's assessment when the programme ended in 2013 and the law was amended.

### **RSC 9 LITHUANIA**

"The Committee concludes that the situation in Lithuania is not in conformity with Article 9 of the Revised Charter because it has not been established that equal treatment is guaranteed to all nationals of States Parties."

88. The representative of Lithuania provided the following information:

"Vocational counseling, guidance and information is performed by territorial labour market training and counseling offices to all legal residents and workers in Lithuania. There is no legal requirement of a length of residence for foreign nationals residing or working lawfully in Lithuania to be entitled to vocational guidance."

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

### **RSC 9 MALTA**

"The Committee concludes that the situation in Malta is not in conformity with Article 9 of the Revised Charter on the ground that it has not been established that there is a guaranteed right to vocational guidance in the education system."

90. The representative of Malta provided the following information:

"Malta provides guidance services both in the educational sector as well as in the unemployment sector. These services are offered by two different entities. The reply below is therefore thus structured.

#### Vocational Guidance in Education

One cannot conclude that lack of statistical data indicates that the situation in Malta is not in conformity with the Charter. One needs to take into consideration the fact that Malta has a population of about 400,000 persons only. The Government offers centralised services as well as decentralised services at educational and training institutions and whenever and wherever the decentralised services need more specialised advice and guidance, these are generally offered through the centre.

Again, because of the small size of the Maltese islands, one is hardly ever farther away from the central services than 45 minutes – which means that all services offered are within reasonable reach. Moreover, with an inclusive education and training culture and context, specific records are not retained to differentiate the guidance services given to different categories of persons (e.g. persons with special needs). However, guidance services are easily and freely provided.

With regards to the statistical data requested relating to the expenditure on guidance services as well as the number of beneficiaries of guidance services, one has to stress once again that due to the small size of the Maltese islands, expenditure on guidance services provided throughout public educational establishments is not differentiated and is included in the general educational budget for the year.

Nonetheless an estimate on the expenditure on guidance services is provided below.

<b>Scholastic Year</b>	<b>Expenditure in (€)</b>
2007-2008	295,951

It is important to note that this only covers the salaries of the persons providing guidance services, and does not cover any other related expenses such as energy costs, stationery, travelling expenses etc. related to the provision of guidance services. Moreover, the estimate provided covers only the public schools which account for 62% of all school in Malta. No data is available on the other 38% which is composed of 26% church schools and 12% private schools.

As regards the number of beneficiaries of guidance services, one can say that all students attending public educational establishments have access and make use of the free guidance services offered by the government.

The University has several ways of providing guidance services. In fact the University has an inbuilt Student Advisory Service (SAS), a unit consisting of three professionals who provide guidance services. The Counselling Unit provides both guidance and counselling. There are four full-time counsellors and four part-time counsellors. There is also a mentoring system whereby students who apply for such a service are assigned a lecturer who meets the students on a regular basis and discusses issues related to their course and their future career. The relative annual expenditure for these two institutions is as follows:

Scholastic Year	Institution	Expenditure in (€)
2007-2008	Student Advisory Service	66,839
2007-2008	Counselling Unit	131,510

#### Vocational Guidance for unemployed persons

As from 1st January 2007, Malta's public employment service, that is, the Employment and Training Corporation, started calling registered jobseekers for an in-depth interview by the respective Employment Advisor leading to the development of a Personal Action Plan for each jobseeker. Between October 2005 and December 2008, the following results were registered:

	Oct 2005-Sep 2006	Oct 2006-Sep 2007	Oct 2007-Dec 2008
Number of jobseekers profiled	3297	662	N/A
Number of personal action plans drawn up	2486	6245	4215
Number of jobseekers benefiting from follow-up interviews	8309	9620	15206

The number of jobseekers profiled was substantial in 2005-2006 due to an ad-hoc exercise carried out during the year with the registered jobseekers. In the following year, only those who registered as unemployed thereafter were profiled. As from October 2007, the profiling interview started being incorporated with the development of personal action plans with jobseekers. Similarly a major exercise was held in 2006-2007 to draw up personal action plans for registered jobseekers and a policy was adopted that every jobseeker should have a plan developed for him and jointly with him. Once these action plans are developed, employment advisers follow jobseekers to determine whether they are abiding by these plans through follow-up interviews.

The table below shows the expenditure on guidance services incurred by the ETC.

	Oct 2005-Sep 2006	Oct 2006-Sep 2007	Oct 2007-Dec 2008
Expenditure on guidance and placement services	€602,000	€680,600	€915,608

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

#### **RSC 9 MOLDOVA**

"The Committee concludes that the situation in Moldova is not in conformity with Article 9 of the Charter on the ground that it has not been established that equal treatment is guaranteed to all nationals of States Parties."

92. The representative of Moldova provided the following information:

"According to information received from the Ministry of Economy and Business, paragraph 16 of Government Decision no.450 of 29 April 2004 concerning the "Regulation of professional guidance and psychological support of the population in the field of careers", stipulates that foreign citizens and

those without nationality living on the territory of the Republic of Moldova, benefit, subject to certain conditions, from all professional guidance and psychological support services provided for in this regulation.”

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

### **Article 10§1 - Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education**

#### **RSC 10§1 SLOVENIA**

“The Committee concludes that the situation in Slovenia is not in conformity with Article 10§1 of the Revised Charter on the grounds that nationals of other States Parties lawfully resident or regularly working in Slovenia are not granted equal treatment as regards access to vocational training.”

94. The representative of Slovenia announced that a new Vocational Education Act had been enacted in 2006, by which access to vocational training for foreign nationals is governed by quotas, which are, in turn, decided on the basis of reciprocity.

95. The Secretariat asked how reciprocity should be understood in this respect and recalled that under Article 10§1 application of reciprocity clauses were contrary to the Charter.

96. The Governmental Committee asked the Government to provide all the necessary information regarding the reciprocity agreements in the next report and decided to await the next assessment of the ECSR.

### **Article 10§2 - Promotion of apprenticeship**

#### **RSC 10§2 MALTA**

“The Committee concludes that the situation in Malta is not in conformity with Article 10§2 of the Revised Charter as it has not been established that nationals of other States Parties lawfully resident or regularly working in Malta are guaranteed equal treatment as regards access to apprenticeships.”

97. The representative of Malta explained that following the ratification of the Charter, the Employment and Training Corporation of Malta (ETC) has removed restrictions for access to apprenticeship courses which are now available to nationals of all States Parties. The ETC no longer imposes any restrictions and does not distinguish between Maltese and foreign nationals.

98. The Governmental Committee invited the Government to provide all the information in the next report and decided to await the next assessment of the ECSR.

#### **RSC 10§2 SLOVENIA**

“The Committee concludes that the situation in Slovenia is not in conformity with Article 10§2 of the Revised Charter on the ground that nationals of other States Parties lawfully residing or regularly working in Slovenia are not granted equal treatment regarding access to apprenticeships.”

99. The representative of Slovenia referred to her statement under Article 10§1 and said that apprenticeship training was also covered by the Vocational Education Act of 2006.

100. The Governmental Committee invited the Government to provide all the necessary information in the next report, including the application of reciprocity agreements and decided to await the next assessment of the ECSR.

### **Article 10§3 – Vocational training and retraining of adult workers**

#### **RSC 10§3 BELGIUM**

“The Committee concludes that the situation in Belgium is not in conformity with Article 10§3 of the Revised Charter as it has not been established that nationals of other States Parties legally resident or regularly working in Belgium are guaranteed equal treatment as regards access to continuing training in the German-speaking community.”

101. The representative of Belgium Stated that the Vocational Guidance Act of 2008 guaranteed the equality of treatment of foreign nationals for access to continuing training in the German-speaking community. In fact equality of treatment was guaranteed even before this Act came into force and the reason for non-conformity was the lack of information.

102. The Governmental Committee invited the Government to provide all the information in the next report and decided to await the next assessment of the ECSR.

#### **RSC 10§3 CYPRUS**

“The Committee concludes that the situation in Cyprus is not in conformity with Article 10§3 of the Revised Charter on the grounds that it has not been established:

- that the right to an individual leave for training is guaranteed;
- that the right to vocational training for the unemployed is effectively guaranteed.”

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

103. The representative of Cyprus provided the following information:

“All unemployed individuals, including the long-term unemployed, have the right to attend vocational training programmes as long as they are registered unemployed at the Public Employment Services. These vocational training programmes are promoted mainly by the Human Resources Development Authority (HRDA) whose mission is the planned and systematic training and development of Cyprus’ human resources, at all levels and in all sectors. Training programmes are also promoted by the Cyprus Productivity Centre and the Higher Hotel Institute of Cyprus.

Equality of access to vocational training for all is ensured by both the law and policies of the HRDA. The participation in training activities approved and subsidized by the HRDA of non Cypriot nationals is governed by the same conditions and regulations as for Cypriots.

As for individual leave for training, in certain economic sectors this is formally stated in the collective agreements. Such sectors are the Hotel Industry, Banking Sector, Textile Industry, Luggage and Handbags Industry, Publishing, Cabinet making and Carpentry Industry, Construction Industry, Printing Industry and Private Clinics (more details can be found in the report “The Vocational Education and Training System of Cyprus: Continuing Vocational Education and Training 2007” (November 2008),

[http://www.refernet.org.cy/Publications/Publications/VocTraining/VocTrainingCont2007\\_en.htm](http://www.refernet.org.cy/Publications/Publications/VocTraining/VocTrainingCont2007_en.htm)) In some other sectors however, the approval of the individual leave for training is subject to the employer’s willingness to train the employees of the organisation.

The right to vocational training for the unemployed is effectively guaranteed through several schemes of the HRDA, with the main ones being the following:

1. Training programmes for upgrading the skills of unemployed persons

HRDA, in partnership with the Public Employment Service, the Cyprus Productivity Centre and the Higher Hotel Institute, organizes, as from May 2009, upgrading training programmes for unemployed persons. These programmes cover important horizontal skills, which will help people to return to productive employment. These programmes will be offered free of charge to unemployed persons.

Such skills are for example information technology (IT) skills, languages and health and safety issues. In addition, under this scheme, a variety of technical training programmes are offered to unemployed persons, giving them the opportunity to enhance their existing skills or be retrained and qualify for jobs which demand these skills (examples are training programmes in the maintenance of hotel electromechanical equipment, specialized welding and specialised cuisine skills).

2. Accelerated initial training of newcomers and other unemployed persons

Under this measure, HRDA organises accelerated initial training courses to be implemented by the Cyprus Productivity Center and the Higher Hotel Institute, which aim at giving theoretical and practical training in occupations which are currently in demand. These courses are offered free of charge to persons who want to embark on a career in such occupations. The participants on the programmes receive training allowances from HRDA.

3. Job placement and training of unemployed tertiary education graduates

This measure aims at strengthening the management capacity of enterprises and organizations through the employment and training of young university and other tertiary education graduates. The measure provides incentives to enterprises to provide employment, practical training and work experience to graduates. HRDA provides subsidies to employers for the delivery of in-house training programmes to young graduates (6 or 12 months duration). The in-house training of graduates is enhanced by the participation in other training courses, aiming at specializing and fulfilling their knowledge.

4. Scheme for the promotion of training and employability of the unemployed, co-financed by the ESF (European Social Fund)

The aim of the Scheme was to provide vocational training opportunities and organized practical experience to unemployed individuals, in order to significantly improve their potential in entering/re-entering the labour market and was planned to be organized and implemented over the period 2006 – 2008.

The target for participation in the Scheme over the period 2006-2008 was 700 persons, approximately 200 for placements and 500 for participation in training programmes. The Scheme was fully implemented in 2008 with a total of 800 unemployed beneficiaries, out of which 216 were for placements and 584 were for participation in training programmes. It is worth mentioning that 86,3% of the unemployed participants were women.

The Scheme will continue, appropriately enriched to include actions regarding the promotion of training and employability of young secondary education school graduates and the enhancement of computer literacy of the unemployed.

The Scheme, which aims to provide vocational training opportunities in accordance with the needs and demands of the labour market as well as organised practical experience to the unemployed, in order to significantly improve their potential in entering / re-entering the labour market, is planned to be organised and implemented over the period 2007 – 2013, co-financed by the ESF (European Social Fund).

5. Scheme for the promotion of training and employability of economically inactive women, co-financed by the ESF

The aim of the Scheme was to provide vocational training opportunities and organized practical experience to inactive women, in order to significantly improve their potential in entering / re-entering the labour market and was planned to be organized and implemented over the period 2006 – 2008.

The target for participation in the Scheme over the period 2006-2008 was 800 women, approximately, 200 for placements and 600 for participation in training programmes. The Scheme was fully implemented in 2008 with a total of 782 women beneficiaries, out of which 233 were for placements and 549 were for participation in training programmes.

The Scheme will continue with the aim to provide vocational training opportunities in accordance with the needs and demands of the labour market as well as organised practical experience to inactive women, in order to significantly improve their potential in entering / re-entering the labour market and is planned to be organised and implemented over the period 2007 – 2013, co-financed by the ESF.”

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

### **RSC 10§3 LITHUANIA**

“The Committee concludes that the situation in Lithuania is not in conformity with Article 10§3 of the Revised Charter on the ground that it has not been established that the right to individual training leave is guaranteed to workers.”

105. The representative of Lithuania provided the following information:

“Articles 181 and 210 of the Labour Code of the Republic of Lithuania establish the right to individual training leave for workers. Article 183 establishes the additional guaranties for elected employees of a trade union functioning at an enterprise. As it was mentioned in the Lithuanian report previously there are also additional guaranties for workers who have received a dismissal notice. Usually all conditions for training for employed persons are settled in the employment/ study agreement or in the collective agreement, but those conditions have to obey the provisions of the mentioned Articles of the Labour Code.

Article 181. Educational Leave

1. Employees shall be entitled to educational leave in order to prepare for and take entrance examinations to colleges, higher and high education institutions - three days for each examination.

2. The employees who are studying at schools of general education or at colleges, higher and high educational institutions registered in the prescribed manner shall be entitled to educational leave subject to a certificate of the above institutions:

1) to prepare for and take ordinary examinations - three days for each examination;

2) to prepare for and take credit tests - two days for each credit test;

3) for laboratory work and consultations - as many days as are set out on the syllabi and time-tables;

4) to complete and present the graduation thesis (Bachelor's, Master's) - 30 calendar days;

5) to prepare for and take state (final) examinations - six days for each examination.

3. Travel time shall not be included in the period of educational leave.

Article 210. Conditions of Pay for Educational Leave

1. The employees specified in Article 181 of this Code, who are studying, taking entrance examinations to colleges and higher educational institutions under study contracts with their enterprise, shall be entitled to a paid educational leave, with the pay at the rate of at least the average wage.

2. The pay for the period of study for the employees who are taking examinations or are studying at their own initiative shall be determined in collective agreements or by agreement of the parties.

Article 183. Leave of Absence for Performance of Official or Public Duties

3. The elected employees of a trade union functioning at an enterprise shall be granted a leave of absence up to six working days per year to improve their qualifications, to attend various trade union events etc. The procedure of granting a leave of absence and payment shall be stipulated in a collective agreement.

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

### **RSC 10§3 SLOVENIA**

“The Committee concludes that the situation in Slovenia is not in conformity with Article 10§3 of the Revised Charter on the grounds that nationals of other States Parties lawfully resident or regularly working in Slovenia are not granted equal treatment regarding access to continuing vocational training.”

107. The representative of Slovenia referred to her statement under Article 10§1 and 10§2 and announced that continuing training was also covered by the Vocational Education Act. Besides, she also mentioned the Adult Education Act which provided guarantees for equality of treatment of foreign nationals.

108. The Governmental Committee invited the Government to provide all the information, including the application of reciprocity agreements and decided to await the next assessment of the ECSR.

### **Article 10§4 – Long term unemployed persons**

#### **RSC 10§4 CYPRUS**

“The Committee concludes that the situation in Cyprus is not in conformity with Article 10§4 of the Revised Charter on the grounds that it has not been established that the right to vocational training for the long-term unemployed is effectively guaranteed.”

109. The representative of Cyprus provided the following information:

“The vocational training system in Cyprus provides for the training of the unemployed, including the long-term unemployed. All of the above mentioned schemes of the HRDA targeting the unemployed are fully applied and targeted to the long-term unemployed as well.”

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

### RSC 10§4 NORWAY

“The Committee concludes that the situation in Norway is not in conformity with Article 10§4 of the Revised Charter on the ground that it has not been established that measures aimed at the retraining and re-integration of long-term unemployed persons are adequate.”

111. The representative of Norway provided the following information:

“The Committee concludes that the situation in Norway is not in conformity with Article 10§4 of the Revised Charter on the ground that it has not been established that measures aimed at the retraining and re-integration of long-term unemployed persons are adequate.

The Norwegian Government offers the information below regarding measures relevant to long-term unemployed, participation in training and the impact of such training on reducing long-term unemployment.

#### 1. The labour market in general – share of long-term unemployed

The number of unemployed was on average 42 600 persons in 2008, i.e. a reduction of 8 % compared with 2007. The positive developments, however, was faltering in late 2008. At the end of December 2008 there were 7800 long-term unemployed or about 18 % of all unemployed. By the end of February 2009, 67 400 persons was registered as unemployed, which is equivalent to 2.7 percent of the labour force. Of the 67 400, 7 500 people were on leave. At this time the share of long-term unemployed of the registered unemployed were 13 percent.

#### 2. Measures aimed at long-term unemployed

Long-term unemployment is defined as a continuous duration of unemployment for more than 26 weeks. By interruption of more than 14 days being registered as unemployed, the duration period begins again.

In Norway there has been a principle to mainstream the active labour market programmes. Generally, there are no labour market measures for specific groups. Therefore there are no programmes specifically target long-term unemployed. It is the *individual's need of assistance* that determines whether or not a person may participate in such measures. At the same time, surveys have shown that there is an overrepresentation of young people without education, older workers, immigrants from countries outside the OECD and people with reduced work capacity in the category long-term unemployed. Due to this, some measures are used to a greater extent than others. Training, work practice and wage subsidies are the most frequently used measures for long-term unemployed.

Long-term unemployed is an important group when it comes to the goal of helping more people into work and activity. For those long-term unemployed who have been without a job for a continuous period of two years or more, there is also a guarantee that ensures that they are given an opportunity to participate in a labour market measure. The aim of the guarantee is to facilitate a transition into the labour market for this group of long-term unemployed.

#### 3. Participation in training and labour market measures in general for long-term job seekers

Long-time job seekers are defined as job seekers that have been continuous unemployed for at least 26 weeks. By interruption of more than 4 weeks or more from the disclosure group "job seeker", the duration period begins again. The definition of long-term job seeker is more comprehensive than the definition of long-time unemployment. Year average for long-term job seekers on labour market training and the percentage of long term job seekers on training in relation to the work force are shown in the table below.

*Table: Year average for long-term job-seekers on the labour market training and the share of long-term job-seekers on training due to the work force. 2005- 2008.*

	2005	2006	2007	2008
Training	3105	2125	2151	2119
Percent of the work force	0,087	0,086	0,085	0,082

The reason for the reduction in the share of participants in training in the period from 2005 to 2008 must be viewed in the context of a general rising demand for labour in this period.

In 2008 in average about 5700 long-term job-seekers participated in labour market measures.

#### **4. Effect analysis of labour market training**

There has not been conducted any effect analysis that measure the effects of training for long-term unemployed. Statistics Norway has, however, conducted an effect analysis that includes a sample of registered unemployed and four different groups of labour market measures; training, wage subsidies, work practice and job club<sup>1</sup>.

The analysis covers participants that started a programme some time during the 4th quarter of 2004, and reports estimated effects of the programme a year later on the employee rate for the treated compared to those who received no treatment. The analysis is based on data collected from different administrative registers.

A year later, participants that started in any of the four types of measures in 4th quarter of 2004, had on average a 5 percentage points higher estimated employee rate, compared to those who had no treatment. However the estimated effects vary between different measures and subgroups. The measures seem to have better employment effects for adults (25-54 years) and for participants that received unemployment benefits a month prior to the start of the measures. In the analysis, each of the four measures has a significant positive effect on the estimated employee rate a year later.

About 60 per cent of the labour market measures in the study are training measures. On average, those who started in a training measure had a 4 percentage points higher estimated employee rate compared to those with no treatment. For participants that started on wage subsidies was found the strongest estimated effect on the employee rate a year later (21 percentage points), followed by those who participated in job clubs. A year later, participants that started in job clubs had on average 9 percentage points higher estimated employee rate, compared to those with no treatment. Participants that started in work practice in 4th quarter had on average 7 percentage points higher estimated employee rate a year later, compared to those with no treatment.”

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

### **Article 10§5 - Full use of available facilities**

#### **RSC 10§5 BELGIUM**

“The Committee concludes that the situation in Belgium is not in conformity with Article 10§5 of the Revised Charter on the grounds that nationals of other States Parties legally resident or regularly working in Belgium are not granted equal treatment regarding financial assistance for training.”

113. The representative of Belgium announced that the length of residence requirement in the French community was five years while in the Flemish community two years. No plans had been made to change this situation as removing restrictions for access to student loans and financial aid for foreigners would undermine the system as the number of requests would significantly increase and the possibility of a student leaving the country after receiving the financial aid would also be a risk.

114. The representatives of Lithuania and ETUC drew the Committee’s attention to the fact that the situation was not in conformity since 1996. The representative of Portugal made a proposal for a warning.

115. The Committee voted on a warning which was not carried (4 votes for, 5 against and 24 abstentions).

116. The Governmental Committee expressed its concern about the situation in Belgium which has not been in conformity since 1996 and urged the Government to take measures to bring the situation into conformity.

---

<sup>1</sup> Jørn Ivar Hamre: "Effect analysis of labour market measures started 4th quarter 2004". Reports 2006/27 - Statistics Norway 2006

### **RSC 10§5 FRANCE**

“The Committee concludes that the situation in France is not in conformity with Article 10§5 of the Revised Charter because equal treatment of nationals of other States Parties lawfully resident or regularly working in France is not guaranteed as regards access to scholarships granted on the basis of social criteria for higher education.”

117. The representative of France made clarifications to the situation regarding access to social scholarships. The granting of social scholarships is means tested. To decide on eligibility, the evaluation of revenues is carried out on the basis of tax declarations on revenues received two years before. Such a method for a means-test itself requires two years residence in France before an application for social scholarship can be made. This condition holds for French nationals themselves as well as nationals of other States Parties other than EU nationals. For the latter, it is sufficient that at least one parent earns income in France without being subjected to a prior length-of-residence requirement of two years. It followed from the statement of the representative of France that in practice EU nationals were put in a more favourable situation regarding access to social scholarships. Moreover, the representative of France also informed the Committee of the system of housing assistance which is available to everyone subject to a means-test where the residence status is not taken into account.

118. The Secretariat confirmed that this information was new on two counts, first that the calculation method (means-test) was not known to the ECSR and, secondly, that French nationals were also subjected to two years prior residency requirement as a result of the calculation method.

119. The representative of the Czech Republic said that this case amounted to indirect discrimination towards non-EU nationals. The Secretariat underlined that since this was new information, the ECSR had not yet taken a stand in this respect.

120. The Governmental Committee expressed its concern about the fact that there might be a case of indirect discrimination of non-EU nationals, urged the Government to provide all the information in its next report and decided to await the next assessment of the ECSR.

### **ESC 10§5 MALTA**

“The Committee concludes that the situation in Malta is not in conformity with Article 10§5 of the Revised Charter as it has not been established that the measures to monitor the efficiency of vocational training for young workers are adequate.”

121. The representative of Malta provided the following information:

“The Employment and Training Corporation has a Monitoring and Evaluation Unit tasked with evaluating ETC measures including apprenticeships and vocational training. An evaluation exercise was undertaken in particular concerning apprenticeships when past and current participants and social partners were involved in giving their feedback. The basic skills courses organized by the Corporation were also evaluated through feedback from participants and action is being taken to improve the efficiency and effectiveness of such courses based on the feedback received. In addition to this, the Corporation has both a database of jobseekers and a database of those in employment. Thus, it tracks those who have participated in apprenticeships and vocational training courses to determine whether they have obtained or were still in employment once completing training.

In 2003, ETC carried out a survey amongst apprentices and employers who participated in apprenticeship schemes between 1990 and 2003<sup>1</sup>. 367 ex-apprentices were personally interviewed

---

<sup>1</sup> <http://www.etc.gov.mt/docs/Apprenticeship%20in%20Malta.pdf>

while 160 employers replied to questionnaire sent via e-mail. Employers who sponsored apprentices were satisfied with the apprenticeship system as it enabled them to train apprentices according to their own needs during on-the-job training. Apprentices on their part stated that the apprenticeship system enabled them to obtain skills and employment. This study found out that 84% of ex-apprentices are in employment (79%) or self-employment (5%). Only ten respondents said that they were seeking employment.

The findings above confirm the effectiveness of these schemes in that the vast majority of those who successfully completed an apprenticeship are in employment and have advanced in their career. The success in obtaining employment by those who attended courses depends on which course they attended. While all courses are evaluated for client satisfaction, it has been found out that basic skills courses (literacy, numeracy, jobseeking) are not enough to enable a person to find a suitable employment. These courses must be followed up by vocational training courses in particular occupations to increase the probability of participants in finding employment. The Corporation has decided to focus on short-term vocational training courses as longer-term vocational training is being provided through apprenticeships and vocational courses run by the Malta College of Arts, Science and Technology.

Students following either a Technician Apprenticeship Scheme or an Extended Skill Training Scheme follow courses according to the specific requirements of the industry and that is why the industry provides the students with apprenticeships in collaboration with the Employment and Training Corporation and the vocational education and training institution. On the other hand, vocational educations and training courses are developed locally, generally in close collaboration with foreign vocational education and training institutions in order to ensure that they satisfy industry requirements. In other several areas courses are organised according to the specific requirements of industry after consultations between the education and training institution and industry managers and entrepreneurs. Other courses are organised according to curricula set by professional bodies. Practically all courses lead to a recognized, generally an international recognition, certification.

The following table shows the number of training courses provided by the ETC to both employed and unemployed persons who sought such training from the ETC, throughout the years. The data is staggered according to the nature of the training requested.

**Profile of Trainees aged 16 – 24 who attended ETC Training courses**

	<b>Oct 04-Sep 05</b>	<b>Oct 05-Sep 06</b>	<b>Oct 06-Sep 07</b>	<b>Oct 07-Dec 08</b>
IT Related Courses	490	375	1239	1096
Office Related Courses	176	245	421	605
Basic Skills Courses	788	1,034	3211	1809
Other Courses	281	329	990	1407
Trade Courses	136	238	749	487
Short Courses	36	24	55	15
Small Business Management Course	33	28	98	89
NIFTE	726	806	2006	1323
Traineeships	26	127	249	40

The Maltese education system recognizes the importance of appropriate guidance services so much so that in 2006, a new proviso for the creation of a Directorate for Quality and Standards in Education was introduced in the Education Act (Cap 327 of the Laws of Malta). The Directorate's responsibility is to 'regulate, establish, monitor and assure standards and quality in the programmes and educational services provided by schools'.

The Malta College of Arts, Sciences and Technology (MCAST) is considered as a centre of excellence by the United Kingdom EDEXCELL-BTEC, a leading international vocational education and training awards provider. In fact MCAST courses are not only internally quality assured but they also have the external quality assurance of EDEXCELL-BTEC as well, and most of its courses are awarded jointly.

Local vocational education and training institutions have not received any negative responses to its courses and have received awards either from employers or trade unions. Moreover, MCAST keeps in regular contact with employers, including the Malta Chamber of Commerce, Industry and Enterprise, with which it has a memorandum of understanding which has resulted, for example, in the organisation of a course leading to a diploma in manufacturing excellence. Besides, MCAST is also in regular contact with the Malta Enterprise, the government agency for the promotion of investment, both local and foreign. MCAST also discusses with both the Malta Enterprise and with investors the human resources requirements in the setting up or expansion of existing enterprises.

At University level, the administration holds regular meetings with employers' organizations and unions, such as The Federation for Professional Bodies, in order to keep track of the labour market trends and, on the basis of this information, evaluate the effectiveness and suitability of the training courses provided by the University, and create new courses where necessary. Furthermore, students themselves, through their Student Societies invite various employers and employers' organizations to give talks to students. Thus students are well informed of the employers' needs and may opt to follow the most suitable training course leading to the desired career."

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

### **RSC 10§5 NORWAY**

"The Committee concludes that the situation in Norway is not in conformity with Article 10§5 of the Revised Charter on the ground that nationals of other States Parties legally resident or regularly working in Norway are not treated on an equal footing with Norwegian students as regards financial assistance for education."

123. The representative of Norway said that Norway had a very generous education system which welcomed foreign students. There were no tuition fees for anyone, while living expenses could be financed through loans from the loan fund. Foreign nationals were subject to two years of prior residence requirement for eligibility to student loans.

124. The representative of France stated that Norwegian and Swedish cases were quite similar. She recalled the case law of the ECSR whereby no prior length of residence requirement was permitted. Representatives of several states (Ireland, Lithuania) underlined that this was a very demanding requirement.

125. The Governmental Committee acknowledged that in general the Norwegian educational system is very generous as it offers good opportunities for foreign students by providing education free of charge and by facilitating access to student aid. However, there still is a differential treatment of nationals of other States Parties legally resident in Norway in respect of access to financial aid. Consequently, the Governmental Committee expressed its concern about this situation, and invited the Government to take measures to bring the situation in conformity with the Charter.

### **RSC 10§5 PORTUGAL**

"The Committee concludes that the situation in Portugal is not in conformity with Article 10§5 of the Revised Charter as it has not been established that the equality of treatment of nationals of other States Parties lawfully resident or regularly working in Portugal is guaranteed as regards financial assistance for training."

126. The representative of Portugal provided the following information:

"In order to explain the Portuguese situation it is necessary to make the distinction between European Union citizens and citizens of other European countries.

1. Law n.º 37/2006, of 9 of August (it transposes the EU Directive n.º 2004/38/CE, 29 of April) - regulates the right of free movement and residence of EU citizens and the members of their family, establishing the juridical system of entry, stay and expulsion of EU nationals, EFTA nationals and citizens from Switzerland and the members of their family. This law also applies to the members of national citizens independently of their nationality. Citizens under the scope of this law have equality of access to financial assistance for training, including scholarships or any other type of social support to training and all levels of education.

2. Law n.º 23/2007, of 4 of July, is applicable to foreign citizens and stateless legally resident in Portugal. This law establishes the right to vocational and professional guidance, training and retraining. Article 83º, n.º 1, c) states that citizens with residence authorization have right to vocational and professional guidance, training and retraining, without any specific requirement.

3. There is also specific legislation relating to access to training and education support. Decree n.º 20956/2008, published in DR II Series, n.º 74, of 16 of April of 2009 with the amendments of Decree n.º 10150/2009, published in DR II Series, n.º 74, of 16 of April – defines the financial

support and award of grants to students of secondary school in public or private establishments. The economic support is provided to students with a lack of resources and it covers expenses of meals, books, transport, lodgings and school fees.

There are no restrictions in the access to these economic aids for legally resident foreign citizens in Portugal. If the students belong to a family that is illegally in Portugal and has lack of resources they may also benefit from the economic assistance described.

Decree Law n.º 129/93, of 22 of April, modified by Law n.º 62/2007, of 10 of September and Law n.º 113/97, of 16 of September establishes the bases of the social services of the Universities and Institutions of high education. EU students, stateless students and students of other countries with cooperation agreements can benefit from economic assistance if they meet the requirements related with the lack of resources.

In 2009, new legislation was adopted concerning economic assistance to university students which recognizes the right of foreigners students to benefit from scholarships if they have a permanent residence authorization or a long term residence.”

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

### **RSC 10§5 SLOVENIA**

“The Committee concludes that the situation in Slovenia is not in conformity with Article 10§5 of the Revised Charter on the grounds that it has not been established that nationals of other States Parties lawfully resident or regularly working in Slovenia are granted equal treatment in the matters of student loans and financial assistance for education.”

128. The representative of Slovenia announced that a new Scholarship Act had been enacted in 2007, which stipulates that those foreigners who do not have permanent resident permit may obtain access to financial aid for education on the basis of international agreements in the field.

129. The Governmental Committee asked the Government to provide all the necessary information in the next report and decided to await the next assessment of the ECSR.

### **RSC 10§5 SWEDEN**

“The Committee concludes that the situation in Sweden is not in conformity with Article 10§5 of the Revised Charter as foreign students are subject to a permanent residence requirement for entitlement to financial assistance for training.”

130. The representative of Sweden provided written information according to which Sweden has a very generous system of study support which is universal and unlike many other countries, is not means-tested and is available for everyone. There are no tuition fees. Foreign nationals become eligible for study support after they become permanently resident. In addition, the representative of Sweden mentioned that there were special cases where certain categories of foreigners such as refugees, persons with family connections and with children etc, can access study support funds earlier. She also said that experts have been looking into statistics from the Agency of Study Support to see what is the situation in practice concerning non-EU nationals vis à vis nationals of Sweden. She said that according to these studies in practice non-EU nationals are not treated less favourably.

131. In reply to the question of the representative of France, the representative of Sweden said that it takes between two and four years to obtain permanent residence status, depending of the circumstances in which initial residence permit was issued. However, the practice has shown that in 70% of cases foreigners become permanently resident in two years. The representative of the United Kingdom said that it should be

measured how important this problem is in reality because the practice has shown that foreign students have very good access to the educational system in Sweden.

132. The representative of France recalled the case law of the ECSR according to which even two years of prior residence requirement is judged to be excessive. She suggested that a meeting be organised with the ECSR to discuss the length of residence requirement which also applies to other provisions of the Charter. The representative underlined that there were other countries in a similar situation and therefore one single approach to these conclusions of non-conformity should be adopted where the Swedish case could serve as a benchmark.

133. The representative of the ETUC disagreed with the latter approach as it could create a dangerous precedent when examining in future “similar” cases of non-conformity both in relation to this article or any other article of the Charter.

134. The Governmental Committee acknowledged that, in general, the Swedish educational system is very generous as it offers good opportunities for foreign students by providing education free of charge and by facilitating access to student aid. However, there still is a differential treatment of nationals of other States Parties legally resident in Sweden in respect of access to financial aid. Consequently, the Governmental Committee expressed its concern about this situation, and invited the Government to take measures to bring the situation in conformity with the Charter.

## **Article 15§1 – Education and training for persons with disabilities**

### **RSC 15§1 BELGIUM**

“The Committee concludes that the situation in Belgium is not in conformity with Article 15§1 of the Revised Charter on the ground that, during the reference period, the antidiscrimination legislation covering education and training for persons with disabilities was inadequate.”

135. The representative of Belgium informed that comprehensive anti-discrimination legislation (three acts) was adopted at the federal level on 10 May 2007. One of these Acts, the Anti-discrimination Act 2007 prohibits direct and indirect discrimination on the grounds, *inter alia* of disability and applies to the public and the private sectors. It does not cover cases which fall within the competence of Belgium’s regions or communities, such as education. In this regard, the representative of Belgium referred to specific regional/community anti-discrimination legislation, adopted in 2004, in the Walloon and the Flemish communities with regard to education and training. She assured the Governmental Committee that a description of the new federal law’s scope of application as well as the details concerning the regional/community arrangements would be included in its next report.

136. The representative of ETUC asked whether the figures concerning mainstreaming and special education and training requested by the ECSR would also be provided. The representative of Belgium hoped this could be possible.

137. The Governmental Committee welcomed the federal legislative development and invited Belgium to provide the relevant figures on mainstreaming and special education to the ECSR. Meanwhile, it decided to await the next assessment of the ECSR.

## RSC 15§1 ESTONIA

“The Committee concludes that the situation in Estonia is not in conformity with Article 15§1 of the Revised Charter on the ground that the anti-discrimination legislation covering education and training for persons with disabilities is inadequate.”

138. The representative of Estonia provided the following information:

“We shall present the additional information with regard to different Articles as follows:

### Article 15§1 and Article 15§2 – anti-discrimination legislation

The Equal Treatment Act was adopted and is in force since 01.01.2009. As a result of Parliamentary discussions the wording proposed by the Government was changed.

The current wording is the following:

§1 (1):

„The purpose of this Act is to ensure the protection of persons against discrimination on the grounds of nationality (ethnic origin), race, colour, religion or other beliefs, age, disability or sexual orientation.”.

§2 (2) and (3):

„(2) Discrimination of persons on the grounds of religion or other beliefs, age, disability or sexual orientation is prohibited in relation to:

- 1) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- 2) entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination of employment contracts or contracts for the provision of services, release from office;
- 3) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- 4) membership of, and involvement in, an organisation of employees or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

(3) This Act does not preclude the requirements of equal treatment in labour relations on the basis of attributes not specified in subsection 1 (1) of this Act, in particular due to family-related duties, social status, representation the interests of employees or membership in an organisation of employees, level of language proficiency or duty to serve in defence forces.”.

The text of the Act is available in English: <http://www.legaltext.ee/indexen.htm> .

### Article 15 § 2 – measures to approve employment

Supporting the employment of persons with disabilities has been among the priorities of the government from mid-1990s, when three complementary multi-annual programmes were implemented with support from the European Union.

Promotion of the employment of persons with disabilities remains an important concern for the current government as well. An overview of the targets for increasing the employment of persons with disabilities and of the respective measures is available on the web site of the Government of the Republic: <http://www.valitsus.ee/?id=8084>.

The aforementioned information is as follows:

### *„Amendments to promote the employment of persons with disabilities (10.01.2008)*

*Despite the increasing employment rate, which reached 69.1 % in Estonia in 2007, the level of employment of persons with disabilities has been persistently low. It was only 32.6 % in 2006. Therefore, the coalition partners have set a target of achieving, in 15 years, the employment rate of 50 % among disabled persons of working age. According to the plans of the government, measures to facilitate movement towards this target include fostering active employment measures, allocating transport allowance, and updating the conditions of payment of social benefits to persons with disabilities.*

*On 19 December 2007, the Riigikogu adopted amendments to the Social Benefits for Disabled Persons Act, according to which the benefit for adults with disabilities was replaced by two different benefits – disability allowance for a person of working age and disability allowance for a person of retirement age –, and a new type of benefit, the work allowance, was added to the range of benefits.*

*On 10 January 2008, the Government of the Republic approved the regulation on "The Procedure and Terms for the Grant and Payment of Social Benefits for Disabled Persons" in order to harmonise it with the legislative amendments, adopted in December.*

*According to the amendments, the amount of the allowance for a disabled person of working age will depend on the additional expenses of the person, not on the severity of disability. The amendment is justified, because active lifestyle (e.g., studying, working) often leads to many additional expenses and*

now a person with higher additional expenses will be able to receive more allowance. As a result of this legislative amendment, the monthly social benefits for disabled persons increased by 30 % in 2008. The amounts of benefits for old-age pensioners remained unchanged.

The new work allowance is paid to a working disabled person between 16 and 70 years of age, who has additional expenses in relation to his or her work as a result of the disability (e.g., transport expenses, greater need for a personal assistant or technical aids, etc.). The allowance is paid either monthly or with greater intervals (as requested by the applicant) in the amount of up to ten times the social benefit rate (i.e., 4,000 kroons) during three calendar years on the basis of proof of expenses. The new benefit supports the promotion of the employment of persons with disabilities through compensation of additional expenses.

In December 2007, the Minister of Social Affairs approved the European Social Fund programme "Increasing the supply of qualified labour", which enabled to expand the scope of employment training and the services for unemployed persons with disabilities (free use of technical aids, adaptation of work premises, assistance for employment interviews, work with a support person) to employed persons with disabilities as well, in order to preserve their competitiveness on the labour market.

However, much still remains to do for the promotion of the employment of persons with disabilities. A survey ordered by the Ministry of Social Affairs in 2005 and 2006 indicated that disabled persons do not see themselves as potential labour force for the employers. As many as 91 % of those, who would like to work, believe that disability makes it difficult for them to find a suitable job and 78 % are of the opinion that employers do not want to employ persons with disabilities. The survey also indicated that the majority of disabled persons (roughly 60 %) would prefer part-time work.

At the same time, the use of part-time work is not as common in Estonia as in many other European countries – only 7.2 % of the employed persons had part-time jobs in 2005. Therefore, in order to facilitate the employment of persons with disabilities, it is important to continue the effort of trying to change the attitudes of disabled persons and employers and promoting flexible forms of employment."

The referenced amendments to the Social Benefits for Disabled Persons Act have been translated into English and are available at <http://www.legaltext.ee/indexen.htm>.

In addition to the described measures, new amendments to the Social Welfare Act came into force on 1 January 2009, establishing a more specific procedure for the provision of the rehabilitation service and specifying a range of new services: daily support service, supported employment service, supported living service and community living service. The purpose of all these services is to support, above all, persons with intellectual disabilities, facilitating independent coping, social integration and equal opportunities.

Unfortunately, the amendments to the Social Welfare Act have not yet been translated into English.

On 1 May 2009, following a proposal by social partners, the Labour Market Board, which was responsible for national employment measures, was merged with the Estonian Unemployment Insurance Fund. The Estonian Unemployment Insurance Fund (UIF) is an agency where representatives of social partners sit on the board and they believe that employment measures can be made more efficient by involving them to a greater extent in these measures. In the first months after the merger, the UIF has already paid special attention to improving the measures to facilitate the employment of persons with disabilities.

The UIF increased the numbers of staff in the regional employment offices. Case managers (comprising 1/3 of all advisers) were employed to help people who face more serious obstacles and multiple problems in finding employment. In every region there are case managers who are specialised in helping disabled people into employment.

The UIF has also proposed to widen the access to special disability employment services. From 2010 special measures will be available also to persons who have longstanding health problems (but have not claimed disability) that affect their employment chances.

The UIF will also provide for employment rehabilitation services for those who do not have access to rehabilitation services funded from the social welfare budget. Another new measure – individual support in finding employment – is among others targeted to persons with intellectual and/or multiple disabilities. The measure includes guidance support in looking for a work and necessary support in the beginning of employment (to employee, employer and co-workers).

We will present additional information in our next report."

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

### **RSC 15§1 FRANCE**

“The Committee concludes that the situation in France is not in conformity with Article 15§1 of the Revised Charter on the ground that it has not been established that persons with autism are guaranteed effective equal access to education (mainstreaming and special education).”

140. The representative of France recalled that following the decision of violation in collective complaint 13/2002, *Autism-Europe v. France* of 4 November 2003 with regard to access to education of persons with autism, France launched a first Autism Plan 2005-2007. Progress concerning the implementation of this plan takes time. When information in this regard was submitted to the ECSR, the time lapse (three years) between the authorisation to establish places for the education of persons with autism and their actual establishment had not yet elapsed. Thus, the figures referred to in the conclusion of non conformity are those of the places for the education of persons with autism which were authorised and financed, not those established. The latter figures will become available presently. The representative of France *inter alia* indicated that by the end of December 2007, 2852 places for special education were established (be it in establishments for persons with autism or in the other special education facilities available – “SESSAD, MAS, FAM”<sup>1</sup>). Moreover, she informed that guidelines were under preparation to better classify the different forms of autism in order to appreciate progress achieved more thoroughly. She also reiterated that a second Autism Plan 2008-2010 foresaw yet further measures concerning education of persons with autism. Information on the implementation of this plan as well as any concrete figure concerning the outcome of the previous plan would be submitted in the next report on Article 15§1.

141. Given the initiatives taken by France with regard to the education of persons with autism, the representative of Portugal wondered why the conclusion in its regard was of non conformity. The Secretariat reiterated that when the ECSR adopted its conclusion, decisions had been taken, budgetary means had been allocated but it was not clear whether the places had been effectively created and how many students had benefitted from this.

142. Replying to a remark from the Chairperson with regard to the issue of mainstreaming of persons with autism which he considered to remain unclear, the representative of France confirmed that the data provided concerned special education facilities.

143. The representatives of Romania and Poland underlined that France should be congratulated for the initiatives taken following Collective Complaint 13/2002.

144. The Governmental Committee welcomed the willingness and efforts of France to guarantee effective equal access to education for persons with autism. It noted the new information concerning access of persons with autism to special education and decided to await the next assessment of the ECSR.

### **RSC 15§1 MALTA**

“The Committee concludes that the situation in Malta is not in conformity with Article 15§1 of the Revised Charter on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in training.”

---

<sup>1</sup> SESSAD : « *Services d'éducaton spéciale et de soins à domicile* » - Educational and domiciliary care services ; MAS : « *Maisons d'accueil spécialisées* » - Specialised care homes ; FAS : « *Foyers d'accueil médicalisés* » - Centers of medical care.

145. The representative of Malta informed the Committee that efforts to increase the number of persons with disabilities in mainstream vocational training have been made. In this regard, he announced that a document containing relevant figures had been submitted to the Secretariat during the current meeting.

146. The Governmental Committee invited the Government to include the relevant figures concerning persons with disabilities attending mainstream vocational training and other forms of training available as well as information on the participation of persons with disabilities in higher education in its next report. Meanwhile, it decided to await the next assessment of the ECSR.

### **RSC 15§1 MOLDOVA**

“The Committee concludes that the situation in Moldova is not in conformity with Article 15§1 of the Revised Charter on the grounds that there is no legislation explicitly protecting persons with disabilities from discrimination in education and training.”

147. The representative of Moldova informed the Committee that a Code on Education, regulating *inter alia* mainstreaming, was adopted on 19 December 2008. She also highlighted that there was a plan to reorganise ordinary and special education to progressively realize inclusive education. Moreover a strategy concerning the integration of persons with disabilities was being elaborated to cover all areas of life, not only education.

148. As to anti-discrimination legislation, the representative of Moldova referred to a draft law which was before the Government. She pointed out that the areas of education and training were covered by the draft and that protection against discrimination was provided for *inter alia* on the grounds of disability. She also highlighted that the draft law provided for legal remedies.

149. The Governmental Committee welcomed the efforts and willingness of Moldova and urged it to continue by adopting the anti-discrimination legislation as soon as possible. Meanwhile, it decided to await the next assessment of the ECSR.

### **RSC 15§1 NORWAY**

“The Committee concludes that the situation in Norway is not in conformity with Article 15§1 of the Revised Charter on the ground that the anti-discrimination legislation covering education for persons with disabilities is inadequate.”

150. The representative of Norway informed the Committee that in January 2009 Parliament adopted an Anti-discrimination and Accessibility Act which covers all areas of society, including education and training. The Act prohibits direct and indirect discrimination on the basis of disability and proclaims the right to equal opportunities for all. A general accommodation requirement is foreseen with regard to schools, employment and health care facilities. The Act also includes a duty to report on the implementation of the anti-discrimination obligation. The Act furthermore foresees the establishment of an equality and anti-discrimination tribunal (which may order measures to prevent discrimination and impose fines) and an equality ombudsperson (with supervisory and guidance functions as well as the power to investigate incidents).

151. The Governmental Committee welcomed the legislative development and congratulated Norway for the implementation mechanism in the new legislation. Meanwhile, it decide to await the next assessment of the ECSR.

## **RSC 15§1 ROMANIA**

“The Committee concludes that the situation in Romania is not in conformity with Article 15§1 of the Revised Charter on the grounds that mainstreaming of persons with disabilities is not effectively guaranteed in education and training as:

- the number of children with disabilities attending special education is high;
- a considerable number of children with disabilities is left without education.”

152. The representative of Romania pointed out that these grounds of non conformity had already been discussed during the 118<sup>th</sup> meeting of the Governmental Committee in October 2008 and that not much had changed in this specific regard since then as progress in mainstreaming takes time. Nevertheless, she was in a position to indicate a further decrease in number of students attending special education (25 748 students with disabilities were in special schools during the 2007-2008 school year compared to the 27 445 who were in special schools during the 2006-2007 school year). She also pointed out that at the beginning of the 2008-2009 school year the share of disabled students integrated in primary and secondary ordinary education special classes was 6.1% of all school students. The representative of Romania also provided figures concerning training of persons with disabilities, which had not been available to the ECSR and would be included in the next report.

153. The representative of ETUC acknowledged the efforts made to reduce the high number of children with disabilities in special education but asked for clarification on the situation of the alleged considerable number of children with disabilities left without education. Several representatives (Czech Republic, Ireland, Sweden, United Kingdom) also asked for a response on this very serious claim.

154. The representative of Romania could not provide the specific information in this regard although she was able to provide figures from the Ministry of Education, the National Agency for Disabled Persons and the National Agency for Employment. She asked the Secretariat to reveal the source containing the figures quoted by the ECSR in its conclusion.

155. The Secretariat informed the Committee that the figures quoted by the ECSR in conclusions 2008 were included in the report submitted by Romania for such conclusions. This report referred to the total number of children with disabilities provided by the National Authority for disabled persons and obtained from the Directorates for Social Assistance and Child Protection. The report also included statistics collected by the Ministry of Education with regard to the total number of children in special and ordinary education.

156. The representative of Romania undertook to check the data and to provide up to date information and relevant figures in its next report. She also recalled the progress made and already communicated to the ECSR (i.e. the adoption in 2006 of the Law on the protection and promotion of the rights of persons with disabilities as well as various policy initiatives taken to improve integration of persons with disabilities in education).

157. The representative of Lithuania was of the view that the Governmental Committee should note the efforts made and welcome the adoption of legislation explicitly protection persons with disabilities from discrimination in education. It should also strongly encourage Romania to provide all the relevant information to the ECSR to assess the situation again.

158. Several representatives (Czech Republic, Ireland, Norway, Sweden, UK, Portugal and ETUC) however reiterated their strong concern that notwithstanding the serious claim that there appear to be a considerable number of children being deprived of education, Romania cannot provide any explanation. They considered that children left without education remain out of society all their life. The Government should thus be urged to do something since this has been a ground for non conformity since 2003. They agreed that a warning should be addressed to Romania.

159. The representatives of Belgium and France agreed on the gravity of the situation. Still, they highlighted that the follow-up of conclusions 2007 (October 2008) and that of conclusions 2008 (May 2009) was too short to expect any considerable tangible progress in such a complex area. A strong message would suffice.

160. The Governmental Committee voted on a warning to Romania (18 votes in favour, 3 votes against and 6 abstentions) concerning the considerable high number of children with disabilities who appear to be left without education. The warning was carried.

## Article 15§2 – Employment of persons with disabilities

### RSC 15§2 ARMENIA

“The Committee concludes that the situation in Armenia is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment.”

161. The representative of Armenia provided the following information:

According to the data provided by the RA National Statistical Service (“Statistical Yearbook of Armenia” 2007, page 53) the number of persons with disabilities among hired workers (in small and extra small organizations excluding private sphere) per years was:

Years	Hired workers, in thousands	Including persons with disabilities, in thousands	Specific Gravity
2004	326.6	1.1	0.3
2005	324,9	1.0	0.3
2006	330.7	1.9	0.6

A sample survey by the State Employment Service agency in December 2008 found that 1.7% (715) of 45,605 employees surveyed were persons with disabilities. 2030 organisations were surveyed and the survey included equal numbers of large, medium, small, extra small organizations.

In the period 2005-2008, activities aimed at addressing employment issues for persons with disabilities were implemented in the following fields:

#### 1. *Improvement of legislative field*

Following challenges by persons with disabilities and given the need to integrate such people into society, persons with disabilities were specified as an uncompetitive group within the labour market and as such were prescribed additional guarantees in the RA Law „On the Social Protection of the Population in Employment and Unemployment.“

Persons with disabilities are not classified as unemployed and are considered job seekers without occupation. A proposed amendment to the legislation has been submitted envisaging a change to the definition of the term “unemployed” . With this amendment persons with disabilities will be classified as unemployed and persons with disabilities having at least one year of basic insurance will be also issued unemployment benefit.

This amendment will contribute to a larger number of persons with disabilities registering at employment centers and to their inclusion to the labour market.

#### 2. *Introduction of new projects*

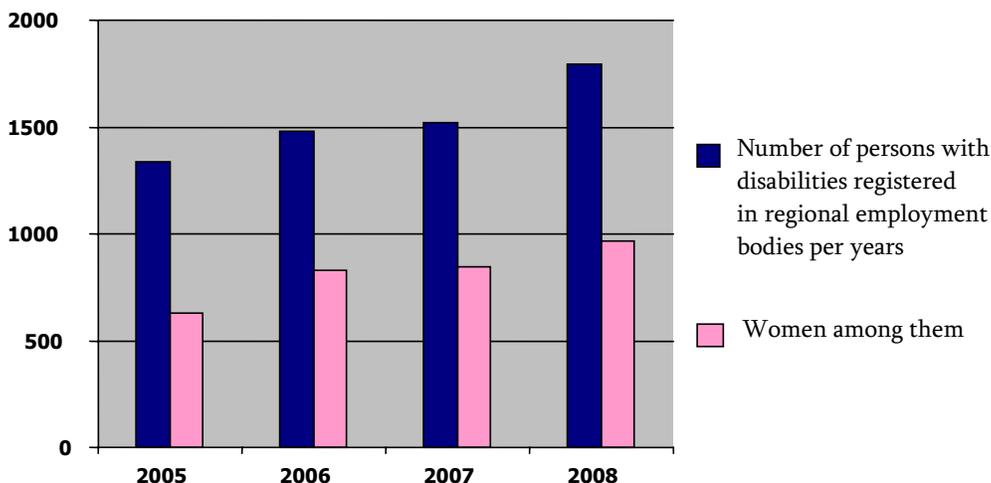
On the basis of Swedish practice, a new project “Partial Reimbursement of the Employer for Hiring Uncompetitive Groups in the Labour Market” was launched in 2006. For hiring these persons the employer receives 50% reimbursement of the wage established by himself, but not more than the amount of the minimum monthly wage. The reimbursement to the employer for persons in the first or second group of disabilities is provided for a period of two years, and for persons in the third group of disabilities – one year.

**3. Introduction of new working methods**

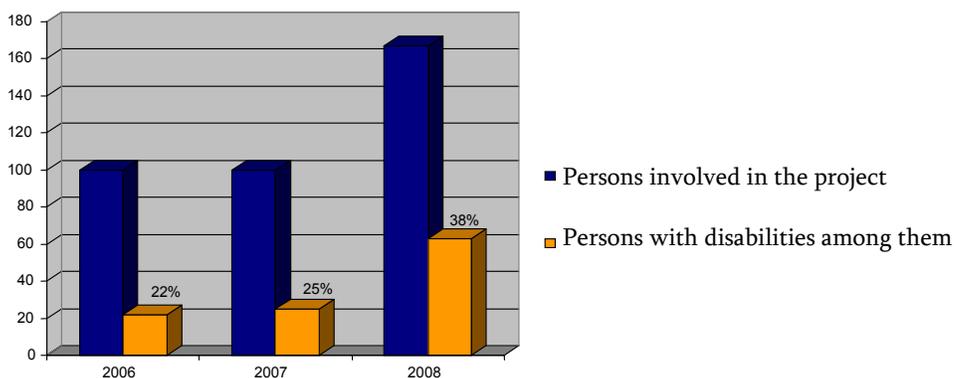
New methods of working with uncompetitive groups in the labour market were introduced, among which are:

- European model of supported employment or accompanying method
- Compiling individual activity plans by means of mapping

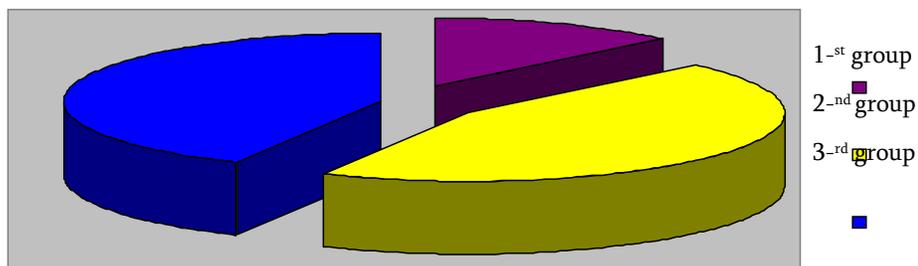
As a result of measures implemented since 2005, the number of persons with disabilities registered in regional employment bodies started to increase from 1335 reaching 1793. See Figure 1.



The involvement of persons with disabilities in the projects being implemented is increasing year by year. During 2006-2008 in the framework of ‘**Partial Reimbursement to the Employer for Hiring Uncompetitive Groups in the Labour Market**’ project, 114 persons with disabilities became employed, i.e. 38% of persons involved in the project. 12% of them have first group of disability, 45% - second, 43% - third. See Figures 2 and 3. 34 people have completed the project and only 5 of them are continuing to work without partial reimbursement.



In 2008 42 307 250 drams were allocated for this project, and it is envisaged to allocate 64 800.0 thousand drams in 2009.

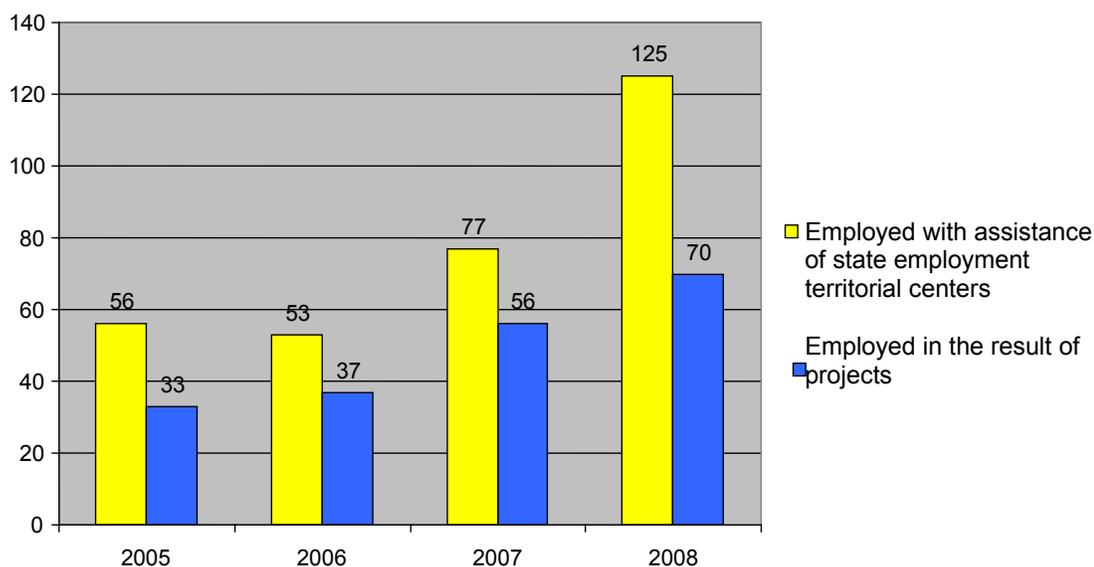


**'Vocational Training of Persons with Disabilities, Working Skills Rehabilitation'** project in 2004-2008 included 360 persons with disabilities, 85 of which became employed. Training courses were organized for the following professions: cook, cobbler, sewer, metalworker, embroiderer, furnisher, hair dresser, manicure maker, real estate broker, computer clerk, assistant-refferent to the manager, computer designer, repairer of computer equipment, carpenter, programmer and in subjects such as marketing, table design and civil service.

In the framework of the **"Provision of financial support to unemployed persons and persons with disabilities for state registration with the purpose of carrying out entrepreneurial activities"** project in 2008 only, 13 persons with disabilities were registered as sole proprietors.

Excluding the aforementioned projects, with the purpose of temporary employment, persons with disabilities are also involved in **Organization of paid public works** project (about 5% of total number of involved).

The number of persons with disabilities employed with the help of state employment service has grown, but the share of employed as a result of projects is high, see. Figure 4.



In addition to state projects, different joint projects were also drafted and implemented seeking to raise awareness and employment of persons with disabilities. Apart from the projects in 2008, the following joint activities were implemented:

- Job fair for persons with disabilities (on the initiative of "Unison" NGO),
- Round table on the topic "Employment and Additional Training of Persons with Disabilities" ("Huys" Foundation),
- Conference on the topic "Integration of Persons with Disabilities" (HDP Foundation),
- Exhibition on the topic "Equal Opportunities for All",
- Meetings with different NGO representatives with the purpose of presenting state guarantees for persons with disabilities,
- Seminar for NGOs on the topic "European Model of Supported Employment" (Swedish experts Bengt Eklund, Clos Erikson).

Another initiative is the **establishment of social enterprises**. With support of USAID grants were issued by tender to two organizations (“Ejmiatsin training-industrial enterprise of Armenian blind association” LLP, “Astgatsolq” NGO) each of which was obliged to create 8 jobs for persons with disabilities. If the project is successful, it will be incorporated into the legislation.

**With regard to the WHO International Classification /ICF-2001/** The Government of Armenia has adopted Decision N-780 based on the MKH- “International Nomenclature of restriction of vital activities, impediments and social dissatisfaction” elaborated by the WHO and UN. The criteria for defining disability in the Republic of Armenia are: definition of disability, of health and health harm, classification of vital activities main types and restriction levels, classification of disorders of the organism functions and their levels, assessment of the vital activities restriction criteria for children, disability definition criteria and rehabilitation of the disabled person.

**Legislation against discrimination**

The RA Constitution contains provisions on discrimination, in particular the Article 14.1 of the Constitution stipulates:

“Everyone shall be equal before the law. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited.”

The Article 3 of the RA Labour Code stipulates the main principles of labour legislation. (Article 3, Part 3). One of the principles is the legal equality of parties of labor relations irrespective of their gender, race, nation, language, origin, citizenship, social status, religion, marital and family status, age, philosophy, political party, trade union or public organization membership, other factors unrelated to the employee’s professional qualities;

The Article 3 of the RA Law on Social Protection in Case of Population’s Employment and Unemployment stipulates the employment issues of the citizens of the Republic of Armenia, foreign citizens and in particular persons without citizenship.

(Article 3, part 2): The citizens of the Republic of Armenia, foreign citizens and persons with no citizenship residing in the Republic of Armenia reserve the right to make a choice between employment and unemployment, except for the cases stipulated by the legislation of the Republic of Armenia.

Clarifications about Article 17 of the RA Law on “Social Protection of Disabled Persons” were submitted in the last report. We would like to add that Article 141 (Part-time work) of RA Labour Code stipulates how to define part-time work on a daily or weekly basis, especially Part 4 of the same Article concerns the persons with disabilities, daily or weekly part-time working is set at the request of a disabled person based on their medical condition.

As for the practical application of Article 17 of the Law on Social Protection of Disabled Persons, no cases of violation of this provision of the law are recorded. The Ministry provided consultations for those disabled persons who have applied for information in this regard.

All legal acts have provisions about discrimination concerning both the public and private sectors.

Unfortunately the reasonable accommodation obligation, as stipulated by the Law on Social Protection of Disabled Persons, has not been implemented in practice properly which means that certain by-laws or regulations need to be developed. The Ministry of Labour and Social Issues of Armenia is currently developing a “Strategy of Sustainable Development of Labour and Social Protection Sphere” which means that there will be a review of all legislative acts in all sub-spheres including disability issues. One of the main goals of this strategy is to bring the national legislation into compliance with obligations taken by the Government within the frameworks of international agreements.

- More steps also need to be taken towards enhancing the trade unions role in sheltered employment facilities. They are not actively involved in this process. However, the Government has taken steps to empower social partners in the social protection sphere. Recently the Government signed the Collective Agreement which prescribes additional social-labour guarantees and common actions of social partners in applying those guarantees.

The Agreement follows trends in the development of policy in the labour and social protection field, to insure wide participation of social partners in its implementation process, as well as the development of institutional and business abilities of the employers and trade unions.

The Agreement includes the following main fields of cooperation between the parties:

- Work safety and health protection,
- Work, wage and population living standards,
- Labour market and employment,
- Social insurance, social protection.

The calculation of salary paid to persons working in sheltered employment is done on a regular basis.”

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

### RSC 15§2 BELGIUM

“The Committee concludes that the situation in Belgium is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed effective equal access to employment.”

163. The representative of Belgium provided the following information:

“The Committee concludes that the situation of Belgium is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that people with disabilities are guaranteed effective equal access to employment.

The Committee asks for information on:

- the total number of persons with disabilities;
- the total number of such persons who are of working age;
- the total number of such persons who are employed on the open labour market or in the sheltered employment sector.

The information requested will be incorporated into the next report.

The following information are provided in French only:

#### *Les handicapés dans la société (1996)*

<i>Pourcentage de la population avec un handicap sévère (b), modéré (c) ou aucun handicap</i>	<i>Belgique</i>
<i>Sévère</i>	4,6%
<i>- hommes</i>	5,0%
<i>- femmes</i>	4,2%
<i>Modéré</i>	8,3%
<i>- hommes</i>	7,9%
<i>- femmes</i>	8,7%
<i>Aucun handicap</i>	87,1%
<i>- hommes</i>	87,1%
<i>- femmes</i>	87,1%

<i>Pourcentage de la population avec un handicap sévère (b) ou modéré (c) par groupe d'âge</i>	<i>Belgique</i>
<i>Total</i>	<b>12,9%</b>
<i>- de 16 à 19 ans</i>	3,0%
<i>- de 20 à 24 ans</i>	4,5%
<i>- de 25 à 29 ans</i>	6,7%
<i>- de 30 à 34 ans</i>	6,9%
<i>- de 35 à 39 ans</i>	10,4%
<i>- de 40 à 44 ans</i>	14,3%
<i>- de 45 à 49 ans</i>	14,6%
<i>- de 50 à 54 ans</i>	20,2%
<i>- de 55 à 59 ans</i>	27,3%

<i>La participation à la vie professionnelle par degré de handicap</i>	<i>Belgique</i>
<i>Sévère (b)</i>	18,3%
<i>- hommes</i>	20,4%
<i>- femmes</i>	15,9%
<i>Modéré (c)</i>	36,9%
<i>- hommes</i>	54,2%
<i>- femmes</i>	22,6%
<i>Aucun handicap</i>	56,3%
<i>- hommes</i>	69,2%
<i>- femmes</i>	44,5%

Les personnes ne vivant pas de façon autonome (habitant dans des institutions, hospices, prisons et communautés religieuses) ne font pas partie de la population examinée et n'entrent donc pas dans l'enquête.

(a) Pas de données pour la Suède.

(b) Personne déclarant être sévèrement incommodé par un problème physique ou mental dans leur vie quotidienne.

(c) Personne déclarant être dans une certaine mesure incommodé par un problème physique ou mental dans leur vie quotidienne.

Source (mention obligatoire) : European Community Household Panel (ECHP), le panel des ménages d'Eurostat.

### Handicap en mobilité (1997-2004)

	Aucun handicap en mobilité			Confiné à la maison et au jardin			Confiné au fauteuil			Alité		
	1997	2001	2004	1997	2001	2004	1997	2001	2004	1997	2001	2004
Moyenne générale	96,2%	94,2%	95,1%	2,4%	3,4%	2,8%	1,0%	1,8%	1,7%	0,4%	0,6%	0,4%
<b>Sexe</b>												
Homme	97,6%	96,2%	96,8%	1,5%	1,9%	2,1%	0,7%	1,5%	0,9%	0,2%	0,3%	0,2%
Femme	94,7%	92,3%	93,5%	3,3%	4,8%	3,5%	1,3%	2,0%	2,5%	0,6%	0,8%	0,5%
<b>Groupe d'âge</b>												
15 à 24 ans	99,7%	99,1%	99,9%	0,1%	0,3%	0,1%	0,0%	0,1%	0,0%	0,1%	0,4%	0,0%
25 à 34 ans	99,2%	99,0%	99,7%	0,5%	0,8%	0,3%	0,2%	0,2%	0,0%	0,1%	0,0%	0,0%
35 à 44 ans	98,4%	98,1%	98,7%	0,7%	1,3%	0,9%	0,3%	0,4%	0,1%	0,6%	0,2%	0,3%
45 à 54 ans	97,8%	97,6%	98,0%	1,6%	1,4%	1,4%	0,3%	0,6%	0,6%	0,3%	0,5%	0,0%
55 à 64 ans	96,3%	94,6%	95,4%	2,6%	3,4%	3,1%	0,8%	1,4%	1,3%	0,3%	0,6%	0,2%
65 à 74 ans	87,1%	89,2%	91,6%	9,7%	6,8%	5,5%	2,6%	3,5%	1,6%	0,5%	0,6%	1,2%
75 ans et plus	70,1%	68,2%	67,1%	16,4%	17,8%	16,2%	11,9%	11,2%	15,0%	1,6%	2,8%	1,7%
<b>Niveau d'instruction</b>												
Primaire ou sans diplôme	88,4%	83,2%	85,3%	7,4%	10,8%	7,5%	3,4%	4,7%	6,2%	0,7%	1,3%	1,0%
Secondaire inférieur	95,1%	92,6%	93,6%	3,3%	3,7%	4,2%	1,2%	2,7%	1,8%	0,3%	1,0%	0,4%
Secondaire supérieur	97,4%	97,1%	96,8%	1,5%	1,7%	2,1%	0,5%	1,0%	1,0%	0,5%	0,2%	0,1%
Supérieur	98,8%	98,2%	98,4%	0,7%	1,2%	0,9%	0,4%	0,4%	0,4%	0,1%	0,2%	0,2%
<b>Niveau d'urbanisation</b>												
Zone urbaine	96,5%	93,7%	95,2%	2,0%	3,9%	2,7%	1,2%	1,8%	1,4%	0,3%	0,6%	0,7%
Zone semi urbaine	96,7%	95,0%	94,6%	2,4%	3,0%	3,1%	0,7%	1,3%	2,1%	0,2%	0,7%	0,2%
Zone rurale	95,0%	93,6%	95,6%	3,0%	3,6%	2,6%	1,2%	2,5%	1,6%	0,7%	0,3%	0,2%
<b>Région de résidence</b>												
Région de Bruxelles-Capitale	93,9%	93,8%	95,0%	3,3%	3,5%	2,8%	2,2%	1,9%	1,7%	0,7%	0,7%	0,6%
Région flamande	97,1%	95,0%	95,2%	2,1%	2,9%	2,8%	0,5%	1,6%	1,8%	0,3%	0,5%	0,2%
Région wallonne	95,4%	92,9%	94,9%	2,7%	4,4%	2,9%	1,5%	2,0%	1,7%	0,3%	0,7%	0,5%

Ces chiffres se rapportent aux personnes de 15 ans et plus.

Source (mention obligatoire) : Enquête de Santé de l'Institut scientifique de la santé publique en coopération avec la Direction générale Statistique.

#### In 2003

There were 1 100 000 persons with disabilities (aged from 15 to 64 years) or suffering from a chronic health problem in Belgium.

42.5% of them were in employment.

#### In the Flemish Community

2007 statistics

Number of persons with disabilities who were of working age (15-64 years): 480 000.

Number of persons working: approx. 200 000, ie 42.2%

#### In the German-speaking Community

Total number of persons registered with the Office for Persons with Disabilities: 5 048.

In 2007, 225 persons with disabilities registered with the Office.

#### In the Walloon Region

As regards employment on the open labour market, the rate of employment of persons with disabilities who wish to work is estimated at around 30% lower than the overall rate of participation on the Walloon labour market. 80% of persons recognised as having disabilities are unemployed.

The relevant financial benefits granted by the AWIPH (the Walloon agency for the integration of persons with disabilities) are useful, but only 3 or 4% of workers with disabilities employed outside sheltered work facilities have recourse to them.

AWIPH action to promote ordinary employment in 2008 embraced:

- 95 persons with disabilities in "initiator training courses"
- 3 persons in sandwich or integration courses
- 38 persons awarded self-employed worker grants
- 352 persons in guardianship
- 809 persons awarded integration grants
- 767 persons under retraining contracts
- 2 767 persons granted compensatory allowances
- 101 persons with adapted work stations
- 664 persons with refunded travel expenses to their workplace;
- giving a total of 5 596 persons with disabilities.

Furthermore, in 2007:

- 160 persons with disabilities were employed in Walloon Government departments and public-interest organisations
- 152 persons with disabilities worked in Public Social Welfare Centres.

The number of persons with disabilities who were working in sheltered work enterprises in 2007 was as follows:

- 6 801 workers with disabilities in the production sector
- 193 persons with disabilities in the executive sector."

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

### **RSC 15§2 ESTONIA**

"The Committee concludes that the situation in Estonia is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment."

165. The representative of Estonia referred to the information provided in response to Article 15§1 conclusion of non-conformity for the first time above.

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

### **RSC 15§2 ITALY**

"The Committee concludes that the situation in Italy is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disabilities are guaranteed effective equal access to employment."

167. The Representative of Italy provided the following information:

"In 2006 the disabled population of working age (15-64) was estimated at about 426 000, of whom 37% were women. The data comes from the 4<sup>th</sup> report to parliament on the application of Act 68/99, which protects and promotes disabled persons' right to work. The report, published in 2008, refers to the "Plus" sample survey conducted by Isfol on the supply of jobs in Italy. According to the data in the report, the working age disabled population rises with age, so that only 7.2% of persons claiming to be disabled are aged between 15 and 29, whereas the figure rises steadily until the age of 50 and over, which accounts for 53.9% of this group. About 44 in every 100 disabled persons of working age said that they were working, and 15.2% said that they were unemployed. Approximately 200 000 persons with disabilities have paid employment.

The Committee noted an inconsistency between the total number of Italian disabled persons living in families and the number of disabled persons of working age in employment. The Italian government

report had stated that there were about 2 500 000 persons with disabilities aged 6 or over living in families. According to the tables in the report for the period 2004-2005, the majority of disabled persons, over 2 million, were in the 65-80 age range. These are therefore persons who are no longer of working age and who receive a retirement pension. There were approximately 500 000 persons in the 6 to 64 age range.

Another question raised by the Committee concerned the disparity between the number of disabled persons registered on employment agencies' reserved lists and the number of placements.

Firstly, it should be noted that the number of persons registered on the reserve lists includes the survivors of employees who have died for work, war or service-related causes, or following invalidity resulting from one of these causes, the survivors of invalids from work, war or service-related causes, and repatriated Italian refugees. Section 18 of Act 68/99 requires public and private employers with more than 50 employees to maintain a one percent reserve quota of jobs. The aforementioned groups must therefore be subtracted from the number of disabled workers registered on employment agencies' reserve lists because their registration on these lists is not linked to disability.

The Committee also thought that the number of disabled persons placed in work each year was too low when compared with the total number registered.

According to the 4th report to parliament, 712 000 persons were registered on the reserved lists in 2007 and 31 530 persons were placed in work. About 400 000 persons who were registered, or 77% of the total, were immediately available for work. The "Plus" survey also shows that 31% of the disabled persons interviewed had found work directly and 23% had successfully sat a public competitive examination.

To determine whether Italy is in compliance with the revised Charter, the Committee has asked for information on the number of disabled workers in sheltered employment and the rate at which employees transfer from sheltered employment to the ordinary labour market. In Italy, sheltered employment is provided by type B social co-operatives. The law authorises these co-operatives to provide employment for disabled workers. They carry out various forms of economic activity in the agricultural, industrial, craft, commercial and service sectors. Disabled persons must make up at least 30% of these co-operatives' workforce. Disabled employees' work is assisted and co-ordinated by specialist professionals. Other sheltered facilities are provided by rehabilitation units in the social and psychiatric services sector. These units help persons with psychological disabilities to develop their social and relationship skills by encouraging their self-esteem, self-motivation and autonomy in a work context.

According to the *"Primo Rapporto CNEL/ISTAT sull'economia sociale. Dimensioni e caratteristiche strutturali delle istituzioni non profit in Italia"* ("First CNEL/ISTAT report on the social economy: sale and structural characteristics of non-profit making institutions in Italy"), published in 2008, 30 141 disabled persons were employed in social co-operatives of this sort in 2005 (27.8% more than in 2003) and, nationally, disadvantaged employees represented 55% of their total workforce, which was therefore above the 30% minimum specified in Act 381/91. The most numerous categories included disabled persons (46.3%, or about 14 000 persons) and psychiatric patients (15%, or about 4 500 persons).

These are currently the only available official figures as the national statistical institutes have not conducted any other surveys on this subject.

With regard to the Committee's question about the number of disabled employees who have transferred to the ordinary labour market, it needs to be borne in mind that these facilities have been established to provide work for special categories of persons with disabilities. Under section 25 of the Act of 30 March 1971, no 118 (*"Conversione in legge del D.L. 30 gennaio 1971, n. 5 e nuove norme in favore dei mutilati ed invalidi civili"*) their function is to permit persons who are too severely disabled to be registered on employment agencies' reserved lists to participate in the labour market. In view of what has been said above and the fact that sheltered facilities provide employment for a higher number of disabled persons than other work environments, it is clearly difficult for disabled employees to transfer to the ordinary labour market.

In recent decades, government and trade unions have given increasing attention to promoting disabled persons' right to work. Following an agreement signed on 23 July 2007 between the

government and trade unions, the government included the subject of disability in the *Protocollo su previdenza, lavoro e competitività per l'equità e la crescita sostenibili* (Protocol on social security, labour and competitiveness, to promote equity and sustainable development). The protocol recognises the effectiveness of the reserved lists system and establishes standards aimed at harmonising the provisions of Act 68/99 with those of legislative decree 276/2003. The result was the Act of 24 December 2007, "*Norme di attuazione del Protocollo del 23 luglio 2007 su previdenza, lavoro e competitività per favorire l'equità e la crescita sostenibili, nonché ulteriori norme in materia di lavoro e previdenza sociale*" ("implementation of the protocol of 23 July 2007 on social security, labour and competitiveness, to promote equity and sustainable development, and employment and social security rules).

The following steps have been taken to encourage disabled persons' participation in the ordinary labour market.

Section 1.37, a) and b) of Act 247/07 amends section 12 of Act 68/99 on social co-operatives and repeals article 14 of legislative decree 276/2003 on social co-operatives and the recruitment of disadvantaged workers. Under the new wording of section 12, social enterprises (established under a legislative decree of 24 March 2006) are authorised to enter into temporary employment agreements for vocational training purposes.

Section 12b authorises private employers who are required to recruit disabled employees, social co-operatives and social enterprises to enter into agreements to employ disabled persons with specific characteristics and difficulties in finding work in ordinary employment. Such agreements may only be signed if the obligatory quota is met and may not exceed 10% of the reserved quota.

Such agreements must satisfy certain conditions. The disabled persons recruited must be suited to this type of agreement, which must be for at least three years, the value of the work order must be established, the disabled person must be recruited by the organisation concerned at the same time as the work order is agreed and reasonable accommodation must be made.

Under section 1.37 c) of Act 247/07 the incentive to employers was changed from tax concessions to direct contributions."

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

### **RSC 15§2 LITHUANIA**

"The Committee concludes the situation in Lithuania is not in conformity with Article 15§2 of the Revised Charter on the ground that legislation does not make reasonable accommodation of the workplace a requirement."

169. The representative of Lithuania provided the following information:

"We would like to pay attention that in the mentioned conclusions 2007 "The Committee concludes the situation in Lithuania is not in conformity with Article 15§2 of the Revised Charter on the grounds that on the basis of the information provided, that there is a low number of persons with disabilities in employment".

Reasonable accommodation

Under the Article 7 of the Equal Treatment Act (amended in 2008) the employer is bind to establish adjustment of working conditions (reasonable accommodation) to the needs of persons with disabilities (paragraph 9), if it does not cost disproportionately hard duties for employer. Additional guaranties for disabled (work conditions, work time, time for rest and other) are established under the Labour Code, Law on Security and Health of Employees and other legal acts of the Republic of Lithuania.

Measures for raising the number of persons with disabilities in employment

In 2008 total number of persons with disabilities was 258,848, from them employed were 48,000. And this number is growing.

In 2005, the total number of employed disabled was 29,400 persons (27,500 working age and 1,900 retirement age disabled persons), total number of persons with disabilities was 248,400.

In 2006, they were 36,700 persons employed and total number of disabled- 251,100

Employment is, definitely, among the most essential preconditions for welfare and it depends on adequate training directly. In Lithuania today one of the major approaches taken in the policy making of

social integration of persons with disabilities are inclusion of disabled persons and social participation. After the new Law on Social Integration of the Disabled took effect in 2005, a new disability concept was started, emphasising the creation of opportunities to work.

In Lithuania special attention is paid to vocational rehabilitation with the view of improving the situation of persons with disabilities in the labour market. Vocational rehabilitation is defined in our legislation as restoration or enhancement of a person's capacity for work, professional competence and ability to participate in the labour market by applying social, psychological, rehabilitation and other measures. In other words, it means a preparation of the disabled person to return to the labour market.

In Lithuania the creation of the system for vocational rehabilitation of persons with disabilities was started in 2005. It comprises such major services as vocational guidance, consultations, assessment of vocational skills, refreshing of skills or promotion of the new ones. Moreover, it involves training, vocational retraining and employment assistance.

The need for vocational rehabilitation is established by the Disability and Working Capacity Assessment Office at the Ministry of Social Security and Labour which presents its conclusions concerning the mentioned establishment. Within three working days after the establishment of the need for such a programme a person applies to the local labour exchange office of his place of residence. The local labour exchange office draws up an individual plan of vocational rehabilitation and issues a vocational rehabilitation certificate as well as a referral to the centre of vocational rehabilitation.

Some progress has been achieved in providing vocational rehabilitation services in Lithuania. In 2005 these services were provided only by one establishment and at the moment there are already nine such establishments. Besides, in 2008 the Vocational Rehabilitation Programme was completed by 173 persons out of whom even 65 per cent were women.

The system of vocational rehabilitation also involves psychological positive thinking training, strengthening of motivation for professional career and development of self-expression. This, definitely, affects social integration of persons with disabilities and after the training they are successfully employed.

In order to enhance the quality of vocational rehabilitation services, Lithuania approved the Strategy for Development of Vocational Rehabilitation Services for 2007-2012. The Strategy determines the following long-term objectives for the development of the vocational rehabilitation system: to improve legal framework, provide the disabled with more access to vocational rehabilitation services and increase their diversity as well as enhance the quality of the services.

Therefore, we hope that persons with disabilities, when provided with more possibilities to participate in vocational rehabilitation programmes, will have greater opportunities to integrate into the labour market and live independently."

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

### **RSC 15§2 MALTA**

"The Committee concludes that the situation in Malta is not in conformity with Article 15§2 of the Revised Charter on the ground that it has not been established that persons with disability are guaranteed an effective equal access to employment."

171. The representative of Malta provided the following information:

"The Committee may wish to note that registration into the National Register of Disabled Persons maintained by the National Commission Persons with Disabilities (NCPD) is purely of a voluntary nature and does in no way reflect the actual number of disabled persons actively seeking employment. The register of disabled persons seeking for Employment is maintained by the Employment and Training Corporation (ETC). The person is asked to call at the ETC in order to be included in this register. From thereon, persons are included in the network of activities carried out by the ETC in order to seek a suitable employment for the person.

The ETC provides vocational guidance services itself by means of two employment advisors dedicated to provide such services to persons with disability. It also has work experience schemes to enable jobseekers with disability to integrate in open employment.

Between October 2005 and December 2008, the Employment and Training Corporation provided the following services to persons with disability:

**Number of Disabled Unemployed Persons registered with the ETC**

	<b>Oct 2005-Sept 2006</b>	<b>Oct 2006-Sept 2007</b>	<b>Oct 2007-Dec 2008</b>
Total No. of Unemployed Persons	7184	6629	6373
No. of Disabled Persons registered as Unemployed	359	327	322
Percentage of Unemployed Disabled Persons	<b>4.99%</b>	<b>4.93%</b>	<b>5.05%</b>

**Number of Disabled Unemployed Persons placed on work experience scheme by the ETC**

	<b>Oct 2005-Sept 2006</b>	<b>Oct 2006-Sept 2007</b>	<b>Oct 2007-Dec 2008</b>
No. of Disabled Persons registered as Unemployed	359	327	322
No. of Disabled Persons Placed on Work Experience Schemes	29	38	49
Percentage of Unemployed Disabled Persons Trained	<b>8.08%</b>	<b>11.62%</b>	<b>15.22%</b>
Disabled Persons Placed on Work Experience Schemes			

**Number of Disabled Unemployed persons placed in Employment by the ETC**

	<b>Oct 2005-Sept 2006</b>	<b>Oct 2006-Sept 2007</b>	<b>Oct 2007-Dec 2008</b>
No. of Disabled Persons registered as Unemployed	359	327	322
No. of Disabled Persons placed in Employment	72	104	147
Percentage of Unemployed Disabled Persons placed in Employment	<b>20.06%</b>	<b>31.80%</b>	<b>45.65%</b>

These figures confirm the commitment of the Maltese authorities towards the integration of disabled persons in employment. The ever-increasing number of registered disabled persons who are placed in employment is a tangible proof of the good practices of the Employment and Training Corporation. These practices shall be updated and ameliorated to provide qualitative assistance to these disadvantaged groups."

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

**RSC 15§2 MOLDOVA**

"The Committee concludes that the situation in Moldova is not in conformity with Article 15§2 of the Revised Charter on the ground that legislation prohibiting discrimination in employment on the ground of disability is inadequate."

173. The representative of Moldova reiterated the information concerning the draft anti-discrimination legislation (see Article 15§1). As to the requirement of reasonable accommodation, she informed that the new law on safety and health at the workplace of July 2008 included such a requirement.

174. Responding to a question of the representative of Poland, the representative of Moldova clarified that remedies against discrimination in employment exist. She referred to Article 20 of the Constitution and to Article 55 of the Labour Code.

175. The Governmental Committee welcomed the efforts of Moldova and urged it to continue by adopting the anti-discrimination legislation as soon as possible.

### **Article 15§3 – Integration and participation of persons with disabilities in the life of the community**

#### **RSC 15§3 BELGIUM**

“The Committee concludes that Belgium is not in conformity with Article 15§3 of the Revised Charter on the ground that there is no general anti-discrimination legislation to protect persons with disabilities that explicitly covers the fields of housing, transport, telecommunications and cultural and leisure activities.”

176. The representative of Belgium said that under the Belgian institutional system, it was impossible for federal anti-discrimination legislation to protect persons with disabilities against all discrimination in the areas of housing, transport, telecommunications and cultural and leisure activities. In Belgium, housing was a regional and telecommunications a federal responsibility, while cultural and leisure activities came under the communities. As far as transport was concerned the railways and air transport were federal responsibilities and buses and underground railways regional ones. The federal anti-discrimination legislation of 10 May 2007 banned all discrimination in the public and private sectors in access to and the supply of goods and services to the public.

177. The representative of Belgium listed the various laws in Brussels-Capital Region, the French Community, the Flemish Region and the Walloon Region banning discrimination on grounds of disability concerning housing, transport, and cultural and leisure activities.

178. The representative of the ETUC asked for confirmation that, notwithstanding the fact that there was no federal anti-discrimination law, no discrimination was practised in any of the regions with regard to access to housing, transport, telecommunications and cultural and leisure activities. The representative of Belgium confirmed that there was no such discrimination.

179. The Chair asked whether Belgium would ratify the United Nations Convention on the Rights of Persons with Disabilities. The representative of Belgium said that the ratification procedure was under way.

180. The representative of the ETUC took note of these positive developments, in particular in relation to the future ratification of the UN Convention on the Rights of Persons with Disabilities.

181. The representative of Poland asked whether there were effective remedies for cases of discrimination. The representative of Belgium said that cases could be brought before the domestic courts.

182. The representative of France asked whether the 2007 law had filled the gaps that the Committee had identified. The representative of Belgium confirmed that this was the case

with regard to federal responsibilities. Each regional or community entity had then, in turn, prohibited discrimination within its own spheres of responsibility.

183. The Governmental Committee noted these positive developments, invited the Government to supply detailed information in the next report and decided to await the ECSR's next assessment.

### **RSC 15§3 ESTONIA**

"The Committee concludes that the situation in Estonia is not in conformity with Article 15§3 of the Revised Charter on the ground that there is no anti-discrimination legislation to protect persons with disabilities, which explicitly covered the fields of housing, transport, telecommunications and cultural and leisure activities."

184. The representative of Estonia said that the equal treatment legislation had come into force on 1 January 2009, but that following debate in parliament it had been modified. The new law banned discrimination on grounds of disability, without any explicit reference to housing, transport, telecommunications and cultural and leisure activities. Because it was so recent, it was necessary to await practical implementation. The Constitution did not explicitly prohibit discrimination on grounds of disability. Article 28 of the Constitution only dealt with positive discrimination. Persons who thought they had been discriminated against could bring an action in the courts on grounds of violation of the Constitution. The Estonian President had signed the United Nations Convention on the Rights of Persons with Disabilities on 25 September 2007 and it was now being ratified.

185. The representative of the ETUC said that even though the new legislation was not specifically concerned with housing, transport, telecommunications and cultural and leisure activities it did implement the 2000 European directive and progress had been made. The Government should be sent a positive message and encouraged to continue implementing Article 15§3.

186. The representative of Lithuania thought that the Committee should take account of the information supplied and the practical impact of the legislation on disabled persons.

187. The Governmental Committee noted the information, invited the Government to supply detailed information in the next report and decided to await the next assessment of the ECSR.

### **RSC15§3 FINLAND**

"The Committee concludes that the situation in Finland is not in conformity with Article 15§3 of the Revised Charter on the grounds that there is no anti-discrimination legislation covering issues such as housing, transport, telecommunications and cultural and leisure activities."  
Article 15§3 of the Revised Charter."

188. The representative of Finland said that the Constitution was the leading source of legislation. It covered discrimination in all sectors of society, including therefore housing, transport, telecommunications and cultural and leisure activities. Harassment was also prohibited in legislation against discrimination on grounds of disability. A new law had been passed on 1 September 2009 on personalised assistance to elderly persons with disabilities, with a particular emphasis on transport. Legislation was also being prepared to ban discrimination against severely disabled persons. The relevant bill could be laid before parliament in spring 2010 and would be compatible with EU directives. Apart from this draft legislation, active steps were being taken, in conjunction with NGOs, to prevent discrimination against persons with disabilities.

189. The representative of the ETUC noted the progress made and asked about the ratification process of the United Nations Convention on the Rights of Persons with Disabilities. The representative of Finland said that the Convention and its optional protocol had been signed on 30 March 2007. A few modifications were required to domestic legislation and Finland could then complete ratification.

190. The representative of the Czech Republic asked whether the Constitution included subjective rights and whether a disabled tenant who was refused a tenancy could appeal on the basis of the Constitution. The representative of Finland said that it was possible to lodge such appeals with the courts.

191. The representatives of Lithuania and the Czech Republic asked for more information in the next report on constitutional rights linked to equal treatment for persons with disabilities.

192. The Governmental Committee noted the information, invited the Government to supply detailed information in the next report and decided to await the next assessment of the ECSR.

### **RSC 15§3 LITHUANIA**

“The Committee concludes that the situation in Lithuania is not in conformity with Article 15§3 of the Revised Charter on the ground that there is no general anti-discrimination legislation to protect persons with disabilities, which explicitly covers the fields of housing, transport, telecommunications and cultural and leisure activities.”

193. The representative of Lithuania provided the following information:

“The general anti-discrimination provisions to protect persons with disabilities, which explicitly covers the fields of housing, transport, telecommunications and cultural and leisure activities are established under Article 11 of the Law on the Social Integration of the Disabled (28 November 1991, No I-2044). It establishes the legal obligation for the settlement of the environment suitable physically for persons with disabilities in all spheres of the life. Under this Article it shall be implemented through the planning of territories, buildings and adjustment of public buildings, housing and its' environment, of public transport for passengers and their infrastructures, of informative environment to the special needs of persons with disabilities.

The same Article establishes the responsibilities:

- Ministry of Environment of the Republic of Lithuania is responsible for the preparation and the supervision of the implementation of the legal technical provisions on the building for the adjustment of environment for the special needs of persons with disabilities;
- Institutions of municipalities, owners and users of objects prescribed under this law are responsible for the adjustment of objects for the special needs of persons with disabilities;
- Institution authorized by the Government is responsible for the adjustment of informative environment to the special needs of persons with disabilities.

There is the Program on Adaptation of Housing for Persons with Disabilities for 2007-2011 which is aimed on independency and social integration of disabled, meeting their special needs and adjustment the housing and environment for them.

Under the National Program on Social Integration of People with Disabilities for 2003–2012 three main measures are financed:

- adjustment of public physical environment;
- adjustment of building and living environment;
- adjustment of informative environment.

The Paragraph 9 of the Article 5 of the Law on Lithuanian National Radio and Television provides that Lithuanian national radio and television shall arrange programs for people with vision and hearing disabilities.

There are also Programs on Social Integration of People with Disabilities in the Sphere of Culture, Sport and Leisure. Under those programs variuos events are organised.

The Paragraph 1 of the Article 3 of the Law on Body Culture and Sport establishes equal rights to sport for all willing without discrimination on disability or any other ground. There are 5 national sport organizations of disabled in Lithuania, 42 sports clubs for people with various disabilities, 15 special schools, 15 special pensions, 4 special centers for persons with disabilities.

Legally there is no payment for authors for the adjustment of their work of art for the use of people with disabilities if this work of art has not been made specially for the use of people with disabilities.”

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

### **RSC 15§3 NORWAY**

“The Committee concludes that the situation in Norway is not in conformity with Article 15§3 of the Revised Charter on the ground that, during the reference period, there was no anti-discrimination legislation to protect persons with disabilities explicitly covering the fields of housing, transport, telecommunications and cultural and leisure activities.”

195. The representative of Norway informed the Committee of a positive development. New legislation on discrimination, accessibility and the duty to act had come into force on 1 January 2009. It covered the areas detailed in Article 15§3 and included both public and private sectors. The courts could enforce this legislation on equality machinery and hand down orders and decisions. An ombudsman could also intervene in individual cases of discrimination. There were various laws banning discrimination on grounds of disability or for various reasons such as origin, religion and so on.

196. The representative of the ETUC asked about the ratification process of the United Nations Convention on the Rights of Persons with Disabilities. The representative of Norway had no information on the subject but it would be included in the next report.

197. The Governmental Committee noted these positive developments, invited the government to supply detailed information in the next report and decided to await the next assessment of the ECSR.

## **Article 18§1 – Applying existing regulations in a spirit of liberality**

### **RSC 18§1 BELGIUM**

“The Committee concludes that the situation in Belgium is not in conformity with Article 18§1 of the Charter because it has not been established that the existing regulations are applied in a spirit of liberality.”

198. The representative of Belgium provided up-to-date information, broken down according to country, on the rates of acceptance and rejection of applications for work permits by category and in the different Communities.

#### In the German-speaking Community:

Of 498 applications for work permits from all nationalities in 2004, 3% were refused

Eleven applications for permits from nationals of parties to the Charter that are not parties to the Agreement on the European Economic Area were refused.

2004						
Country	Granted			Refused		
	Permit A	Permit B	Permit C	Permit A	Permit B	Permit C
Albania					1	
Andorra						

Armenia			2			
Azerbaijan			2			
<b>Bulgaria</b>		5			<b>1</b>	
Cyprus						
Croatia	5	8				
Estonia						
Iceland						
Hungary	4	5	1			
Latvia						
Lithuania		2				
Malta						
Moldova						
<b>Poland</b>		30		<b>1</b>	<b>5</b>	
Romania		11			<b>1</b>	
Slovakia		5				
Slovenia						
Czech Republic		2				
<b>Turkey</b>		1	15		2	
<b>Total no of applications</b>		<b>498</b>				

The refusals concerned applications lodged by 1 Albanian, 1 Bulgarian, 6 Poles, 1 Romanian and 2 Turks.

In Brussels-Capital Region:

279 applications for permits from nationals of parties to the Charter that are not parties to the Agreement on the European Economic Area were refused.

- 16 concerned Albanians
- 8 concerned Armenians
- 1 concerned an Azerbaijani
- 16 concerned Bulgarians
- 3 concerned Croatians
- 1 concerned an Estonian
- 6 concerned Moldavians
- 93 concerned Poles
- 71 concerned Romanians
- 4 concerned Slovaks
- 6 concerned Czechs
- 54 concerned Turks

In the Flemish Region:

339 applications for permits from nationals of parties to the Charter that are not parties to the Agreement on the European Economic Area were refused.

- 17 concerned Albanians
- 19 concerned Bulgarians
- 1 concerned an Estonian
- 1 concerned a Hungarian
- 3 concerned Croatians
- 3 concerned Latvians
- 4 concerned Lithuanians
- 4 concerned Moldavians
- 154 concerned Poles
- 51 concerned Romanians
- 4 concerned Slovaks
- 24 concerned Czechs
- 54 concerned Turks

In 2005

In the German-speaking Community:

15 refusals concerned nationals of parties to the Charter that are not parties to the Agreement on the European Economic Area.

<b>2005</b>
-------------

Country	Granted			Refused		
	Permit A	Permit B	Permit C	Permit A	Permit B	Permit C
Albania						
Andorra						
Armenia						
Azerbaijan			1			
Bulgaria	1	1				
Croatia	3	15			2	
Estonia						
"Macedonia"		1	2			
Hungary		4	1			
Latvia						
Lithuania						
Moldova						
Poland	7	26	3		8	
Georgia						
Romania	5	8			2	
Slovakia		2				
Slovenia						
Czech Republic		1				
Turkey			15			3
<b>Total no of applications</b>	<b>435</b>					

In 2006 in the German-speaking Community

2006						
Country	Granted			Refused		
	Permit A	Permit B	Permit C	Permit A	Permit B	Permit C
Albania						
Andorra						
Armenia			2			
Azerbaijan			12			1
Bulgaria		1				
Croatia	4	7	1		1	
Estonia						
"Macedonia"		1	2			
Hungary	1	2				
Latvia			1			
Lithuania		1				
Moldova						
Poland	6	41	1			
Georgia						
Romania	2	10			2	
Slovakia		1			1	
Slovenia						
Czech Republic		1				
Turkey			31			1
<b>Total no of applications</b>	<b>430</b>					

Of 430 applications for permits from nationals of parties to the Charter that are not parties to the Agreement on the European Economic Area, six were refused.

199. The Governmental Committee welcomed the positive developments in Belgium. It noted the information provided by the representative and asked the Government to include all relevant information in its next report.

### **RSC 18§1 FINLAND**

“The Committee concludes that the situation in Finland is not in conformity with Article 18§1 of the Revised Charter because the existing regulations are not being applied in a spirit of liberality.”

200. The representative of Finland provided the following information:

“As to the refusal rate of first-time and permit renewal applications it is to be noted that contrary to the Committee’s conclusion the percentage of refusal rate has been going down being in 2007 14,6% and in 2008 14,4%. Still in 2008 negative decisions on permits applications were mainly based reasons other than availability of labour which currently is increasing because of economic recession. Most often the negative decisions were based on lacking information on terms of employment. If the potential employer failed to answer the questions regarding wage, working time, annual holiday etc. the authorities could not issue the work permit because the terms of the employment need to provide the applicant with basic income and correspond with those of the applicable collective agreement.”

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

### **RSC 18§1 FRANCE**

“The Committee concludes that the situation in France is not in conformity with Article 18§1 of the Revised Charter on the ground that it has not been established that the rules governing the right to engage in a gainful occupation are applied in a spirit of liberality.”

202. The representative of France said that the information requested was now available as a result of the creation of a new computer file, FRAMIDE (France Migration Détachement), by decree on 3 March 2009 which appeared in the Official Journal on 28 April 2009. This allows for the automated processing of nominative data relating to procedures for the granting of work permits to foreign nationals and should be operational by the end of 2009.

203. The representative of France specified that 33% growth in professional immigration in 2007 and 2008 is not a negligible indicator.

204. The Governmental Committee welcomed the positive developments. It noted the information provided by the representative and asked the Government to include all relevant information in its next report.

### **RSC 18§1 ITALY**

“The Committee concludes that the situation in Italy is not in conformity with Article 18§1 of the Revised Charter as it has not been established that the regulations governing the right to engage in a gainful occupation are applied in a spirit of liberality.”

205. The representative of Italy announced that because a new information system had been introduced, it would now be easier to obtain the data required under Article 18§1 of the revised Charter.

206. The Governmental Committee welcomed this positive development. It asked the Government to provide all relevant information in its next report.

**RSC 18§1 SLOVENIA**

“The Committee concludes that the situation in Slovenia is not in conformity with Article 18§1 of the Revised Charter on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.”

207. The representative of Slovenia provided the following information:

“Further to the conclusion of the European Committee of Social Rights that the situation in Slovenia is not in line with Article 18.1 of the ESC, because of the repeated failure to provide statistics, we are giving the following information:

The refusal rate for work permits – for nationals of State Parties - issued for employment purposes (incalculated are both: work permits for the first time and renewal applications), in reference period 1.1.2005-31.12.2008, was 5, 4 %.

		All applications for work permit (for the 1 <sup>st</sup> time and renewal applications)	Refused applications	
			Number of refused	% of refused
2005	ALBANIA	7		0,0
	ANDORA			0,0
	ARMENIA			0,0
	AZERBAJDŽAN			0,0
	BOSNA IN HERCEGOVINA	9805	521	5,3
	CROATA	1421	44	3,1
	FYRM	2288	191	8,3
	MOLDAVIJA, REPUBLIKA	125	6	4,8
	TURKEY	16		0,0
	UKRAJINA	803	23	2,9
	Subtotal	14465	785	5,4
2006	ALBANIA	7	1	14,3
	ANDORA			0,0
	ARMENIA			0,0
	AZERBAJDŽAN			0,0
	BOSNA IN HERCEGOVINA	12484	641	5,1
	CROATIA	1645	45	2,7
	FYRM	2785	256	9,2
	MOLDAVIJA, REPUBLIKA	171	5	2,9
	TURKEY	8		0,0
	UKRAJINA	752	18	2,4
	Subtotal	17852	966	5,4
2007	ALBANIA	7	3	42,9
	ANDORA			0,0
	ARMENIA			0,0
	AZERBAJDŽAN			0,0
	BOSNA IN HERCEGOVINA	24258	1700	7,0
	CROATIA	2759	55	2,0
	FYRM	3289	196	6,0
	MOLDAVIJA, REPUBLIKA	198	2	1,0
	TURKEY	11		0,0
	UKRAJINA	782	24	3,1
	Subtotal	31304	1980	6,3
2008	ALBANIA	57	2	3,5
	ANDORA			0,0
	ARMENIA	1		0,0

	AZERBAJDŽAN			0,0
	BOSNA IN HERCEGOVINA	34773	1923	5,5
	CROATIA	2904	97	3,3
	FYRM	6773	628	9,3
	MOLDAVIJA, REPUBLIKA	220	4	1,8
	TURKEY	15	1	6,7
	UKRAJINA	857	31	3,6
	Subtotal	45600	2686	5,9

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

## Article 18§2 – Simplifying formalities and reducing dues and taxes

### RSC 18§2 ITALY

“The Committee concludes that the situation in Italy is not in conformity with Article 18§2 of the Revised Charter on the ground that the formalities for granting residence permits to self-employed workers were not simplified.”

209. The representative of Italy could not announce any positive developments since the situation had last been examined (Detailed report on Conclusions 2007, § 261).

210. The Committee asked the Government to provide indicative data on the average time lapse between the filing of an application for a work permit to engage in a liberal profession and the date of issue.

211. The representative of the ETUC emphasised that the problem is not so much that of visas but of the denseness of decision-making procedures that require the involvement of three ministries. He would like to know when the Italian government finally decides to take the measures that are needed to remedy the situation.

212. The Governmental Committee urged the Government to take all the necessary steps with regard to the liberal professions to bring the situation into conformity with Article 18§2 of the revised Charter.

## Article 18§3 – Liberalising regulations

### RSC 18§3 FINLAND

“The Committee concludes that the situation in Finland is not in conformity with Article 18§3 of the Revised Charter on the grounds that it has not been established that the rules governing consequences of loss of job have been liberalised.”

213. The representative of Finland provided the following information:

“According to the Aliens Act a foreigner who has graduated from a Finnish educational institute is entitled to get a residence permit for a period of six months for the purpose of looking for a job. However, it is not possible to extend the permit on the said base if he/she cannot find a job.

If the person has been dismissed and he/she has taken the case to the court and the residence permit is still valid he/she may look for a new job. When it expires he/she is not granted a new permit only for looking a job.

In regard to extension of permits it is to be noted that the applicant must have a job that provides him/her with basic income. The Alien’s Act does not have a provision on work permit that generally grants the right to look for a job except for those graduated from a Finnish educational institute.

Is a person has first been granted a permit and he/she applies for extension which is not granted he/she may appeal to the court and continue to work on the same branch and look for a new job. Expulsion from the country is only possible after the court's decision is enforceable."

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

### **RSC 18§3 NETHERLANDS (Kingdom in Europe)**

"The Committee concludes that the situation in the Netherlands is not in conformity with Article 18§3 of the Revised Charter on the ground that the regulations governing access to the national labour market for foreign nationals are too restrictive."

215. The representative of the Netherlands gave further information on the Dutch legal framework governing access to the national labour market for foreign workers.

216. In some situations it was compulsory to reject a work permit application while in others it was merely an option. If there were enough Dutch workers to do the job, any application for a work permit by a foreign national had to be refused. Other grounds for refusal such as a lack of appropriate housing or the fact that the applicant was over 45 years of age were considered optional grounds. Age therefore was not a sufficient reason on its own to reject an application for a work permit from a foreign worker.

217. The aim of the Netherlands' emigration policies was to simplify the admission of highly qualified foreign workers. Foreign nationals whose applications for a work permit were rejected could appeal against the administrative decision in question.

218. At the Committee's request, the Secretariat confirmed that the representative had submitted two new items of information, namely that there were two types of ground – compulsory or optional – for rejecting applications for work permits from foreign workers, and that there was a right to appeal against the authorities' decision to reject a work permit application.

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

### **RSC 18§3 ROMANIA**

"The Committee concludes that the situation in Romania is not in conformity with Article 18§3 of the Revised Charter on the ground that formalities governing the access of foreign workers to the national labour market were not simplified."

220. The representative of Romania provided the following information:

"The legal framework that governs the access of foreign workers to the national labour market is regulated by **Act no. 194/2002** on the regime of foreign citizens in Romania and **Act no. 56/2007** on the employment and detachment of foreign workers on the Romanian territory.

The procedures for obtaining the long stay visa for employment are as follows:

The long stay visa for employment is issued by the Romanian diplomatic missions and consular offices, on the basis of the work permit issued by the Romanian Office for Immigration.

The Romanian Office for Immigration issues the work permit in 30 days after the day it has received the request from the employer. In those cases when additional verifications are needed in order to assert the fulfillment of all conditions for issuing the work permit, the duration can be extended with maximum 15 days.

The foreigner can request the long stay visa for employment in maximum 30 days after the work permit is issued.

The long stay visa for employment is issued, as afore-mentioned, by the diplomatic missions and consular offices of Romania, with the approval of the National Centre for Visa.

The National Centre for Visa is a structure in the subordination of the Directorate General for Consular Affairs, inside the Ministry for Foreign Affairs, which processes and sorts out the requests for visas, received by the consular and diplomatic missions of Romania abroad.

As regards the obtaining of the work permit for permanent workers, the employer shall submit to the Romanian Office for Immigration a documented application on the need to employ a foreigner, accompanied by the following documents:

- a notification from the Employment Agency in the area of which is located the employer's headquarters, with regard to the available labour force for the vacancy communicated by the employer, in the terms set by law;
- the job description, the organizational chart with the specifications related to the positions filled and vacant;
- the proof of having published the advertisement for the vacant job in a widely-spread newspaper;
- the copy of the Minute concluded after the selection that has been made with a view to filling the vacant position;
- the foreigner's Curriculum Vitae, containing his/her statement that has no criminal records, is apt from a medical point of view to be employed and has minimum knowledge of the Romanian language.

Concerning the ECSR's question on the quotas applied for the admission of foreign nationals who wish to work in Romania, for 2009 the quota was set to 8,000."

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

### **RSC 18§3 SLOVENIA**

"The Committee concludes that the situation in Slovenia is not in conformity with Article 18§3 of the Revised Charter on the ground that numerous restrictive rules relating to the employment of foreign workers have not been liberalised."

222. The representative of Slovenia provided the following information:

"Further to the conclusion of the European Committee of Social Rights that the situation in Slovenia is not in line with Article 18 of the ESC, laying down the right to engage in a gainful occupation in the territory of any other Party, hereby we give the following explanations:

By adopting the Act Amending the Employment and Work of Aliens Act (Ur. I. RS, No. 52/07 of 12 June 2007), coming into force on 3 December 2007, we followed the provisions of Article 18 of the ESC. The main objective of the amendments was to simplify procedures and eliminate all unnecessary administrative barriers. Besides this, the amendment of the Act corrected certain deficiencies in the applicable Act in practice and harmonised the Slovenian legislation with the *acquis*. Among the substantive changes, we should mention that the circle of aliens liable to apply for a personal work permit with a three-year validity period has been broadened, thus rendering their position in the labour market equal to that of Slovenian citizens. This means that they are free to pursue employment or self-employment or may be entered in the register of unemployed persons.

The new Article 10b of the Act provides that an application for a personal work permit valid for a period of three years may be submitted by:

1. a member of a Slovenian citizen's immediate family who has been in possession of a valid permit for temporary residence for the purpose of family reunification;
2. an immediate family member of an alien who is in possession of a personal work permit valid for an indefinite period of time, and who has been in possession of a permit for temporary residence for the purpose of family reunification if he/she has resided in the Republic of Slovenia on the basis of a permit for temporary residence for at least two years;
3. a Slovenian emigrant, or his direct descendants up to three times removed, who is not in possession of Slovenian citizenship;
4. a self-employed alien who has been uninterruptedly self-employed in the Republic of Slovenia and has been entered in the Business Register;
5. an alien with at least vocational education who for the two years prior to submitting an application has been uninterruptedly employed with the same employer or his/her legal successor;
6. a working migrant who for the two years prior to submitting an application has been uninterruptedly employed with the same employer or his/her legal successor;

7. an alien who has completed the last year of his/her education in the Republic of Slovenia and obtained at least a higher degree of education if he/she finds an employer or becomes self-employed within one year after obtaining his/her qualification;
8. an alien who has completed a research programme in the Republic of Slovenia and finds an employer or becomes self-employed within a period of one year;
9. an immediate family member of an alien referred to in the preceding point;
10. an immediate family member of an alien who has the status of researcher;
11. a person eligible for subsidiary protection.

In practice, this provision has enabled a large number of foreigners, mainly those with at least vocational education, to obtain a personal work permit, generally on the basis of a two-year employment with the same employer.

As regards work permits, the amendments to the Act have facilitated the extension of a work permit after the expiry of its validity.

New Rules on work permits, registration and de-registration of work and supervision of the employment and work of aliens (Ur. l. RS, No. 37/2008), adopted owing to Act amendments, greatly reduced the number of evidence documents necessary in procedures for the issue of work permit, the majority of these being attained *ex officio* by the Employment Service. The new Rules have also contributed to greater transparency of legislation, as the document has annulled and replaced eight implementing regulations governing the employment of aliens.

In the procedure for issuing work permits, it is no longer required that aliens should have their education recognised by the Ministry of Higher Education, Science and Technology; instead, a copy of the certificate verified by apostille stamp on the basis of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Ur. l. FLRJ, No. 10/62), or, in the event that a foreign country is not a signatory of the Convention, pursuant to the Act on Verification of Documents in International Law (Ur. l. RS, No. 64/01) is sufficient. By this amendment, in practice, the alien's time for arrival to Slovenia is a few months shorter, and thus related costs are also reduced.

Regarding the violation of Article 18 of ESC due to a double procedure for obtaining a residence permit and work permit, we should explain that Slovenia will transpose the Council Directive on a Single Application Procedure for a Single Permit for Third-Country Nationals to Reside and Work in the Territory of a Member State and on a Common Set of Rights for Third-Country Workers Legally Residing in a Member State into its legislation, and introduce a uniform procedure, thus eliminating the double procedures as soon as the directive is adopted.

Regarding the violation of Article 18 of ESC due to the fact that foreign workers may obtain a temporary residence permit only in their country of origin and for precisely defined employment:

Entry and residence of aliens in the Republic of Slovenia is regulated by the Aliens Act (Ur. l. RS, No. 71/08, official consolidated text), which is fully harmonised with the *acquis* in the area of migrations. The *acquis* in the area of migrations also regulates the admission (entry and residence) of third-country nationals into the territory of Member States for specific residence purposes, including employment or work and self-employment, and requires that the conditions for admission of a third-country national to the territory of a Member State be checked prior to his/her entry into the Member State.

Thus, the applicable Aliens Act – in accordance with the *acquis* – requires that an alien who is a third-country national, must obtain the permit for his/her first residing in the Republic of Slovenia prior to his/her entry into the country. An application for the issue of the first residence permit for the reason of employment or work in the Republic of Slovenia may be submitted by the alien himself/herself, or, since 6 June 2008, when the Act Amending the Aliens Act (Ur. l. RS, No 44/08) came into force, the application may also be submitted by the alien's employer. The alien may file the application with the diplomatic/consular representative office of the Republic of Slovenia abroad, while the employer may also file the application directly to the administrative unit of the State competent for issuing the permit. In July 2006, Rules on procedures and the required documentation to obtain work permits were drawn up to apply to cases where the employment of a foreign national is not – due to the nature of the work – tied to the labour market; the new Rules reduce the number of documents required and the duration of the procedure to obtain work permits. However, even in the case that the application for the first residence permit was submitted by the employer, the alien must wait for the decision abroad. The alien may file the application with the diplomatic/consular representative office of the Republic of Slovenia abroad, while the employer may also file the application directly to the administrative unit of the State competent for issuing the permit.

Therefore, the alien must obtain his/her first residence permit for the purpose of employment or work before his/her entry into the Republic of Slovenia, but the Aliens Act does not stipulate that the permit must be or can only be obtained in the alien's country of origin. The Aliens Act stipulates only that the permit must be obtained prior to the alien's entry into the country (second paragraph of Article 28) and

that an application for issuing the first residence permit should be filed with the diplomatic/consular representative office of the Republic of Slovenia abroad. Therefore, the allegation that an alien may obtain a permit for his/her first residence in the Republic of Slovenia only in his/her country of origin is not true.

An alien applying for a temporary residence permit for the purpose of employment or work must also have a work permit or any other permit required under the law governing the employment and work of aliens in the Republic of Slovenia. A residence permit enables an alien to enter and reside in the Republic of Slovenia, while a work permit allows him/her to work there. The type of work that may be performed by the alien in the Republic of Slovenia is specified in the work permit and not in the residence permit.

Regarding the fact that a foreign worker may obtain a permit for his/her first employment only for certain work with a certain employer, we believe that this does not represent a violation of Article 18 of ESC. As regards the employment of third-country nationals, Slovenia implements a selective policy based on a quota system to obtain workers pursuing occupations for which there is a shortage of available labour in the Slovenian market. In regular employment, the basic criterion for access to the Slovenian labour market is labour market control, which implies a linkage of the alien's first employment to a particular employer and to specific work. Prior to issuing a work permit, it is necessary to check whether the particular job vacancy could be filled with a domestic unemployed person. Thus, the Employment Service of the Republic of Slovenia, which conducts the proceedings for issuance of work permits, shall check whether there are suitable domestic job-seekers or persons who enjoy equal status with domestic unemployed persons (EU and EEA citizens, and third-country nationals with personal work permits) entered in the records of unemployed persons. In his/her application for issuance of an employment permit, the employer must precisely define the work post, education requirements and other conditions to be met by the worker in order to fill the vacancy. Through this arrangement, Slovenia prevents "social dumping" and tries to reduce unemployment in the country.

The Employment and Work of Aliens Act stipulates that during the time of validity of an employment permit, a foreign worker is tied to the employer who has obtained the work permit for him/her. Nevertheless, this system allows for a certain degree of flexibility. On the basis of the termination of the employment contract with the first employer and obtaining a new employment permit with another employer, a foreign worker may be reassigned to the new employer without having to leave Slovenia. The 2007 amendment to the Employment and Work of Aliens Act (entry into force on 3 December 2007) makes it possible that one or more employment permits for the same alien may be issued to more than one employer after the alien has been uninterruptedly employed for six months with the first employer if the alien employed has higher education. The employment with another employer must be in compliance with the Employment Relationships Act.

Regarding the fact that a work permit and a temporary residence permit may be revoked due to an early loss/termination of work, we believe that this does not represent a violation of Article 18 of ESC. As stated in the preceding paragraph, economic migrations in Slovenia are based on a quota system depending on the needs of the labour market. Aliens have access to the labour market for the purposes of employment in a certain work post. In the case of termination of employment i.e. the reason for which the work permit has been issued, the latter, which was issued for the particular job, ceases to be valid. However, if the alien fulfils the condition for acquiring cash benefit, his/her stay is also justified in the period in which the person is receiving cash benefit. During this time, he/she may seek another employer who may obtain for him/her another employment permit."

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

### **RSC 18§3 SWEDEN**

"The Committee concludes that the situation in Sweden is not in conformity with Article 18§3 of the Revised Charter on the grounds that:

- the rules governing access to the labour market for nationals of States Parties are too restrictive;
- the residence permits of foreign workers who have lost their job cannot be extended to give them enough time to look for a new one."

224. The representative of Sweden supplied information on the recent change to the legislation governing immigration policy (amendments to the Immigration Act of 15 December 2008), which would relax the rules on the issuing of work permits. Although applications for work permits applied initially to a particular job and employer, after a

period of two years employees could now apply for new jobs and thus new work and residence permits.

225. The representative of Sweden confirmed that under the amendments to the Immigration Act of 15 December 2008, all employees would be entitled to a three month extension to the validity of their residence permit to give them additional time to seek new employment.

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

## **Article 20 – Right to equal opportunities and treatment in employment and occupation without sex discrimination**

### **RSC 20 ANDORRA**

“The Committee concludes that the situation in Andorra is not in conformity with Article 20 of the Revised Charter because an adjustment of the burden of proof is not guaranteed for persons alleging discrimination based on sex. “

227. The representative of Andorra provided the following information:

“In the first report of the government of Andorra, the answer to the question on shifting the burden of proof for persons alleging discrimination based on sex (question E of the Form) was extremely succinct. The reply was confined to the statement that "legislation does not provide for a reversal of the burden of proof in cases where discrimination based on sex is alleged, and there is no known case-law on the subject".

We have consulted the case-law reports and it is true that there have not been any proceedings where this principle has been contemplated. Although we have found no case-law on the subject, this does not mean that the Andorran courts do not apply the principle, merely that there were no allegations of discrimination during the reference period (1-1-2005 to 31-12-2006), so the principle has not been considered. This information has also been confirmed by the *Batllia*, the court of first instance.

In the light of the foregoing, we wish to make the following points:

1. The legislation on reversing the burden of proof

There is nothing in Andorran legislation on reversing the burden of proof, or its equivalent. Nor have Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation or its Article 10 on adjustments to the burden of proof been transposed into Andorran law. Nevertheless, the courts ensure that the right to non-discrimination is fully enforced.

2. The application of the adjustment of the burden of proof principle by the courts

As already indicated, during the reference period there were no cases involving allegations of sexual discrimination to which this principle might have been applied. However, the government can confirm that:

a. The courts enforce the rights embodied in the Andorran constitution, as the principal source of Andorran law.

When they are handing down judgments or decisions in proceedings, the courts rigorously uphold fundamental constitutional rights. They therefore protect the right not to be discriminated against, on grounds of sex or for any other reason. If this right is breached, the courts will not confine themselves to determining whether there is an objective and reasonable justification for the difference of treatment. They will consider in detail whether what seems to be a reasonable difference does not, in reality, represent hidden or disguised discrimination, to ensure that constitutional rights are properly enforced.

This is clearly demonstrated by the approach adopted by the courts when they are faced with breaches of labour or employment rights that are guaranteed by the constitution.

b. Procedural consequences when there is evidence of discrimination

It is usually difficult to obtain irrefutable evidence that discriminatory treatment really does constitute discrimination. No one actually practises inequality in the employment, or any other, field, by declaring in writing that the motive for it is discrimination. So when victims complain of discriminatory behaviour,

they can present facts that can be reasonably supposed to amount to discrimination, but they cannot offer formal proof, because this does not exist.

The presentation of facts constituting reasonable evidence of discrimination has implications for proceedings. Defending parties are required to show that their actions have another cause than that alleged by the would-be victim.

Inevitably, this means that the defending party has to be more active in and take more responsibility for the evidential stage of the proceedings. In practice, therefore, there is a *de facto* adjustment of the burden of proof.

In other words, given the obvious difficulty faced by the courts in determining whether proof has been established because of the lack of any objective evidence, a *de facto* adjustment of the burden of proof has become one possible element of their procedure.

c. Comparative law as one of the non-mandatory sources of Andorran law.

In his book "*Les sources du droit andorran*", Mr André Pigot, a judge in both France and Andorra and a consultant to the Andorran judicial service commission, argues that there are supplementary sources of law and that comparative law is very important because it offers courts further options when there are gaps in or a complete absence of existing rules of law.

Traditionally, the supplementary sources were Roman, canon and Catalan law. With time, comparative law has been added to this number. According to Mr Pigot it plays an important role in interpreting the science of law and highlights for lawyers the meaning and significance of the law, based on the experience of all nations.

Given the lack of rules on and the difficulties of securing evidence of discrimination, comparative law is a source of law. The Andorran courts may therefore take account of articles 10 and 8 respectively of Directives 2000/78/EC of 27-11-2000, and 2000/43/EC of 29-6-2000 and of the experience of other countries such as Spain that have recently transposed European law into their domestic systems.

d. Importance of legal theory

Legal theory is not a source of law, but it is highly relevant to the application and interpretation of rules, as Mr Pigot confirms in his book.

Legal theory encapsulates, clarifies and gives expression to the results of careful study of the law. It plays a key role in determining how we interpret the law and therefore has a major influence on all lawyers, and thus on judges.

There is a consensus among legal theorists on the need to restore the balance between the parties in discrimination cases. Legal theory is concerned, *inter alia*, with the difficulty of weighing up any psychological damage, the victim's vulnerability to the perpetrator, the likelihood of reprisals following a complaint and the lack of irrefutable evidence of discrimination.

The fact that legal theory highlights the obstacles posed by the need for proof of discrimination will undoubtedly influence the courts in their efforts to provide effective protection for a constitutional right, when they are finally required to rule on a case of alleged discrimination."

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

## **RSC 20 AZERBAIJAN**

" The Committee concludes that the situation in Azerbaijan is not in conformity with Article 20 of the Revised Charter on the ground that legislation prohibits the employment of women in underground mining and all other labour intensive jobs. "

229. The representative of Azerbaijan provided the following information:

"In response to the ECSR conclusions of non-conformity, the Ministry of Labour and Social Protection of the Population of the Republic of Azerbaijan has addressed a letter to the Cabinet of the Ministers of the Republic of Azerbaijan requesting that appropriate orders be given to the institutions concerned to make proposals for adequate legislation changes in order to bring situation into conformity with Article 20 of the Revised Social Charter."

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

## **RSC 20 CYPRUS**

“The Committee concludes that the situation in Cyprus is not in conformity with Article 20 of the Revised Charter on the ground that it is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims.”

231. The representative of Cyprus indicated that, following the ECSR’s conclusion of non-conformity, an amendment to the Law had been enacted so that wage comparisons could be extended outside the company concerned. Having consulted social partners, agreement was reached to extend the comparison to associated companies of the same group of companies. The amended Law No. 38(1)/2009 on equal pay between men and women for similar work or work of equal value was enacted in April 2009.

232. The Governmental Committee noted the positive developments in Cyprus, invited the Government to supply all relevant information in the next report and decided to await the ECSR’s next assessment.

## **RSC 20 PORTUGAL**

“The Committee concludes that the situation in Portugal is not in conformity with Article 20 of the Revised Charter on the ground that it is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims.”

233. The representative of Portugal indicated that equality between women and men is a main priority of the Portuguese policy and legislation including the Labour Code. The Equal pay principle and the remuneration gap between men and women is a big concern and there has been different approaches beside the labour law to address this problem. The report about the implementation of the Equality Plan (2006-2007-2008), the work done in order to eliminate discriminatory clauses in collective agreements and the handbook on tackling the gender pay gap were some of the initiatives adopted to combat the discrimination of women in what remuneration is considered. There were also public campaigns to eliminate discrimination in this field.

234. No changes however had been made to the specific provision in the Labour Code which envisaged pay comparisons within the same company.

235. The representative of France again stated that the requirement of wage comparisons outside a company was not easy to implement, and that more information from the ECSR on this matter would be desirable.

236. The representative of the ETUC welcomed the changes aimed at eliminating the discriminatory provisions.

237. The Governmental Committee took note of the information provided and decided to await the next assessment of the ECSR.

## **RSC 20 SLOVENIA**

“The Committee concludes that the situation in Slovenia is not in conformity with Article 20 of the Revised Charter on the grounds that women are prohibited from working in underground mines, and in principle are prohibited from night work in industry and in the construction sector.”

238. The representative of Slovenia provided the following information:

“Further to the conclusion of the European Committee of Social Rights that the situation in Slovenia is not in line with Article 20 of the ESC, unfortunately we can not give any new information and can only, once again, give the following explanation:

### **Special protection measures**

The legal provisions in the Act surrounding the ban in principle on women working in industry and construction and performing underground work in mines, are a consequence of the fact that based on the act of succession (Ur. l. – MP RS No. 15/92) Slovenia is still a signatory to ILO Convention 45 Concerning the Employment of Women on Underground work in Mines of all Kinds, which prohibits women from working in mines, and ILO Convention 89 Concerning Night Work of Women Employed in Industry, which prohibits women from working at night in industrial enterprises.

Here we should point out that a proposal has already been formulated for withdrawing from Convention 45, and this has also been deliberated over and confirmed by the social partners in Slovenia. Withdrawal in accordance with Convention 45 takes effect one year after registration of the withdrawal at the ILO. The procedure for withdrawal from Convention 89 can only be started after the expiry of the period in which withdrawal in accordance with the Convention is not permitted, this being 2012, and up until withdrawal Slovenia is bound by its provisions.

Slovenian national law also observes the Protocol to ILO Convention 89 of 1990, which allows women to perform night work without the individual permission of a state authority, if the social partners agree that such work is necessary in a specific line of business. This possibility is provided by point 1 of the second paragraph of Article 153 of the Act, and on this basis the social partners have already agreed on the conditions and permissibility of night work for women in agriculture and the foodstuffs industry for lines of business performed in an industrial manner and in the chemical and rubber industries.

With regard to women performing night work in industry and construction, Article 153 of the Act states that an employer in industry and construction can only employ a female worker for night work if the worker is a member of the employer's family, if the worker performs management work or manages a work unit or performs work relating to ensuring the safety, health or social security provisions for workers, if that work must urgently be done due to force majeure or to prevent damage to raw materials or other perishable material – within 24 hours of its introduction the employer must notify the competent labour inspector of such night work – and if the work has been given prior approval by the minister competent for labour in the national interest.

The Act also provides that with the consent of the minister competent for labour, night work may be introduced for women in industry and construction for the better exploitation of the means of work, expansion of employment possibilities and similar economic or social reasons.

For the above reasons night work may be introduced:

- in a specific line of business or occupation, provided that the representative unions and the association of employers have agreed to this or given their consent;
- at one or more employers provided that an agreement has been made between the unions at the employer and the employer, that consultation has taken place between employer(s) and the employers' association and the representative union in the line of business; or
- at a certain employer provided that an opinion has been requested from the unions at the employer, the representative union for the line of business and the employers' association, and that the labour inspector has made prior verification of the fulfilment of conditions for introducing night work for women.

The special treatment of night work in industry and construction therefore relates to all employed women in these sectors, with the above-listed exceptions. Where in accordance with the provisions of the Act summarised above women perform night work in industry or construction on the basis of consent from the minister competent for labour, the Act provides additional security for certain categories of female worker, specifically workers during pregnancy and the period of breastfeeding and also during parenthood, as well as older female workers and those under 18 years old."

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

### **RSC 20 SWEDEN**

"The Committee concludes that the situation in Sweden is not in conformity with Article 20 of the Revised Charter on the ground that the employment insurance legislation indirectly discriminates against women working part-time. In accordance with Article 21."

240. The representative of Sweden mentioned that when, in 2002, the ECSR came to a conclusion of non-conformity it based its assessment mainly on the fact that most part-time workers in Sweden were women. However, a careful examination of the statistics showed that there was a difference of 23% between men and women working part-time in respect of those working more than 20 hours per week. This difference was nevertheless not

relevant because all such workers had full access to the unemployment scheme. As regards part-time workers working less than 20 hours a week, the difference between men and women was only 3%. These people did not have access to unemployment scheme because they mostly consisted of students and persons working few hours besides their main occupation. The law would have been changed had it been considered discriminatory, but the Swedish authorities do not consider the 3% difference as a significant one.

241. The representatives of Lithuania and Romania indicated that the situation did not seem to be discriminatory. Other representatives indicated that the clarifications presented should be forwarded to the ECSR.

242. The Governmental Committee took note of the information and data presented by the Swedish representative. It invited the Swedish Government to provide them in the next report and decided to await the next assessment of the ECSR.

## **Article 24 – Right to protection in cases of termination of employment**

### **RSC 24 ALBANIA**

“The Committee concludes that the situation in Albania is not in conformity with Article 24 of the Revised Charter on the ground that the compensation for unlawful termination of employment is subject to a maximum of one year’s wages.”

243. The representative of Albania provided the following information:

“Pursuant to Section 146 para 3 of the Labour Code the termination of an employment contract in violation of this provision of the Code shall be invalid and the employer shall be under an obligation to pay the employee compensation up to a maximum amount of one year’s salary. In case the dismissal of an employee in public administration has been declared unlawful, the court may also order reinstatement.

According to the conclusions of the Committee, regarding the stipulation of the article 146 of the Albanian Labour Code, the Albanian Government is under a process of evaluation, in order to amend this article.

It is planned to intervene during 2010 to the Albanian Labour Code in order to have a specific regulation on this issue.

By the order no.275, date 06.02.2009 of the minister of Labour, Social Affairs and Equal Opportunities, it is established a working group for the revision of the Albanian Labour Code.

This working group is composed by representatives from the government, social partners (both employee and employer organisations), and academic field.

The representative of the Ministry of Labour, Social Affairs and Equal Opportunities has presented to the group, the ground of non-conformity of Albanian Labour Code with article 24 of the Revised Social Charter.

The working group is under the process of evaluation, in order to achieve a consensus on the amendment of the article 146 of Albanian Labour Code.

The time-table for the discussions of the working group it is foreseen to be completed until 31 October 2009 (not only related with this issue).

The first draft law on the amendment of Albanian Labour Code it is foreseen for January 2010.”

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

### **RSC 24 BULGARIA**

“The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Revised Charter on the ground that the compensation for unlawful termination of employment is subject to a maximum of six months’ wages.”

245. The representative of Bulgaria indicated that a new government had been established in July 2009, and that one of its priority goals was overcoming the situations of non-conformity identified by the ECSR. As regards the conclusion of non-conformity under Article 24 on the ground that compensation in cases of unlawful dismissal was limited to 6 months wages, she announced that a bill had been prepared with a view to amending the Labour Code and entirely removing the limits of compensation in such cases.

246. According to the representative of Bulgaria, the bill would soon be presented to the National Council for Tripartite Cooperation in order to be discussed with the social partners. It would subsequently be presented to the National Assembly for adoption. If the procedure was followed without delays it could be expected that the amendments would be adopted by the National Assembly and would enter into force no later than 6 months, thus resolving the present situation of non-conformity.

247. The representative of Lithuania welcomed the preparation of new legislation in this difficult area.

248. The representative of the ETUC considered it was still uncertain whether the problem would be solved, and given the seriousness of the breach in question, suggested sending a strong message to the Government as a stimulus to finalise and adopt the draft bill. This suggestion was backed by other representatives, including those from France and Portugal.

249. On the other hand, a number of representatives, including those from Finland, Denmark, United Kingdom and the Czech Republic, did not support the calls for a strong message as they were of the opinion that steps were being taken in an effort to remedy the situation.

250. The Governmental Committee noted the positive developments in Bulgaria, urged the Government to take all necessary steps to bring the situation into conformity and decided to await the ECSR's next assessment.

## **RSC 24 CYPRUS**

"The Committee concludes that the situation in Cyprus is not in conformity with Article 24 of the Revised Charter on the grounds that:

- employees who have not been employed with their employer for a continuous period of 26 weeks are not entitled to protection against dismissal regardless of their qualifications,
- compensation for unlawful termination of employment is subject to a ceiling."

### First ground of non conformity

251. The representative of Cyprus indicated there had been no change to the situation. Thus, under the Termination of Employment legislation, employees who had not completed a continuous period of 26 weeks of employment were not entitled to any compensation in the event of dismissal as this period was considered a probation period.

252. The ECSR conclusion had been made available to the tripartite technical committee that is discussing the modernisation of termination of employment legislation. None of the partners has raised any issue related to making alterations to the period of probation. Furthermore, given that all employees are covered under Contract Law, irrespective of the length of work, an employee who believes he/she has been unlawfully dismissed even

before the completion of the 26 weeks period may lodge a complaint to the District Court claiming compensation.

253. The representative of Cyprus also said that the ECSR had never specified what a 'reasonable' probation period was within the meaning of the Appendix to Article 24, which made it more difficult to identify any possible changes to bring the situation into conformity.

254. Several representatives, including those from Cyprus, the Czech Republic and the United Kingdom, considered it would be helpful to have some guidance from the ECSR on what a 'reasonable' period was.

255. The Secretariat was asked to prepare a table indicating the situation in those countries that had accepted Article 24 and were in conformity with this provision, as such information might clarify what was a 'reasonable' probation period for the purposes of exclusion from protection against termination of employment legislation.

256. The Governmental Committee took note of the information provided, urged the Government to take all necessary steps to bring the situation into conformity and decided to await the ECSR's next assessment.

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

257. The representative of Cyprus provided the following information:

"According to the Termination of Employment legislation, for the calculation of the compensation the Industrial Disputes Court takes into consideration, among others, the earnings of the employee, the period of employment, the loss of career prospects, the age of the employee and the conditions under which he /she was dismissed. As mentioned in the Cyprus report,

*"The minimum compensation the Industrial Disputes Court may order in the case of unlawful dismissal is equal to the redundancy payment which the employee would have been entitled to if his employment had been terminated due to redundancy. The maximum compensation is the wages of two years.*

*It is noted that if the employee resorts to a District Court instead of the Industrial Disputes Court, the District Court may order a larger compensation than the maximum compensation mentioned above"*

From the above, it is ascertained that the unlawfully dismissed employee may appeal either to Industrial Disputes Court or to the District Court which takes into consideration the same criteria for the purpose of determining the amount of compensation due to unlawful dismissal. In the case of appeal to the District Court, there is no limit to the amount of compensation the District Court may award.

Furthermore, the District Court may, if there is a breach of contract according to the provisions of the Contracts Law, consider among others the financial losses incurred and the damage suffered by the victim. The victim of unlawful dismissal may seek from the District Court to order reinstatement and, according to the provisions of the Termination of Employment legislation, the District Court may order such remedy. However, bearing in mind that the majority of employers in Cyprus are family enterprises, reinstatement is not something the victim of an unlawful dismissal seeks since the employer-employee relationship is broken."

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

#### **RSC 24 FINLAND**

"The Committee concludes that the situation in Finland is not in conformity with Article 24 of the Revised Charter on the ground that the compensation for unlawful termination of employment is subject to an upper limit."

259. The representative of Finland referred to the information given in response to CSR 1§2 conclusion of non-conformity at the 119<sup>th</sup> meeting of the Governmental Committee (T-SG(2009)9).

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

#### **RSC 24 ITALY**

“The Committee concludes that the situation in Italy is not in conformity with Article 24 of the Revised Charter on the ground that the categories of workers excluded from the protection against termination of employment are more extensive than those provided for by this provision.”

261. The representative of Italy indicated that very few categories of workers were not covered by general legislation on termination of employment. Domestic employees did not fall under the scope of the said legislation because domestic work is considered a special kind of working relationship. The worker is engaged more in a trustee relationship than in the industrial process and thus had weaker / different protection against dismissal (no right to reintegration or compensation). They did however enjoy the right to a legal notice period, and severance pay, in cases of dismissal, as provided by law 339/58 and by collective agreement. As regards workers undergoing a probation period of 6 months, they did not have the right to a notice period or to payment of compensation in the event of dismissal, although the employer did have the obligation of motivating the dismissal.

262. The representative of the ETUC asked whether any of the information provided was new, as it seemed there had been no developments in the situation.

263. The representative of Portugal considered it would be useful to know the number of persons working as domestic employees in Italy that were excluded from protection against termination of employment legislation. The UK representative stated in this respect that a clarification of the definition of domestic employee would be useful, as this was a very broad term, which sometimes covered self-employed workers also.

264. The Governmental Committee took note of the information provided, urged the Government to take all necessary steps to bring the situation into conformity and decided to await the ECSR’s next assessment.

#### **RSC 24 MALTA**

“The Committee concludes that the situation in Malta is not in conformity with Article 24 of the Revised Charter on the ground that employees are excluded from protection against dismissal during a six months probationary period that might be extended until up to one year for certain categories of employees.”

265. The Representative of Malta provided the following information:

“As has been stated in previous replies by Malta on the issue of employment relations, given the small labour market, where minimal industrial unrest could lead to serious repercussions on the island’s economy, social dialogue has always been at the forefront of any employment relations issue. In fact, in Malta all industrial matters are dealt with and agreed to, through discussions and agreement reached between the Social Partners. This process has in fact led to relatively peaceful industrial relations which are based mainly on dialogue and agreement between employers, employees and the State.

All matters relating to employment and industrial relations were extensively discussed in detail between the Social Partners following the issue of a White Paper before the implementation of the current provisions of the Employment and Industrial Relations Act. These discussions included the length of the probationary periods as well as matters regarding protection against and redress in cases of dismissal during employment.

It is acknowledged that currently there is no obligation on the employer to provide a reason for dismissal during the probationary period, but this is not absolute. An employee claiming unfair dismissal on the grounds of discrimination can still refer his case to the Industrial Tribunal, which is the Maltese labour court. In fact, according to Article 75 (1) (a) of the Act, an employee can take his case to the Tribunal and in such proceedings there is a reversal of the burden of proof with the employer having to provide sufficient reasons to contradict any *prima facie* claims of discriminatory actions leading to dismissal. Hence one can conclude that an employee does have a degree of redress in such a situation.

It is also pertinent to underline that a review of the Employment and Industrial Relations Act is being considered and it is likely that these and other issues will be up for further discussions between the social partners.”

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

## **APPENDIX I / ANNEXE I**

### LIST OF PARTICIPANTS / LISTE OF PARTICIPANTS

- (1) 119<sup>th</sup> meeting : 25-25 May 2009  
(2) 120<sup>th</sup> meeting : 5-8 October 2009

### **STATES PARTIES / ETATS PARTIES**

#### **ALBANIA / ALBANIE**

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

#### **ANDORRA / ANDORRE**

Mme Iolanda FONT, Directrice de Travail, Ministère de Justice et intérieur (1)

Mme. Maria GELI, Directrice du Travail, Ministère de la Justice et de l'Intérieur (2)

#### **ARMENIA / ARMENIE**

Mrs. Anahit Martirosyan, Head of Division of International Relations, Ministry of Labor and Social Affairs (1)

#### **AUSTRIA / AUTRICHE**

Mrs Elisabeth FLORUS, Federal Ministry of Economics and Labour (1) (2)

#### **AZERBAIJAN / AZERBAÏDJAN**

Mr Hanifa AHMADOV, Deputy Head of the International Cooperation Department, Ministry of Labour and Social Protection of Population (1) (2)

#### **BELGIUM / BELGIQUE**

Mme Marie-Paule URBAIN, Conseillère, Service public fédéral Emploi, Travail et Concertation sociale, Services du Président, Division des Etudes juridiques (1) (2)

Mme Murielle FABROT, Attachée, Service public fédéral Emploi, Travail et Concertation sociale, Division des Etudes juridiques, de la documentation et du contentieux (1) (2)

#### **BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE**

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

#### **BULGARIA / BULGARIE**

Mr Nikolay NAYDENOV, Head of Section for International Organizations and International Law, Directorate for European Affairs and International Cooperation, Ministry of Labour and Social Policy (1)

Mme Yuliya ILCHEVA, Conseillère, Direction des Affaires européennes et coopération internationale, Ministère du travail et de la politique sociale (1) (2)

#### **CROATIA / CROATIE**

Mrs Gordana DRAGIČEVIĆ, Head of Department for European Integration and Project Management, Ministry of Economy, Labour and Entrepreneurship (1) (2)

#### **CYPRUS / CHYPRE**

Mr Costas CHRYSOSTOMOU, Senior Administrative Officer, Ministry of Labour and Social Insurance (1)

Mrs Eleni PAROUTI, Senior Administrative Officer, Ministry of Labour and Social Insurance (2)

#### **CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

Ms Kateřina MACHOVÁ, Legal Official; Ministry of Labour and Social Affairs (1) (2)

#### **DENMARK / DANEMARK**

Mr Kim TAASBY, Special Adviser, Danish Ministry of Employment (2)

Ms Vibeke HAUBERG, Head of Division, Danish Ministry of Refugee (2)

**ESTONIA / ESTONIE**

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

Mrs Thea TREIER; Head of Employment Relations, Working Life Development Department, Ministry of Social Affairs (1)

**FINLAND / FINLANDE**

Mrs Liisa SAASTAMOINEN, Senior Officer Legal Affairs, Ministry of Employment and the Economy (1) (2)

Mrs Riitta-Maija JOUETTIMÄKI, Ministerial Councillor, Ministry of Social Affairs and Health (1) (2)

**FRANCE**

Mme Jacqueline MARECHAL, Chargée de mission, Délégation aux affaires européennes et internationales, Ministère de la Santé et des Solidarités (1) (2)

**GEORGIA / GEORGIE**

-

**GERMANY / ALLEMAGNE**

Mr Udo PRETSCHKER, Federal Ministry of Labour and Social Affairs (1) (2)

**GREECE / GRECE**

Ms Evangelia ZERVA, Official, Ministry of Employment and Social Protection, International Relations Directorate (1) (2)

**HUNGARY / HONGRIE**

Mr Gyorgy KONCZEI (Chair/Président) (1), Advisor, Ministry of Social Affairs and Labour, Alkotmany (1)

Dr. Ildikó BODGAL, Chief Councillor, Ministry of Social Affairs and Labour, Department for European Union and International Affairs (2)

**ICELAND / ISLANDE**

Ms. Pálína M. RUNARSDOTTIR, Adjointe au Représentant Permanent de l'Islande auprès du Conseil de l'Europe (2)

**IRELAND / IRLANDE**

Mr John Brendan McDONNELL, International Officer, International Desk, Employment Rights' Legislation Section, Department of Enterprise, Trade and Employment (1) (2)

**ITALY / ITALIE**

Ms Carmen FERRAILOLO, Ministry of Labour, Health and Social Policies, Directorate General Working Conditions (2)

Ms Monica BERGER, Ministry of Labour, Health and Social Policies, Directorate General Working Conditions (2)

**LATVIA / LETTONIE**

Mr Sergejs MALUHINS, Legal adviser, International Agreements and Relation Unit, Social Insurance Department, Ministry of Welfare (1) (2)

**LITHUANIA / LITUANIE**

Ms Kristina VYSNIAUSKAITE-RADINSKIENE, Chief Specialist of International Law Division, Ministry of Social Security and Labour (1) (2)

**LUXEMBOURG**

M. Joseph FABER, Conseiller de direction première classe, Ministère du Travail et de l'Emploi (1) (2)

**MALTA / MALTE**

Mr Franck MICALLEF, Director (Benefits), Social Security Division (1) (2)

**MOLDOVA**

Mme Lilia CURAJOS, Chef de la Section des relations internationales et communication, Ministère de la Protection sociale, de la Famille et de l'Enfant (1) (2)

**NETHERLANDS / PAYS-BAS**

Mr Onno P. BRINKMAN, Policy Advisor, Ministry of Social Affairs and Employment (1) (2)

**NORWAY / NORVEGE**

Ms Mona SANDERSEN, Senior Adviser, Ministry of Labour and Social Inclusion, Working Environment and Safety Department (1) (2)

**POLAND / POLOGNE**

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

**PORTUGAL**

Ms Maria Alexandra PIMENTA (**Chair/Présidente**) (2), Legal Adviser of the Secretary of State Adjunct and for the Rehabilitation (1) (2)

**ROMANIA / ROUMANIE**

Ms Cristina ZORLIN, Senior counsellor, Directorate for External Relations and International Organisations, Ministry of Labour, Family and Equal Opportunities (1) (2)

**SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**

Mr Juraj DŽUPA, Director, Department of EU Affairs and International Cooperation, Ministry of Labour, Social Affairs and Family (1) (2)

Mr Lukáš BERINEC, Department of EU Affairs and International Cooperation, Ministry of Labour, Social Affairs and Family (2)

**SLOVENIA / SLOVENIE**

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

Ms Janja GODINA, Senior Adviser, International Cooperation and European Affairs Service (2)

**SPAIN / ESPAGNE**

Ms. Adelaida BOSCH, Relaciones Sociales Internacionales, Ministry of Labour and Immigration (2)

**SWEDEN / SUEDE**

Ms Helle ELLEHÖJ, Deputy director, Division for Labour Law and Work Environment, Ministry of Employment (1)

Gustaf RönneklefRÖNNEKLEV, Desk officer, ministry of Justice (1)

Johanna DUNER, Ministry of Employment (1)

Mr Karin SÖDERBERG, Deputy Director, Division for Labour Law and Work Environment, Ministry of Employment (2)

**"the former Yugoslav Republic of Macedonia" /**

**« l'ex-Republic yougoslave de Macedoine »"**

Mr Darko DOCINSKI, Head of Unit for Coordination of Realisation of Programme for Adoption of Acquis Communautaire and Negotiations for Accession, Ministry of Labour and Social Policy (1)

**TURKEY / TURQUIE**

Ms Selmin SENEL, Expert, Directorate General for External Relations and Services for Workers Abroad, Ministry of Labour and Social Security (1) (2)

**UKRAINE**

Mrs Natalia POPOVA, Senior Officer, Ministry of Labour and Social Policy (1) (2)

**UNITED KINGDOM / ROYAUME-UNI**

Mr Stephen RICHARDS, Head of ILO, UN and CoE Team, Joint International Unit, Dept for Work and Pensions (1) (2)

**SOCIAL PARTNERS / PARTENAIRES SOCIAUX**

**EUROPEAN TRADE UNION CONFEDERATION /  
CONFEDERATION EUROPEENNE DES SYNDICATS**

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

M. Henri LOURDELLE, Conseiller, Confédération Européenne des Syndicats (1) (2)

**BUSINESSEUROPE**

–

**INTERNATIONAL ORGANISATION OF EMPLOYERS /  
ORGANISATION INTERNATIONALE DES EMPLOYEURS**

–

**SIGNATORIES STATES / ETATS SIGNATAIRES**

**LIECHTENSTEIN**

–

**MONACO**

M. Stéphane PALMARI, Secrétaire, Département des Affaires Sociales et de la Santé, Ministère d'Etat (1) (2)

**MONTENEGRO**

Ms Vjera SOC, Senior Adviser for International Cooperation, Ministry of Health, Labour and Social Welfare (1) (2)

Ms Anka STOJKOVIC, Head Labour Inspector, Ministry of Health, Labour and Social Welfare (1)

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

Mme Elena VOKACH-BOLDYREVA, Conseillère, Département de la coopération internationale et des relations publiques, Ministère de la Santé et du Développement social (1) (2)

**SAN MARINO / SAINT-MARIN**

–

**SERBIA / SERBIE**

Ms Dragana RADOVANOVIC, Senior Adviser, Sector for International Cooperation and European Integration; Ministry of Labor and Social Policy (1) (2)

**SWITZERLAND / SUISSE**

–

**OINGs INVITÉES** (1)

Maritchu Rall , Caritas

Gabriel Nissim, Président de la Commission "Droits de l'Homme" des OING du Conseil de l'Europe

Marie-José Schmitt, Déléguée à la Charte Sociale

## Appendix II

### Chart of Signatures and Ratifications – Situation at 1 December 2009

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	<b>29/10/69</b>	
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	<b>26/02/03</b>	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	<b>03/11/99</b>	
Denmark	*	<b>03/03/65</b>	
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	*	<b>27/01/65</b>	
Greece	03/05/96	<b>06/06/84</b>	18/06/98
Hungary	07/10/04	20/04/09	
Iceland	04/11/98	<b>15/01/76</b>	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	29/05/07	<b>31/01/02</b>	
Liechtenstein		<b>09/10/91</b>	
Lithuania	08/09/97	29/06/01	
Luxembourg	*	<b>10/10/91</b>	
Malta	27/07/05	27/07/05	
Moldova	03/11/98	08/11/01	
Monaco	05/10/04		
Montenegro	22/03/05		
Netherlands	23/01/04	03/05/06	03/05/06
Norway	07/05/01	07/05/01	20/03/97
Poland	25/10/05	<b>25/06/97</b>	
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	<b>06/05/80</b>	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland		<b>06/05/76</b>	
«the former Yugoslav Republic of Macedonia»	27/05/09	<b>31/03/05</b>	
Turkey	06/10/04	27/06/07	
Ukraine	07/05/99	21/12/06	
United Kingdom	*	<b>11/07/62</b>	
Number of states	<b>47</b>	<b>2+ 45 = 47</b>	<b>13 + 29 = 42</b>
			14

The **dates in bold on a grey background** correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

\* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.

## **Appendix III**

### **List of Conclusions of non-conformity**

#### **A. Conclusions of non-conformity for the first time**

RSC 24 ALBANIA

RSC 20 ANDORRA

RSC 15§2 ARMENIA

RSC 20 AZERBAIJAN

RSC 15§2 BELGIUM

RSC 1§4 BULGARIA

RSC 1§4 CYPRUS

RSC 10§3 CYPRUS

RSC 10§4 CYPRUS

RSC 24 CYPRUS

RSC 15§1 ESTONIA

RSC 15§2 ESTONIA

RSC 18§1 FINLAND

RSC 18§3 FINLAND

RSC 24 FINLAND

RSC 1§2 ITALY

RSC 15§2 ITALY

RSC 1§4 LITHUANIA

RSC 9 LITHUANIA

RSC 10§3 LITHUANIA

RSC 15§3 LITHUANIA

RSC 1§2 MALTA

RSC 9 MALTA

RSC 10§5 MALTA

RSC 15§2 MALTA

RSC 24 MALTA

RSC 9 MOLDOVA

RSC 10§4 NORWAY

RSC 10§5 PORTUGAL

RSC 18§3 ROMANIA

RSC 18§1 SLOVENIA  
RSC 18§3 SLOVENIA  
RSC 20 SLOVENIA

**B. Renewed Conclusions of non-conformity**

RSC 1§3 BELGIUM  
RSC 1§4 BELGIUM  
RSC 9 BELGIUM  
RSC 10§3 BELGIUM  
RSC 10§5 BELGIUM  
RSC 15§1 BELGIUM  
RSC 15§3 BELGIUM  
RSC 18§1 BELGIUM

RSC 24 BULGARIA

RSC 1§2 CYPRUS  
RSC 20 CYPRUS  
RSC 24 CYPRUS

RSC 1§2 ESTONIA  
RSC 1§4 ESTONIA  
RSC 9 ESTONIA  
RSC 15§3 ESTONIA

RSC 1§2 FINLAND  
RSC 15§3 FINLAND

RSC 1§2 FRANCE  
RSC 10§5 FRANCE  
RSC 15§1 FRANCE  
RSC 18§1 FRANCE

RSC 1§2 ITALY  
RSC 1§3 ITALY  
RSC 18§1 ITALY  
RSC 18§2 ITALY  
RSC 24 ITALY

RSC 1§2 LITHUANIA  
RSC 15§2 LITHUANIA

RSC 1§4 MALTA  
RSC 10§2 MALTA  
RSC 15§1 MALTA

RSC 1§2 MOLDOVA  
RSC 1§4 MOLDOVA  
RSC 15§1 MOLDOVA  
RSC 15§2 MOLDOVA

RSC 18§3 NETHERLANDS (Kingdom in Europe)

RSC 10§5 NORWAY  
RSC 15§1 NORWAY  
RSC 15§3 NORWAY

RSC 1§2 PORTUGAL  
RSC 20 PORTUGAL

RSC 1§1 ROMANIA  
RSC 1§2 ROMANIA  
RSC 1§3 ROMANIA  
RSC 1§4 ROMANIA  
RSC 15§1 ROMANIA

RSC 1§4 SLOVENIA  
RSC 10§1 SLOVENIA  
RSC 10§2 SLOVENIA  
RSC 10§3 SLOVENIA  
RSC 10§5 SLOVENIA

RSC 10§5 SWEDEN  
RSC 18§3 SWEDEN  
RSC 20 SWEDEN

**Appendix IV****List of deferred Conclusions****C. Conclusions deferred for lack of information for the second time**

ALBANIA	RSC 1§1, 1§2, 1§3, 25
ARMENIA	RSC 18§1, 18§2, 18§3
BELGIUM	RSC 10§4, 18§3
CYPRUS	RSC 15§2
FINLAND	RSC 1§4, 10§2, 10§3
FRANCE	RSC 10§1, 10§3, 10§4
ITALY	RSC 1§1, 1§4, 9, 10§4
MOLDOVA	RSC 1§1, 18§3
NETHERLANDS (Kingdom in Europe)	RSC 15§1, 15§2
NORWAY	RSC 1§3
PORTUGAL	RSC 18§1
SLOVENIA	RSC 15§1, 15§2, 15§3
ROMANIA	RSC 15§2, 34 (third deferral – new questions)
LITHUANIA	RSC 18§4

**D. Conclusions deferred because of questions asked for the first time or additional questions (first reports and others)**

ALBANIA	RSC 1§4, 20
ANDORRA	RSC 1§4, 10§1, 10§2, 10§5; 15§3
ARMENIA	RSC 1§1, 1§2 (first report on the provision), 15§3, 20
AZERBAIJAN	RSC 1§1, 1§2 (first report on the provision), 1§3, 1§4, 9
BELGIUM	RSC 1§2

BULGARIA	RSC 1§2, 20, 25
CYPRUS	RSC 15§3
FINLAND	RSC 10§5,
FRANCE	RSC 9, 15§2 (new questions), 15§3
GEORGIA	RSC 1§1, 1§2 (first report on the provision), 1§4, 10§4, 18§4, 20
ITALY	RSC 15§1 (new questions), 15§3
MALTA	RSC 15§3, 20
MOLDOVA	RSC 20
NETHERLANDS (Kingdom in Europe)	RSC 1§4, 10§4, 15§3, 24 (first report)
NORWAY	RSC 1§2
PORTUGAL	RSC 10§4, 15§2 (new questions), 15§3
SLOVENIA	RSC 1§3
ROMANIA	RSC 25
TURKEY	RSC 1§1

## Appendix V

### Warning(s) and Recommendation(s)

#### Warning(s)<sup>1</sup>

##### **Article 15, paragraph 1**

##### **– Romania**

(Mainstreaming of persons with disabilities is not effectively guaranteed in education and training as:

- the number of children with disabilities attending special education is high;
- a considerable numbers of children with disabilities are left without education).

#### Recommendation(s)

–

#### Renewed Recommendation(s)

–

---

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