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**EUROPEAN SOCIAL CHARTER  
GOVERNMENTAL COMMITTEE**

**REPORT CONCERNING CONCLUSIONS XIX-1 (2008) OF  
THE EUROPEAN SOCIAL CHARTER**

**(Austria, Croatia, the Czech Republic, Denmark, Germany, Greece,  
Hungary, Iceland, Latvia, Luxembourg, Netherlands (Netherlands Antilles,  
Aruba), Poland, the Slovak Republic, Spain, “the former Yugoslav  
Republic of Macedonia”, Turkey and the United Kingdom)**

*Detailed report of the Governmental Committee  
established by Article 27, paragraph 3, of the European Social Charter<sup>1</sup>*

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<sup>1</sup> The detailed report and the abridged report are available on [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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## I. Introduction

1. This report is submitted by the Governmental Committee of the European Social Charter made up of delegates of each of the 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, in a consultative capacity, meetings of the Committee. The Confederation of European Business (BUSINESSEUROPE) is also invited 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 concerned Austria, Croatia, the Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Netherlands (Netherlands Antilles, Aruba), Poland, the Slovak Republic, Spain, “the former Yugoslav Republic of Macedonia”, Turkey and the United Kingdom. Reports were due by 31 October 2007 at the latest; they were received between October 2007 and June 2008. The Governmental Committee repeats that it attaches a great importance to the respect of the deadline by the States Parties.

5. Conclusions XIX-1 of the European Committee of Social Rights were adopted in October 2008 (Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Netherlands (Netherlands Antilles, Aruba), Poland, Slovak Republic, Spain, “the former Yugoslav Republic of Macedonia”, Turkey and the United Kingdom).

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) were also invited to attend the meetings of the Governmental Committee, for the purpose

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<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.

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

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

- on 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 XIX-1 (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 5 of them, and adopted 4 warnings (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.
15. The Governmental Committee proposed to the Committee of Ministers to adopt the following Resolution:

**Resolution on the implementation of the European Social Charter during the period 2005-2006 (Conclusions XIX-1 (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, in particular to the provisions of Part IV thereof;

Having regard to Article 29 of the Charter;

Considering the reports on the European Social Charter submitted by the Governments of Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Netherlands (Netherlands Antilles, Aruba), Poland, Slovakia, Spain, "the former Yugoslav Republic of Macedonia", Turkey and the United Kingdom (concerning the reference period 2005-2006);

Considering Conclusions XIX-1 (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,

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<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 XIX-1 (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

#### ESC<sup>2</sup> 1§1 CROATIA

"The Committee concluded that the situation in Croatia is not in conformity with Article 1§1 of the Charter on the ground that, despite the measures it has introduced, the Government's efforts to secure full employment are still inadequate."

16. The representative of Croatia provided the following information:

"In the last couple of years, employment has significantly increased. Employment rate of the population between 15 and 64 years of age has gone up from 55.6% in 2006, to 57.1% in 2007, while in the third quarter of 2008 it reached 59.7%

A significant increase of registered employment has caused a proportionately high economic growth in 2007, which was also an effect of the mentioned retirement plan reform, the measures for combating unregistered work and especially, a stronger action on the behalf of the work inspection unit.

According to the information from Eurostat which allow us the analyses till 2008. unemployment rate (of the population between 15 and 74) has decreased from 11.2% in 2006, to 9.6% in 2007, and in the 2008, it reached 8.4%.

*In 2006. based on the Annual Employment Incentives Plan in 2008, implementing measures within the competence of the Croatian Employment Service 4.869 persons in 2006. 8.494 in 2007., 7.531 and in 2008. persons from the register of unemployed persons were included.*

The share of expenses for active employment policy measures in GDP was proportionally low, as well as the share of stakeholders-users of measures in total number of the unemployed. Therefore the effect of these measures on total employment was probably not significant. However, it should be taken into account that during the observed period the Croatian authority has invested proportionally a lot in education and infrastructure and has promoted entrepreneurship and private investments in physical capital. Investments in human and physical capital contribute essentially to the long-term economic growth and employment.

In that light, the Republic of Croatia also prepared the National Implementation Plan for Employment (2009 - 2010) which sets the main principles of the government employment policy. It also identifies responsibilities and defines tasks of competent government bodies and public institutions in implementing the Plan and supports their joint actions and cooperation.

The National Implementation Plan for Employment (NPPZ) follows the employment policy priorities set by the revised Lisbon Agenda on the Growth and Jobs and pays particular attention to the following:

- Increase in the availability of labor force,
- Attracting and retaining more people in the status of employment,
- Modernization of the social care system,
- Adaptability enhancement of workers and companies,
- Increased investments into human resources through improved education and skills,
- Good management,
- Building of administrative capacities and actually signifies the start of a new cycle of active employment measures in Croatia.

*The Implementation measures under NPPZ include the priorities for actions, as set by JAP, which also correspond to the priorities set by the Operative Program for Human Resources Development (within the Component IV of IPA), thus, 38 million Euros over the period of three years, has been allocated for the project implementation under IPA.*

*Furthermore, in 2008, the tax system also underwent certain changes."*

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

<sup>2</sup> ESC : European Social Charter .

17. 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.

### **ESC 1§1 NETHERLANDS (Netherlands Antilles)**

“The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1§1 of the Charter as the efforts being made in the area of employment policy are inadequate in the light of the prevailing employment situation.”

18. The representative of the Netherlands said that the Netherlands' current priority in the Netherlands Antilles was the constitutional revision process, which was intended to give a greater degree of autonomy to each of the territories of the Netherlands Antilles and would therefore inevitably affect the implementation of the Charter.

19. The Government was concerned, nonetheless, about the current employment situation and a working group had been appointed to prepare a report on the subject.

20. The representative of the ETUC questioned what impact the constitutional changes in the Netherlands Antilles would have on engagements taken relating to the Charter.

21. The Governmental Committee emphasised how crucial employment issues were to Article 1§1 of the Charter and urged the Government to provide all the relevant information in its next report and take all the necessary steps to promote full employment in the Netherlands Antilles.

### **ESC 1§1 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 1§1 of the Charter because the unemployment rate remains high, the long-term unemployed rate is particularly high and the measures introduced to remedy the problems are inadequate.”

22. The representative of Slovakia was aware that the situation was still a cause for concern, but unemployment had continued to fall in 2007 and 2008, with the number of jobseekers declining from 299 181 in 2006 to 250 938 in 2007 and 230 433 in 2008.

23. The Government's main priorities for dealing with unemployment were helping the most vulnerable jobseekers, particularly those who were unqualified, to find work, the entry of young graduates into employment and establishing a national register of qualifications to meet the needs of the labour market.

24. In connection with finding work for jobseekers, the representative of Slovakia referred to the amendments to the employment service legislation, which had come into force on 1 May 2008. They included the establishment of new activities such as training courses and the preparation of individual action plans for the most vulnerable unemployed. The latter were also being encouraged to seek work more actively, involving, in particular, more regular interviews with the public employment services.

25. The representative of Slovakia also said that measures had been introduced to encourage certain employers to retain a minimum of 25% of disabled persons.

26. Specialised posts had been established in secondary schools to offer young persons vocational guidance. Moreover, new legislation was being drawn up to bring school curricula more into line with the needs of the labour market, with the participation of local authorities and several professional organisations.

27. Finally, the representative of Slovakia referred to the passing of amendments 139/2008 to the employment services legislation, designed to ensure that labour market requirements were taken into account through a national qualifications register. This should also help employers to determine their recruitment needs and their priorities regarding continuing training.

28. The Governmental Committee noted the positive developments in Slovakia, invited the government to supply all relevant information in the next report and decided to await the ECSR's next assessment.

### **ESC 1§1 “the former Yugoslav Republic of Macedonia”**

“The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 1§1 of the Charter on the ground that despite the measures it has introduced, the Government’s efforts to improve the employment situation are still inadequate.”

29. The representative of “the former Yugoslav Republic of Macedonia” provided the following information:

“Being aware of the unfavorable situation and the challenges as regards the labour market, the Government of the Republic of Macedonia recognizes stimulating employment and reducing the high rates of unemployment as its leading priority.

In fact, employment stimulation and reforms in the area of labour market, with a view to decreasing unemployment and increasing the living standard are among the basic priorities of the Government’s macro-economic policy.

The employment policy being implemented in the Republic of Macedonia aims at maintaining the trend of reducing the unemployment rate and increasing the employment rate.

The main characteristic of the employment policy for the present and future period is that the policy is going to be primarily focused on active labour market measures and programmes.

In compliance with the **National Employment Strategy** for the period up to 2010 and the **National Employment Action Plans** (2006-2008) and (2009-2010), the determination of the Government of the Republic of Macedonia is to continuously increase the funds allocated for financing active employment measures, so as to extend the type and scope of these measures and thus improve the integration of unemployed persons into the labour market.

The National Employment Strategy represents the basis for preparation of the National Action Plan for Employment, which includes the planned programs, projects and activities aimed at achieving the goals stated within the Employment Strategy. In line with the National Employment Strategy 2010, the Ministry of Labour and Social Policy, as the coordinator, leads the process of development of the *National Employment Action Plan (NEAP) 2009-2010*. This NAPE was adopted in the beginning of 2009 as the basis for accomplishing the targets laid down in the National Employment Strategy 2010.

The role of active labour market policies was significantly increased starting from 2007 with the preparation, adoption and implementation of annual **Operational Plans for active employment programs and measures**. With the purpose of ensuring successful implementation of employment policies and measures envisaged in the main Government documents in the labour market and employment sector, the annual Operational Plans define the type of programs and active employment measures for the particular year, detailed information about the target groups, resources needed and sources of funds, as well as the specific activities and deadlines for the entities responsible for their implementation. The goal in preparing these Operational Plans is to ensure timely and successful implementation of the envisaged active employment measures and programs that will depend on the accurately defined activities of each of the entities, with clearly determined deadlines for implementing planned activities. The Operational Plans also contribute to a more successful coordination between various institutions and other involved entities to aid implementation of these measures.

The active policies and measures for employment implemented within the **Operational Plan for active employment programmes and measures 2007**, as well as the effects and results of its implementation, have been described and presented in details in the “*REPLY TO THE ADDITIONAL QUESTIONS in regard to the First Report on the implementation of the ESC*”, submitted by Republic of Macedonia in June 2008.

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The **Operational Plan for Active Employment Programmes and Measures 2008** was successfully implemented during the year of 2008. Several types of active employment measures and policies were implemented targeting various target groups of unemployed persons

The Operational Plan 2008 included the following programmes/measures :

#### 1. Program for self-employment

The aim of this programme was reduction of unemployment and poverty through new business start-ups. The programme was realized through training for the unemployed who have shown interest in obtaining basic knowledge in entrepreneurship, preparation of solid and sustainable family business plans, provision of assistance and support in registration of personal businesses and subvention for starting a business. Specifically, this programme was implemented through the following measures:

- Self-employment for young unemployed persons up to the age of 27 ;
- Self-employment for women with secondary and university education, registered in Employment Agency as unemployed for more than 2 years;
- Self-employment for long-term unemployed persons, registered in the Employment Agency for more than 2 years.

#### 2. Program for assistance in registering (formalization) of existing family businesses

The purpose of this programme was to register existing businesses started-up by unemployed individuals and their legal inclusion on the labour market with intention to reduce the grey economy. The program was being realized through providing support in procedures of registration of the existing businesses for persons who have informal experience in the retail trade, agriculture and crafts.

#### 3. Employment preparation programme

This programme provided training, qualification or re-qualification, as well as counselling of the unemployed in order to obtain the necessary knowledge and skills that would increase their employability and their competitiveness in the labour market. Under this programme, the following separate measures were implemented:

- Training, qualification and re-qualification for known employer. This employment measure was with the duration of 3 months at least, with an obligation for the employer to employ at least 70% of the persons included in the training activities and keep them employed for at least 1 year;
- Training provided in job clubs for the unemployed to obtain knowledge and skills (foreign languages and computer literacy), aimed at improving their labour market competitiveness;
- A pilot project to provide training for specific professions and skills that are deficient in the labour market, according to the Labour Market Skills Need Analysis prepared by the Employment Agency in 2007. The training was conducted for unemployed persons, using a previously prepared program and the persons who successfully completed the training received a certificate of their work qualifications;
- Education to start up a family business. This measure was aimed at strengthening the capacities of the Employment Agency to provide education for unemployed persons, through training for trainers and education of unemployed people to start up a business.

#### 4. Employment Subsidies Programme

This Employment Subsidies Programme was implemented through the following measures:

- Subsidizing employment of children without parents. This measure provided financial support for children without parents, by providing financial support for salaries, social contributions and food and transportation expenses, with a monthly amount of 15,000 MKD for a nine month period. The employer benefiting from this program will have an obligation to keep the employed person for at least another 18 months (total of 27 months : 9+18m).
- Subsidizing employment of disabled persons. With this measure subsidies for disabled persons were provided with the aim of supporting the social inclusion of this category of unemployed persons and integrate them on the labour market
- Subsidizing employment of single parents. This measure provided support for single parents for their easier inclusion on the labour market
- Subsidizing employment of elderly persons (55-64 years of age). The implementation of this measure contributed to the reintegration of elderly unemployed persons and their incorporation back on the labour market. With this subvention, a financial support for salaries and contributions on salaries and food and transportation expenses were provided to the amount of 12,000 MKD per month for a nine month period, with an obligation for the employer to keep these people employed for at least another 18 months (total of 27 months).

#### 5. Internship Programme in support of first employment for youth up to 27 years of age

The aim of this programme was inclusion young, educated, unemployed persons into the internship programmes. This measure allowed the participants to acquire certain practical knowledge and skills, preparing them for entering into the labour market.

Apart from the budget allocated for implementation of the Operational Plan 2008, the Government of the Republic of Macedonia allocated additional 6.2 million EUR (385 mill. MKD) for 2008, for implementation of the new active employment measure **“Self-employment by crediting”**, as a programme providing support through credits (loans) to the unemployed persons from the target groups for establishing businesses. Beneficiaries of this measure were the long-term unemployed persons registered as unemployed in the Employment Service Agency for at least one year, persons up to 27 years of age that are recipients of unemployment allowance, and persons over 55 years of age. Additional stimulating funds were also provided under this measure for: unemployed persons due to redundancies, bankruptcy or liquidation, unemployed registered for over 3 years. This measure became very popular among the target groups of unemployed and its implementation was very successful.

Regarding the results and number of beneficiaries covered by the different programmes and measures of the Operational Plan for active employment programmes and measures 2008, the registration of 529 companies was made within the Self-employment Programme (5.8% increase compared to the plan), as well as 113 companies, in accordance with the Programme for formalization of the existing business (5.6% more than planned). Within the Programme for training for employment, training for prequalification or completion of qualification for a known employer was provided, and courses for foreign languages and computers were held for total 4,821 unemployed persons, training for unemployed persons for an unknown employer was held for the first time related to deficit skills in the labour market involving 60 persons; total 820 persons attended training for starting their own business.

Within the Programme for subsidies, financial support for employment of certain target groups was provided involving 4 parentless children, 156 disabled persons, 80 single parents and 135 elderly persons. Practical training was also provided for 141 unemployed persons under age of 27, so that they could acquire certain knowledge and skills for their easier inclusion in the labour market.

The implementation of the Operational Plan and Programme was monitored regularly during the year on the basis of which allocation of funds was made from the programmes and measures that were not interesting enough for the target groups to programmes and measures for which there was a greater interest.

The implementation of the Programme for Self-employment with crediting, within which 1,946 unemployed persons were employed, was also completed.

In addition to that, in 2008 a special **Programme for employment of Roma** was also implemented, providing training for 60 unemployed Roma.

In accordance with the previously described, during the year of 2008, a total budget of over 660 million MKD for the implementation of active measures in the labour market, involving 8,846 unemployed persons, was allocated and realized (Operational Plan 2008 – MKD 275.6 million, Programme for Self-Employment by Crediting – MKD 385.7 million and Programme for Roma Employment – MKD 1.4 million).

\* \* \*

As mentioned above, in accordance with the National Development Plan and the determination of the Government to continuously increase the budget for financing active employment measures, the funds allocated for this purpose for the year of 2009 were substantially increased.

In line with this Government commitment and the National Strategy for Employment and National Employment Action Plan, as well as taking into account the experience and lessons learned from the implementation of active programmes for employment in 2008, a redesigning of the active programmes and measures for employment for 2009 was made, including modifications in relation to the target groups, scope, conditions and eligibility criteria, together with the planned budget for that purpose.

Accordingly, for this year a total budget of MKD 825 million was allocated for the implementation of the **Operational Plan for active employment programmes and measures for 2009**, which represents an increase of 200% compared to the funds used for this purpose in 2008 (OP 2008). According to the Plan, over than 12,000 unemployed persons, or 80% more than the number of persons included by the Operation plan for 2008, will be included. The Operational Plan for active programmes and measures for employment for 2009 includes 9 different types of programmes and measures for different target groups of unemployed persons, i.e. long-term unemployed, young unemployed persons, persons with disabilities, women, elderly persons and others.

One of the novelties within this OP, compared to the one from 2008, are the measures for direct job creation, i.e. public works.

In addition to the Operational Plan budget, additional funds for implementation of the Programme on **“Self-employment with crediting (loans)”** were also allocated for the year 2009. This program will involve 2,000 unemployed persons, with the total budget of MKD 360 million.

In accordance with the above, a total budget of MKD 1,185 million is planned and allocated for implementation of active labour market measures (Operational Plan for 2009 and the **Programme on Self-employment by crediting**), which is a 79% increase in the budget for ALMM compared to 2008. With respect to the total number of beneficiaries of these ALMM, with the planned coverage of 14,162 unemployed persons for 2009, the increase is over 60%, compared with the number of persons covered by the ALMM in 2008. (See Table below)

The **Operational Plan for active employment programmes and measures for 2009** includes the following programs :

#### 1. Self-employment program

The aim of this Programme is to reduce poverty and unemployment by starting-up new businesses. Through this program 600 self-employments/family businesses will be created, of which:

- 250 young unemployed persons up to the age of 27, registered with ESA for more than six months;
- 150 unemployed women, registered with ESA for more than a year;
- 200 long-term unemployed persons, registered with ESARM for more than a year;

For completion of each self-employment, financial support of non-repayable funds in the amount of 201,897 denars (approx. 3,300 EUR) is planned, out of which 185,000 denars as direct support for purchasing equipment and raw materials, while the remaining 16,897 MKD for support in terms of basic training for conducting business, voucher system for drafting business plan and support in registration of businesses. The total allocated funds for this programme are MKD 127, 540,300

#### 2. Programme for formalization of existing businesses

The goal of the Program is to formalize existing (informal) businesses of 250 unemployed persons and their legal inclusion in the labour market, aimed at reducing the grey economy

For the realization of each self-employment, financial support of non-repayable funds in the amount of 188,000 MKD is planned, of which 185,000 as direct support for purchasing equipment and materials and 3,000 MKD for registration of businesses. The total allocated funds for this programme are 47,000,000 MKD.

#### 3. Programme for employment preparation

Under this program training, re-qualification or further qualification, as well as counseling of 3,692 unemployed individuals will be implemented, aimed at building their knowledge and skills and increasing their competitiveness on the labour market. The programme includes the following different measures :

- Training, re-qualification or further qualification for a known employer (512 persons)
- Trainings in Job clubs for acquiring knowledge and skills in foreign languages and computers (2,000 persons in total)
- Programme for training on certain occupations and skills which are deficient on the labour market, according to the Labour market skill needs analysis, conducted by ESA in 2008 (120 persons in total). This programme will provide training for 120 unemployed persons for the period of 3 months, for the professions of electrical fitters and electrical assemblers, gas and water supply system fitters and maintenance workers and mechanotronic systems maintenance workers
- Education on starting up a business (1,000 persons in total). The training will include staff from the regional Employment Service Centres, so they can acquire certain skills and knowledge on defining the priorities for reduction of unemployment and realization of programs for counselling unemployed persons interested in starting up their own business. The training will also refer to issues related to realization of business ideas, drafting of business plans, sources of financing, access to information for conducting business, company registration procedure, legal provisions, etc
- Education on starting up a business in the Municipality of Gazi Baba/Skopje (60 persons). The training will include registered unemployed persons from the Municipality of Gazi Baba in the Capital Skopje, who have a minimum high school education level and possess basic computer and internet skills.

#### 4. Employment subsidizing programme

This programme will provide employment subsidizing for 1,680 unemployed persons belonging to the specific target groups, i.e. :

- unemployed children without parents (8);
- unemployed disabled persons (200);
- single parents, single parents with 3 or more children, young single parents up to the age of 27, married couples with 3 or more children and parents of children with special needs (222);
- elderly persons, between 55 and 64 years of age (629);

- young persons up to the age of 27 and unemployed persons whose employment has been terminated on the basis of bankruptcy, liquidation or redundancy, as well as victims of domestic violence (621).

The employment of these persons will be subsidized through financial support for the employers who will employ unemployed persons belonging to the defined target groups.

#### 5. Public works programme

Through this programme 5,000 unemployed persons in certain municipalities will be engaged for the period of 6 months, for the purpose of acquiring practical skills and knowledge and for poverty reduction. Financial support will be provided for unemployed persons that will take part in public works in the monthly amount of 7,600 MKD per person, i.e. total of 228,980,000 denars. The Units of Local Self-Government and the City of Skopje, can provide additional funds for the same persons or for the purpose of involving greater number of persons.

#### 6. Internship program in support of first employment of young persons up to the age of 27 and young persons in final stages of their studies

This programme will cover 650 young unemployed persons (up to the age of 27) for the period of 3 months, to whom an opportunity will be given to enter the labour market prepared, as well as to provide preventive action with regard to young persons who are in final stages of their studies. An amount of 5,000 MKD per person per month is allocated for this measure.

#### 7. Pilot survey of free job vacancies

The purpose of this programme is to provide information flow on work force demands on the labour market by engaging 90 unemployed persons, for a limited time period, to perform phone surveys of employers on work force demands through a "mini call centre". The persons will be engaged for a period of up to two months.

#### 8. Programme on economic empowerment of women-victims of domestic violence

The goal of this programme is to provide services to assist women, victims of domestic violence, who will be provided with financial support for self-employment, training and re-qualification to help them find employment. For this programme, 35,000,000 MKD has been allocated.

#### 9. Roma employment support program

The goal of the programme is to increase Roma employment to aid poverty reduction and their inclusion on the labour market. Employment training will be provided as employment support of 200 registered unemployed Roma who have a minimum primary education level.

These programmes and measures are currently being implemented, during 2009, and their implementation is regularly monitored and reported upon.

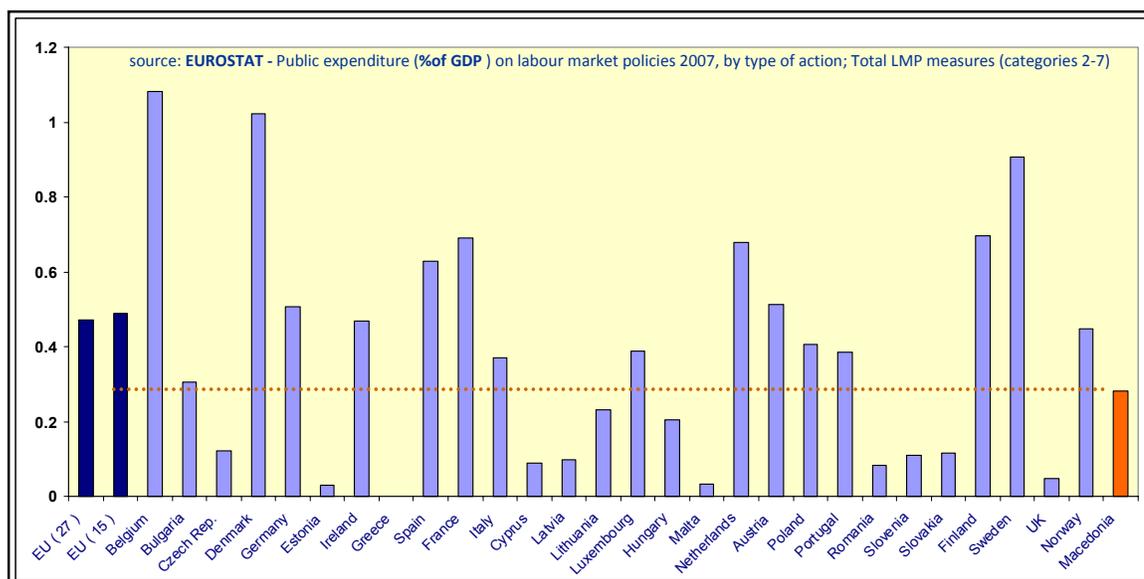
The following table presents the Active Labour Market Measures (ALMM) for the years of 2008 and 2009, in relation to the total allocated budget and the number of beneficiaries covered.

A L M M	2008		2009	
	# of beneficiaries	spent funds (mill. MKD)	Planned of beneficiaries	allocated funds (mill. MKD)
Self-employment programme	529	102.49	600	127.54
Formalization of registered businesses	113	19.15	250	47.00
Programme on preparation for employment	5,701	50.78	3,692	21.55
Employment subsidies Programme	338	94.44	1,680	339.01
Internship programme in support of first employment of young persons	141	1.69	650	13.50
Public works Programme	/	/	5,000	228.98
Pilot survey on job vacancies	/	/	90	0.73
Economic strengthening of women-victims of domestic violence	/	/	tbd	35.00
Programme for employment of Roma	60	1.44	200	4.80
Programme for self-employment with loans	1,964	385.74	2,000	360.00
Administrative exp., announcements etc.	/	6.95	/	7.0
<b>TOTAL</b>	<b>8,846</b>	<b>662.67</b>	<b>14,162</b>	<b>1,185.10</b>
Increase (2009 compared to 2008)			<b>60%</b>	<b>79%</b>

This trend of substantial increase in the annual expenditures from the national budget for the Active Labour Market Measures, can also be clearly noticed when presented as a percentage of the Gross Domestic Product (GDP).

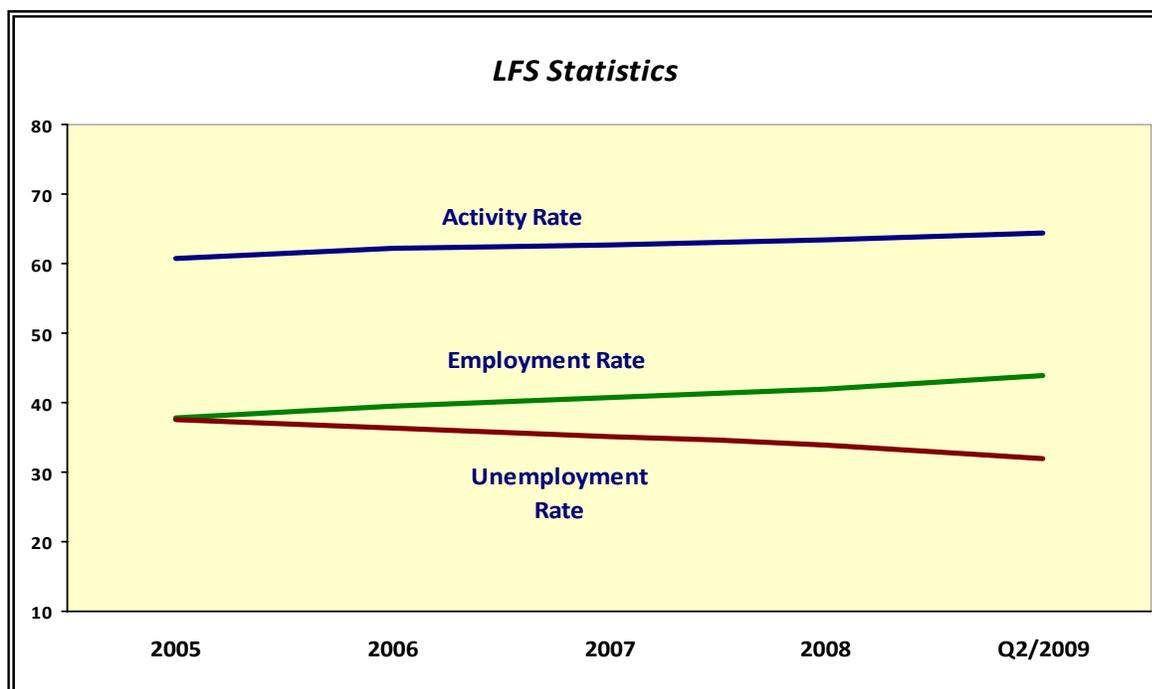
<b>Expenditures on ALMM</b>			
	<b>2007</b>	<b>2008</b>	<b>2009</b>
MKD	283 M	662 M	1,155 M
EUR	4.6 M	10.7 M	18.8 M
% of GDP	0.08 %	0.16 %	0.29 %

Corresponding to the above presented, the expenditures for active policies in the labour market in the Republic of Macedonia for the year of 2009 are in the total amount of 0.29% of the GDP, a level which is comparable with the one in the most of the new EU Member States.



The following table presents the trends regarding the main labour market indicators, i.e. activity, employment and unemployment rates, according to the data from the State Statistical Office, Labour Force Survey (LFS)

<b>Main Labour Market Indicators</b>					
<b>Source: Labour Force Survey (LFS), State Statistical Office</b>					
	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Q2/2009</b>
Activity Rate	60.7	62.2	62.8	63.5	64.4
Employment Rate	37.9	39.6	40.7	41.9	43.8
Unemployment Rate	37.6	36.3	35.2	34.0	32.0
Employment Rate <b>(MEN)</b>	45.4	48.3	48.8	50.7	53.1
Unemployment Rate <b>(MEN)</b>	39.9	35.6	34.8	33.7	31.5
Employment Rate <b>(WOMEN)</b>	30.1	30.7	32.3	32.9	34.3
Unemployment Rate <b>(WOMEN)</b>	38.8	37.5	35.8	34.3	32.7



30. 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 1§2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)**

#### **ESC 1§2 AUSTRIA**

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

- a pre defined upper limit to compensation is imposed in cases of discrimination when considering an application for an employment;
- legislation requires employers to make foreign workers redundant first when reducing manpower or to avoid having to reduce the working hours of all employees.”

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

31. The representative of Austria provided the following information:

“Regarding the upper limit for damages it should be noted that the limits provided for discrimination in the establishment of an employment relationship and in career opportunities (especially with regard to promotion) apply only when the applicant was not the best-qualified candidate and the damage caused by discrimination consists solely of the application being rejected immediately and not leading to the establishment of an employment relationship or promotion even if it had been considered, because other candidates were more suitable. Only in such cases is the solatium for the personal derogation suffered limited to € 500.

It should be kept in mind that only the damage caused by not considering the application is limited. In case of additional damage (e.g. travel expenses or similar application expenses) this damage has to be examined separately and it is not covered by the € 500 limit.

The reason for the limitation of the damage caused by not considering the application is as follows: it is a solatium for the immaterial damage caused by the fact that the application has been rejected without further examination, which is an impairment of dignity and self-esteem.

It must be pointed out that the Austrian civil damages law is extremely reluctant when it comes to compensation for damages which are not material damages (that is to say damages resulting from the

impairment of interests which have no material asset). Austrian civil damages law allows for immaterial damages only where an explicit legal regulation for the immaterial damage exists.

As concerns the Equal Opportunities Act it was necessary to take account of this essential element of Austrian civil law and to create a system-compliant regulation.

The Equal Opportunities Act on principle stipulates an entitlement to compensation for immaterial damage in all cases of discrimination in order to create the necessary legal basis for the compensation. An entitlement to solatium for immaterial damage therefore exists in either case - the solatium cannot be valued at zero.

The Equal Opportunities Act thereby clarifies its judgement of want of value in respect of discrimination and penalizes it. The treatment of discriminations thus differs considerably from the treatment of other condemnable acts of the employer.

Furthermore, the Equal Opportunities Act defines both lower and upper limits in order to anchor the new element of compensation for immaterial damage within the Austrian labour law and in order to give some indications to jurisdiction for its assessment. With regard to the assessment of the damage the Equal Opportunities Act thereby remains within the framework of the Austrian civil damages law.

If - according to Austrian jurisdiction - for instance compensation for 1 day imprisonment is valued at € 100, the frame for compensation for damage caused by discriminatory rejection of an application between € 1 and € 500 is in due proportion. The lower limit of € 1 is only of theoretical significance because in practice such low assessments do not occur.

Compensation for psychological pain which does not reach the level of medical significance is acknowledged by the Austrian civil damage law only in case of gross negligence of the tortfeasor. By contrast, the Equal Opportunities Act stipulates damages regardless of negligence and therewith goes beyond the standard of the general civil damages law.”

### Second ground of non conformity

32. The representative of Austria indicated that a new government bill will be submitted to Parliament, which will delete Section 8 paragraph 2 of the Alien's Employment Act entirely from the Act.

33. This reform is currently still under discussion and under examination by the social partners but it is foreseen that it will enter into force before the end of this year.

34. The Governmental Committee took note of the information provided. It expected the new regulation to enter into force rapidly, and decided to await the next assessment of the ECSR.

### **ESC 1§2 GREECE**

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

- restrictions on access of nationals of non-European Union States Parties to posts in the public service are excessive;
- the length of the alternative service to armed military service is excessive.”

### First ground of non conformity

35. The representative of Greece explained firstly that the situation does not apply to EU nationals, further some exemptions from the rules are made in respect of certain occupations, such as teaching, nursing also for musicians. Foreigners can also work in the public sector under a private law contract.

36. There has been a decrease of available jobs in the public sector, and therefore at present the Government is not prepared to broaden access to the public sector.

37. Further opening up the public sector to foreign nationals from the States Parties might also attract more immigrants to Greece which would have social and economic implications.

38. The representatives of Sweden and Norway pointed out that there were a very limited number of occupations open to foreign nationals.

39. The representative of the ETUC reminded the Committee that the situation had been one of non conformity for long time.

40. The representative of Romania also highlighted that there was a very narrow range of posts open to foreigners, and posts prohibited to foreigners were not limited to posts involving the exercise of public authority , security, etc.

41. The representative of France proposed addressing a warning to Greece.

42. The Governmental Committee voted on a warning; 10 in favour, 8 against and 10 abstentions, the warning was not carried

#### Second ground of non conformity

43. The representative of Greece stated that many persons choose alternative service. Those undergoing alternative service now serve for 24 months as opposed to 34 months that was previously required. This additional period is legitimate as alternative service is carried out in more favourable conditions than military service. Further after discharge from military service persons remain in the reserves and may be called upon periodically to serve.

44. A number of representatives ( Bulgaria, Lithuania, Latvia and Romania) noted that the situation had evolved, that the Greek Government had improved the situation by reducing periods of unarmed military service and alternative service, but nevertheless the period of alternative service was still too long.

45. The Governmental Committee urged the Greek Government 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.

#### **ESC 1§2 ICELAND**

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

- legislation prohibiting discrimination in employment on grounds other than sex is inadequate;
- certain occupations (primary school teacher, pharmacist and operator of an industrial, craft or factory facility) which are not inherently connected with the protection of the public interest or national security and do not involve the exercise of public authority and therefore are not covered by Article 31 of the Charter are restricted to Icelandic nationals or EEA nationals.”

#### First ground of non conformity

46. The representative of Iceland said that under Administrative Procedure Act No. 37/1993 of 1993, the general principle of equal treatment in employment applied in the civil service.

47. A bill on non-discrimination, which was to transpose Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000 into domestic law, had been added to the parliament's agenda for discussion in the following few weeks.

48. The Representative of the ETUC asked for clarifications on the requirement for a one year residency period. Was this a new requirement? In support of other representatives, he agreed that the Committee should at least take note of the information provided but he expressed his preference for sending a strong message.

49. The Governmental Committee urged the Government to take all the necessary steps to bring the situation into conformity with Article 1§2 of the Charter.

#### Second ground of non conformity

50. The representative of Iceland said that, where primary school teachers were concerned, parliament had just adopted a new act abolishing the requirement for applicants to be Icelandic nationals to be entitled to a licence to practise this profession.

51. A similar act concerning pharmacists had been tabled in Parliament in the last few days.

52. The representative of Iceland added that no change was planned in the situation with regard to operators of an industrial, craft or factory facility.

53. Following a proposal by the representatives of Romania and Lithuania, the Governmental Committee welcomed the progress that had been made in Iceland while urging the Government to take all the necessary steps to bring the situation into conformity with Article 1§2 of the Charter with regard to pharmacists and operators of an industrial, craft or factory facility.

#### **ESC 1§2 NETHERLANDS (Netherlands Antilles)**

"The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1§2 of the Charter on the ground that the legislation prohibiting discrimination in employment is inadequate."

54. The representative of the Netherlands announced that the draft ordinance on equal treatment mentioned when the situation had last been examined (detailed report on Conclusions XVIII-1, §54) had not yet been discussed by the parliament because of the current constitutional revision process.

55. The Governmental Committee emphasised how important it was to have a legal framework prohibiting discrimination in employment and called on the authorities to adopt the draft ordinance on the subject.

#### **ESC 1§2 POLAND**

"The Committee concludes that the situation in Poland is not in conformity with Article 1§2 of the Charter on the ground that, during the reference period, nationals of other States Parties who wished to work as doctors in Poland had to be granted authorisation by the National Chamber of Physicians which was entirely discretionary."

56. The representative of Poland confirmed the adoption of the Act of 24 August 2007, entered into force on 10 October 2007, which provides that foreign nationals wishing to practise as doctors in Poland must obtain an authorisation from the Polish Medical

Association. Such an authorisation will have to be delivered if the applicant meets the requirements which apply to all, irrespective of his or her nationality.

57. The Governmental Committee took note of developments having taken place in Poland and decided to await the next assessment of the ECSR.

### **ESC 1§2 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 1§2 of the Charter on the ground that it has not been established that restrictions on access of nationals of States Parties to posts in the public service are not excessive.”

58. The representative of Slovakia provided the following information:

“**The Public Service Act** does not define Slovak citizenship as a prerequisite for the performance of public service, which means that citizens of other member states have open access to posts. The employment of citizens of European Union member states is implemented in accordance with community law. The employment of EU citizens is implemented in accordance with the same rules as the employment of Slovak citizens.

Restrictions on the access of citizens of other member states to posts under the **State Service Act** affect, as stated in the response to Article 1 – the Right to Work, only posts in state employment listed in Decree No. 390/2006 Z.z. This defines a list of posts in the state service divided into a general section (Annex No. 1) and a specific section (Annex No. 2). The general section of the list includes state service posts in the areas of Justice, Defence, Industrial Ownership, Interior, Protection of Official Secrets and state service posts in the Supreme Audit Office, the Ministry of Foreign Affairs, the Public Prosecution Office, the Regional Public Prosecution Offices, the Upper-tier Military Prosecution Office and the Territorial Military Prosecution Offices. The specific section of the list includes state service posts in every service office that are of extraordinary importance and posts that require authorisation for access to official secrets.

All other state service posts in the state service (including management posts) are open to citizens of states that are members of the European Union and, under the draft State Service Act, also the citizens of states that are contracting parties to the European Economic Area and citizens of the Swiss Confederation.

In view of the legal relationship between a state employee and the state, which has a public service character, and the tasks that a state employee is required to perform in the course of such a relationship, in particular where the relationship involves specific tasks relating to the activity of courts and judges, the prosecution service and prosecutors, the police, the defence of the state, state foreign policy, the performance of independent control of public finances and the protection of industrial and state secrets, i.e. the exercise of public power in the broad sense of the word, there are reasonable grounds for defining state service posts open only to Slovak citizens.

The European Social Charter allows national law to define certain conditions barring access to the performance of state service to applicants who are not citizens of the given state. The limitation on the performance of state service in Slovak law is therefore in our opinion quite in conformity with the European Social Charter. There is no discrimination in Slovakia regarding possibility to become a state employee citizens of contracting parties. On the other hand – examination before accepting an adept to the state service is very strict for Slovaks, too.

59. 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.

### **ESC 1§2 “the former Yugoslav Republic of Macedonia”**

“The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 1§2 of the Charter on the grounds that:

- there is an upper limit on compensation for discrimination in employment;
- the system for granting work permits constitutes discrimination based on nationality against nationals of other States Parties.”

First ground of non conformity (for the first time)

60. The representative of “the former Yugoslav Republic of Macedonia” provided the following information:

“The existence of the upper limit for the sanctions involving payment of compensation in cases of discrimination, within the existing labour legislation, i.e. the Law on Labour Relations, was pointed out as a remark to the Government, also by the European Commission, as well as by the ECSR.

The Government undertook the necessary actions regarding these recommendations and in August 2008 the corresponding legal provisions were amended accordingly. With the amendments to the Law on Labour Relations, adopted and published in the “*Official Gazette of the Republic of Macedonia*” No.106/08, from the 27 August 2008, among other changes and amendments, the recommendations for removal of the upper limit of the sanctions for payment of compensation in cases of discrimination, were incorporated.”

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

61. The representative of “the former Yugoslav Republic of Macedonia” indicated that information would be provided at a later date.

62. 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.

#### **ESC 1§2 TURKEY**

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

- there is an upper limit on compensation for discrimination in employment;
- restrictions on access of nationals of other States Parties to several categories of employment are excessive;
- the Commercial Code authorises the captain of a ship to use force to bring sailors back on board and hence ensure that the ship is run properly and discipline is maintained;
- the Martial Law, it is possible to suspend or transfer civil servants and local government employees because their work is not necessary.”

#### First ground of non conformity

63. The representative of Turkey described the real situation as opposed to the one described in the Conclusion of the ECSR which she considered to be erroneous. In cases of discrimination compensation is not subject to a ceiling, the employee always has the possibility to request compensation more than 4 times his/her salary. The employee may request this compensation not only on the basis of Article 5§ 6 (breach of equal treatment) and 17§ 6 (notice periods) of the Labour Code but also on the basis of Article 41 of the Code of Obligations (penal responsibility and damage suffered).

64. The representative of Turkey further stated that legislative reform is underway in order to harmonize Turkish legislation with Article 1§2 of the Charter and Directive 2002/73/CEE. Lastly the issue of discrimination is also an issue discussed in the framework of the negotiations on Turkish accession to the European Union.

65. The Governmental Committee, taking into account the erroneous interpretation of the situation as regards limits to compensation made by the ECSR in its previous conclusion, decided to await the next assessment of the ECSR.

#### Second ground of non conformity

66. The representative of Turkey stated that there had been no change to this situation. Certain jobs were still reserved for nationals in order to protect the Turkish labour market

from the effects of the global economic crisis. Foreigners could however have access to certain jobs under certain conditions.

67. The representative of Turkey enumerated the list of jobs reserved for nationals which was submitted with the Turkish report and undertook to provide statistics on the refusal rate for work permits for nationals of states parties in the next report.

68. The Committee proceeded to vote on a warning. The result was the following: 8 votes in favor, 13 against and 8 abstentions. The warning was not adopted.

69. The Governmental Committee urged Turkey to bring the situation into conformity with Article 1§2 of the Charter by reducing the list of jobs reserved for nationals.

#### Third ground of non-conformity

70. The representative of Turkey informed the Committee that the Turkish government has prepared a draft bill for new "Turkish Code of Commerce" and in this draft law the said provision is not taken a place, it is deleted. The draft law was sent to the Grand National Assembly in 2005. The Main Specialized Commission in this subject (Justice Commission) at the National Assembly completed their studies on the bill at the beginning of 2008, but the side Commission (Industry, Trade, Energy, Natural Resources, Information and Technology Commission) has not completed its study

71. Several representatives pointed out that this situation is a long standing one and that, on the previous occasion this was examined, the same information was provided by the representative of Turkey so in fact there is no new information.

72. Several representatives suggested a warning would be appropriate in order to expedite the process. (France, Czech Republic, Hungary, Cyprus Belgium and the ETUC). A warning was adopted 16 votes in favour, 2 votes against and 11 abstentions.

#### Fourth ground of non-conformity

73. The representative of Turkey pointed out that an amendment to the legislation meant that now it was possible for a civil servant dismissed under the legislation to appeal against his/her dismissal. In fact this emergency legislation was not applied in practice. . Most of the emergency legislation may include the same provisions. The provision is there but is not applied, then it cannot be assessed in terms of its compliance with the Charter. On the other hand, she also stated that Turkey is engaged in a fight against terrorism, all amendments in the legislation have to take into account both the country's specific conditions and related ratified International documents.

74. The representative of ETUC pointed out that there was no new information, no new development and apparently no intention to amend the situation.

75. The representative from the Czech Republic stated that she was in favour of a warning.

76. The Polish representative stated that, although it was permissible for states to have emergency legislation, there had to be limits. The legislation in this instance was very general in its scope and she was in favour of a warning.

77. A warning was adopted, 19 votes in favour, 2 against, and 8 abstentions.

### **ESC 1§2 UNITED KINGDOM**

“The Committee concludes that the situation in the United Kingdom is not in conformity with Article 1§2 of the Charter on the ground that, during the reference period, the system of certificates for nationals of other States Parties to allow them to fill non-reserved posts in the civil service represented an excessive restriction on access to civil service posts constituting discrimination based on nationality.”

78. The representative of the United Kingdom provided the following information:

#### **“Access to Civil Service posts generally**

○ The prohibition on the employment of ‘aliens’ in Crown service (including the Civil Service) is a statutory one – it has its origins in the Act of Settlement 1700 which prevents any “person born out the Kingdoms of England, Scotland or Ireland or the Dominions thereunto belonging...to enjoy any Office or Place of Trust either Civil or Military”. This was reinforced, in relation to the Civil Service, by the Aliens Restriction (Amendment) Act 1919, which provides that “no alien shall be appointed to any office or place in the Civil Service of the State”.

○ During the Second World War, Defence Regulations permitted the temporary employment of ‘aliens’ if no suitable British subjects were available. This system was replaced by the Aliens’ Employment Act 1955 as referred to in the report.

○ The Act introduced a certification process whereby a non-UK/Commonwealth national could be employed under cover of an aliens’ certificate signed by the responsible Minister. Such certificates can cover the employment of a particular individual in a particular post or the employment of aliens generally in particular posts or in posts of a particular class or description.

○ A certificate can be issued in relation to an individual if there is no suitably qualified UK/Commonwealth national available for employment in the post; or if the ‘alien’ possesses exceptional qualifications or experience for the post. Other certificates (including those covering the employment of aliens in posts of a particular class or description may be issued if suitably qualified UK nationals are not readily available, or available in sufficient numbers for employment in the post or class or description of the posts specified in the certificate.

○ The number of certificates in force during the 2007 – 2008 financial year peaked at 80 - although a small number, the positive angle is that the Act does allow entry into posts in the Civil Service of individuals who would otherwise be precluded due to their nationality. Further, there is not a limit on the number of applications that departments can make should there be a genuine need for such a certificate to be issued.

○ UK law, and the Civil Service Nationality Rules also allows for the employment of EEA, Swiss and Turkish nationals and certain family members of EEA, Swiss and Turkish nationals so is entirely compliant with EU requirements in this respect.

○ These requirements are set in legislation and cannot simply be overturned, amended or ignored – to change them would require a change in primary legislation.

#### **Discrimination – legal position in the United Kingdom**

○ The application of the Civil Service Nationality Rules is not discriminatory in law.

○ Section 41 of the Race Relations Act 1976 provides that it is not unlawful to discriminate on specified grounds in pursuance of enactments, orders in council or instruments made under such enactments or in compliance with conditions imposed by such enactments. Section 75(5) of the Race Relations Act 1976 provides that the Act does not invalidate rules restricting employment in the Service of the Crown or by any public body prescribed for the purposes of section 75(5) by regulations made by the Minister for the Civil Service to persons of particular birth, nationality, descent or residence.

○ The cumulative effect is that it is not unlawful to discriminate on the grounds of nationality where to do so is to comply with obligations pursuant to primary legislation.

#### **European Communities (Employment in the Civil Service) Order 2007**

○ This Order, introduced in March 2007, clearly defines the criteria by which posts could be reserved for UK nationals only thereby opening many more posts to other nationals than UK that were previously available.

○ The criteria is as follows –

    All posts within the security and intelligence services are reserved.

▪ Other posts which are capable of being reserved fall into categories – posts within the Defence Intelligence Staff within the Ministry of Defence; and posts whose functions are concerned with

- Access to intelligence information received directly or indirectly from the security and intelligence services;
- Access to other information which, if disclosed without authority or otherwise misused, might damage the interests of nationality security;
- Access to other information which, if disclosed without authority or otherwise misused, might be prejudicial to the interest of the United Kingdom or the safety of its citizens;
- Border control or decisions about immigration.
  - If posts do not fall into the criteria set out in the Order then they cannot be reserved which has led to a position whereby approximately only 5% of Civil Service posts are reserved.
  - Some 95%, the vast majority, are available to all other nationals – including those employed under issue of an aliens' certificate.

The above shows that the application of the Civil Service Nationality Rules

- is not discriminatory in UK law;
  - does allow nationals who would not otherwise be eligible on the basis of their nationality to be employed (i.e. under cover of an aliens' certificate); and
- have included, by the introduction of the 2007 Order, positive steps to reduce the number of posts that are available to UK nationals only unless there is a specific need as illustrated by the Order.”

79. 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 1§3 – Free placement services**

#### **ESC 1§3 NETHERLANDS (Netherlands Antilles)**

“The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1§3 of the Charter as it has not been established that the right to free placement services is guaranteed.”

#### Ground of non conformity (for the first time)

80. The representative of the Netherlands was unable to provide any further information at this time.

81. 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.

#### **ESC 1§3 POLAND**

“The Committee concludes that the situation in Poland is not in conformity with Article 1§3 of the Charter on the ground that public employment services are not efficient.”

82. The representative of Poland provided the following information:

“The negative conclusion is not based on the relevant statistics.

1. The first problem concerns the number of vacancies notified to the public employment services. For 2005, the committee of independent experts took the number of vacancies notified to the public employment services presented on page 15 of the report in the part relating to Article 1§1 (875 829). For 2006, it took the difference between the numbers of vacancies in 2005 and 2006 (227 821, still on page 15), and compared the two figures. Since the figure for 2006 was four times lower the Committee had no option but to reach a negative conclusion.

In fact, the real number of vacancies is different. It was presented correctly on page 36 of the report, in the part dealing with Article 1§3:

- 2005 – 885 236
- 2006 – 1 117 165

difference – 231 929

2. In the case of the placement rate and the average length of unemployment the data in the report itself are either incorrect or have been calculated using a variety of methods. The relevant

departments of the ministry of labour and social policy only discovered these errors when they read the conclusions.

The errors can be explained as follows:

– the placement rate: the figure for 2005 was the number of persons employed after completing an employment activation programme as a percentage of the total number of vacant posts, while for 2006 it was the number of subsidised placements as a percentage of vacant posts,

– the average time taken to fill a vacant position: the figure for 2005 was the average length of unemployment of persons registered with the public employment services and in 2006 the average period of search for employment according to BAEL (the national economic activity survey).

Corrected data:

– placement rate: 2005 – 26.8%, 2006 – 27.9%,

– average time taken to fill a vacant position: 2005 – 15.5 months, 2006 – 15.2 months.

These figures indicate a positive trend.

The next report on the application of this article will include correct data that will enable the Committee to review its assessment of the performance of the public employment services.”

83. 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.

### **ESC 1§3 SLOVAKIA**

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

84. The representative of Slovakia provided the following information:

“The right to free employment services in Slovakia is guaranteed. In accordance with the Employment Services Act, all offices of labour, social affairs and family in Slovakia provide information and counselling on employment free of charge for job seekers and persons interested in employment.

The Committee previously asked about information on other performance indicators in order to assess the situation, such as the number of visits or contacts with employers or the average period of time required to fill a vacancy. The Committee reiterates its question.

The offices of labour, social affairs and family do not monitor indicators from which it would be possible to calculate the time required to fill a vacancy or the number of visits a job seeker must make to the office of labour, social affairs and family necessary to obtain a job.

It is also impossible to provide information on the market share of public employment services in the total number of persons recruited on to the labour market, because the Central Office of Labour, Social Affairs and Family does not have the necessary information on the total number of persons recruited on to the labour market.

85. 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 1§4 – Vocational guidance, training and rehabilitation**

#### **ESC 1§4 ICELAND**

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

87. See Article 15§1.

#### **ESC 1§4 LUXEMBOURG**

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

88. See Article 15§1.

### **ESC 1§4 NETHERLANDS (Netherlands Antilles)**

“The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that vocational guidance, continuing vocational training of workers and vocational rehabilitation for persons with disabilities are guaranteed.”

89. The representative of the Netherlands said that particular attention was currently being paid to the integration of people with disabilities. A conference on these people’s participation in vocational training had been held in this connection in January 2008. Employers had been invited so that they could be made more aware of the issue.

90. The representative of the ETUC stressed the importance, as much social as economic, of the question of integration of people with disabilities into employment. He called for strong measures to be taken in this direction that go beyond simple awareness-raising activities.

91. The Governmental Committee urged the Government to take all the necessary steps to bring the situation into conformity with Article 1§4 of the Charter.

### **ESC 1§4 POLAND**

“The Committee concludes that the situation in Poland is not in conformity with Article 1§4 of the Charter on the grounds that:

- access to continuing training for nationals of other States Parties is subject to an excessive length of residence requirement;
- it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in the field of education and training.”

#### First ground of non-conformity

92. The representative of Poland regretted that she could not announce any positive moves towards bringing Poland’s situation into conformity with Article 1§4 of the Charter. No amendment of the Act of 20 April 2004 on the promotion of employment and labour market institutions was planned.

93. The representative of Poland confirmed that there were restrictions in Poland on access to vocational training for foreign nationals. She explained that the justifications for the regulations in force were that foreign nationals were only admitted onto the Polish employment market under strict conditions i.e. for a defined period of time and in order to carry out a specific job for which they already had qualifications and for a given employer. As a result of this policy, there is therefore no reason to offer them professional training to improve their chances of finding work in Poland (as is the goal of the training programmes offered by public employment offices).

94. The representative of the ETUC pointed out that, although it had been emphasised how serious the situation was, nothing had changed. This was not a question of immigration policy but one of equal treatment with regard to access to vocational training.

95. The Governmental Committee had adopted a warning the last time it had discussed the situation (detailed report on Conclusions 2007, §292). It repeated its warning to Poland and urged the Government to take all the necessary steps to bring the situation into conformity with Article 1§4 of the Charter.

## Second ground of non conformity

96. See Article 15§1.

### **ESC 1§4 SLOVAKIA**

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

97. See Article 15§1.

### **ESC 1§4 SPAIN**

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

98. See Article 9 and 15§1.

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

### **ESC 9 SPAIN**

“The Committee concludes that the situation in Spain is not in conformity with Article 9 of the Charter on the grounds that it has not been established that:

- the right to vocational guidance in the education system is guaranteed;
- equal treatment is guaranteed to all nationals of States Parties.”

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

99. The representative of Spain provided the following information:

“a. The first ground of non-conformity stresses the repeated failure to provide information on the right to vocational guidance. Owing to this lack of information, the Committee considers that it has not been established that the right to vocational guidance is guaranteed in the education system or on the labour market.

The Spanish education system maintains direct links with the world of work not only at university level but also in the schools, where particular importance is attached to the middle and higher levels of vocational training. Moreover, compulsory secondary education (*ESO*) and higher secondary education (*Bachillerato*), as well as the social guarantee programmes, involved acquiring certain occupational skills which give those successfully completing these courses access to the employment market. These actions, which are fully integrated in the corresponding teaching courses, are not broken down into separate data groups, which makes it difficult to provide statistics exclusively relating to these vocational guidance activities.

Obtaining the compulsory secondary education certificate (*Graduado en Educación Secundaria* and *Educación Secundaria Obligatoria*) gives the student access either to the middle-level vocational training courses or directly to the world of work. The certificate awarded on completion of higher secondary education (*Bachiller*) gives the student access to higher-level vocational training courses, of whatever kind, and these in turn, once successfully completed, provide access to certain university courses or the world of work.

Furthermore, all initial vocational training courses comprise a specific in-company training module. This is an ideal platform for the students to familiarise themselves with the working environment and to gain direct experience of the professional world, albeit without employee status. This in-company training module is extremely useful because on completion of their studies the students in question are often recruited by the company in which they conducted their practical course.

Increasing economic globalisation is forcing us to facilitate worker mobility within the European Union, of which economic area Spain is a member. The need for common elements and some degree of homogeneity in the field of vocational skills in the EU is one of the reasons for implementing the *Copenhagen Process*. This process is basically geared to standardising skills at the European level and implementing the resultant instruments at the national level (Europass, Common framework for quality assurance, basic principles for validating non-formal learning, etc).

We must therefore ensure that the Spanish legal system adequately enshrines the right to vocational guidance in the education system and on the labour market, in all legislation relating to both the development of the education system and labour regulations.

Currently, following the approval of Organic Law No. 5/2002 of 19 June 2002 on vocational qualifications and training, we are conducting a process of regulating the various vocational qualifications at the legislative level, geared to linking up the skills acquired in the formal framework of the education system with those acquired in the context of training for the unemployed and further training. Training acquired in a non-formal context and via work experience are also to be taken into account.

The following are the legislative texts concerned, specifying the relevant articles:

**1. Organic Law No. 5/2002 of 19 June 2002 on vocational qualifications and training**

Title III of this law lays down the purpose and structure of vocational information and guidance.

**2. Royal Decree No. 1128/2003<sup>1</sup>: this decree governs the national catalogue of vocational qualifications.** It stipulates that one of the purposes of the catalogue is to guide and inform, as explicitly mentioned in the explanatory memorandum and provided for in the enacting clauses.

**3. Royal Decree No. 1558/2005 defining the framework for integrated vocational training centres** very clearly reiterates the regulations governing the provision of information and guidance services.

**4. Organic Law No. 2/2006 on education** is directly in line with the previous texts; Articles 1 and 2 enshrine educational and vocational guidance, setting out the basic principles and objectives of the Law, in addition to a number of other references set out in the Preamble and in Articles 5 and 10.

**5.** The third objective of the National Vocational Training Programme focuses on developing an integrated vocational information and guidance system (**Royal Decree No. 1936/2004 of 27 September 2004 amending Royal Decree No. 631/1993 of 3 May 1993 governing the National Vocational Training and Integration Plan**).

**6. Royal Decree No. 395/2007 governing the vocational training sub-system for employment** also refers to vocational information and guidance.

Moreover, Spanish legislation comprises a series of provisions on the right to vocational guidance for job-seekers. **Article 24.2 and 3 of Law No. 56/2003 of 16 December 2003 on employment** provides that the services defined under the active policies for employment management by the public employment departments include personalised occupational integration pathways which are devised in co-operation with the individual job-seekers and which take account of their occupational and personal circumstances, with an eye to improving their possibilities for finding employment. **Article 25** of this Law also stipulates that one of the duties of these public departments is to provide information and guidance in order to help the individual concerned to actively seek employment.

b. In connection with the Committee's second ground of non-conformity, namely that equal treatment is not guaranteed for all residents of member states, we would point out that, in connection with the rights set out in the **Preliminary Title and Part I of the Constitution**, which include the right to education, our constitutional system does not define, and consequently does not permit, any nationality criterion for acceding to this right, as laid down in Articles 13 and 27 of Part I (Fundamental Rights and Duties) of the Constitution.

**Article 13.1** *Aliens in Spain shall enjoy the public freedoms guaranteed by the present Part, under the terms to be laid down by treaties and the law.*

**Article 27.1** *Everyone has the right to education. Freedom of teaching is recognised.*

Furthermore, **Article 3 of Organic Law No. 4/2000 of 11 January 2000 on the rights and freedoms of aliens in Spain and their social integration** provides that:

1. *Aliens in Spain shall enjoy the rights and freedoms recognised in Part I of the Constitution under the terms laid down by international treaties, the present Law and the laws governing the exercise of each of the said rights and freedoms. The general criterion for interpretation is that aliens shall exercise the rights recognised by the present Law on an equal footing with Spanish nationals.*

2. *The texts relating to the fundamental rights of aliens shall be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements in force in Spain dealing with the same matters, whereby the fact of holding different religious beliefs or ideological or cultural convictions shall not be used to justify acts or conducts contrary to these texts.*

Moreover, as regards citizens of EU Member States, European legislation, which is applicable in our country, fully guarantees their equal treatment."

100. 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.

<sup>1</sup> The amendment does not cover guidance aspects.

## **ESC 9 TURKEY**

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

101. The representative of Turkey provided the following information:

“The following statistical information is provided to give a more clear and understandable answer to the decline in the number of beneficiaries of vocational training.

The percentage of vocational and technical education reached 42.58% in total secondary education. During the last 7 years, the demand for vocational education has been increased a lot.

According to the data of Ministry of National Education, 2 million 855 thousand 851 students were educated in total 6 thousand 389 secondary schools in 2001-2002 academic year. 3 million 324 thousand 158 students are educated in total 8 thousand 660 secondary schools in 2008-2009 academic year. In seven years, the increase in number of schools is 2271 and the increase in number of students is about 468.307.

Especially, as a result of increasing demand for intermediate personnel in the economy, the number of pupils attended vocational and technical education is increased to 1.415.516 in 2008-2009, while the same number was 947.358 in 2001-2002. The increase in the number of vocational and technical school students is about 468.158. This increase is a record; it is almost equal to the increase in all secondary education.

While the number of school in vocational education was about 3.750 seven years ago, it increased to 4.602 in 2008-2009 academic year. The percentage of vocational and technical education was about 33.17% in 2001-2002 academic in total secondary education, and it reached 42.58% in 2008-2009.”

102. 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**

### **ESC 10§1 AUSTRIA**

The Committee concludes that the situation in Austria is not in conformity with Article 10§1 of the Charter as nationals of States Parties who are not nationals of the European Economic Area and are lawfully resident or regularly working in Austria are granted access to university education only subject to the availability of places.

103. The representative of Austria stated that the draft legislation amending the University Studies Act was before Parliament and would be adopted by the end of 2009. This amendment forms part of the larger reform of the whole educational system and takes account of the situation of non-conformity under Article 10§1 .

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

### **ESC 10§1 SLOVAKIA**

The Committee concludes that the situation in Slovakia is not in conformity with Article 10§1 of the Charter as it has not been established that the right to vocational education is adequately guaranteed.

105. The representative of Slovakia provided detailed information on the situation of non-conformity, such as the structure of post-secondary education and higher education system following the reform of the educational system, the selection of students for higher technical and university education, measures taken to make secondary and higher

education qualifications relevant from the perspective of professional integration into the job market, legislative amendments etc.

106. 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.

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

### **ESC 10§2 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 10§2 of the Charter on the ground that it has not been established that the right to apprenticeship is adequately guaranteed.”

107. The representative of Slovakia said that Slovakia did not have a specific Act on apprenticeship and apprenticeship training was covered by the Schools Act. However, the act on vocational education and training was in preparation which is intended to provide a comprehensive legal framework for vocational education and training in specialised secondary schools and educational facilities in Slovakia.

108. The representative of the Czech Republic emphasised that this information had not be provided in the previous report because following the transition to the new reporting system, the period of time between the two reports (2006 and 2007) was too short for reforms to take place.

109. The Governmental Committee welcomed the developments, invited the Government of the Slovak Republic to provide all the information in the next report, and decided to await the next assessment of the ECSR.

## **Article 10§4 – Encouragement for the full utilisation of available facilities**

### **ESC 10§4 AUSTRIA**

“The Committee concludes that the situation in Austria is not in conformity with Article 10§4 of the Charter on the ground that equal treatment of nationals of other States Parties lawfully resident or regularly working in Austria is not guaranteed with regard to fees and to financial assistance for training.”

110. The representative of Austria said that there were no new developments as regards the legal situation: the requirement of having spent five years to become eligible for financial assistance for fees and living expenses still remained.

111. Representatives of several states, as well as ETUC, underlined the fact that in Austria foreign students have to pay fees for higher education, among them those who are already resident in the country for less than 5 years. While welcoming the progress made towards the reduction of fees for nationals of non-EU member states from € 726 to € 363 per semester in 2008, the Governmental Committee noted the discriminatory nature of such fees.

112. As regards the financial assistance towards living expenses, the Committee considered that five years of length-of residence requirement was too long.

113. The representative of France drew the Committee's attention to the fact that even for secondary education, financial support was only available for pupils if at least one of the parents paid taxes in Austria.

114. The Governmental Committee took note of the reduction of fees for higher education but expressed its concern about the existence of such fees and the length of prior residence requirement imposed on foreign nationals. It urged the Government to bring the situation into conformity with the Charter.

#### **ESC 10§4 DENMARK**

"The Committee concludes that the situation in Denmark is not in conformity with Article 10§4 of the Charter on the ground that nationals of other States Parties lawfully residing or regularly working in Denmark are not treated on an equal basis with Danish nationals with regard to financial assistance for education and training."

115. The representative of Denmark explained that the subject of criticism from the ECSR was the Educational Grant and Loan Scheme (SU) which is designed to support students in full-time education. To become eligible under this scheme, non-Danish nationals are required to have resided in Denmark for two years, to be combined either with marriage to a Danish citizen or with having been in paid employment of at least 30 hours per week. However, according to her, the Act of Integration of Aliens also includes seven other provisions under which foreign nationals with a prior residence of less than two years could qualify for the SU. These provisions relate to, for instance, being in a possession of a permanent residence permit or other conditions under which the granting of assistance would be deemed to appropriate. Besides, according to the representative of Denmark, this requirement imposed on foreign nationals was meant to ensure that the person concerned has acquired a certain degree of connection to Denmark and therefore was justifiable as a restriction. She also underlined that since education is publicly funded, it would not be possible for Denmark to bear the costs of every single person requiring education support.

116. The representatives of the Czech Republic and Norway noted that the Danish situation was comparable to that of Norway and Sweden. The Representative of Estonia recalled that at the meeting of the Bureaux of the Governmental Committee and the European Committee of Social Rights, held in Paris on 29 September 2009, the representative of the ECSR mentioned that the length-of-residence requirement of less than two years would not cause a problem of compliance with the Charter.

117. The Governmental Committee acknowledged that in general the Danish 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 Denmark in respect of access to financial aid.

#### **ESC 10§4 LUXEMBOURG**

"The Committee concludes that the situation in Luxembourg is not in conformity with Article 10§4 of the Charter on the ground that nationals of non-EU States Parties legally resident or regularly working in Luxembourg are not guaranteed equal treatment with regard to financial assistance for training."

118. The representative of Luxembourg noted that the situation whereby there is a length-of-residence requirement of five years for foreign nationals in order for them to become eligible for financial assistance for education, had not changed. He also informed

the Committee about the establishment of the University of Luxembourg in 2003 and emphasised that nationals of Luxembourg wishing to pursue their studies abroad may also receive financial aid for education.

119. The representative of Portugal underlined that the requirement of five years was excessive. According to the representative of France, a requirement of 12-18 months at most would not cause a problem of compliance with the Charter as was explained by the ECSR representative at the meeting of the Bureaux of the Governmental Committee and the European Committee of Social Rights, held in Paris on 29 September 2009.

120. Régis Brillat, Head of Department of the European Social Charter explained that although the fact that students from Luxembourg receive financial aid for their studies abroad is a positive feature of the educational system, it is not required by the Charter. The Charter requires that foreigners, legally resident in a state concerned be treated equally with nationals and not be subjected to a prior length of residence requirement to qualify for financial aid for education.

121. The Governmental Committee expressed concern about the length of residence requirement of five years and urged the Government to take measures to bring the situation into conformity with the Charter.

#### **ESC 10§4 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 10§4 of the Charter on the ground that equal treatment of nationals of other States Parties who are not permanently resident in Slovakia is not guaranteed with respect to financial assistance for education and training.”

122. The representative of Slovakia explained that the situation whereby a permanent residence permit is required in order for foreign nationals to access educational loans and financial aid has not changed and that there were currently no plans to do so. Permanent residence can only be obtained after five year of regular residence in Slovakia.

123. The representatives of the Czech Republic and Estonia observed that the Slovak situation was similar to the Austrian, with the exception that no efforts were made to reduce fees for foreigners or simplify access to loans.

124. The representatives of Portugal and France asked for statistics regarding the number of cases of foreign nationals concerned with such discrimination.

125. The Governmental Committee expressed its concern about the length of residence requirement of five years and urged the Government to take measures to bring the situation into conformity with the Charter.

#### **ESC 10§4 SPAIN**

“The Committee concludes that the situation in Spain is not in conformity with Article 10§4 of the Charter as it has not been established that the right to equal treatment for nationals of other States Parties lawfully resident or regularly working in Spain is guaranteed with respect to financial assistance.”

126. The representative of Spain provided the following information:

“Having regard to this observation, to the ground of non-conformity in the Committee’s conclusions and to the question on the guaranteed equal treatment of residents of other member States in the field of *financial assistance*, we would point out that in connection with the assistance provided for in Article 25 of Royal Decree 395/2007 of 23 March 2007 governing the sub-system of vocational training for

employment there is no discrimination vis-à-vis participants in the training activities mainly targeting the unemployed which may accompany the assistance, namely:

- grants, which are payable to unemployed persons with disabilities (Art. 25 of Order TAS/18/2008 of 7 March 2008, expanding on R.D. 395/2007;
- transport, maintenance and housing assistance (Art. 26 of the same Order);
- assistance with reconciling caring for children under the age of six and dependent family members, with training aid (Art. 26 of Order TAS/18/2008)."

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.

### **ESC 10§4 UNITED-KINGDOM**

"The Committee concludes that the situation in the United Kingdom is not in conformity with Article 10§4 of the Charter because nationals of other States Parties residing or working lawfully in the United Kingdom are not treated on an equal footing with the United Kingdom nationals with respect to fees and financial assistance for training."

128. The representative of the United Kingdom provided clarifications concerning the situation of overseas students from non-EEA countries who had to pay higher fees for education unless there were regularly resident in the United Kingdom for at least three years before the start of their studies. He underlined that universities enjoyed autonomy in deciding on reduction of fees, student loans and scholarships. As a result, foreign students did not automatically have to pay higher fees – the decision was left to the university to take on a case by case basis. The United Kingdom was a leading country in Europe in attracting foreign students. The level of fees varied from institution to institution depending on the course concerned. He said that education is publicly funded and therefore three years of prior residence requirement was a reasonable balance.

129. The representative of the Czech Republic said that the case of the United Kingdom was comparable to the Austrian and Slovak cases as the fees were involved, but unlike the Austrian case no efforts were made to reduce these fees for overseas students who were legally resident for less than three years.

130. The Governmental Committee expressed its concern about the length of residence of three years and a differential treatment of some overseas students as regards reduction of fees and urged the Government to take measures to bring the situation into conformity.

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

#### **ESC 15§1 DENMARK**

"The Committee concludes that the situation in Denmark is not in conformity with Article 15§1 of the Charter on the ground that, during the reference period, there was no legislation explicitly protecting persons with disabilities from discrimination in education."

131. The representative of Denmark informed that the Act on Education for Young Persons with Special Needs entered into force in August 2007. She specified that the act concerns young persons with a mental disability, brain injuries, physical disabilities and multiple disabilities which are of such a nature that mainstream education cannot be suitable. The act establishes that special needs education must be made available free of charge to young people irrespective of their degree of disability in all municipalities.

132. The representative of Denmark said that as of February 2009, 2000 youngsters were taken into special needs education and it was foreseen that such number would

increase. She mentioned that education for young persons with special needs was evaluated on an ongoing basis and that appeals could be brought before the Special Education Board on a municipality's decision concerning the content of the education programme.

133. Finally she assured the Committee that Denmark would include all relevant information to demonstrate that students with disabilities receive the support they need to be able to take in ordinary education on the same footing with other young persons.

134. Responding to a question from the Secretariat as to whether the new law explicitly protected persons with disability from discrimination in education, the representative of Denmark replied in the negative. However she noted that the principle of equality of treatment was enshrined in the acts and executive orders concerning education. She also pointed out that Denmark had ratified the UN Convention on the rights of disabled persons.

135. The Governmental Committee invited Denmark to provide the relevant information on protection from discrimination on the basis of disability in education in its next report, and decided to await the next assessment of the ECSR on Article 15§1 of the Charter.

#### **ESC 15§1 GREECE**

"The Committee concludes that the situation in Greece is not in conformity with Article 15§1 of the Charter on the ground that there is no legislation explicitly protecting persons with disabilities from discrimination in education."

136. The representative of Greece informed that legislation explicitly protecting persons with disabilities from discrimination, including in the field of education, had been adopted by the Parliament in October 2008 (Act 3699/2008). The new Act streamlined existing legislation concerning persons with disabilities and completed it with a view to bringing it into conformity with international human rights obligations. The new Act would be described in the next report.

137. The Governmental Committee welcomed the legislative development in Greece and decided to await the next assessment of the ECSR on Article 15§1 of the Charter.

#### **ESC 15§1 ICELAND**

"The Committee concludes that the situation in Iceland is not in conformity with Article 15§1 of the Charter on the ground that there is no legislation explicitly protecting persons with disabilities from discrimination in education and training."

138. The representative of Iceland informed that proposals on anti-discrimination legislation were given to the Minister of Social Affairs and Social Security early 2009. She announced that on the basis of such proposals a bill on anti-discrimination legislation implementing the EU Directives 2000/43/EC and 2000/78/EC would be submitted in Parliament in 2009/2010. She assured that while preparing such bill, the conclusions of the ECSR on the issue would be taken into consideration.

139. The representative of the ETUC pointed out that this was not the first time that Iceland announced that anti-discrimination legislation was in the pipeline and such legislation had not yet concretised. He thus wondered why this time the situation should be expected to be different.

140. The representative of Iceland replied that previous proposals had not been officially submitted to the Minister as was the case now. Moreover, with specific regard to protection of persons from discrimination in education and training, she pointed out that Parliament had adopted a new Compulsory School Act and Upper Secondary School Act in 2008 which includes provisions on rights of pupils with special needs. She also announced that the Minister of Education, Science and Culture would issue a regulation stipulating further the implementation of these acts and case procedure.

141. The Governmental Committee welcomed the developments in Iceland, inviting it to adopt the anti-discrimination legislation. Meanwhile, it decided to await the next assessment of the ECSR on Article 15§1 of the Charter.

### ESC 15§1 LUXEMBOURG

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

142. The representative of Luxembourg provided the following information:

**1) Evolution du nombre d'heures réservées à l'assistance en classe  
des enfants à handicap  
(Service rééducatif ambulatoire)**

Année	heures
1994/1995	678
1995/1996	858
1996/1997	1.77
1997/1998	1477
1998/1999	2013
1999/2000	2277
2000/2001	2917
2001/2002	2937
2002/2003	2937
2003/2004	2937
2004/2005	2937
2005/2006	2937
2006/2007	3017
2007/2008	3067
2008/2009	3067

À l'heure actuelle (année scolaire 2008/2009) 432 élèves à handicap intégrés dans une classe de l'enseignement ordinaire bénéficient d'une assistance en classe. En dehors des heures scolaires le Service ré-éducatif ambulatoire offre en plus des ateliers d'apprentissage et des mestres rééducatives.

Le nombre des heures d'assistance a augmenté au fil des années, mais elles ont été recentrées sur les enfants à handicap et/ou à besoins spécifiques. Suite à la gestion du contingent de ces ressources par les cmpp régionaux (ou la CMPP Nationale, en ce qui concerne l'enseignement secondaire) un nombre plus restreint d'élèves bénéficie d'un nombre plus important d'heures d'assistance.

## 2) Evolution de la population scolaire des écoles de l'Education différenciée (1999-2007)

	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008
Institut pour IMC	61	61	63	62	59	66	65	62
Institut pour Enfants Autistiques	37	37	39	35	29	35	41	41
Centris d'observation Olin	6	8	7	7	7	7	8	6
Centris d'observation Pélarage	16	17	11	16	16	20	20	19
Centris d'Intégration Sociale	9	8	5	11	11	11	11	11
<b>Total - Instituts spécialisés</b>	<b>129</b>	<b>131</b>	<b>125</b>	<b>131</b>	<b>122</b>	<b>139</b>	<b>145</b>	<b>139</b>
Centre d'éducation différenciée Clervaux	18	22	22	26	27	26	23	29
Centre d'éducation différenciée Differdange	13	13	15	15	21	22	22	24
Centre d'éducation différenciée Eschtranch	19	24	27	27	27	28	29	28
Centre d'éducation différenciée Eschvalzette	61	79	69	92	93	95	69	65
Centre d'éducation différenciée Luxembourg	47	48	51	52	55	51	51	51
Centre d'éducation différenciée Rudange	19	20	18	20	18	18	17	17
Centre d'éducation différenciée Ruesel	13	14	17	16	13	13	15	14
Centre d'éducation différenciée Rumelange	17	15	15	14	15	15	13	17
Centre d'éducation différenciée Roudic/Spre	41	36	37	36	40	30	37	35
Centre d'éducation différenciée Wierken	43	51	55	49	47	46	42	44
<b>Total - Centres d'éducation différenciés</b>	<b>311</b>	<b>322</b>	<b>346</b>	<b>347</b>	<b>356</b>	<b>344</b>	<b>339</b>	<b>344</b>
Centre de propédeutique prof. Clervaux	28	23	24	16	18	15	16	9
Centre de propédeutique prof. Walle-l'arange	28	29	28	29	21	24	23	21
Centre de propédeutique prof. Wierken	50	49	42	46	31	20	24	19
<b>Total - Centres de propédeutique prof.</b>	<b>106</b>	<b>101</b>	<b>92</b>	<b>93</b>	<b>68</b>	<b>67</b>	<b>63</b>	<b>49</b>
<b>Total - Education différenciée (Ecoles)</b>	<b>646</b>	<b>664</b>	<b>663</b>	<b>671</b>	<b>646</b>	<b>650</b>	<b>647</b>	<b>632</b>

4) Des 512 élèves inscrits dans une école de l'Education différenciée, une centaine fréquemment des classes de cohabitation (cf. relevé en annexe). Les classes de cohabitation sont dirigées par des titulaires de l'Education différenciée, mais elles fonctionnent au sein d'un bâtiment scolaire ordinaire.

### 3) Les classes de cohabitation (2007/2008)

Intégration d'un groupe d'élèves d'un centre d'éducation différenciée ou institut spécialisé dans un bâtiment d'une école de l'enseignement primaire

Centre ou institut	classes	élèves
Centre d'éducation différenciée à Clervaux	1	5
Centre d'éducation différenciée à Esch-sur-Alzette	2	12
Centre d'éducation différenciée à Luxembourg	6	38
- Uelzecht Lycée	2	16
- Bartange	2	14
- Batty Weber	2	8
Centre d'éducation différenciée à Redange	1	7
Centre d'éducation différenciée à Warken	1	4
Institut pour enfants autistiques et psychotiques	7	36
- Cessange	1	6
- Batty Weber	1	3
- Henri 7	3	14
- Lycée Michel Rodange	2	9
<b>TOTAL</b>	<b>18</b>	<b>102</b>

### Répartition des élèves par tranche d'âge

Le tableau reprend les élèves scolarisés dans les centres et instituts spécialisés de l'Education différenciée, à l'exception de l'institut pour déficients visuels qui travaille en ambulatoire.

Âge	2002/03	2003/04	2004/05	2005/06	2006/07
3	2	-	-	3	1
4	8	5	8	8	10
5	15	7	10	14	11
6	10	13	11	14	16
7	21	19	19	17	27
8	29	37	32	28	25
9	33	50	46	39	35
10	59	44	52	49	48
11	44	57	53	54	50
12	64	56	60	57	62
13	75	63	63	64	56
14	47	64	62	60	61
15	49	34	47	57	53
16	25	29	23	36	41
17	7	16	15	16	24
18	4	8	7	11	14
> 18	74	71	38	27	13
<b>Total</b>	<b>563</b>	<b>571</b>	<b>546</b>	<b>550</b>	<b>547</b>

143. 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.

## ESC 15§1 POLAND

"The Committee concludes that the situation in Poland is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in education and training".

144. The representative of Poland provided the following information:

***"Article 15§1 is concerned with vocational training:***

*"With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake:*

1. to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private;"

*Examining the education system as a whole, as the independent experts have attempted, falls outside the material scope of Article 15§1. It would be justified in the case of Article 15§1 of the revised Charter, which creates an obligation to take the necessary measures to provide persons with disabilities with guidance, education and vocational training. However, Poland is not bound by the provisions of the revised Charter. The reply to the negative conclusion therefore only concerns the vocational training of persons with disabilities.*

***1. Principles***

*The Education Act of 7 September 1991 entitles all children to access to education. The rule is that both general and vocational education are provided in mainstream schools. Disabled children are therefore taught in ordinary schools, sometimes in so-called "integration" classes, or in "integration" schools. The system covers all levels of education and they are taught as close to their home as possible, with a view to integrating children with and without disabilities.*

*In particular cases, children with disabilities are sent to special schools, if their abilities prevent them from pursuing their education or training in mainstream schools.*

***2. Vocational training***

After completing their general education, at lower secondary level, disabled children may continue their education in the following schools:

- vocational school offering two to three years' training leading to a vocational training qualification,
- general senior secondary school for three years leading to higher school leaving certificate,
- vocational senior secondary school for three years leading to higher school leaving certificate,
- technical senior secondary school for four years leading to higher school leaving certificate,
- supplementary general senior secondary school for two years for graduates of vocational schools leading to higher school leaving certificate,
- supplementary technical senior secondary school for three years leading to higher school leaving certificate,
- post-school-leaving-certificate establishment for up to two and a half years leading to a vocational training qualification,
- special vocational school for three years for pupils with moderate or severe mental disorders and for multiply disabled children leading to a vocational training qualification.

Most decisions on the choice of school are taken by the parents or guardians, who in most cases opt for mainstream education or an integration school.

Secondary education in ordinary or integration schools – general, technical or vocational – is the rule for children with sensory (sight or hearing) and motor disorders. The exception concerns children with mild mental disorders, whether or not combined with other disabilities such as hearing, sight and/or motor disorders, and/or autism. In view of these children's special needs and limited capacities, their parents generally choose special vocational schools.

***3. Special training***

*Section 71b of the Education Act requires special education to be provided to all children who needs their education to be organised in a special way, accompanied by appropriate working methods. It must be adapted to their particular disabilities to offer them a form of education that is accessible to them and responds to their needs. It is also concerned with their social rehabilitation and integration. Special education is provided at each stage of the education process.*

*Its organisation is set out in:*

- the ministry of education and sport regulation of 18 January 2005 on the organisation of education, training and care for disabled and socially maladjusted children in nursery schools and mainstream and integration schools and classes;
- and

– *the ministry of education and sport regulation of 18 January 2005 on the organisation of education, training and care for disabled and socially maladjusted children in special nursery schools, schools and classes, and special centres.*

Parents and guardians may ask their local education authority to arrange special education, subject to their obtaining a decision that the child needs special or individual education, issued by a special committee of the relevant psychoeducational centre.

Such decisions specify:

– the education/training arrangements and the forms of stimulation, resocialisation, therapy, rehabilitation, potential skills development and other forms of psychoeducational assistance required by the child;

– the most appropriate form of specialist education or training for the child: ordinary school, integration school or class or special class.

Decisions on individual education specify:

– the arrangements for education/training and participation in school life, and the forms of stimulation, resocialisation, therapy, rehabilitation, potential skills development and other forms of psychoeducational assistance required by the child;

– the extent to which the child should take part in courses organised by the school, or provided on an individual basis if his or her health makes school attendance a problem;

– for children attending vocational schools the possibility of continuing with vocational training.

Each committee is composed of the director of the relevant psychoeducational centre, a psychologist, an educationalist and a physician. Other specialists may take part as necessary. Applicants may also attend the committees' sessions and express their views. This all ensures that the consideration of cases and the decisions taken will be of a high standard.

*The committees determine in detail the forms of education required, in terms of type of school (mainstream, integration or special) and the level (primary, lower secondary or upper secondary – for example vocational). They do not decide on the type of vocational training required, which is the responsibility of the psychologist and the school's and the centre's vocational adviser. If parents opt for a vocational school, an occupational physician's opinion must be sought.*

Decisions on special education or training are for a specified period, which may be the school year, the length of training placement or the training period in a school, depending on children's specific situation.

*As already noted, children may only be placed in special schools if a decision has been taken that this is necessary on account of their special education needs. This excludes all discretionary element concerning these children's education and training.*

*Disabled children's education is supervised by the director of education. If schools are not complying with the law, the supervisory body can:*

– issue an order that the breach be rectified within a specified period;

– issue a recommendation in accordance with its supervisory powers.

*If the school head does not end the breach of the law within the specified time the supervisory body will issue a demand to the school's governing body to dismiss the head at the end of, or in the course of, the school year, without notice. The school's governing body must give effect to such demands.*

In 2008, the ministry of education set up a group to propose changes to the organisation and curriculum of vocational training. It discussed the issue of training for persons with special needs in February 2009. Final proposals are expected in late 2009 for implementation in 2012.

*An examination of the current state of vocational training for persons with mild mental disabilities has stressed the critical importance of vocational guidance in schools for their choice of future careers and their social integration. This guidance comes in several stages, which follow the development of each child's particular abilities, the first stage being the decision-making procedure concerning the child's special education needs. Proposals have been discussed concerning improvements to the vocational training system, such as curriculum changes, new forms of support and training for those offering the guidance, and the training itself, such as the system for acquiring new qualifications and their validation, including professional examinations.*

A group of experts has been set up in the education ministry to look at special education issues, including special vocational training, and this will be responsible for implementing the aforementioned proposals.

Statistics

When analysing the relevant statistics, particularly when comparing the numbers of pupils in mainstream and specialised schools and in the following education stages, it should be borne in mind that under current legislation it is possible to individualise educational careers, for example by extending the training period, so that each training stage may be extended by at least one year and disabled pupils may remain in junior secondary school up to the age of 21. This means that the

number of pupils in one particular stage of training may differ significantly from the number in the previous one.”

<i>Elèves handicapés aux écoles ordinaires</i>		
	2004/2005	2005/2006
<i>Lycée général</i>	4.794	4.746
<i>Ecole professionnelle</i>	6.026	5.092
<i>Année scolaire 2006/2007</i>		
<i>Lycée général</i>	2.083	
<i>Lycée profilé</i>	823	
<i>Ecole professionnelle</i>	1.499	
<i>Lycée technologique</i>	658	
<i>Ecoles artistiques</i>	69	
<i>Ecole post-bac</i>	135	
<i>Elèves handicapés aux écoles spéciales</i>		
	2004/2005	2005/2006
<i>Lycée général</i>	1.089	1.178
<i>Ecole professionnelle</i>	25.141	22.983
<i>Année scolaire 2006/2007</i>		
<i>Lycée général</i>	767	
<i>Lycée professionnel</i>	577	
<i>Ecole professionnelle</i>	17.777	
<i>Ecole préparant au travail</i>	6.691	
<i>Lycée technologique</i>	912	
<i>Ecole post-bac</i>	409	
<i>Classes aux écoles spéciales</i>		
	2004/2005	2005/2006
<i>Lycée général</i>	105	119
<i>Ecole professionnelle</i>	2.211	2.040

145. 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.

### **ESC 15§1 SLOVAKIA**

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

146. The representative of Slovakia acknowledged that complications with the Statistical Office resulted in difficulties in providing the ECSR with the necessary data to assess the situation with regard to mainstreaming of persons with disabilities in education and training. Such data was presently available and would be submitted to the ECSR.

147. As to the issue of the definition of disability, which was raised by Conclusions XVIII-2 and XIX-1, the representative of Slovakia clarified that Slovak legislation, (e.g. Act No. 448/2008 concerning monetary contributions as compensation for severe disability) is not based on the definition of disability endorsed by the WHO (International Classification of Functioning, Disability and Health – ICF 2001); it refers to the definition of the International Statistical Classification of Diseases and related Health Problems – ICD.

148. Responding to a question by the Chairperson, the representative of Slovakia explained that the “special homes” in which some children with severe health problems are placed for care are considered “special education institutions” where education tailored to each individual is provided.

149. The Governmental Committee invited the government of Slovakia to provide the relevant statistics and information on ordinary and special education in its next report and decided to await the next assessment of the ECSR on Article 15§1 of the Charter.

### **ESC 15§1 SPAIN**

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

150. The representative of Spain communicated the figures requested by the ECSR and assured the Committee that they would be included in the next report. She also provided information concerning the implementation of the II Action Plan for Persons with Disability (2003-2007) and the I National Accessibility Plan (2004-2012). This too would be submitted to the ECSR.

151. The Governmental Committee invited Spain to provide the relevant information and figures enabling the ECSR to assess whether the right to education and training is effectively guaranteed to persons with disabilities in its next report. Meanwhile, it decided to await the next assessment of the ECSR on Article 15§1 of the Charter.

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

### **ESC 15§2 CZECH REPUBLIC**

“The Committee concludes that the situation in the Czech Republic is not in conformity with Article 15§2 of the Charter on the ground that there is no legislation explicitly prohibiting discrimination in employment on the ground of disability.”

152. The representative of the Czech Republic explained that the draft anti-discrimination legislation explicitly prohibiting discrimination in employment on the grounds *inter alia* of disability was adopted both by the Chamber of Deputies and by the Senate in 2008, but the Czech President vetoed it. It then was returned to the Chamber of Deputies where it may become law if it obtains 101 votes (majority of all the Deputies). Since the President may use his veto powers only once, he may no longer block the adoption of this legislation. The representative of the Czech Republic was of the view that given the pressure also from the EU on the adoption of such legislation, it should be voted before the next political elections (October 2009).

153. The representatives of Lithuania, Portugal, Romania and ETUC considered that a strong message should be addressed to the Government to encourage the Parliament to adopt the anti-discrimination legislation.

154. Replying to a question from the representative of Estonia, the representative of the Czech Republic pointed out that the Employment Act (435/2005) prohibits discrimination in employment on the grounds, *inter alia* of “health conditions”. She explained that the Czech expression in the Act corresponded more to “disability” than to “health condition”. In any event, the clarifications on the definition of disability requested by the ECSR would be contained in the next report.

155. The Governmental Committee took note of the clarifications provided and urged the Czech Republic to adopt the anti-discrimination legislation as soon as possible.

### **ESC 15§2 ICELAND**

“The Committee concludes that the situation in Iceland is not in conformity with Article 15§2 of the Charter on the ground that there is no legislation explicitly prohibiting discrimination in employment on the ground of disability.”

156. The representative of Iceland referred to her intervention under Article 15§1 concerning developments with regard to the anti-discrimination bill.

157. The Governmental Committee welcomed the developments in Iceland inviting it to adopt the anti-discrimination legislation. Meanwhile, it decided to await the next assessment of the ECSR on Article 15§2 of the Charter.

### **ESC 15§2 LUXEMBOURG**

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

#### Ground of non conformity (for the first time)

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

159. 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.

### **ESC 15§2 POLAND**

“The Committee concludes that the situation in Poland is not in conformity with Article 15§2 of the Charter on the ground that anti-discrimination legislation in the field of employment does not make reasonable accommodation of the workplace a requirement.”

160. The representative of Poland acknowledged that the information submitted in the report did not indicate the provision which makes reasonable accommodation of the workplace a requirement. She highlighted that such legal obligation is very difficult to identify as it is contained in a regulation of 26 September 1997 concerning the application of the law on safety and health at work. She promised to provide a clearer explanation in this regard in the next report to the ECSR. She however also pointed out that new anti-discrimination legislation is being prepared and that this will contain the requirement of reasonable accommodation of the workplace in a more visible way.

161. In reply to the representative of Belgium, the representative of Poland informed the Committee that legal remedies are available in the Labour Code for those who allege they have been unlawfully discriminated against in employment..

162. The representatives of Romania and Lithuania considered that Poland should be encouraged to adopt anti-discrimination legislation. The representative of ETUC highlighted that a strong message should be sent with regard to the reasonable accommodation requirement as it appeared from the conclusions of the ECSR that the existing Polish provisions in this regard were vague.

163. The Governmental Committee encouraged Poland to provide all the necessary clarifications in its report and urged Poland to adopt the anti-discrimination legislation containing the reasonable accommodation requirement.

## ESC 15§2 SLOVAK REPUBLIC

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

164. The representative of Slovakia acknowledged that the mandatory quota system was not effective and that instead of filling their quota, employers preferred acquiring goods produced by persons with disabilities. He thus did not have any figures concerning the mandatory quota. He did, however, provide figures with regard to the number of jobseekers with disabilities. He then described the instruments of active labour market policy implemented under the Employment Services Act to support the placement of the disabled. He highlighted in particular that in 2008: (i) employers created 731 jobs for persons with disabilities; (ii) 189 citizens with disabilities were retained in employment by 33 employers; (iii) 333 new jobs were created for persons with disabilities in the sectors of sole trader or sole proprietor.

165. The representative of the ETUC asked for clarification as to which of the above jobs were in the ordinary labour market and which in sheltered employment. He also reiterated the question of the ECSR concerning the role of trade unions in sheltered employment and asked whether it was possible to indicate what percentage of persons with disabilities entered the ordinary labour market after having been employed in sheltered workshops/places.

166. The representative of Slovakia assured that such clarifications would be included in the next report.

167. The Governmental Committee invited Slovakia to provide the relevant statistics and information on equal access to employment for persons with disabilities in its next report and decided to await the next assessment of the ECSR on Article 15§2 of the Charter.

## ESC 15§2 SPAIN

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

168. The representative of Spain provided the following information:

“Law No. 62/2003 of 30 December 2003 on fiscal, administrative and social measures (Chapter III, Measures to implement the principle of equal treatment) constitutes the national transposition of Directive 2000/87/EC, which lays down a general framework for equality of treatment in the education and employment fields, requiring Spain to establish the principle of equal treatment and equal opportunities in legislation.

Article 38 of this Law reads as follows:

**Article 38.** Amendments to Law No. 13/1982 of 7 April 1982 on the social integration of people with disabilities

I. Article 37 of Law No. 13/1982 of 7 April 1982 reads as follows:

1. The main purpose of the policy for the employment of workers with disabilities is to integrate them under conditions which guarantee the application of the equal treatment principle, within the ordinary labour system, or, failing that, to incorporate them into the production system by means of special sheltered employment facilities as detailed in Article 41.
2. For the purposes of the previous paragraph, the “equal treatment principle” refers to the absence of any direct or indirect discrimination based on disability.
3. Direct discrimination is where one person is treated less favourably than another in a similar situation because of his/her disability.

Indirect discrimination is where a legal or statutory provision, a contractual clause, an individual agreement or a unilateral decision taken by an employer, which are ostensibly neutral, may produce a

particular disadvantage for persons with disabilities as compared with other individuals, unless they objectively pursue a legitimate aim and the means of attaining this aim are appropriate and necessary, or unless the employer is required to adopt appropriate measures, depending on the needs arising from each individual situation and in accordance with Article 37 bis of the present Law, to eliminate the disadvantages caused by such provision, clause, agreement or decision.

II. A new Article 37 bis shall be added to Law No. 13/1982 of 7 April 1982, worded as follows:

1. In order to guarantee full equality at work, the equal treatment principle shall not prevent the maintenance or adoption of specific measures geared to preventing or offsetting disadvantages arising out of situations of disability.

2. Employers shall be required to adopt the requisite measures to adapt work stations and access to the enterprise in accordance with the needs of each individual situation, in order to ensure that persons with disabilities can have access to employment, perform their work, progress in their careers and accede to training, unless such measures would impose an excessive burden on the employer.

In deciding whether a burden is excessive in such cases, regard shall be had to whether it is sufficiently offset by public measures, assistance or subsidies for persons with disabilities, as well as the financial and other costs which the measures entail and the size and total turnover of the organisation or enterprise in question.

Similarly, Article 41 of this Law reads as follows:

**Article 41.** Amendments to the revised text of the Law on social offences and sanctions, approved by Royal Legislative Decree No. 5/2000 of 4 August 2000.

I. Article 8 (12) of the Law on social offences and sanctions reads as follows:

12. Unilateral decisions taken by the employer which involve direct or indirect discrimination unfavourable on the ground of age of disability or positive or negative in terms of remuneration, working hours, training, promotion and other working conditions, gender, racial or ethnic origin, civil status, social status, religion or convictions, political ideas, sexual orientation, affiliation or non-affiliation to trade unions and union agreements, family relationships with other workers in the enterprise or language within the Spanish State, as well as decisions taken by the employer involving unfavourable treatment of workers in response to a complain submitted in the enterprise or against judicial proceedings geared to securing respect for the equal treatment principle and non-discrimination.

II. A new paragraph 13 bis shall be added to Article 8 of the Law on social offences and sanctions, worded as follows:

13 bis. Harassment on the grounds of racial or ethnic origin, religion or convictions, disability, age and sexual orientation, where this occurs within the area of jurisdiction of the management of the enterprise, regardless of the active subject of such harassment, provided that the employer has been apprised of the situation and has subsequently failed to adopt the requisite measure to prevent it.

III. Article 16 (2) of the Law on social offences and sanctions shall henceforth be worded as follows:

2. establish the conditions, by means of advertising, broadcasting or any other medium, for positive or negative discrimination vis-à-vis access to employment, on the grounds of gender, racial or ethnic origin, age, civil status, disability, religion or convictions, political opinions, sexual orientation, affiliation to trade unions, social status or language within the State.

In response to the Committee's request for updated statistics on the number of persons with disabilities of working age, those in employment (on the open labour market and in sheltered employment facilities), those benefiting from employment promotion measures, those seeking employment and those who are unemployed, we enclose the following information:

- the latest statistics comprising the requested information, relating not to the 2005-2006 period but to the 2002-2003 period;

- tables setting out information on 2005 and 2006.

PROV./COMUNAUTÉ	Hommes âgés de moins de 25 ans	Hommes 25-44 ans	Hommes âgés de plus de 45 ans	Femmes âgées de moins de 25 ans	Femmes de 25-44 ans	Femmes âgées de plus de 45 ans	Total
Total	160	1197	554	67	519	204	

ANNÉE 2005 Période: Décembre

#### Contrats de personnes avec un handicap selon le genre et le type de Journée de travail

PROV./COMMUNAUTE	Hommes Total	Hommes Partiel	Hommes Complet	Hommes Fixe Discontinue	Femmes Total	Femmes Partiel	Femmes Complet	Femmes Fixe Discontinue	Total Total	Total Partiel	Total Complet	Total Fixe Discontinue
Total	6.647	969	5.557	121	3.369	1.134	2.108	127	10.016	2.103	7.665	248

ANNÉE: 2005 Période: Décembre

*Contrats de personnes avec un handicap selon le genre et tranche d'âge*

PROV./COMMUNAUTÉ	Hommes âgés de moins de 25 ans	Hommes de 25-44 ans	Hommes âgés de plus de 45 ans	Femmes âgées de moins de 25 ans	Femmes de 25-44 ans	Femmes âgées de plus de 45 ans	Total
<i>Total</i>	622	3719	2.306	364	2008	997	10.016

ANNÉE: 2005 Période: Décembre

*Contrats Temporaires de personnes avec un handicap selon le genre et tranche d'âge*

PROV./COMMUNAUTÉ	Hommes âgés de moins de 25 ans	Hommes de 25-29 ans	Hommes de 30-39 ans	Hommes de 40-44 ans	Hommes âgés de plus de 45 ans	Femmes âgées de moins de 25 ans	Femmes de 25-29 ans	Femmes de 30-39 ans	Femmes de 40-44 ans	Femmes âgées de plus de 45 ans	Total
<i>Total</i>	1.067	1.395	2.800	1.258	2.138	575	729	1.274	538	872	12.646

ANNÉE: 2005 Période: Décembre

*Contrats temporaires de personnes avec un handicap selon le genre et type de journée de travail.*

PROV./COMMUNAUTÉ	Hommes Total	Hommes Partiel	Hommes Complet	Femmes Total	Femmes Partiel	Femmes Complet	Total Total	Total Partiel	Total Complet
<i>Total</i>	8.658	874	7.784	3.988	894	3.094	12.646	1.768	10.878

ANNÉE: 2005 Période: Décembre

*Contrats temporaires de personnes avec un handicap selon durée en mois*

PROV./COMMUNAUTÉ	Égal à 12 mois	Entre 12 et 18 mois	Entre 18 et 24 mois	Plus de 24 mois	Total
<i>Total</i>	11.419	1.104	37	86	12.646

ANNÉE: 2005 Période: Décembre

Les données concernant l'année 2006 sont les suivantes:

*Contrats de personnes avec un handicap selon le genre et tranche d'âge*

PROV./COMMUNAUTÉ	Hommes âgés de moins de 25 ans	Hommes de 25-44 ans	Hommes âgés de plus de 45 ans	Femmes âgées de moins de 25 ans	Femmes de 25-44 ans	Femmes âgées de plus de 45 ans	Total
<i>Total</i>	695	4240	2.792	444	2389	1.237	11.797

ANNÉE: 2006 Période: Décembre

*Contrats de personnes avec un handicap selon le genre et le type de journée de travail*

PROV./COMMUNAUTÉ	Hommes Total	Hommes Partiel	Hommes Complet	Hommes Fixe Discontinue	Femmes Total	Femmes Partiel	Femmes Complet	Femmes Fixe Discontinue	Total Total	Total Partiel	Total Complet	Total Fixe Discontinue
<i>Total</i>	7.727	1.119	6.475	133	4070	1.455	2.480	135	11.797	2.574	8.955	268

ANNÉE: 2006 Période: Décembre

*Contrats temporaires de personnes avec un handicap selon le genre et type de journée de travail.*

PROV./COMMUNAUTÉ	Hommes Total	Hommes Partiel	Hommes Complet	Femmes Total	Femmes Partiel	Femmes Complet	Total Total	Total Partiel	Total Complet
<i>Total</i>	9.953	1.255	8.698	4.822	1.401	3.421	14.775	2.656	12.119

ANNÉE: 2006 Période: Décembre

*Contrats temporaires de personnes avec un handicap devenus indéfinis selon le genre et tranche d'âge.*

PROV./COMMUNAUTÉ	Hommes âgés de moins de 25 ans	Hommes de 25-44 ans	Hommes âgés de plus de 45 ans	Femmes âgées de moins de 25 ans	Femmes de 25-44 ans	Femmes âgées de plus de 45 ans	Total
<i>Total</i>	184	1591	860	118	828	340	3.921

ANNÉE: 2006 Période: Décembre

*Contrats temporaires de personnes avec un handicap selon durée en mois*

PROV./COMMUNAUTÉ	Égal à 12 mois	Entre 12 et 18 mois	Entre 18 et 24 mois	Plus de 24 mois	Total
Total	13.703	913	57	102	14.775

169. 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§1 – Applying existing regulations in a spirit of liberality**

#### **ESC 18§1 SPAIN**

“The Committee concludes that the situation in Spain is not in conformity with Article 18§1 of the Charter on the grounds 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.”

170. The representative of Spain provided the following information:

“Where Article 18§1 is concerned, the ECSR states that the lack of statistics on residence and work permits granted or refused prevents it from assessing the situation in Spain.

In connection with the question put on Article 18.1 regarding the lack of statistics on residence and work permits granted or refused, we would point out that they are included among the general labour statistics published on the Web page of the Ministry of Labour and Immigration.

The Statistical Yearbook of the Ministry of Labour and Immigration, which incorporates the main social and labour data, describes the situation and evolution of the Spanish labour market in detail, and since it was first published in 2004 it has also comprised the main data on integration of aliens on the labour market.

In connection with statistics on residence and work permits granted to or withheld from nationals of third countries, we enclose tables of total numbers of permits granted or refused, which provide a full overview of developments in this area from 2004 to 2006.

As regards the question related to Article 18(1) on the lack of statistical data on the number of requests for work and residence permits that were granted and denied, we point out that such data can be found on the work statistics published on the web page of the Ministry of Work and Immigration.

In the Annual Statistics of the Ministry of Work and Immigration, which recompiles the main social and labour data, a complete picture of the Spanish labour market and its evolution is provided, and since the 2004 edition it also contains basic data on the integration of foreigners in the labour market.

As regards statistical data on the granting and denial of work permits to third country nationals, attached are tables which include the number of requests that have been settled with a resolution (those granted and those refused), which provide a complete picture of the evolution in time (2004-2006).”

171. 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**

#### **ESC 18§2 SLOVAKIA**

“The Committee concludes that the situation in Slovakia is not in conformity with Article 18§2 of the Charter, on the grounds that:

- the formalities for the granting of temporary residence permits have not been simplified;
- there are two distinct and totally separate procedures for issuing work permits and residence permits.”

#### First and second grounds of non conformity

172. The representative of Slovakia could not announce any positive developments since the situation had last been examined, with regard either to the simplification of the

formalities for the granting of temporary residence permits or to the existence of two separate procedures for work permit and residence permit applications.

173. Since Slovakia had ratified the Schengen agreement, administrative procedures for the issuing of work and residence permits had become quicker all the same, owing to the use of new information technologies.

174. New legislation to transfer responsibility for immigration from the police to the civil authorities, thus simplifying formalities, had not yet been adopted but should be shortly.

175. Unlike the representatives of Romania, Norway, Lithuania and the ETUC, the representatives of the Czech Republic and Ireland considered that Slovakia should be encouraged to speed up the process of adopting a new law in this area.

176. The Governmental Committee urged the Government to take all the necessary steps to bring the situation into conformity with Article 18§2 of the Charter.

### **ESC 18§2 TURKEY**

“The Committee concludes that the situation in Turkey is not in conformity with Article 18§2 of the Charter on the grounds that there exists a dual application procedure for work and residence permits.”

177. The representative of Turkey reported on the measures taken to increase co-operation between the Ministry of the Interior and the Ministry of Labour and Social Security with regard to applications for residence and work permits.

178. She added that the residence permit is an important complementary element to the work permit.

179. Residence permit is the complementary and supplementary element of the work permit. The work and residence permit are tied together. It is not dual application, but it can be double check for preventing illegal migration and illegal employment and also human trafficking.

180. It doesn't mean dual application as the foreigners do not apply to two different authorities with double application forms. Foreigners are applying to Turkish mission abroad with only one application form including all necessary documents.

181. If they are able to get working visa, then they are registered with the Ministry of Interior after entering into Turkey.

182. Measures to link the two application procedures had been taken in particular where applications were made to a Turkish diplomatic or consular representation in the applicant's country of origin or residence. E-mail was also increasingly used in the processing of applications and this was speeding up administrative procedures.

183. The representative of the ETUC would like to know how the measures taken are concretely translated.

184. The Governmental Committee noted the information provided by the representative and asked the Government to include all relevant information in its next report.

## Article 18§3 – Liberalising regulations

### ESC 18§3 DENMARK

“The Committee concludes that the situation in Denmark is not in conformity with Article 18§3 of the Charter on the grounds that the regulations governing access to the national labour market, exercise of the right to employment and consequences of loss of job have not been liberalised.”

185. The representative of Denmark said that the aliens legislation had been amended and a new Act, No. 486, had come into force on 1 July 2008. The Danish regulations on residence and work permits had been relaxed for foreign workers from countries outside the EU. The green card system had changed. Residence and work permits were now issued for three years and were no longer linked to a specific job, so foreign nationals were now free to change their employment during this period. In addition, the education level required for a residence or work permit was now equivalent to a first degree. The annual income required to obtain a residence permit had been reduced from € 60 000 to € 50 000. The conditions under which foreign nationals could change employment had become more flexible. Those who had been made redundant or had a fixed-term employment contract could be granted a six-month residence permit to look for a new job.

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

### ESC 18§3 GERMANY

“The Committee considers that the situation in Germany is not in conformity with Article 18§3 of the Charter on the ground that foreign workers are dependent on one specific employer and if they lose their job their right of residence can be curtailed and they can be prevented from seeking new employment.”

187. The representative of Germany provided the following information:

“In its communication of May 2009, the federal government submitted additional information with regard to the conclusion drawn by a majority of the members of the Committee of Experts according to which the legal provisions governing the gainful employment of foreign workers in Germany is not in conformity with Article 18§3.

In this communication, the federal government underlines again the assessment developed by a minority of members of the Committee of Experts on the basis of a profound knowledge of the underlying legal principles according to which Germany is in conformity with Article 18§3.

The federal government regrets that in the 25<sup>th</sup> Report some phrases were translated very vaguely. This gave rise to the impression that in Germany it is possible to limit the duration of a residence permit retroactively and that the foreigners authority has wide discretionary powers in this regard. This, however, is not true.

Having explained this in advance, we would like to describe to the Governmental Committee the essential elements of the German labour migration system and the facilitations that have been introduced since the 25<sup>th</sup> Report was submitted:

1. The modernized German foreigners law has continuously improved the residence status of foreign workers. As of August 2007, for example, complete access to the German labour market is already obtained after two years of insurable employment or after three years of lawful residence in Germany. The residence permit to be issued is no longer restricted to a specific employment or a specific employer and the examination to ascertain whether privileged German workers or workers of equal status are available for a certain employment has been dropped.

2. In cases where the employment relationship is terminated, the foreigners authority **can** retroactively limit the duration of the residence permit. This must therefore be considered an optional provision. There is no obligation for the foreigners authority to apply it. Insofar, it is right to say that the authority has discretionary powers. If, however, the authority wishes to make such a limitation, it is legally obliged to examine all relevant facts of the case in advance. Its discretionary powers are

therefore very limited and subject to judicial review. This important aspect must be taken into account when assessing the legal situation in Germany with regard to Article 18§3.

3. Under the relevant circumstances, the legislator has assigned a major role to the financial and economic situation of foreign workers having lost or abandoned their jobs. Accordingly, only such foreign workers risk to have their residence permit limited retroactively who, after having lost employment, are not able to earn their own living.

4. All workers having had a job subject to compulsory social insurance for at least 12 months, are entitled to receive unemployment benefit for a period between 6 and 24 months (dependent on their age). The livelihoods of these workers are secured. They would therefore not have to fear a retroactive limitation of their residence permit if they lost or gave up their jobs. They would have sufficient time to find a new job.

5. Foreign workers having no such entitlements need not be afraid of a retroactive limitation if they are able to secure their livelihoods in another way. They, too, would have sufficient time to find a new job.

6. Foreign workers without entitlements or other sources to secure their livelihoods would be affected by particular social hardship if they lost their job during the first 12 months of their limited stay in Germany. This, too, must be taken into account by the foreigners authority when taking a decision on retroactive limitation.

7. Foreign workers can take court action against a retroactive limitation of their residence permits. The rule of law is therefore guaranteed in this field, too. Improper use of discretionary powers by the foreigners authority can thus be counteracted.

8. The number of cases where, due to the loss of employment, a residence permit has been limited retroactively is not statistically recorded by the foreigners authorities since there are no corresponding notification or cooperation requirements. The federal government has no knowledge of any complaints from foreign workers asserting that they have not been granted sufficient time to search a new job. The number of cases in practice, where a residence permit was limited retroactively because livelihoods could not be guaranteed, are probably not worth mentioning.

9. The possibility of retroactively limiting a residence permit must, however, be maintained in order to prevent a potential abuse, i.e. to prevent a foreign worker from giving up his/her job on which the residence permit is based and searching another job with another employer. As regards the empirical relevance for this group of persons, we do not have any information, too.

188. 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.

### **ESC 18§3 SPAIN**

“The Committee concludes that the situation in Spain is not in conformity with Article 18§3 of the Charter on the grounds that foreign workers who have lost their job are not entitled to an extension of their work permit to give them sufficient time to seek new employment.”

189. The representative of Spain provided more detailed information on the situation. She stated that the relevant legislation was article 54 of the Organic law 4/2000 as approved by Royal Decree 2393 of 30 December 2004. This provides that a foreign worker who has worked or at least three months in the preceding year but who has lost his/her job will have his/her residence permit renewed if he/she can demonstrate that the job was terminated through no fault of their own, that he/she is actively seeking work .

190. The representatives of France and Lithuania sought confirmation that this was an additional clarification. The Spanish representative stated that, while the legislation was not new, it had not been explained properly in the previous report.

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

### **ESC 18§3 TURKEY**

“The Committee concludes that the situation in Turkey is not in conformity with Article 18§3 of the Charter on the grounds that the regulations governing access to the national labour market and exercise of the right to employment are too restrictive.”

192. On the first ground the representative of Turkey confirmed that there had been no change to the situation found by the ECSR not to be in conformity with the Charter. Legislation had been adopted by the Parliament during the reference period easing the restrictions on self employed foreigners. However the legislation had not been approved by President and was therefore before the Parliament again. The draft legislation, inter alia abolishes the 5 year residence requirement for persons wishing to engage in a self employed activity where they could demonstrate the creation of 10 new jobs on the Turkish market.

193. By the way, these all requirements are aiming to prevent illegal migration, illegal employment and on the other hand, existing provisions on the access of foreigners to national labour market are aimed to increase the rate of national employment.

194. She added that even it was considering liberalizing access to Turkish Labour market to some extent, the current global economical crises in the world has caused a big obstacle on it. She said that especially under the pressure of the global crisis, as all other countries, Turkey is also trying to recover negative effects of crisis on its labour market.

195. The representatives of France and Hungary pointed out that there had been no change to the situation.

196. The representative of the ETUC stated first of all that this was a long standing situation of non conformity and, in any event, the proposed amendments in his view would not remedy the situation.

197. The Chairperson, after consulting the Secretariat, informed that the issue of the restrictions on the self employed was not so long standing, the finding of non conformity on this issue dated from 2004.

198. On the second ground, the representative of the ETUC sought confirmation that there had been no change to the requirement that a foreign employee work with the same employer for three years and in the same sector of activity for six years.

199. The representatives of Lithuania, Azerbaijan and Ireland proposed awaiting the adoption of the new legislation and, in the meantime, encouraging the Government to take all the necessary steps in respect of the two grounds.

200. The Governmental Committee encouraged the Government to take all the necessary steps to bring the situation into conformity on both grounds with the Revised Charter and decided to await the next assessment of the ECSR.

### **ESC 18§3 UNITED KINGDOM**

“The Committee concludes that the situation in the United Kingdom is not in conformity with Article 18.3 of the Charter because foreign workers who lose their jobs must leave the country without the possibility of searching for new employment.”

201. The representative of the United Kingdom provided the following information:

“Nationals of countries other than EEA or Swiss nationals require a permit to work in the UK. The permit is however awarded to the employer allowing him to employ a particular foreign worker in a particular post. The worker then approaches the British Embassy in his country of residence for an entry visa which is normally granted in parallel with the work permit. If the worker loses his job for

some reason then he has no permit to work in the UK and so would be obliged to leave the country. He can not simply transfer to another employer without that employer first seeking a permit to employ that worker.

In practice if his entry visa has not expired the authorities would allow him a period of grace to find alternative employment but he has no permit to work and so theoretically should leave the country. As previously stated the work permit is granted to the employer giving him the right to employ that worker not to the worker giving him the right to work in the United Kingdom..”

202. 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 1 of the 1998 Additional Protocol – Right to equal opportunities and treatment in employment and occupation without sex discrimination**

### **ESC Article 1AP CROATIA**

“The Committee concludes that the situation in Croatia is not in conformity with Article 1 of the Additional Protocol to the Charter on the grounds that night work and access to dangerous occupations is prohibited to women in general.”

203. The representative of Croatia informed the Committee that new legislation had been drafted by the Ministry of Environment and Labour, which repeals the prohibition on women performing night work with certain exceptions relating to maternity. This draft legislation is currently before the Parliament and should be adopted before the end of the year.

204. The Governmental Committee welcomed this positive development and decided to await the next assessment of the ECSR.

### **ESC Article 1AP CZECH REPUBLIC**

“The Committee concludes that the situation in the Czech Republic is not in conformity with Article 1 of the Additional Protocol on the following grounds:

- compensation in sex discrimination cases where the victim does not wish to be reinstated is not proportionate to the damage suffered;
- it is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims.”

### First and second grounds of non-conformity

205. As regards the first ground of non-conformity, the representative of the Czech Republic indicated the authorities did not consider any changes necessary in respect of this situation. She mentioned there were very few cases of sex discrimination in the courts (two cases per year on average). Under the Labour Code, when a person had been subject to an unjustified dismissal based on discrimination, the courts could, on a case-by-case basis, award compensation based on the length of the proceedings and the average wage that the person would have received up until the end of the legal notice period following the Court’s decision. It was also possible for a person to bring a case under civil law claiming damages.

206. Several representatives, including those from Romania, Poland and France, pointed out that compensation did not seem to be sufficiently dissuasive for employers.

207. The representative of the ETUC recalled that, when an employer discriminates against an employee, he is committing an offence, and compensation should therefore be of a sufficient level to have a deterrent effect.

208. The representatives from Poland and Lithuania considered that the system in place in the Czech Republic could be seen as obliging persons to return to a job against their wishes given the low level of compensation.

209. The representative from Norway pointed out that the lack of compensation for non-economic loss seemed to be the problem with this situation. The Czech representative acknowledged that the Labour Code did not offer an adequate solution in such cases, but that the victim of discrimination could always lodge a complaint under the civil code claiming moral damage.

210. Several representatives considered that this was a serious situation and suggested that a warning would be appropriate in order to encourage the authorities to review the safeguards in case of a discriminatory dismissal.

211. A warning was adopted 20 votes in favour, 6 against and 8 abstentions.

212. As regards the second ground of non-conformity, the Representative of the Czech Republic indicated that the Czech Republic had fully implemented Council Directive 75/117/EEC relating to the application of the principle of equal pay for men and women, and that domestic regulations even went beyond the Directive requirements. Thus, legislation guaranteed the principle of equal pay for men and women outside the scope of a single employer, but only if the employees worked *de facto* for a single employer but were remunerated by different employers.

213. According to the representative of the Czech Republic, the application of the principle of equal pay for equal work or for work of equal value in the form required by the ECSR could not be ensured in practice, because it was not possible to ascertain either the specific wages of particular employees between different employers, or whether particular employees of different employers perform equal work or work of equal value.

214. The representative of the Czech Republic also stated that applying the principle of equal pay for work of equal value between different employers would deny or significantly impair the functioning of basic wage functions, and consequently impact on basic economic rules. The enforcement of this principle between employers in regions with different socio-economic conditions and differing living costs have the opposite of the desired effect, i.e. it would lead to a real income discrepancy between employees performing work of equal value. This inequality can already be seen within a single employer with offices in different locations with different socio-economic conditions. The employee in a region with lower living costs would earn a higher wage in practice than an employee in a region with higher living costs.

215. The representative of the ETUC considered that the economic arguments presented by the Czech representative were not valid in the context of this situation.

216. The representative of France considered that the ECSR conclusion on wage comparisons was not very clear, and that it was difficult to put into practice.

217. Both the representatives of France and Estonia considered it would be useful if the ECSR could give some clarifications/additional information on this matter.

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

**ESC Article 1AP NETHERLANDS (Netherlands Antilles)**

“The Committee concludes that the situation in the Netherlands with regard to the Netherlands Antilles is not in conformity with Article 1 of the Additional Protocol on the grounds that the legal framework prohibiting discrimination in employment is inadequate, and because of a lack of measures to promote the employment of women.”

219. The representative of the Netherlands indicated that an Ordinance on Equal Treatment and an amendment to the Civil Code had been submitted to Parliament. However, given the constitutional changes taking place in the Netherlands Antilles, the latter would no longer exist by the time the amendments entered into force.

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

**APPENDIX I / ANNEXE I**

**LIST OF PARTICIPANTS / LISTE DES 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**

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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 JOUTTIMÄKI, 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**

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**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, Alkotmány (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**

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**ITALY / ITALIE**

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

**LATVIA / LETTONIE**

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**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**

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**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 INVITEES (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	47	2+ 45 = 47	13 + 29 = 42
			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**

ESC 1§2 AUSTRIA

ESC 1§1 CROATIA

ESC 18§3 GERMANY

ESC 15§1 LUXEMBOURG

ESC 15§2 LUXEMBOURG

ESC 1§3 NETHERLANDS (Netherlands Antilles)

ESC 1§3 POLAND

ESC 1§4 POLAND

ESC 15§1 POLAND

ESC 1§2 SLOVAK REPUBLIC

ESC 1§3 SLOVAK REPUBLIC

ESC 9 SPAIN

ESC 10§4 SPAIN

ESC 15§2 SPAIN

ESC 18§1 SPAIN

ESC 1§1 “the former Yugoslav Republic of Macedonia”

ESC 1§2 “the former Yugoslav Republic of Macedonia”

ESC 9 TURKEY

ESC 1§2 UNITED KINGDOM

ESC 18§3 UNITED KINGDOM

#### **B. Renewed Conclusions of non-conformity**

ESC 1§2 AUSTRIA

ESC 10§1 AUSTRIA

ESC 10§4 AUSTRIA

ESC 1AP CROATIA

ESC 15§2 CZECH REPUBLIC

ESC 1AP CZECH REPUBLIC

ESC 10§4 DENMARK

ESC 15§1 DENMARK

ESC 18§3 DENMARK

ESC 1§2 GREECE  
ESC 15§1 GREECE

ESC 1§2 ICELAND  
ESC 1§4 ICELAND  
ESC 15§1 ICELAND  
ESC 15§2 ICELAND

ESC 1§4 LUXEMBOURG  
ESC 10§4 LUXEMBOURG

ESC 1§1 NETHERLANDS (Netherlands Antilles)  
ESC 1§2 NETHERLANDS (Netherlands Antilles)  
ESC 1§4 NETHERLANDS (Netherlands Antilles)  
ESC 1AP NETHERLANDS (Netherlands Antilles)

ESC 1§2 POLAND  
ESC 1§4 POLAND  
ESC 15§2 POLAND

ESC 1§1 SLOVAK REPUBLIC  
ESC 1§4 SLOVAK REPUBLIC  
ESC 10§1 SLOVAK REPUBLIC  
ESC 10§2 SLOVAK REPUBLIC  
ESC 10§4 SLOVAK REPUBLIC  
ESC 15§1 SLOVAK REPUBLIC  
ESC 15§2 SLOVAK REPUBLIC  
ESC 18§2 SLOVAK REPUBLIC

ESC 1§4 SPAIN  
ESC 15§1 SPAIN  
ESC 18§3 SPAIN

ESC 1§2 TURKEY  
ESC 18§2 TURKEY  
ESC 18§3 TURKEY

ESC 10§4 UNITED KINGDOM

**Appendix IV****List of deferred Conclusions****C. Conclusions deferred for lack of information for the second time**

AUSTRIA	ESC 18§1, 18§2
CROATIA	ESC 1§3
GERMANY	ESC 1§2
HUNGARY	ESC 1§4, 10§1, 10§2, 10§3, 10§4, 15§1, 15§2
ICELAND	ESC 18§3
LATVIA	ESC 1§2
LUXEMBOURG	ESC 1§3, 18§2
SLOVAK REPUBLIC	ESC 9, 10§3
SPAIN	ESC 1§3, 18§2
TURKEY	ESC 1§3

**D. Conclusions deferred because of questions asked for the first time or additional questions (first reports and others)**

AUSTRIA	ESC 15§1 (new questions), ESC 15§2 (new questions), 18§2
CROATIA	ESC 1§4, 9
CZECH REPUBLIC	ESC 1§2
DENMARK	ESC 18§1
GREECE	ESC 1§1, 10§1, 15§1, 15§2 (new questions), 18§1
HUNGARY	ESC 1§2
ICELAND	ESC 18§2
LATVIA	ESC 1§3
POLAND	ESC 1§1
SPAIN	ESC 10§1

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ESC 1§3, 15§2 (first report)

UNITED KINGDOM

ESC 1§4, 15§1 (new questions), 18§2

## Appendix V

### Warning(s) and Recommendation(s)

#### Warning(s)<sup>1</sup>

##### **Article 1, paragraph 2**

##### **– Turkey (3rd ground of non-conformity)**

(The Commerce Code authorises the captain of a ship to use force to bring sailors back on board and hence ensure that the ship is run properly and discipline is maintained.)

##### **Article 1, paragraph 2**

##### **– Turkey (4th ground of non-conformity)**

(The Martial Law, it is possible to suspend or transfer civil servants and local government employees because their work is not necessary).

##### **Article 1, paragraph 4**

##### **– Poland**

(Renewed warning – Access to continuing training for nationals of other States Parties is subject to an excessive length of residence requirement).

##### **Article 1, Protocol 1**

##### **– Czech Republic**

(It is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims).

#### Recommendation(s)

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#### Renewed Recommendation(s)

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<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.