COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 19 July 2007

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GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER

REPORT CONCERNING

CONCLUSIONS 2006

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

[1] The detailed report and the abridged report are available on www.coe.int/T/E/Human_Rights/Esc.

CONTENTS

Page

I. INTRODUCTION

1. This report is submitted by the Governmental Committee of the European Social Charter made up of delegates of each of the thirty-nine states bound by the European Social Charter or the European Social Charter (revised)[1]. 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. BUSINESSEUROPE (former Union of Industrial and Employers' Confederations of Europe, UNICE) is also invited to attend but did not participate.

2. The supervision of the application of the European Social Charter is based on an analysis of the national reports submitted at regular intervals by the States Parties. According to Article 23 of the Charter, the Partie "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/T/E/Human_Rights/Esc.

3. The first responsibility for the analysis lies with the European Committee of Social Rights (Article 25 of the Charter), whose decisions are set out in a volume of "Conclusions". On the basis of these conclusions, the Governmental Committee (Article 27 of the Charter) draws up a report to the Committee of Ministers which may "make to each Contracting Party any necessary recommendations" (Article 29 of the Charter).

4. In accordance with Article 21 of the Charter, the national reports to be submitted in application of the European Social Charter (revised) concerned Albania, Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Italy, Lithuania, Moldova, Norway, Portugal, Romania, Slovenia and Sweden. Reports were due on 30 June 2005 at the latest; they were received between 30 June 2005 and 2 March 2006. The Governmental Committee repeats that it attaches a great importance to the respect of the deadline by the States Parties.

5. Conclusions 2006 of the European Committee of Social Rights were adopted in February-March 2006 (Albania, Bulgaria, Estonia, France, Italy, Moldova, Norway, Portugal, Sweden), and in July 2006 (Cyprus, Finland, Ireland, Lithuania, Romania, Slovenia)..

6. The Governmental Committee held four meetings (2-4 May 2006, 12-14 September 2006, 10-12 October 2006 and 16-19 April 2007), which were chaired by Mrs Hanna Sigridur GUNNSTEINSDOTTIR (Iceland), with the exception of the meeting in October 2006 which was chaired by Mr. Georgy KONCZEI (Hungary).

[1] List of the states parties on 2 May 2007 : Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom.

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) (Bosnia and Herzegovina, the Russian Federation, Serbia) were also invited to attend the meetings of the Governmental Committee, for the purpose of preparing their ratification of this instrument. Since a decision of the Ministers' Deputies in December 1998, other signatory states were also invited to attend the meetings of the Committee (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 3 May 2006, the Netherlands had ratified the European Social Charter (revised);

– on 21 December 2006, Ukraine had ratified the European Social Charter (revised);

9. The state of signatures and ratifications on 2 May 2007 appears in Appendix I to the present report.

II. EXAMINATION OF NATIONAL SITUATIONS ON THE BASIS OF CONCLUSIONS 2005 OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

10. The present abridged report, for the Committee of Ministers, only contains discussions concerning national situations for which the Governmental Committee proposed that the Committee of Ministers adopt a recommendation or renew a recommendation. The detailed report is available on www.coe.int/T/E/Human_Rights/Esc.

11. Moreover, the Governmental Committee continues the improvement of its working methods. It decided to apply some of these measures, in particular to make a distinction between conclusions of non conformity for the first time – for which information on the measures which have been taken or have been planned by states to bring the situation into conformity with the Charter appears *in extenso* in the reports of its meetings – and renewed conclusions of non conformity.

12. The Governmental Committee examined the situations not in conformity with the European Social Charter (revised) listed in Appendix II to the present report. The detailed report which may be consulted at www.coe.int/T/E/Human_Rights/Esc 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 invites governments to continue their efforts with a view to ensure compliance with the European Social Charter (revised). In particular, it asked governments to take into consideration Recommendations adopted by the Committee of Ministers. It adopted the warnings set out in Appendix III to this report.

14. The Governmental Committee proposes to the Committee of Ministers to adopt the following Resolution:

Resolution on the implementation of the European Social Charter (revised) during the period the period 2003-2004 (Conclusions 2006, "hard core" provisions)

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

The Committee of Ministers,[1]

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

[1] 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, Andora, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom.

Having regard to Article 29 of the Charter;

Considering the reports on the European Social Charter (revised) submitted by the Governments of Albania, Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Italy, Lithuania, Moldova, Norway, Portugal, Romania, Slovenia and Sweden (concerning period of reference 2003-2004)[1] ;

Considering Conclusions 2006 of the European Committee of Social Rights appointed under Article 25 of the Charter;

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

Recommends that Governments take account, in an appropriate manner, of all the various observations made in the Conclusions 2006 of the European Committee of Social Rights and in the report of the Governmental Committee.

15. With this Resolution, the Committee proposes that the Committee of Ministers adopts a Recommendation: Ireland, Article 7, paragraphs 1 and 3 (see paragraphs 160 to 167 and paragraphs 184 to 193).

EXAMINATION ARTICLE BY ARTICLE

Article 1§1 – Policy of full employment

1§1 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 1§1 of the Revised Charter on the grounds that the policy measures to address the high long-term unemployment rate as well as the rising youth unemployment rate are inadequate."

Ground of non-conformity (for the first time)

16. The Romanian delegate provided the following information in writing :

"The Romanian strategic approach in the field of employment envisages the promotion of full employment in connection with the social cohesion attainment (as main objectives of the National Strategy for Employment 2004 – 2010). Since 2002, the Romanian Government approved and implemented a series of National Action Plans for Employment and the last one, for 2006, targeted through its priorities the most vulnerable groups on the labour market (rural residents and Rroma persons) and the development of the local and regional institutional capacities of the Public Employment Services.

The financial resources (national budget, unemployed insurance fund, EU pre-accession funds – Phare) are made available for active measures implementation, with a focus on measures for human capital improvement and sustainable social inclusion for vulnerable groups on the labour market.

[1] As far as Albania, Finland and Portugal are concerned, the beginning of the reference period coincided with the entry into force of the European Social Charter (revised) for each of these states.

An integrated vision on social inclusion promotion is now in place thanks to the agreement on the Joint Inclusion Memorandum (JIM). The JIM commitments were put into operation through the Strategic Plan for Social Inclusion (the first strategic objective being the promotion of an inclusive labour market). Specific measures into an integrated approach, including at local level, are provided and an institutional mechanism for monitoring and evaluation exists.

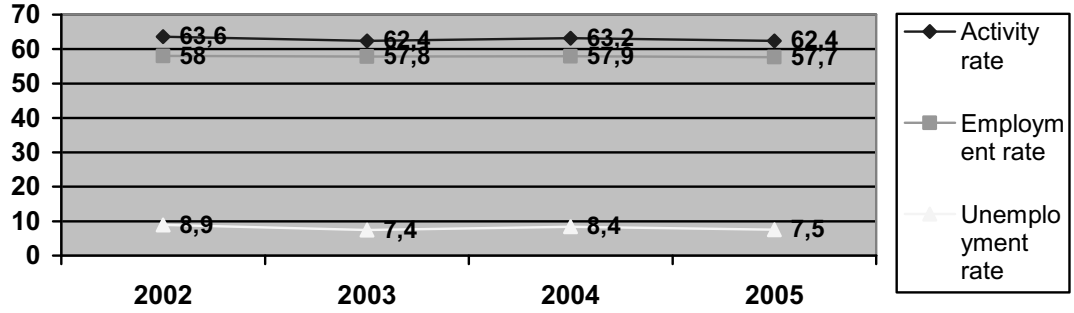
The labour market indicators for Romania reflect a period of sharp economic restructuring process accompanied by influxes of foreign capital or development of new domestic business that entailed risks and opportunities for the participants to the labour market (collective redundancies, new employment opportunities in services, shifts of employment share among the three main sectors – agriculture, industry and services and between the public and private sector). The labour market evolutions are mixed during the last years but the unemployment rate is below the EU average rate, the employment rates are relatively constant and prognosis is favorable. Please see below the relevant tables and graphs.

Table 1: Annual Changes in GDP, Productivity and Wages

	2000	2001	2002	2003	2004	2005
Real GDP growth %	2.1	5.7	5.1	5.2	8.4*)	4.1**)
Employed population – thousand persons	10508	10440	9234	9223	9158	9147
Employed population: change %, as against previous year	-0.3	-0.6	-11.5	-0.1	-0.7	-0.1
Minimum wage as % of nominal average wage	32.9	44.2	44.6	51.7	46.8	41.6

GDP growth =Annual average of GDP growth.
Employed population = Persons in employment
Productivity = Total annual output divided by number of employed population and hours worked (GDP in PPS per person employed/per hour worked relative to EU-15)
*) Semifinal data
**) Provisional data
Source: National Institute for Statistics, Romania

Activity, employment and unemployment rates for 2002 – 2005
(15-64 age bracket)



Source: National Institute for Statistics, Households Labor Force Survey (AMIGO) Romania

Regarding the youth presence on the labour market, the youth unemployment rate decreased by 1.3 percentage points from 2004 (21.0%) to 2005 (19.7%), while the total unemployment young people as share of total population in the same age bracket was 6.3 % in 2005 as against 7.7 % in 2004.

The long term unemployed rate registered a decrease of 0.7 pp from 2004 (4.7%) to 2005 (4.0%) and this means a reduction by over 70 thou. in the total number of long-term unemployed.
The relatively low insertion on the labour market of youth and the high share of long-term unemployed in total unemployed are tackled with a range of active measures and financial incentives aimed at their employment (supplementary to those already in place):

Youth
- The employers who hire on open-term conditions graduates of education institutions benefit, in addition to their workplaces subsidies, by the exemption to pay for a 12 months period the contribution owed to the unemployed insurance budget in case of these graduates;
- With a view to provide incentives to graduates to take up a job and to encourage them to maintain the labour relations, the following measures were introduced:
a) The education institutions' graduates and the special school graduates, with a minimum age of 16, registered with the employment agencies, who take a job with normal work schedule, for a period over 12 month, benefit by a non-taxable bonus of one minimum gross wage guaranteed in payment, in force at the date of this right setting;
b) The graduates whose right to unemployment benefits was set and who take a job during the period of this allocation granting will benefit by a non-taxable amount, equal to the unemployment benefit to which he/she would be entitled of if he/she was not hired, by the end of the expiration of the granting period.

In order to increase the chances for a sustainable integration on the labour market for young persons, including those low-skilled, the Government of Romania approved a new scheme of employment combined with vocational training – the apprenticeship at work (Law no. 279/2005 on apprenticeship at work).

Vulnerable groups on labour market susceptible to be long-term unemployed
- With a view to increase the incentives for employers in order to hire on open-term unemployed aged over 45 years or unemployed who are single supporters of mono-parental families, the employers benefit, in addition to their workplaces subsidies, by the exemption to pay for a 12 months period the contribution owed to the unemployed insurance budget in case of these hired persons, with the obligation to maintain the labour relations for at least 2 years;

NAE implements employment programs for disabled persons in accordance with the Law No.76/2002 on the Unemployment Insurance System and Employment Stimulation, with its further amendments and complements.

Thus, subsequent to the implementation of such programs, a total number of 1,434 disabled persons were employed over the period 2002 – 30.06.2006, as follows:
26. in 2002 – 475 disabled persons;
27. in 2003 – 352 disabled persons;
28. in 2004 – 301 disabled persons;
29. in 2005 – 217 disabled persons;
30. in (first half) 2006 – 89 disabled persons.

During the same period, a number of 1,890 disabled persons became employed, without wage-subsidizing, as follows:
31. in 2002 – 288 disabled persons;
32. in 2003 – 331 disabled persons;
33. in 2004 – 529 disabled persons;
34. in 2005 – 441 disabled persons;

35. in (first half) 2006 – 301 disabled persons.

As for the number of disabled persons and of the persons belonging to ethnic minorities (especially Rroma minority) who are employed, the figures can be supplied only by the National Agency for Disabled Persons, respectively the National Agency for Rroma Persons or the National Institute for Statistics.
We specify that the weight of the active and passive measures financed out of the Unemployment Insurance Fund in GDP is the following:

Year/measure	Active measures (%)	Passive measures (%)
2002	0.10	0.59
2003	0.16	0.56
2004	0.13	0.55
2005	0.11	0.43

We also specify that, in absolute value, the amounts allotted to active measures increased every year but, considered as weights in GDP, these ones decreased as long as the GDP increased, while the unemployment and, implicitly, the number of unemployed targeted by active measures, fell."

17. The Committee invited Romania to bring the situation into conformity with Article 1§1 of the revised Charter.

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

1§2 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§2 of the revised Charter on the grounds that legislation does not provide for adequate compensation proportionate to the loss suffered by the victims of discriminatory dismissal."

18. The Bulgarian delegate explained that an individual dismissed in breach of the labour Code (which includes discriminatory dismissal) may seek reinstatement and/or compensation. Compensation however is limited to an amount equal to 6 months wages. In order to mitigate any hardship this ceiling may cause due to the length of legal proceedings, the proceedings may be expedited by a procedure known as a rapid procedure.

19. The ETUC representative requested information on the relationship between this provision of the Labour Code and the Anti discrimination legislation 2003.

20. The Bulgarian delegate replied that there were no limits to the amount of compensation that may be awarded under the 2003 Act, which also applied to employment. In theory in his view, it would be possible to seek compensation for discriminatory dismissal under this legislation. However there was no case law on this as yet.

21. The Portuguese delegate stated that the situation in her view was a clear violation of the revised Charter.

22. The Committee asked the Government to provide information on the inter action between the Labour Code and the anti discrimination legislation and further

requested the Government to take the most appropriate action to bring the situation into conformity with Article 1§2 of the revised Charter.

1§2 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 1§2 of the revised Charter on the grounds that the length of service alternative to military service exceeds one and a half times the length of military service and therefore interferes with a persons' right to earn their living in an occupation freely entered upon."

Ground of non-conformité (for the first time)

23. The Estonian delegate provided the following information in writing:

"The Ministry of Social Affairs communicated the conclusion of the Committee of Social Rights to both the Ministry of Defence as well as the National Defence Committee of the Riigikogu. We received the following explanation from them.

1. Military service and alternative service are relatively short in Estonia. In its regulations the Government of the Republic has established that the duration of military service shall be 8 months, but the duration of military service for non-commissioned officers, specialists and those being sent to courses of reserve officers shall be 11 months. The duration of alternative service shall be 16 months.

Thus alternative service in comparison with military service of the persons mentioned in the second place shall last only for 5 months longer and in comparison with this group the duration of military service shall be in conformity with the requirements of the case law of the Social Charter.

Alternative service is a voluntary choice for persons who do not wish to serve military service due to their religious or moral beliefs. Alternative service is longer than military service as the person in alternative service resides at home and is connected with the service only during the working time. Outside the working time he does not have any obligations. In addition to this remuneration in the extent of not less than the minimum wage is paid for the work.

Military service is physically and mentally more difficult. The conscripts reside in barracks and are in military service 24 hours a day. A conscript does not receive any remuneration, but only small support from the state.

2. The Ministry of Defence finds that upon shortening the length of alternative service, the conditions of alternative service with regard to military service would be unfairly easy, as a result of which at the moment it has not been planned to change the proportion of the length of alternative service and military service. The time of alternative service was reduced only in 2004 and the present situation is in accordance with the final conclusions of the second report of the Human Rights Committee of the United Nations International Covenant on Civil and Political Rights.

3. Alternative service is not popular in Estonia in general, and only about ten people have served it in total (in 1992-2006). At the moment 1 person is in alternative service. Before that for approximately 5 years no persons were in alternative service."

24. The Committee invited Estonia to bring the situation into conformity with Article 1§2 of the revised Charter.

1§2 FINLAND

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

- compensation payable in cases of unlawful discriminatory dismissal is subject to a ceiling;
- the length of civilian service alternative to military service is a disproportionate restriction on a worker's right to earn a living in an occupation freely entered upon."

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

25. The Finnish delegate provided the following information in writing :

"The Committee of Experts considers that the remedy available to the victims of discrimination must be adequate, proportionate and dissuasive and without predefined upper limit as this may preclude damages from being awarded on a proper way.

Discrimination on based the Non-Discrimination Act (21/2004)
The Non-Discrimination Act (21/2004) prohibits discrimination based on age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. Further on the Act on Equality between Women and Men (609/1986) which is now amended, provides for gender equality.

Redress under the Non-Discrimination Act and the Act on Equality between Women and Men
A supplier of work, movable or immovable property or services, education and training or benefits, who has infringed the prohibition of discrimination or victimization on the bases of age, ethnic or national origin, nationality, religion, conviction, state of health, disability, or sexual orientation, may be sentenced to redress the injured party for the infringement. The liability for redress is independent of fault and does not require deliberate or indirect (through negligence) action of the discriminator.

Redress may be adjudged for immaterial loss. A sentence does not require evidence of the quantity of the insult but the base for redress is the nature of the act. The maximum amount of redress is 15 000 euros. A court of law may exceed the maximum amount for a special reason. Redress may not be adjudged if this is considered to be reasonable.

Indemnification under the Tort Liability Act
In case discrimination has caused material loss for the injured, he /she may resort to the Tort Liability Act for indemnification. The liability of indemnification provides that the party causing the damage has caused it through his/her fault or negligence. The injured party must give evidence of the amount of the loss. The indemnification is based on the amount of the loss and has no predefined ceiling.

Indemnification under the Employment Contracts Act
The Employment Contract Act provides that an employer who illegally dismisses an employee has to pay indemnification the amount of which varies between 3 and 24 months' pay depending on case (in case of shop steward 30 months pay). In addition to the compensation the victim is entitled to unemployment benefit security if he/she cannot find another job.

The Government of Finland is of the opinion that the very fact that the employer knows that he might have to pay 24 months' salary to the employee is sufficiently dissuasive and restrains employers from resorting to illegal dismissals because of economical consequences. Such dismissal may also – depending – on case meet the requirement of work discrimination which is sanctioned in chapter 47 section 3 of Penal Code (fine or imprisonment of max. 6 months).

The amount of indemnification is not pre-defined. It is based is victim's salary the amount of which can be freely agreed to between the parties as there is no general minimum pay system in Finland. However, the relevant collective agreement must be followed. The restriction results from the period of 24 months - the maximum time the compensation may be paid."

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

Second ground of non-conformity

27. The Finnish delegate informed the Committee that a Bill shortening the durantion of alternative military service would be submitted to Parliament sometime in 2007. It recalled that the Finnish Government had twice before submitted such a Bill to Parliament, but on both occaisions the Bill had been rejected.

28. The Committee urged the Government to persist and decided to await the next assessment of the ECSR.

1§2 FRANCE

"The Committee concludes that the situation in France is not in conformity with Article 1§2 of the revised Charter on the grounds that discrimination is suffered by interpreter guides and national lecturers with a state diploma as regards the freedom to conduct guided tours."

29. The French delegate recapitulated the situation and the decision of the ECSR in Syndicat national des professions du tourisme v. France, Collective Complaint No. 6/1999. In her Government's view there was no problem of conformity and it had no intention of changing the situation.

30. The Polish and Portuguese delegates inquired as to what was the nature of the qualifications required of the guides at the restricted sites.

31. The French delegate said that the guides concerned had to have specialised training, including in particular training in the health and safety aspects of working at the sites in question.

32. The Committee requested the Government to provide detailed information on this point and especially as regards the health and safety aspects in the next report. It recalled that Recommendation RecChS(2001)1 was still valid and therefore urged the Government to bring the situation into conformity with Article 1§2 of the revised Charter as soon as possible.

1§2 IRELAND

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

– there are upper limits on the amount of compensation that may be awarded in discrimination (with the exception of gender discrimination cases) cases;
– an excessive length of compulsory service may be required of army officers."

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

33. The Irish delegate provided the following information in writing :

"The situation outlined by the ECSR above remains unchanged. The current situation is outlined below:

What is the Equality Tribunal ?
The Equality Tribunal is the independent body set up by law to investigate or mediate complaints of discrimination. It remains neutral and treat all complaints fairly and professionally and as quickly as it can.

What do the Employment Equality Acts do?
These Acts make it unlawful to discriminate in relation to employment, including: pay,
- conditions, +
- promotion or re-grading or grouping of posts,
- vocational training,
- work experience,
- access to employment,
- dismissal,
- collective agreements, and
- harassment.

Discrimination is unlawful on nine grounds:
- gender,
- marital status,
- family status,
- sexual orientation,
- religion,
- age,
- disability,
- membership of the Traveller community, and
- race, colour, nationality, ethnic or national origin.

Discrimination also applies to someone who is treated less favourably because they associated with someone protected under the nine grounds.

What about victimisation?
Victimisation is also covered by the legislation. Victimisation occurs where a person is treated less favourably than another because they oppose discrimination or are involved in a complaint of unlawful discrimination.

Complaints
If you feel you have been discriminated against on any of the nine grounds in relation to employment or you have been victimised, you may bring a complaint to the Equality Tribunal.
When a person makes a complaint, they are known as the claimant. The person or organisation complained about is known as the respondent because they must respond to the complaint.
Depending on your situation and the type of alleged discrimination, the respondent might include your employer, trade union or professional association or the organisation that provides vocational training or work experience.

Do I need a lawyer?
No, neither side needs a lawyer. However, if you choose, you may be represented by a solicitor, professional association, trade union, support person or a support organisation. The respondent may also be represented.
The Tribunal cannot award legal costs to either side, so if you do use a lawyer, you must pay your own legal fees even if your complaint is successful.

How do I make a complaint?
1. You are entitled to ask the respondent for information.
This information may help you decide whether to make a complaint to the Equality Tribunal. If you decide to ask for information, you must use the form set by law to do this. This is Form EE2, which is available from the Equality Tribunal by post, phone, in person or on www.equalitytribunal.ie. You will find our contact details at the end of this leaflet.
The respondent does not have to reply to a request for information. However, if there is no reply, or if the information given is false or misleading, the Tribunal may take this into account when reaching a decision.
2. You may bring the complaint to the Equality Tribunal.
You must do this within 6 months of the date of the incident, setting out the details on Form EE1. This form is available from the Equality Tribunal by post, phone, in person or on www.equalitytribunal.ie. You will find our contact details at the end of this leaflet. The 6 month time limit does not apply to equal pay cases.

What happens if the complaint is late?
If you have a good reason for being late, you can ask the Director of the Tribunal to extend the time limit for making a complaint up to 12 months. If you are not happy with the Director's decision on extending the time limit, you can appeal to the Labour Court.

What happens when the Equality Tribunal receives my complaint?
We will write to you and let you know that we have received the complaint. We may also ask you to explain any points that are unclear. We will then send a copy of your complaint form and any other relevant material to the respondent.
There are then two ways in which the Tribunal can act on your complaint: mediation or investigation. The outcomes of both options are legally binding. The case goes to mediation if neither side objects to it and if the Director of the Equality Tribunal considers the case suitable. If you do not wish to take part in mediation, you must tell the Equality Tribunal that you object. Your case will then go to investigation and decision.

What is mediation?
In mediation, you and the respondent sit down with a trained Mediation Officer, who will help you reach an agreement that is acceptable to both of you. Either side may withdraw from mediation at any stage. If mediation is not successful, you may ask in writing for the case to be dealt with by investigation. Agreements reached through mediation are confidential and their terms must be obeyed by both sides.

What is an investigation?
An investigation is a formal examination of a complaint carried out by an Equality Officer. The Equality Officer will ask you to provide a written statement, known as a submission, setting out the facts of your case and the arguments you want to make. The Tribunal will send a copy of this and any other relevant material to the respondent. The Equality Officer will also ask the respondent to provide a written statement and will send a copy of this and any other relevant material to you. The Equality Officer will then set a date to hear the case.

What happens at the hearing?
At the hearing, the Equality Officer will give you and the respondent a chance to present your cases, to call witnesses and to answer points made by the other side. The Equality Officer will also question both of you. Hearings are held in private.

Burden of proof
It is up to you to present facts that would support your claim of discrimination. If you establish these facts, the respondent has the burden of proving that discrimination did not take place.

What happens after a hearing?
The Equality Officer will consider all the evidence and issue a detailed written decision. This decision is legally binding, meaning that both you and the respondent must obey its terms.
By law, the Tribunal must publish decisions. However, in sensitive cases, either side may ask for their names to be left out. Copies of all decisions are made available on our website.

What will the decision say?
The decision will give a summary of the evidence and say whether the Equality Officer upholds your complaint and why.
If the Equality Officer finds in favour of you, they will make an order. This can be for:

13. a monetary award,
14. equal pay or equal treatment, and/or
15. a specified course of action by a specified person (usually the respondent).

In equal pay cases, you may be entitled to equal pay and up to three years' arrears of pay from the date of your complaint.
In other cases, you may be entitled to equal treatment and/or compensation of up to two years' pay (or up to €12,697 if you are not an employee).
If the Equality Officer finds in favour of the respondent, it means that your complaint was unsuccessful and that unlawful discrimination did not occur.

Enforcement
If the decisions of the Equality Officer or the agreements reached through mediation are not obeyed, either side may ask the Circuit Court to enforce them.

Can decisions be appealed?
Yes, if either side is unhappy with the Equality Officer's decision, they can appeal to the Labour Court within 6 weeks (42 days) of the date of the decision.

Can the Equality Tribunal give advice?
No, the Equality Tribunal cannot give advice to either side on the merits of a case. We must remain absolutely neutral and can only give information on how the system works.

Information on the Equality Tribunal and its operations may be accessed at the following websites :-

http://www.equalitytribunal.ie/index.asp
(for main Equality Tribunal website)

http://www.equalitytribunal.ie/index.asp?locID=1&docID=1207
for EE 1 – Making a Complaint (summary of steps to be taken)

http://www.equalitytribunal.ie/index.asp?locID=78&docID=-1

(for annual Mediation Reviews)
http://www.equalitytribunal.ie/uploadedfiles/AboutUs/Eq.%20Trib.%20Mediation%20Review.pdf

(for Mediation Review 2005 – presented to the Minister for Justice, Equality and Law Reform)

http://www.equalitytribunal.ie/index.asp?locID=112&docID=-1
(for leaflets published by the Equality Tribunal)
http://www.equalitytribunal.ie/uploadedfiles/AboutUs/EqualityAct2004.pdf
(for the text of the Equality Act 2004 – Act No. 24 of 2004)

http://www.equalitytribunal.ie/index.asp?locID=75&docID=-1
(for Recent Changes :- Procedures and Jurisdiction)"

34. The Committee invited Ireland to bring the situation into conformity with Article 1§2 of the revised Charter.

Second ground of non-conformity

35. The Irish delegate outline the reasons for the requirement, he again highlighted the size of the Irish air force and the necessity to ensure pilots trained for the air force did not simply depart for civilian airlines. He stated in his view the position of the ECSR would lead to increased militarisation.

36. The Portuguese, Belgian, French delegates and the representative of the ETUC pointed out that the real problem of the situation was that the decision to release a pilot form the airforce was discretionary and the minimum length of service excessive and proposed that the Committee voted on a warning.

37. The Committee proceeded to vote on a warning to Ireland, which was not adopted (9 votes in favour, 9 votes against and 11 abstentation).

1§2 ITALY

"The Committee concludes that the situation in Italy is not in conformity with Article 1§2 on the grounds that that the Shipping Code provides for criminal sanctions involving compulsory labour against seafarers and civil aviation personnel who desert their post or refuse to obey orders even in cases whether neither the safety of the vessel or aircraft are in danger."

38. The Italian delegate recalled that the provisions concerned were not applied in practice and that their repeal was not considered a priority by the Government. She further mentioned that the non-application of the provisions were confirmed by a court decision dating from 1996.

39. The Belgian delegate asked what had happened to the Commission responsible for reviewing the Shipping Code which had been referred to on a previous occasion by the Italian Government.

40. The Italian delegate replied that the Commission had stopped its work in this respect simply because it was not considered an important political priority. She pointed out that the Italian trade unions do not consider the situation to be a problem.

41. In reply to a question from several delegates (Portugal, Sweden) the Secretariat explained that according to the constant case law of the ECSR the mere non-application of provisions contrary to Article 1§2 of the Charter is not sufficient to bring the situation into conformity. The Secretariat also confirmed that the Italian report had contained no new information on this point.

42. On the proposal of the Dutch delegate, the Committee proceeded to vote on on a proposal for a renewed Recommendation, which however was not carried (16 votes in favour, 8 against and 6 abstentions).

43. The Committee, recalling the recommendations previously addressed to Italy, urged the Government to bring the situation into conformity with Article 1§2 of the revised Charter as soon as possible and to provide detailed information in the next report.

1§2 LITHUANIA

"The Committee concludes that the situation in Lithuania is not in conformity with Article 1§2 of the Revised Charter on the grounds that the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Former Permanent Employees of the Organisation could be applied in circumstances which go beyond Article G of the Revised Charter."

Ground of non-conformity (for the first time)

44. The Lithuanian delegate provided the following information in writing :

> "Replying to Committee remark in Article 1§2 item 4, we provide the following information: The project of the Law, which amends the Article 2 of the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Former Permanent Employees of the Organisation (16 July 1998), is prepared and registered in the Parliament of the Republic of Lithuania. The restrictions prescribed by amendments apply to much smaller field of employments, they concern only important (not all) public services which have responsibilities in the field of law, order, national security, information and education. For instance, the former employees of the SSC should not do duties for which appointment of Parliament, Speaker of the Parliament, Government or Prime Minister is necessary. Also they may not be appointed as Vice Minister, State Secretary of the Ministry, Secretary of the Ministry, Director and Deputy Director of governmental institutions, Head of national and municipal school, prosecutor, civil servant in state security system or diplomacy sector and others.
> Private services are not restricted for the former employees of the SSC in the mentioned project of the Law."

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

1§2 MOLDOVA

"The Committee concludes that the situation in Moldova is not in conformity with Article 1§2 of the revised Charter of the grounds that the length of alternative military service excessively fetters the right to earn one's living in an occupation freely entered upon."

Ground of non-conformité (for the first time)

46. The Moldova delegate provided the following information in writing:

> *"Country's comments*
>
> According to information dated May 2006 from the Ministry of Defence and the Government, a working group has been set up to draft new legislation on the

organisation of civilian, or replacement, service, taking the conclusions of the European Committee of Social Rights into account."

47. The Committee invited Moldova to bring the situation into conformity with Article 1§2 of the revised Charter.

1§2 PORTUGAL

"The Committee concludes that the situation in Portugal is not in conformity with Article 1§2 of the revised Charter on the grounds that that Sections 132 and 133 of the Merchant Naval and Disciplinary Code provide for penal sanctions against seafarers who abandon their posts."

48. The Portuguese delegate said that there been no changes to the situation, but the Government was currently preparing draft legislation to remove the offending provisions. No time-table for submitting the proposal to Parliament could be indicated at present.

49. The Committee recalling that the warning previously addressed to Portugal is still valid urged the Government to bring the situation into conformity with Article 1§2 of the revised Charter as soon as possible.

1§2 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 1§2 of the Revised Charter on the grounds that the length of alternative service to compulsory military service is excessive."

50. The delegate from Romania informed the Committee that Law no 395 from 16/12.2005 abolishes compulsory military service in peacetime from January 2007. Therefore the situation found to be in violation of the Revised Charter by the ECSR would be remedied.

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

Article 1§3 – Free placement services

1§3 ITALY

"The Committee therefore concludes that the situation in Italy is not in conformity with Article 1§3 of the revised Charter on the ground that it is unable to assess whether the right to free placement services is guaranteed in practice."

Ground of non-conformité (for the first time)

52. The Italian delegate provided the following information in writing:

"The data in this reply are the ones currently available on public and private services. For more information on the situation regarding public and private agencies, please consult the site www.isfol.it. The data requested will in any case be specifically sought out and included in the next report.

Public services

During the period from 2000 to mid-2005, the SPI (public employment service) system was introduced and brought into service. This development formed part of a

process of decentralising and regionalising responsibilities for active labour market policies, which started in Italy in the second half of the 1990s. One of the main features was the reform of Part V of the Constitution.

The modernisation of the national employment services is one aspect of the European employment strategy, whose main features have been laid down in legislation on a number of occasions since the second half of the 1990s. In particular, under Legislative Decrees 181/2000 and 297/2002, on establishing the level of unemployment and the allocation of active employment policy measures, traditional "placement" activities are replaced by active employment policies in which job centres' operational activities are designed to prevent long-term unemployment and manage the transitions between work and unemployment in an increasingly flexible labour market.

The opening of the placement system under Legislative Decree 276/2003 and Act 30/2003 to additional public and private bodies on the basis of a single national and regional accreditation scheme extends the liberalisation process in this area that started in the 1990s. Under regional legislation, this liberalisation has led to a reorganisation of employment systems that are open to a wider range of clients.

In the five year period under consideration, the design and establishment of the organisations making up the public employment service system were nearly completed. In 2005, the Italian job centre system comprised 536 local offices and 854 peripheral and temporary or seasonal ones, most of them in the southern regions, where there is a high average level of demand. The service has about 15 000 employees, slightly over 10 000 of them in the job centres.

Job centres have their own specific organisational structure, with operational standards, based on criteria in the legislative decrees on the certification of unemployment, concerning assistance to the unemployed in the form of job offers and active employment policies.

Table 1 summarises the percentages of job centres that have introduced all the services delegated to them under the 1997 reform.

Table 1 – Job centres that have introduced all the services laid down in the reform

Job centres that have introduced all the services laid down in the reform		
	2004	*2001*
	%	*%*
Italy	72.7	61.5
South	51.4	38.4
Central-North	88.1	78.4
Difference Central-North and South	36.7	40.0

Source: Isfol Monitoring Spi

The difference between the central and northern regions and the southern region reflects the large imbalance in their workloads. A survey carried out by Isofol into persons seeking their first job shows that in the final year (2004-2005) job centres dealt with 2.5 million persons, of whom 47% were in the south.

In the years under consideration, the effect of the reforms, coupled with a substantial contribution from the European Social Fund, was to increase the supply of personalised services to clients, based on detailed individual interviews, the presence

of specialist personnel, help with drafting CVs, selection of staff in conjunction with (or for) specific employers and so on.

Job centres have used these services to:

- undertake activities aimed at making people more employable, through information, guidance and diagnostic activities and establishing links with vocational training;

- introduce measures to produce a better balance between labour supply and demand, such as services for individual employers, matching and so on.

As shown in table 2, in 2004, 75% of job centres (397 out of 530), compared with 9.4% in 2000, offered guidance services to help clients draw up occupational or training plans. This highlights the extent to which the diagnostic sector (analysing needs, drawing up client profiles and preparing individual assisted vocational and employment plans) expanded in the five year period concerned.

Table 2 – Job centres, guidance service: client occupational or training plans

	client occupational or training plans	
	2000	2004
North west	13.4	94.4
North east	25.7	85.0
Centre	8.0	93.2
South	0.0	64.8
Islands	0.0	37.0
Italy	9.4	75.0

Source: Isfol, monitoring Spi 2004

62.5% of job centres (330 out of 530), compared with 7.8% in 2000, were concerned with improving the match between labour supply and demand.

Table 3 – Job centres offering preselection services in conjunction with or on behalf of employers

Selection in conjunction with or on behalf of employers		
	2000	*2004*
North west	4.3	72.9
North east	12.2	74.6
Centre	16.1	95.4
South	5.2	56.3
Islands	0.0	13.0
Italy	7.8	62.5

Source: Isfol, monitoring Spi 2004

Finally, 61.7% of the active job centres (313 out of 507), compared with 18.7% in 2001, organise placements with employers.

There has also been a growth in services designed to give job centres a more active role towards clients and to encourage the latter to play a more active part themselves in their integration or reintegration into the labour market.

28.2% of job centres (149) carry out ongoing checks on and updates of individuals' employment plans as part of their guidance activities, 18.6% offer pre-selected candidates assistance with integrating into their new places of employment and 17.2% offer support services to small and medium-sized employers.

The new market of "Private employment Agencies" in Italy
First empirical evidence.

A further, progressive opening of job placement market to new actors (both public and private) in compliance with the single provision of authorisation (at a country and at a regional level), following reform Law no. 30/2003 and related legislative Decree no. 276, has come along on, and speeded, the existing path towards a open labour market (which had begun with so-called "Pacchetto Treu" Laws in 1997). Given the relatively recently put into force new regulation of employment services (it has been operative only since September 2004), the present study reflected such "transition period" and thus was essentially meant to be a primary test on the effects of the above reform, aiming at shedding some first light on issues such as organisational and functional key-aspects concerning private operators – authorised by the newly-entered reform to supply job provision, intermediation, outplacement, human resources' search and selection. In details, we hereby intended to focus, on the one hand, on the "description" (that is to say, in terms of tasks and activities carried on, of each company's type according to corporation law, of its organisational structure and its location in space through the country); on the other hand, we aimed at emphasising "functional" aspects and relative operational conditions (in terms of services provided, human resourced employed, financial resources etc). Moreover, the study deepened the analysis on the present forms of interaction and co-operation between private operators and the public employment services' system, by focusing its progress with a view on foreseeable trends of evolution. The results hereby presented were mainly based on a monitoring survey that has been carried out in February 2005 on all existing authorised private operators, amounting to 442 units, whose subdivision by category was as follows: 355 were agencies for human resources' search and selection; 70 were agencies for "multitasking" job provisions (so-called "generaliste"); 3 were agencies for job intermediation; 14 were agencies for outplacement. To this purpose, a specific questionnaire, tailored for each of the above categories, has been submitted to all private operators (by using the C.A.W.I. methodology, i.e. Computer-Assisted Web Interviewing), to which 176 units have positively answered, thereby representing about 40% of the whole authorised operators' universe. The very first phase of this monitoring activity stressed how, at the present time, on the ground of the private operators' market scenario two of the above categories such as "agencies for job provision" (i.e. previously defined as "agencies providing temporary work") and "agencies for search and selection" are largely prevailing, both in terms of market shares attained and of level of services to labour market and supply. Besides, with respect to these two categories it was also possible to underline a marked dichotomy, whereas it regards mainly dimensional profile and related characteristics (corporation type, human resources, etc): indeed, under these parameters the description of the majority of "generic" agencies seem to recall the typical dimensional profile of middle and/or big enterprises, thus more labour-intensive (than the average level observed for agencies for search and selection), since they employ, on average, more human resources per unit (especially payroll employed with permanent contracts; note that most of these employed are not female). More than 70% of "generic" agencies employ at least 5 human resources for each unit; meanwhile, 90% circa of Agencies for search and selection employ on average 2 human resources. As far as their distinction for amount of turnover is concerned, it can be observed that 55% of generic agencies declared to have reached the "threshold" of € 11 mln, while such quota for agencies of search and selection falls to only 4,6%. The introduction of the abovementioned reform post Decree 276/2003 seems to have had no significant impact on the private operators' scenario in terms of the prevailing corporation type observed among the agencies, providing also confirmation of the dichotomy we referred to. Considered as a whole, 8,5% of all agencies (of both categories) operates on the market as a stock company (S.p.A.), most of which belonging to the category of generic agencies; on the other

hand, search and selection operators have predominantly chosen (71,2% of them) to operate as a limited-liability company (S.r.l.) When analysing agencies on the ground of their geographical location through the Country, we underline the role of some strategic factors that have a significant impact on it. As first, we see how a greater number of agencies operate around existing industrial and entrepreneurial districts, particularly in the North-Western area (59,2% on total), and in the North-Eastern one (27,7%), with some remarkable exception to be referred to Central regions such as Tuscany, Marche and Latium, particularly Rome (these regions count for 22% of all agencies), while also location in some Southern regions (Campania, and notably the urban area of Naples) is worth of interest. Despite only 2,1% on the total number of agencies is located in Southern Italy and the two Islands, we noticed how the territorial scope and coverage for their activity by generic agencies is satisfactory, thanks to their widespread diffusion. It is, however, clear that the propensity to locate near traditional long-lasting economic-developed areas, and notably more innovation-oriented (thereby depending on the local economic characteristics, infrastructure and logistics etc.) is one of the key-elements to understand the private operators' sector, whereas the latter is "institutionally" conceived in order to reach a full territorial coverage of the Country.

As far as what about the volumes of activity can be reported, 12 out of the 20 generic agencies have declared to provide other important services at the same time, so that they can be mentioned as follows: 12 of them provide "search and selection" services, 8 of them provide "staff leasing" services, 8 of them deal with outplacement and 7 of them also deal with matching services. It is therefore useful, with regard to generic agencies, to report the "combination of activities" observed: 8 of them keep on carrying on with the same activity they were officially authorised for (job provision), 3 of them fully comply with the range of activities allowed by the reform; while for the remaining agencies operate according to a sort of "partially multi-functional tasks" shape, despite the "search and selection" related tasks and activities are slightly prevailing.

The main features hereby reported for each agencies' category can also be found when dealing with their initiatives and activities having to do with training. In this case, major differences appear to be directly linked with the market segment that agencies are interested with: agencies for search and selection are usually involved in training courses – both in case they actually provide and organise them, or in case they only supply a financial support – whose primary aim is to meet the skills criteria required for specific, professional demand of job figures from enterprises."

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

1§3 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with article 1§3 of the Charter on the grounds that the Government has not provided the information enabling it to assess whether the right to free placement services is guaranteed."

Ground of non-conformity (for the first time)

54. The Romanian delegate provided the following information in writing :

"The Law no.76/16 January 2002 on the unemployment insurance system and employment stimulation, with the subsequent amendments and complements, provides the free access to placement services for the job-seekers. Relevant legal excepts are presented below for the clarifications requested by the Committee. The free of charge access is extended to other types of active employment measures.

"Art. 1 In Romania the right to choose freely the profession and job, as well as the right to unemployment insurance shall be guaranteed for each person.
(…)

Art. 4 (1) Any kind of discriminations for criteria such as politics, race, nationality, ethnic origin, language, religion, social category, beliefs, sex and age shall be excluded at the enforcement of the present law.

(2) The measures and special rights granted by the present law to certain disadvantaged categories of persons shall not constitute discrimination within the meaning of the provisions of paragraph (1)
(…)

Art. 16 The beneficiaries of the provisions of the present law shall be the *job-seekers*, in one of the following situations:
a) they became unemployed (…);
b) they could not fill a position after graduating an education institution or after satisfying the military service;
c) they have a job and, for various reasons, they intend to change it;
d) they obtained the refugee status or other form of international protection, according to the law;
e) the foreign or stateless citizens who were employed or who obtained incomes in Romania, according to the law;
f) they could not fill a position after having been repatriated or after being released from detention.
(…)

Art. 53 The measures for the employment stimulation shall aim at:

a) increasing the employment opportunities of the job-seekers;
b) stimulating the employers to hire the unemployed and create new jobs.

Art. 54 The measures for employment stimulation shall be aimed both at the job-seekers and employers and shall be carried out by way of specialized services, supplied by the employment agencies or other service suppliers from the public or private sector."

The main employment stimulation measures (*job placement, career information and counseling*) are provided free of charge to job seekers (articles 58 and 59).

In what regards the access to the *vocational training* as active employment measure, the article 66 provides for free access for certain categories:

"(1) The persons provided in Article 16 a), b), d), e), and f), as well as the persons carrying on activities in the rural area who do not earn monthly incomes or earn monthly incomes lower than the unemployment benefit and who are registered with the employment agencies shall benefit by free of charge vocational training services.
(2) The vocational training services shall be ensured free of charge at the request of the employed persons, with the agreement of the employer or, at the request of the employer, also for the persons in the following situations:

a) they resumed the activity as a result of ending the leave for raising children up to the age of 2, respective 3 years, in case of disabled children;
b) they resumed the activity after satisfying the military service;
c) they resumed the activity as a result of recovering the working capacity after the retirement for invalidity."

The access to another active measure - *counseling and assistance to start an independent activity or to start-up a business* – "shall be granted free of charge to the persons provided in Article 16 a), b) d), e) and f) only once for each period of time when the persons is seeking for a job, as well as to the students requesting loans with favorable interests from the unemployment insurance budget under the conditions of the present law" (art. 71).

The National Agency for Employment (NAE) implements also measures aimed at unemployment prevention: pre-dismissal services for persons at risk to be dismissed (granted free of charge) and subsidizing of a certain share of the employers' expenses on vocational training for employees being at risk to lose their job.

In 2005, 507,000 persons were placed through the implementation of the NAE's 2005 Employment Program and stand for 67.89% of the 747,225 persons who had access to the active employment stimulation measures.

From the total number of employed persons, 41.09% (208,492) were persons from rural areas and the vulnerable groups on labor market (youth, long term unemployed, Rroma ethnics, disabled persons, persons release from prison) were properly reflected in the specially focused employment plans.

In 2003, the annual average number of participants in active measures was of 94,494 persons, which stands for 13.7% of the number of unemployed registered with NAE. Over the year, a number of 1,681,753 jobseekers were covered in an active measure or benefited by employment service (vocational information and counseling or job-matching). The annual average number of these persons was 796,946.

With regard to 2004, the figures will become available after 10th October 2006.

Concerning the territorial scope of the public employment services, the situation looks as follows: by 1st August 2006, 90 local agencies for employment and 141 working points functioned at the level of counties and Bucharest municipality, which stands for an average of 5 – 6 local agencies and working points for each county, respectively Bucharest municipality. Under these conditions, we consider that the public employment service has the capacity to provide quality services, on average each local agency/working point dealing with around 1,900 jobseekers.

At the same time, according to G.O. no. 159/2006, NAE functions with a total number of 3,545 positions.

In 2004, the weight of the expenditures of the public employment service in GDP was of 0.72%, which means that this percentage covers all the expenditures with: measures for the social protection of unemployed, employment incentives, as well as the administrative expenses of NAE, that is all the expenditures made out of the Unemployment Insurance Fund.
The right to free of charge employment services is guaranteed according to the Law No. 76/2002, with its further amendments and complements.

Thus, on the ground of art. 58, paragraph (1) and art. 59, paragraph (3), the vocational information and counseling services, as well as the job-matching services, are provided free of charge, by the agencies for employment, to all jobseekers."

55. The Committee invited Romania to bring the situation into conformity with Article 1§3 of the revised Charter.

Article 5 – Right to organise

5 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 5 of the revised Charter on the grounds that :

– legislation does not provide for adequate compensation proportionate to the loss suffered by the victims of discriminatory dismissal because of trade union activities;
– foreign workers' right to form or to participate in the formation of trade unions is subject to prior authorisation."

First ground of non-conformity

56. The Bulgarian delegate referred to his statement with regard to Article 1§2.

57. The Committee referred to its decision with regard to Article 1§2.

Second ground of non-conformité (for the first time)

58. The Bulgarian delegate provided the following information in writing:

> "The Legal Entities with non-commercial Purpose Act regulates the base for foundation, registration, structure, activity and termination of such entities. No distinction is made between Bulgarians and foreign citizens, regularly residing on the territory of Bulgaria.
>
> The Regulation, mentioned in the Conclusions regulates the issue of permit for long-term residence of foreigners, based on Art. 24§1, Item 16 of the Foreigners Act. Such permit may be received by foreigners willing to develop non-commercial activity after permission of the Ministry of justice. Such activity is a reason for granting long-term residence permit. The Regulation in question is not applicable for persons already residing in the country and having activity such as foundation of trade unions. This is also a decision of the Supreme Administrative Court (Case № 2332/2003)."

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

5 FRANCE

"The Committee concludes that the situation in France is not in conformity with Article 5 of the revised Charter on account of closed shop practices continue to exist in the book sector."

60. The French delegate recapitulated the historical background to the existence of closed shop situations in the book sector, however she emphasised that at present such practices, which were in any event illegal under French law, were no longer enforced by the trade unions and membership of a specific union was no longer a condition for obtaining employment in the book sector. However, since a previously announced survey to document the situation had been put on hold, the Government could unfortunately not prove that the situation had actually changed.

61. The Dutch delegate said that closed shop practices were in clear violation of the Charter and the Governmental Committee should act accordingly.

62. The IOE representative also considered this situation to be an obvious violation of the Charter which should be addressed with the utmost seriousness.

63. Several delegates (Cyprus, Germany, Hungary) felt that the French Government should clarify the situation in detail in the next report and provide the necessary evidence if possible. The Belgian delegate suggested that if it could be shown that jobseekers were placed in the book sector through the public employment services (ANPE) that might serve as an indicator that a specific trade union no longer enforced a monopoly on the jobs in that sector.

64. The Committee urged the Government to give all relevant information in the next report showing that closed shop practices no longer exists in the labour market.

5 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 5 of the Revised Charter for the following reasons:

– certain closed shop practices are authorised by law;
– national legislation does not protect all the workers against dismissal on grounds of membership of a trade union or involvement in trade union activities."

First ground of non-conformity

65. The Irish delegate said that an interdepartmental group had examined the cases of non-compliance with Articles 5 and 6 of the revised Charter in detail. The work was continuing. A framework agreement for 2000-2016 had been prepared by the Government. However, the trade unions and employers' organisations had not raised the question of closed shops and so they were not part of the measures planned for the period. The Government's scope for action in this area was limited.

66. The secretariat asked what implications Ireland attached to the judgment of the European Court of Human Rights, which had ruled, in January 2006 in a case involving Denmark[1], that pre-entry closed shops were in breach of Article 11 of the Convention. It also asked whether the interdepartmental group had taken account of this when discussing the matter.

67. In reply, the Irish delegate said that the Court judgment was likely to speed up negotiations.

68. The representative of the IOE noted that there were still pre-entry closed shops in Ireland and this infringed the revised Charter and the European Convention on Human Rights. She was surprised that Ireland was not capable of giving an answer on this issue.

69. The French, Belgian and Bulgarian delegates and the representative of the ETUC noted that the situation had been the same since 1994 and the Government had no desire to change it. They proposed a warning.

70. The Committee proceeded to vote on a warning to Ireland, which was adopted (by 24 votes for, 4 against and 5 abstentions).

Second ground of non-conformity

[1] Sørensen and Rasmussen v. Denmark judgment of 11 January 2006

71. The Irish delegate said that a new Industrial Relations Act (no. 139/2004) was being prepared, under which employees would be given specific protection and entitled to claim compensation whether members of trade unions or not.

72. The representative of the IOE asked whether the Unfair Dismissals Act of 1977 had been amended so that it was not just workers who were members of representative trade unions who were protected but members of any type of trade union.

73. The Irish delegate said that the new Act would protect all workers, regardless of whether they were unionised and whatever the type of trade union concerned, whether representative or not.

74. The Committee welcomed the fact that new legislation was being prepared and decided to await the ECSR's next assessment.

5 LITHUANIA

"The Committee concludes that the situation in Lithuania is not in conformity with Article 5 of the revised Charter because the minimum requirement of thirty members to form a trade union undermines the freedom to organise."

75. The Lithuanian delegate said that the trade unions had prepared a draft amendment to the Trade Union Act in 2004. This had been submitted to the Tripartite Board of Lithuania. However, the thirty-member requirement had not been altered in this new version. The Government intended to ask the trade unions to amend the bill.

76. The representatives of the ETUC and IOE said that it was the Government's responsibility to amend the law, not for the trade unions to bring the situation into compliance with the Charter.

77. The Lithuanian delegate reiterated that the trade unions had taken part in drafting the law but the final version would be adopted by the Government and Parliament.

78. The Portuguese delegate and the representative of the ETUC proposed that the Government should be sent a warning so that it would be aware of the Committee's concern at the situation.

79. The Committee proceeded to vote on a warning to Lithuania which is not adopted (2 votes for, 17 against and 11 abstentions). It noted that the Government's intentions were not clear and emphasised that it is for the Government to bring the situation into conformity with the revised Charter and not for the trade unions.

5 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 5 of the Revised Charter on the following grounds:

– the restrictions on the right to organise of senior civil servants and officials holding management positions or high public office are too general;
– the compulsory membership of the police officers of the National Police Association;
– the Romanian nationality requirement for representatives of management and labour on the Economic and Social Council."

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

80. The Romanian delegate provided the following information in writing :

"Law no.188/1999 on the public servants statute, republished was modified and completed by the enforcement of Law no.251/2006/19th July 2006.

Article 27 of the enforced law has the following content (different from that in Law 188/1999 modified by the Law no.344/2004):

Article 27, paragraph (1) The right to organize is guaranteed to public servants.
(2) Civil servants may freely set up a trade union, adhere to it, and exercise any mandate within their framework.
(3) When the senior civil servants or the management public servants are elected in management bodies of the trade unions, they have the obligation to choose for one of the two functions within 15 days. When the public servants choose to carry on their activity on a management function/position within trade union organizations, the service reports are suspended for a period equal to that of the mandate in the management function they fill with in the trade union.
(4) Civil servants may associate in the professional organizations or in other organizations taking as purpose protecting the professional interests".

According to article 40 paragraph 1. in the Romanian Constitution, citizens may freely associate in political parties, in trade unions, in employer's associations and in other association forms.

According to the provisions of art.2 paragraph 1 from the Law no.54/2003 "persons hired and the public servants that have the right to constitute the trade unions and to adhere to them."
According to the provisions of the fundamental law, The Statute of the public servants, adopted through organic law, provide the principle of right to organize for the public servants (Art.27, paragraph 1 from the Law 188/1999).

Restriction for exercising some rights for some categories of persons is allowed in the terms of art. 53 from the Romanian Constitution, republished.

According to the Romanian Constitution, the measure must be (commensurate) proportionate to the situation that determinates it, to be applied in a non-discriminatory way and without prejudice to the existence of a right or liberty.

It is important to note in this context that similar provisions are provided by the Convention for defense of human rights and fundamental liberties from 4 November 1950, ratified by Romania through Law no.30/1994.

The Convention provides the right to associate "any person has the right to liberty of peaceable meeting and liberty of association, inclusively the right to constitute with other trade unions and to affiliate to trade unions for protecting their interests" and also situations in which this right can be restrictive: "Exercising some rights can not be the object of other restrictions others than those provided by law, constitutes necessary measures, in a democratic society, for the national security, public safety, defense of order and prevention of the offences, healthy protection or moral or for protecting other rights and liberties. The present article does not forbid as legal restrictions to be imposed for exercising these rights by the members of the army forces, policemen, or of the state administration".

As one can notice, limits must be exclusively in order to favor the general benefit in a democratic society.

In order to avoid the conflict of interests, taking into account that the public interests take precedence over individual interests, we do consider that it is imposed the restriction of the right to participate in the management body of the trade unions for the public servants from the category of management public servants and senior public servants, in the sense of suspension the service report of these public servants during exercising some management functions in trade unions.

We appreciate that exercising some public functions, from the above mentioned categories and in the meantime management functions in the trade union organizations would lead to the impossibility of exercising their competences conferred by the law to the central and local public administration.

Also, we must take into account the fact that the public functions from these categories normally have, a large level of representatively (for example, executive managers, who belong to the management civil servants and who in most cases lead public institutions).

It may occur the unacceptable situation when the same person should represent the interests of the authority or public institutions but also those of the members of the trade unions; or, in order to use the particular means of defense of the interests of the trade unions' members, namely the negotiation, the procedures of solving the litigation by means of mediation, arbitration or conciliation, petition, a.s.o it is necessary to exist a debate between partners (employers' and trade unions' representatives).

Conclusions:

1. Article 27 does not forbid to the management public servants and senior civil servants the right to associate in a trade union, but only the right to fill in the meantime, a management position within a trade union organization and a management public function or from the category of the senior public servants.

2. The proposed measure means keeping the position of the civil servants and insures, on the period of exercising a management public function in the trade unions, normal developing of the activity both in the public institutions and in the trade union's organizations.

1. Article G from European Social Charter (revised) provides that "restrictions must be provided by laws and necessary in a democratic society for protecting the rights and liberties of the others or for protecting the public interest, national security, public or moral health "

Taking intro account the above mentioned, we consider that the provisions of the article 27 in Law no.188/1999, republished, with its amendments and completions, are in conformity with European Social Charter (revised)."

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

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

82. The Romanian delegate said that in accordance with Section 48 of Law No. 360/2002 on the status of police officers, the latter were entitled to form professional associations, although membership was not compulsory and members could leave whenever they wished. In accordance with Law No. 54/2003 on trade unions, there were other unions representing the interests of police officers, such as the National Police Officers Union, which police officers were free to join. The only condition relating to membership of these associations was that the statutes must contain provisions on the acquisition and loss of membership status. The delegate stated that the situation of non-compliance had therefore been remedied.

83. The ETUC representative, based on the information received from his Romanian colleagues, confirmed that in practice ahead 3 trade unions were established to which police officers could affiliate. He invited the Romanian delegate to provide such information in its next report.

84. The Committee welcomed the changes that had taken place. It invited the Government to provide detailed information in its next report and awaited the next assessment by the ECSR.

Third ground of non-conformity

85. The Romanian delegate said that Section 14a of Law No. 109/1997 requiring Romanian nationality for those entitled to represent the two sides of industry on the Economic and Social Council would be discussed with representatives of management and labour at national level with a view to amending this provision. However, the provision in question applied solely to the representatives on the Economic and Social Council and not to the institution's employees.

86. The ETUC representative confirmed that there was a willingness in the Romanian Economic and Social Council to find a formal solution to the issue. The misunderstanding also seems to lie in the fact that the law uses the term "citizenship" rather than "nationality".

87. The Portuguese and Swedish delegations felt that there should not henceforth be any discrimination on nationality grounds for membership of the Economic and Social Council.

88. The Committee asked for the situation to be brought into compliance as speedily as possible, as any discrimination on the grounds of nationality/citizenship was unacceptable.

5 SWEDEN

"The Committee concludes that the situation in Sweden is not in conformity with Article 5 of the revised Charter because certain pre-entry closed shops remained in existence during the period under reference."

89. The Swedish delegate recalled that as a result of a process of tripartite negotiations no new agreements containing closed shop or priority clauses are being concluded and agreements containing such clauses are rapidly disappearing. The dialogue between the Government and the social partners on this issue continues and on 12 May 2006 the Swedish Minister of Labour would meet with the social partners concerned, including those representing the electricity sector and the paint

industry. Finally, the delegate emphasised that the European Convention on Human Rights is incorporated in Swedish law and following the recent judgments by the European Court of Human Rights in the Sorensen and Rasmussen cases it would clearly not be possible to enforce close shop clauses in Sweden.

90. The ETUC representative said that the information provided by the Swedish delegate corresponded to the information ETUC had received from its Swedish member unions.

91. The Dutch delegate wondered why the ECSR had been forced to note the existence of closed shop clauses in certain sectors from "other sources" than the Swedish report.

92. The Swedish delegate explained that this was information provided to the ECSR by Swedish employers' organisations and that the Government was not aware of the occurrence of pre-entry closed shop clauses in the sectors mentioned. However, we have already taken the first step to investigate the situation.

93. The Committee, while welcoming the efforts made strongly urged the Government to speed up the process of abolishing closed shop clauses in all sectors of the labour market.

Article 6§3 – Conciliation and arbitration

6§3 ALBANIA

"The Committee concludes that the situation in Albania is not in conformity with Article 6§3 of the revised Charter on the ground that the circumstances in which recourse to compulsory arbitration is authorised go beyond the limits set out in Article G of the revised Charter."

Ground of non-conformité (for the first time)

94. The Albanian delegate provided the following information in writing:

> "In order to prevent the harmful and unrepairable consequences that may be caused for the normal progress of life, in the sectors of water supply services, energy supply services, air traffic control services, services of protection against fire and penitentiary services, is required to be offered the necessary services.
>
> Employees in sectors of services of vital importance, as well as employees working in other sectors have their right to enter in collective conversations with the employer. If these employees do not agree to the employer for collective disputes, the unions of these employees do not have the right to go on strike, but the dispute is settled in an obligatory and final way, after the mediation and conciliation of the Arbitral Court compound of 3 judges appointed from the parties themselves.
>
> How is done the cognition of the judge for settlement of disputes?
> The arbitreres are independent and the court decides their cognition for practicing his activity of arbitration in disputes, between employees and employers.
>
> Which are the procedures followed in case of disputes?
> When parties have disputes between them the Labor Code provides these procedures:

1. Initially parties try maximally to settle the disputes between the parties with comprehension.

2. If parties can't settle the dispute with comprehension, then they choose 3 arbitrers from the list of arbitrers approved by the Court's Decision, or by the arbitrers appointed by them self in the collective agreement between them.

3. If parties don't agree on the arbitrers who will settle their dispute, in order to prevent the heavy and unrepairable consequences that strike can cause, the Minister of Labour selects arbitrers from the list of arbitrers, known as such by a court decision, within 5 days from the day of the request of one of the parties.

Hereupon we can say again that there are the arbitrers of the Arbitral Court, those who interfere to settle the disputes between the parties."

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

6§3 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§3 of the Revised Charter on the ground that there is no conciliation or arbitration procedure in the public service."

96. The Bulgarian delegate confirmed that there has been no development in the matter and that there still existed no conciliation or arbitration procedures in the public service. He informed the Committee that a new ministry has been established being responsible for issues related to collective bargaining and collective action and that the relevant conclusions of non-conformity of the ECSR have been brought to the attention of this ministry.

The Bulgarian delegate indicated that legislative amendments in the matter may be expected within short but stated in reply to the President's corresponding question that no exact time frame for these amendments could be given.

97. The ETUC representative pointed out that this was the second time Bulgaria was found not to be in conformity with this fundamental right of the revised Charter and proposed to the Committee to vote on a warning.

98. The Belgian delegate, joined by the Danish, French and Finnish delegates, was of the opinion that in view of the fact that the precedent conclusion of non-conformity dates back to 2004 only, it would rather be appropriate to send a strong message to the Bulgarian Government to remedy the violation.

99. The Committee welcomed the Government's intention to remedy the situation but urged it to intensify its efforts to bring the situation into conformity with Article 6§3 of the revised Charter as soon as possible.

6§3 MOLDOVA

"The Committee concludes that the situation in Moldova is not in conformity with Article 6§3 of the revised Charter on the ground that recourse to compulsory arbitration is permitted in circumstances which go beyond the limits set out in Article G of the revised Charter."

Ground of non-conformité (for the first time)

100. The Moldova delegate provided the following information in writing:

"Article 359 of the Labour Code stipulates that a conciliation commission shall be established at the request of one of the parties to a dispute. This shows that using the conciliation procedure is not an obligation but an option open to the parties. The exception is Article 362§3 of the Code, which makes it obligatory to use the conciliation procedure before calling a strike. If one of the parties does not reach an agreement before the conciliation commission, Article 360 grants either party the right, without the other's agreement, to apply to the courts to secure a settlement to the dispute.

We do not consider that the legislation in question breaches the provisions of the revised Charter on voluntary arbitration. It is simply an example of access to justice, which under Article 20 of the Moldovan Constitution and various international human rights treaties[1] is a fundamental right of each individual. Under these treaties, persons who consider that one of their legal rights has been infringed can ask the courts to enforce that right.

Article 6 of the Charter calls for the promotion of voluntary arbitration in connection with the effective exercise of the right to bargain collectively. When arbitration seems to be the most appropriate way of resolving collective disputes associated with bargaining, in circumstances where rights established in law or existing collective agreements are being breached, we consider that recourse to the courts is the proper way to re-establish those rights. In such cases, the refusal of the party responsible to take the matter to the courts should not prevent the other party from exercising this right.

Article 359 authorises the parties to seek conciliation to settle collective disputes. Conciliation commissions are made up of equal numbers of representatives of the different parties. This form of negotiation is equally available to employees who have the right to strike and those who cannot strike, under Article 369§2 of the Labour Code.

There are no time limits on the conciliation process, if the parties agree to use it to resolve their differences. If commission members are unable to settle the dispute or if the parties refuse to accept a commission decision, the employee representatives are entitled to call a strike, subject to the conditions laid down in legislation.

The Code makes no provision for cases in which disputes could be partially settled within a conciliation commission. It seems likely that in such cases the commission would adopt a binding decision on the points on which there was agreement while there would have to be an opportunity for the parties to discuss those on which they differed, which would then serve as the basis for a strike call.

So far there have been no disputes between employers and their representatives and the law makes no provision for a special procedure to deal with such disputes. The parties to conflicts may, at any time, ask the courts to settle them, in accordance with normal civil procedure."

[1] The Universal Declaration of Human Rights of 10 December 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, the International Covenant on Civil and Political Rights of 16 December 1966, etc.

101. The Committee invited Moldova to bring the situation into conformity with Article 6§3 of the revised Charter.

Article 6§4 – Collective action

6§4 ALBANIA

"The Committee concludes that the situation in Albania is not in conformity with Article 6§4 of the revised Charter on the following grounds:
– civil servants are denied the right to strike;
– employees in electricity and water supply services are generally denied the right to strike."

Grounds of non-conformité (for the first time)

102. The Albanian delegate provided the following information in writing:

> "First ground of non confirmity
> In the framework of the conclusion of the Committee regarding the denial of the right to strike of civil servants, the Albanian Public Administration Department which is under the Minister of Interior, created a working group to study this issue.
>
> Best legislation, practices and regional experiences will be taken under scrutiny and if is decided to change the existing legal framework, the changes will be incorporated in the draft for amending the law no.8544, dated 11.11.1999 "On the status of civil servant", actually under drafting.
>
> Second ground of non confirmity
> Article 197/5 of Labor Code of the Republic of Albania provides that the right to go on strike can not be practiced in the services of vital importance, in which job's interruption."

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

6§4 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§4 of the revised Charter on the ground that non-military personnel of the Ministry of Defense and any establishments responsible to that ministry are denied the right to strike."

104. The Bulgarian delegate stressed that the right to strike is recognised as a fundamental right by Bulgarian legislation and that restrictions to the right to strike for the protection of national security are permitted by the revised Charter.

He specified that the denial of the right to strike for non-military personnel of the Ministry of Defence and any establishment responsible to such Ministry is related to the functions exercised by such personnel which is closely connected to the armed forces. He went on to explain that a work stoppage by this personnel for the purpose of strike action would endanger national security and assured that the next report would contain a description of the functions concerned.
The Bulgarian delegate further drew the Committee's attention to the fact that the restriction of the right to strike for non-military personnel of the Ministry of Defence has not been criticised by the Bulgarian trade unions within the scope of the currently pending Collective Complaint No. 32 lodged against Bulgaria.

105. The Polish delegate suggested that the Government should provide detailed information in the next report on the functions exercised by the non-military personnel prohibited from striking in order to explain the special status of the employees concerned.

106. The Committee expressed its concern about the violation of such a fundamental right as the right to strike (Article 6§4 of the revised Charter) and invited the Government to provide detailed information on the functions exercised by the non-military personnel prohibited from striking in its next report and decided to await the next assessment of the ECSR.

6§4 CYPRUS

"The Committee concludes that the situation in Cyprus is not in conformity with Article 6§4 of the Revised Charter on the following grounds:

– in accordance with the Trade Union Laws 1965-1996 in the version applicable during the reference period, the decision to call a strike must be endorsed by the executive committee of a trade union;
– Defence Regulations 79A and 79B, which authorise the requisition of workers and the prohibition of strikes in cases other than those allowed by the Revised Charter, were still in force during the reference period."

First ground of non-conformity

107. The Cypriot delegate informed the Committee that the draft law on the amendment of the Trade Union Laws 1965-1996 could not be adopted by the Parliament in 2005 as announced in the Cypriot report because its translation into modern Greek had delayed the legislative procedure. He specified that the draft law will be sent to the Law Commissioner's Office before the end of 2006 and will subsequently be transmitted to the Law Office for legal vetting.

108. In reply to the representative of the ETUC, the Cypriot delegate confirmed that adoption of the draft law was only a matter of time and that there was consensus on its content but he could not indicate an exact timeframe for its adoption.

109. The Committee took note of the envisaged legislative amendments and urged the Government to bring the situation into conformity with Article 6§4 of the revised Charter as soon as possible. Meanwhile, it decided to await the next assessment of the ECSR.

Second ground of non-conformity

110. The Cypriot delegate confirmed that Defence Regulations 79A and 79B were abolished by the Council of Ministers' Decision no. 63.905 of 22 June 2006.

111. The Committee took note of the positive development and decided to await the next assessment of the ECSR.

6§4 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 6§4 of the revised Charter on the ground that civil servants are denied the right to strike."

112. The Estonian delegate informed the Committee that the Ministry of Social Affairs had proposed a draft Act to amend the regulations regarding the denial of the

right to strike to civil servants which was supported by the social partners but rejected by the Government and thus did not enter into force.

She went on to explain that an amendment of the said regulations is supposed to take place in the course of the public service reform to be discussed in the course of this year. Several delegates expressed their doubts whether there was a link between such a reform and the amendment of the relevant legal provisions regarding the right to strike of civil servants.

113. The ETUC delegate joined by the Cypriot, Swedish and Portuguese delegate suggested that a strong message should be addressed to the Government in this respect.

114. The Committee proceeded to vote on a warning, which was not adopted (4 votes in favour, 19 against and 5 abstentions).

115. The Committee expressed however its concern about the violation of such a fundamental right as the right to strike and urged the Government to bring the situation into conformity with Article 6§4 of the revised Charter.

6§4 FINLAND

"The Committee concludes that the situation in Finland is not in conformity with Article 6§4 of the Revised Charter on the ground that civil servants cannot call a strike in pursuance of objectives which are not covered by a collective agreement."

116. The Finnish delegate drew the Committee's attention to a translation mistake in the national report. Instead of "Strikes pursuing objectives other than those covered by the collective agreement are prohibited" it should read "Strikes pursuing objectives other than those that according to the Act on Collective Agreements for State Civil Servants can be agreed upon in a collective agreement are prohibited".

She explained that civil servants may call strikes regarding matters, that can be the subject of a collective agreement pursuant to the Act on Collective Agreements for State Civil Servants except for those which have already been agreed upon in a still valid collective agreement.

She went on to explain that the aforementioned Act does not include a list of the issues that may be agreed upon in a collective agreement but does only mention those issues which are excluded from the scope of a collective agreement such as questions related to the rights of political bodies and issues which, as in the private sector, fall within the employer's sole scope of authority. As regards matters that may be agreed upon in collective agreements she mentioned in particular those related to the financial and social benefits for civil servants resulting from their employment relationship.

The Finnish delegate finally summarised that it is possible for civil servants to call a strike not aiming at the conclusion of a collective agreement if the issue to which the strike relates (i) is not stipulated in a valid collective agreement, (ii) relates to the conditions of employment of civil servants, (iii) can be the subject of a collective agreement according to the Act on Collective Agreements for State Civil Servants.

In reply to the Belgian delegate, she confirmed that civil servants may call a strike against an increase in taxes if such increase is directly linked to the terms of their employment relationship.

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

6§4 FRANCE

"The Committee concludes that the situation in France is not in conformity with Article 6§4 of the revised Charter on the following grounds:

– only the most representative trade unions have the right to call strikes in the public sector;
– deductions from the wages of striking state employees are not always proportional to the duration of the strike."

First ground of non-conformity

118. The French delegate pointed out that there were no new developments to announce in the matter. Pursuant to French law all employees including civil servants were granted the right to strike. She further stressed that the formation of trade unions in France at all levels is governed by a flexible system and not subject to extensive formalities and that therefore civil servants were granted an effective right to strike as in particular evidenced by the important number of days registered over the recent years on which work in the public service ceased due to strike action.

In reply to questions raised by the Swedish and the Luxembourg delegate, the French delegate specified that only representative trade unions on the respective level may call a strike but that non-representative trade unions may liaise with representative ones for this purpose. She also stated that it is easy for a trade union to qualify as representative and that representativeness is determined on the basis of the results of the latest workplace elections but did not further specify what result has to be achieved at these elections to qualify as representative. She further confirmed that it was possible that more than one trade union qualifies as representative at the same workplace.

119. In reply to a question raised by the ETUC representative, the Secretariat confirmed that in rendering its conclusion the ECSR has taken into account the fact that a locally representative trade union could also issue a strike notice without having to establish its national representativeness.

120. The Portuguese delegate observed that in practice civil servants do not seem to be prevented from exercising their right to strike and proposed to call the French Government's attention to the legal restrictions to the right to strike in the public sector based on the representativeness requirement.

121. The French delegate and the ETUC representative expressed their wish that the ECSR should clarify this ground of non-conformity and give an indication to the French Government how the situation could be brought into conformity with the revised Charter. In reply to the President's question whether the ECSR could address a corresponding letter to the French Government, the Secretariat informed that a letter could be send by the Government to the ECSR and that a meeting between the ECSR and the Government could also be arranged upon the latter's request to discuss the matter.

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

Second ground of non-conformity

123. The French delegate stated that there was no new information on this recurring ground of non-conformity and again explained that the regulations on the deduction of wages of striking civil servants were based on an accounting rule that had been confirmed by the Constitutional Council in 1987.

She further stated that in practice no strike in the public sector lasted less than one day and that the level of strike action in the public sector shows that the rule does not deter employees in the public sector form striking. In reply to the Portuguese delegate she further confirmed that the rule has never been contested by the trade unions. In reply to the Swedish delegate she further specified that striking workers are not compensated by trade unions for the wage deductions due to strike action.

124. The Belgian delegate, joined by the Bulgarian and the Danish delegate, pointed out that even though the rule constitutes a violation of the revised Charter, in practice it does not seem to prevent the workers concerned from striking.

125. The ETUC representative noted that there is no intention on the part of the Government to change the rule and that the situation was more ambiguous in reality than indicated by the submissions of the French delegate. Amongst others he indicated that the criticised system only applied in the public sector and not for the private sector which in a way could also be considered as a discriminatory situation for public sector workers. He observed that the situation had not been in conformity with the Charter for a long time and therefore proposed that the Committee should vote on a warning.

126. The Committee urged the Government to reconsider its position and to bring the situation into conformity with Article 6§4 of the revised Charter.

6§4 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 6§4 of the Revised Charter on the following grounds:

– only authorized trade unions, i.e. trade unions holding a negotiation licence, their officials and members are granted immunity from civil liability in the event of a strike;
– under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in a strike. The dismissal of a striking employee will only be unfair if the employer dismisses certain employees or selectively rehires certain employees."

First ground of non-conformity

127. The Irish delegate stated that the situation has not changed as regards the first ground of non-conformity. Only authorised trade unions, their officials and members are granted immunity from civil liability in the event of a strike. As on the previous occasion he indicated that an Interdepartmental Committee is examining the situation in the light of the criticism expressed by the ECSR.

128. The Portuguese delegate, joined by the Swedish and the French delegate as well as the representatives of the ETUC and the IOE, suggested that in view of the fact that this was a longstanding violation of the fundamental right to strike, the Committee should vote on a warning.

129. The Committee proceeded to vote on a warning, which is adopted (14 votes in favour of the warning, 1 against and 12 abstentions).

Second ground of non-conformity

130. Initially, the Irish delegate stated that amendments to the Unfair Dismissals Act had brought the situation more in line with the requirements of the revised Charter.

131. In reply to questions for clarification raised by the President, the representative of the ETUC as well as the French, Belgian and Portuguese delegates, the Irish delegate however specified that the legislative changes referred to have not yet actually been adopted and that hitherto no legislative procedure has started in this respect.

He went on to explain that the corresponding legal changes were envisaged in a framework agreement between the social partners for the period 2006-2015 and approved by the Government and Parliament, thus creating the highest possible commitment of the parties to proceed to implementation of these amendments.

132. In reply to the President he added that according to the framework agreement the changes are to be published before the end of 2006 and their implementation could be expected in 2007.

133. The Committee took note of the positive development and urged the Government to bring the situation into conformity with the revised Charter as soon as possible. Meanwhile, it decided to await the next assessment of the ECSR.

6§4 ITALY

"The Committee concludes that the situation in Italy is not in conformity with Article 6§4 of the revised Charter on the grounds that

– it is not able to assess whether the Government's right to issue ordinances restricting strikes in essential public services falls within the limits of Article G of the revised Charter;
– the requirement to notify the duration of strikes concerning essential public services to the employer prior to strike action is excessive."

Grounds of non-conformité (for the first time)

134. The Italian delegate provided the following information in writing:

> "The purpose of Act 146/1990 (as amended and extended by Act 83/2000) governing strikes in essential services is to strike a balance between the right to strike and the enjoyment of the constitutionally protected individual rights to life, health, freedom and security, freedom of circulation, education and freedom of communication (Section 2.2 of the Act). Under Article 40 these are constitutionally protected rights whose force, parliament has decided, shall be equal to or greater than that of the right to strike. The right to strike may be exercised in essential public services, subject to the following conditions:

- steps must be taken to permit the distribution of essential services to ensure that the objectives laid down in the Act can be met. Such services must be determined and specified by public departments and contractors in the relevant collective agreements. The services must be reviewed by a guarantee commission to assess whether they are appropriate. If the commission decides that they are not appropriate it issues temporary regulations, which are binding. Essential services must be provided at 50% of the normal level and up to one-third of the workforce must continue to work.
- there must be a minimum strike notice of not less than ten days, to enable the department or the contractor providing the service to take the necessary steps to guarantee essential services. Strike notices, which under collective agreements may be for periods in excess of ten days, must be issued in writing and must indicate the length and form of the strike, and the reasons for it.
- information must be provided to users about the strike from those providing the service. In particular, departments or contractors providing essential public services must inform users at least five days before the start of a strike, in an appropriate manner, of the arrangements for and times of the distribution or provision of services during the strike.

In the light of all these factors, parliament has concluded that the legal minimum period of ten days is necessary and reasonable for ensuring that the pre-strike procedure is correctly implemented.
When a strike leads to an interruption or alteration to the functioning of an essential public service, which in turn creates a well founded risk of serious and imminent harm to persons benefiting from constitutional protection, and in cases of need and urgency, the competent authorities – the prime minister or the prefect, depending on whether the dispute is of national or local importance – may issue an injunction and provide appropriate information to the guarantee commission (Section 8 of Act 146/1990, as replaced by Section 7 of Act 83/2000).“

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

6§4 LITHUANIA

“The Committee concludes that the situation in Lithuania is not in conformity with Article 6§4 of the Revised Charter on the following grounds:

– trade unions may only initiate collective action if two-thirds of an undertaking's employees vote in favour of a strike (Article 77.1 of the Labour Code), which is an undue restriction on trade unions' right to collective action;
– strikes are totally forbidden in public electricity, district heating and gas supply enterprises (Article 78.1 of the Labour Code).”

First ground of non-conformity

136. The Lithuanian delegate stated that a draft law had been elaborated following extensive discussions within the Tripartite Council which is supposed to remedy the violation. In reply to the IOE representative, she explained that the draft law had been registered with the Parliament, i.e. introduced into the legislative procedure. She specified that it was, however, impossible to predict when the draft law would be discussed in Parliament and whether it would be adopted.

137. The ETUC representative pointed out that according to information from Lithuanian national trade unions, the Government objected to the draft law and that it was unlikely that it would be adopted.

138. The Committee welcomed the introduction of a draft law into the legislative procedure with a view to remedy the violation of the Revised Charter and urged the Government to continue its efforts to bring the situation into conformity with the Revised Charter as soon as possible. It invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Second ground of non-conformity

139. The Lithuanian delegate informed the Committee that Sections 77.4 and 78.1 of the Labour Code had been amended by a law adopted in May 2005 and that these legislative amendments have brought the situation into conformity with the Revised Charter.

140. The Committee welcomed the legislative amendments which were supposed to bring the situation into conformity with the Revised Charter. It invited the Government to provide all relevant information in its next report and decided to await the next assessment of the ECSR.

6§4 MOLDOVA

"The Committee concludes that the situation in Moldova is not in conformity with Article 6§4 of the revised Charter on the following grounds:

– the restrictions to the right to strike for public officials and employees in sectors such as internal affairs, state security sectors and national defence go beyond those permitted by Article G of the revised Charter;
– the right to strike is denied to all employees in electricity and water supply services, telecommunication and air traffic control."

Grounds of non-conformité (for the first time)

141. The Moldova delegate provided the following information in writing:

> "As noted in the last report, under Article 362§1 of the Labour Code, strikes may be called to settle collective labour disputes, in accordance with the procedure laid down in the Code.
>
> Under Article 362§2 of the Labour Code, workers' representatives protect the interests of employees *vis-à-vis* employers, employers' associations and central and local authorities both in strikes and in civil and criminal proceedings in the courts. This article has to be interpreted in accordance with Article 1 of the Code, which defines workers' representatives as trade unions that operate lawfully within undertakings in accordance with the legislation in force and their statutes, or in their absence, representatives elected by the employees of the undertaking in accordance with Article 21 of the Code[1].
>
> The Labour Code does not lay down any criteria of representativeness of trade unions that have the right to call strikes.
>
> Article 363§3 must be applied directly because there is no other legislation on which equipment and plant employers and employees must continue to maintain in operation during strikes. Nor is there any specific legislation to determine what

[1] This article appears in its entirety in the previous report on the core provisions of the Charter.

damage caused to an undertaking as a result of strike action may be deemed to be irrecoverable.

Those taking part in or organising strikes in accordance with the Code are not in breach of their employment obligations and cannot suffer any negative consequences (Article 363§8 of the Code). This applies to all employees, whether or not they are union members.

Restrictions on the right to strike were introduced in response to the need to maintain a minimum level of activity in the most important state services. One such is the customs service, which has a legal responsibility to defend the country's sovereignty and economic security. This approach is fully consistent with international instruments ratified by Moldova, which authorise it to place legal limits on the right to strike. These include relevant provisions of the European Social Charter (Article 6§4), the International Covenant on Economic, Social and Cultural Rights (Article 8§1.d) and the Document of the Copenhagen Meeting of the Conference on the Human Dimension (Part II, 9.3).

Reference should also be made to Government decision 656 of 11 June 2004, which includes an exhaustive list of categories of employees who are not allowed to strike. The list was drawn up in close consultation with all the social partner organisations at national level, including the two trade union confederations.

Article 369 of the Code prohibits strike action not just for certain categories of employees but also in certain circumstances, namely natural disasters, epidemics and pandemics, states of emergency and wartime. There are no precise definitions of disasters, epidemics and pandemics in Moldovan legislation. "State of emergency" and "state of war" are defined in Section 1 of the State of Emergency, Siege or War Act, No. 212-XV of 24 June 2004. The relevant passages of the Act are as follows:

State of emergency - a series of political, economic, social and public order measures introduced temporarily in certain localities or throughout the country, in the event of:
a. actual or imminent outbreaks of exceptional natural, technological or ecological events whose consequences have to be prevented, reduced or eliminated;
b. threats to national security or constitutional order requiring the defence of the rule of law and the maintenance or re-establishment of legality.

State of war – provisions instituted throughout the country in the event of a declaration of war or armed aggression against the Republic of Moldova, with a view to defending the country's sovereignty, independence, unity, territorial integrity and constitutional order.

Other issues

1. There is nothing in national legislation on lockouts.

2. The current legal status of the commissions on consultations and collective negotiations is laid down in Government decisions 1033 of 8 November 1999 and 765 of 11 July 2000. Since certain provisions no longer reflect current requirements, the government has decided to draft legislation to govern the activities of the National Consultations and Collective Negotiations Commission and the sectoral and local commissions. The bill has already been tabled in parliament and if passed could be described in the next report.

3. Moldovan legislation needs to be seen in the context of a system of social dialogue designed to maintain social peace by co-ordinating the interests of the social partners

amicably, with a view to promoting the country's long-term social and economic development. This approach is also founded on the principles of social partnership, including mutual confidence and respect of the social partners, their commitment to contractual relationships and the priority given to conciliation. Against this background, collective agreements offer an answer to practical social and economic problems.

We consider that the issue of the right to call strikes in situations where, under a collective agreement or in practice, the parties have agreed to renounce strike action, has to be seen from the standpoint of another fundamental principle of social partnership, namely the requirement to abide by undertakings in collective agreements. Where such agreements only provide for the renunciation of strike action in certain circumstances, these constitute exceptions to the right to strike. On the other hand, if an agreement stipulates a total renunciation of strike action for a specified period, the right to strike can only be exercised during this period if relevant changes are negotiated to the agreement. In practice, in Moldova a commitment to abstain from strike action under a collective agreement is usually offset by a moratorium on collective bargaining."

142. The Committee invited Moldova to bring the situation into conformity with Article 6§4 of the revised Charter.

6§4 NORWAY

"The Committee concludes that the situation in Norway is not in conformity with Article 6§4 of the revised Charter on the ground that legislation was enacted during the reference period in order to terminate collective action in circumstances which went beyond those permitted by Article G of the revised Charter."

Ground of non-conformité (for the first time)

143. The Norwegian delegate provided the following information in writing:

"According to the ECSR the situation in Norway is not in conformity with article 6 para. 4 as legislation was introduced in order to terminate collective action and impose arbitration during the reference period in circumstances which in the view of the ECSR went beyond those permitted by Article G of the Charter.

The Norwegian Government does not agree on this point. The interventions were based on the conviction that the consequences of a total halt in the production on the Norwegian continental shelf would lead to circumstances, both in Norway and abroad, that would be detrimental to public interest, and therefore within the scope of Article G of the Revised Social Charter. Before I describe the consequences that the Government had to take into consideration, I will give a brief summary of the disputes in question, the two which were ended in June 2004 and the one which were ended in October 2004.

The case in June concerned a dispute on the production platforms on the Norwegian continental shelf. Two agreements were to be renegotiated, one between the Federation of Oil Workers (OFS) and the Norwegian Oil Industry Association (OLF), involving about 2170 workers, and one between the Organisation for Managers and Executives, Norway (OME) and OLF, involving nearly 700 workers.

OLF conducted parallel negotiations with three workers' organisations OFS, OME and NOPEF (The Norwegian oil and petrochemical workers' union), and reached an agreement with NOPEF, while OFS and OME, broke off the negotiations on 24 May.

The parties were summoned to mediation. The mediation was, however, terminated without any result at midnight on 17 June.

On 18 June OFS called out 152 members, distributed across four rigs, on strike, while OME called out 55 members on two of the same rigs. On 20 and 23 June the strike was escalated when OME called out another 5 members and OFS 16 more members on two of the rigs. On 23 June notice was also given from both OFS and OME that 97 more members would be called out on strike from 27 June.

The strike thus so far affected a limited part of the operations on the oil and gas fields. The production on the Snorre field and the Vigdis field stopped, as well as the activities on two platforms on the Ekofisk field. This resulted in a reduction in the oil production of 370 000 barrels per day, which would be added by a further loss in oil production of 160 000 barrels per day and a reduction in the gas export of 30 million standard cubic meters (Sm3) per day by the announced escalations from 27 June. The strike of course had considerable ecomonic consequences, but from the authorities' point of view they were not dramatic at this stage, and as to supply of resources, production could be increased on other fields in order to fulfil supplies to customers.

On 24 June, however, the employers' organisation announced lockout towards the rest of the workers involved in the two disputes, with effect from midnight on 28 June. An escalation of such a size was dramatic, as it would result in a total stop in all oil and gas production on the Norwegian continental shelf.

Faced with the economic and social consequences a total stop in the production would have, and a deadlocked situation between the parties the Government saw no other solution than to adopt a Provisional Ordinance banning further industrial action and referring the dispute to be solved by the National Wages Board. This was done on 25 June, after 8 days of strike. A Provisional Ordinance was, in accordance with our Constitution, used because the Storting, our Parliament, was not in session. If the Storting had been assembled, the Government would have put forward a bill.

The intervention in October concerned a dispute on the revision of the agreement for mobile offshore units and drilling platforms. The parties to the agreement were the Federation of Oil Workers (OFS) and the Norwegian Shipowners' Association (NSA).

The employers' organisation had carried out parallel negotiations with three workers' organisations on the revision of their agreements. On 9 June they came to terms with two of the unions, but the negotiations with OFS failed. The OFS and NSA then were summoned to mediation, which, however, was terminated without any result on 1 July. On 2 July OFS took out 142 members on 3 drilling rigs on strike. From 13 July to 12 October the conflict was escalated on several occasions, by OFS calling out further members on strike, and by NSA locking out OFS members not already on strike. The state mediator summoned the parties when the conflict had lasted for one month, but found no basis for further mediation.

On 25 October NSA announced lockout for all members of OFS not already on strike, from 8 November. NSA also announced a sympathy lockout for employees on 94 offshore service vessels and shuttle tankers to be put into effect from the same date.

By 25 October the conflict, which started on 2 July and had been extended several times, had caused a stop in operations on 9 drilling and production installations, a reduction in oil production of about 55 000 barrels per day and delay in prospective drilling.

The announced sympathy lockout would, however, bring about much more dramatic effects. It would in fact, if it was put into force, have as a result that the entire production of oil and gas on the Norwegian continental shelf would come to a halt within 5–7 days. The economic and social consequences of a full stop in the production of oil and gas consequently would correspond to those in the case of the dispute between OFS/OME and OLF. Additionally, the situation on the international oil market had even worsened during the autumn.

One also has to bear in mind that the situation between the parties was deadlocked. The industrial action started on 2 July. Despite mediation attempts during the conflict it had not been possible to bring the parties in the nearly four month long conflict to terms. On this background the Government on 29 October put forward a bill to our Parliament proposing the dispute to be solved by compulsory arbitration by the National Wages Board. The bill was adopted by Parliament by a large majority.

We will then give a overview and an evaluation of the consequences, which founded the basis for the decisions on intervention, both in June and in October:

We will start with the economy: A suspension of all Norwegian gas and oil production was estimated to entail a monthly reduction in the production value of crude oil, NGL and natural gas of the order of 31 billion NOK based on the oil prices in effect in the summer of 2004. And it was not the employers, but the state which would have to bear the largest losses, in form of loss in tax revenues. This was estimated to about 16 billion NOK per month in the summer of 2004, and to 22 billion NOK in the autumn of 2004. The increase is due to rising oil prices. The trade balance would deteriorate by the same amount. In addition came the central government losses in direct oil revenues of 9 billion NOK per month, which had increased to 12 billion NOK in the autumn. These losses would have direct consequences for the State's financial commitment for the current year, and would affect the State's financial needs both that year and the following year. Losses in central government revenues of such a magnitude would of course have serious consequences.

A total halt in production would, however, have serious effects far beyond mere economic losses.

First of all, Norway takes its responsibility as an important supplier of gas to Europe seriously. Since Norwegian gas is being delivered under long-term contracts, a work stoppage over a lengthy period would affect the energy supply to customers in Europe, as well as seriously reduce Norway's credibility as a reliable supplier of gas. Norway exported approximately 170 million standard cubic meters (Sm3) gas daily in 2004. In all, Norway was expected to export about 75 billion Sm3 in 2004, making up to nearly 15% of the gas supply to Europe. In some areas, e.g. in Germany, Norwegian gas holds a share of the market of close to 30 %. A substantial part of the gas is used in households. Although a halt in Norwegian gas deliveries would not have been as serious as during the winter, the consequences would nevertheless be severe. A total stop in the Norwegian gas export was expected to cause considerable increases in gas prices, and lead to considerable turmoil in the European gas market.

Secondly, a most crucial element in the evaluation of the Government in 2004 was the serious situation on the international oil market, which already experienced fluctuating and historically high oil prices. A strong growth in the demand for oil, small stocks, little available production capacity and a risk for interruption in the production in a number of oil-producing countries contributed to the high prices. Norway being the world's third largest oil exporter with an export in the summer of 2004 of about 3.1 million barrels per day, a full stop in the production on the Norwegian shelf would have a dramatic effect on the oil prices. The available oil production capacity

worldwide at that time was about 1.5 million barrels per day, which was a historically low level. A persisting absence of Norwegian oil production could consequently not be substituted by using free capacity in other oil producing countries. In the autumn of 2004 OPECs available capacity was estimated to 1 million barrels per day, which was not by far sufficient to replace the Norwegian oil production, which then was estimated to 3.2 million barrels per day.

In this already extreme situation a full stop in the production on the Norwegian continental shelf would further worsen the situation on the international oil market. It would have a dramatic effect on the oil prices, which in its turn would have a serious impact on the economy of many countries around the world. As a large exporter of oil it is the policy of Norway to contribute to stability in the oil market.

All these elements created an enormous pressure on the Government. To be brief, in that situation it would not have been possible for any Norwegian Government not to intervene.

As the Norwegian Government sees it, at the time when the interventions were made in 2004, the situation was so serious that it fell within Article G of the Charter. The decisions to terminate the conflicts by compulsory arbitration was based on the conviction that the consequences of a total halt in the production on the Norwegian continental shelf would lead to circumstances, both in Norway and abroad, that would be detrimental to public interest, and therefore within the scope of Article G of the Revised Social Charter.

Finally, we would like to draw your attention to a decision by the European Court of Human Rights from the summer of 2002, application No 38199/97 by Federation of offshore workers' trade unions and others against Norway. OFS, the Oil Workers' Federation, had complained that an intervention of 1 July 1994 restricting the right to strike and imposing compulsory arbitration violated Article 11 of the Human Rights Convention. The facts of that case and the consequences of the industrial action were quite similar to those just described in the present conflicts.

The Court found that the intervention was not a violation of Article 11 para. 1, as the trade union, before the ban on the strike was imposed, had enjoyed several means of protecting their occupational interests. (Such as negotiations, mediation and strike action, in addition to an independent resolution in an arbitration body where parties to the dispute were represented.) The Court thus held the application from the oil workers to be inadmissable as manifestly ill-founded.

We are fully aware that the Social Charter and the Human Rights Convention are quite different and independent instruments, and that Article 6 para. 4 of the Charter explicitly protects the right to strike, while Article 11 of the Human Rights Convention protecting the freedom of association and specificly the right to form and to join trade unions, has no express inclusion of the right to strike. I will, however, in the following explain why we nevertheless find the decision relevant.

The interesting point is that Article 11 para. 2 of the Human Rights Convention in the same way as Article G of the Social Charter gives a listing of situations permitting exceptions from Article 11 para. 1. Although the court found that the intervention was not a violation of Article 11 para. 1, it nevertheless, based on the assumption that Article 11 para. 1 did apply to the matter, examined whether the strike ban fulfilled the conditions in Article 11 para. 2. Based on a broad evaluation of the huge consequences of the conflict, the Court concluded that the dispute measures was supported by relevant and sufficient reasons and that there was reasonable proportionality between the interference with the Article 11 rights of the applicants and

the legitimate aims pursued. The court found that the conditions in Article 11 para 2 were fulfilled, and that the national authorities thus were justified in resorting to compulsory arbitration.

The wording of the two provisions, Article G of the Charter and Article 11 para. 2 of the Human Rights Convention, permitting exceptions from Article 6 para. 4 and Article 11 para. 1 respectively, is quite similar. In our opinion this makes the case from the European Court of Justice relevant in relation to the cases on our agenda here today."

144. The Committee invited Norway to bring the situation into conformity with Article 6§4 of the revised Charter.

6§4 PORTUGAL

"The Committee concludes that the situation is not in conformity with Article 6§4 of the revised Charter on the ground that the right to call a strike is reserved only to trade unions while the forming of the latter is subject to an excessive timeframe."

145. The Portuguese delegate stated that the relevant Section of the Labour Code was not applied in recent years and that the problem therefore does not exist in reality. In any event, the thirty day maximum period for the publication of a trade union's statute would only apply in the event there had been no administrative decision on an application lodged by a trade union before expiry of this period.

146. The Committee invited the Government to provide all the relevant information as to how the regulation is applied in practice in its next report and decided to await the next assessment of the ECSR.

6§4 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 6§4 of the Revised Charter on the following grounds:

– a trade union may take collective action only if it fulfils representativeness criteria and if more than 50% of its members agree to do so, which unduly restricts the right of trade unions to take collective action;
– it is unable to assess whether the restrictions on the right to strike of public servants fall within the limits of Article G of the Revised Charter."

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

147. The Romanian delegate stated that the situation had not changed and that Article 42 of the Act No. 168/1999, stipulating that a trade union can only take collective action if it meets representative criteria and if the strike is approved by at least half of the respective trade union's members, was still in force.

148. She explained that discussions regarding the amendment of the said law were underway but had not yet led to the elaboration of corresponding draft laws and that she could not give a timetable for any such potential legal amendments.

149. The ETUC representative, joined by the IOE representative and the Swedish delegate, suggested that in view of the fact that this was the third time the situation was found not be in conformity with Article 6§4 of the Revised Charter, the Committee should vote on a warning.

150. The Committee adopted a warning by 13 votes in favour, 4 against and 15 abstentions.

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

151. The Romanian delegate provided the following information in writing :

"The right to strike is in close correlation with other rights and fundamental liberties and has not an absolute character. Exercising this constitutional right intervenes when other means of solving labour conflict miscarried; being the last solution, extreme, through it the patronage (administration) must be persuaded to satisfy the employee's demands.

Romanian Constitution allows (to the law) to establish some conditions and limits in exercising the right to strike and provide the obligation of law to regulate the necessary guarantees for ensuring the essential services for the society. These have the purpose to avoid the abusive strike or otherwise the abusive exercising of the right to strike.

This regulation is in whole consonance with the provision of the International Pact regarding economic, social and cultural rights ratified by the Romania through Decree no.212/1974, that decrees at the art.8, regarding the trade union freedom and the right to strike, that "exercising these rights by the army forces members, of the police or by the public servants may be subject to some legal restrictions".

Furthermore, the Revised European Social Charter, adopted in Strasbourg on the 3rd May 1996, ratified by the Romania by Law 74/1999, recognizes the possibility of restricting this right, but this limitation must be settled by law and is necessary in a democratic country in order to guarantee the observing of the rights and freedoms for the others or for protecting the public order, national security, or good manners. In this context, are natural and wholly justified the interdictions established by article 63 in Law no.168/1999 on solving labour conflicts, with its subsequent amendments regulating the categories of personnel which cannot be on strike, restrictively enumerated by this legal text.

Meanwhile, highlighting the particular characteristic of the regime applying to the Ministry of Administration and Interior's staff is necessary, thus, we appreciate that not all collective rights necessary for defending the interests of the Ministry of Administration and Interior's staff are limited by law, but only those making impossible the exercising of the particular activity of public interest.

According to art.5 paragraph 1 from Emergency Government Ordinance no.64/2003 for regulating some measures regarding the setting up, organization, reorganization or functioning of some structures from the Government staff, ministries, other specialized bodies of the public central administration and some public institutions approved with amendments by Law no.194/2004, with its subsequent amendments, was created by the Ministry of Administration and Interior through fusion of the Ministry of Interior and the Ministry of Public Administration. According to article 21 let d) from the same normative act, in these normative acts in force the denominations of the Ministry of Interior and the Ministry of Public Administration are replaced with the syntagma "Ministry of Administration and Interior".

Initially, article 63 in Law.no.168/1999 regarding solving labor conflict provided that the staff of the Ministry of Interior staff and of the units in its subordination can not declare a strike.

After the enforcement of the provisions GEO no.64/2003, the reference from article 63 of the law no.168/1999 is made for the Ministry of Administration and Interior. According to the provisions of article 16 from the GEO no.63/2003 regarding the organization and function of the Ministry of Administration and Interior, approved with amendments and completions by Law no.604/2003, with its subsequent amendments and completions, the Ministry of Administration and Interior's staff includes public servants, policemen-civil servants with a special statute, military personnel in activity, contractual personnel, and also military, police soldiers and border policemen employed on a contractual basis. We mention the fact that prior to this regulation, the Ministry of Interior's staff consisted of military staff and civil employees, according to the provisions of Article 8 in Law no.40/1990 regarding organizing and functioning the Ministry of Interior.
We must say that according to the provision of article 45 in Law no.360/2002 on the Statute of policemen, with its subsequent amendments and completions, it is forbidden to the police, civil servants, with special statute, to declare or participate in strike.

Also, according to provisions of article 28 in Law 188/19999 on the Statute of public servants, republished, with its subsequent amendments and completions, to the public servants it is recognized the right to strike, in terms of law.
Taking into account the invoked provisions, we mention that difficulties in interpretation regarding the categories of personnel from the Ministry of Administration and Interior benefiting by the right to strike may arise, because this aspect is not clearly regulated, fact that would call for the setting up of a legal framework.

In this context, in order to correlate the normative acts applying to this field and to eliminate some restrictive discriminatory provisions, the Ministry of Administration and Interior drew up a draft-law for the completion of Law no.168/1999, setting up the possibility of exercising the right to strike by the public servants and contractual staff in the Ministry of Administration and Interior, according to the statutory applicable provisions and not to the institution in which they develop their activity. This draft-law is at present at the Ministry of Labor, Social Solidarity and Family for its signing as a joint author.

Article 6 paragraph 4 " Collective action " - We specify that the provisions of the article 63 of the *Law no.168/1999 on work conflicts solving* are applicable to the entire civil personnel of Ministry of Defense. Considering the specific of the national defense, we appreciate that a clear distinction between the personnel that is more or less implicated in security and national defense related activities is not possible. We mention that the Ministry of Defense's personnel carries on activities implying a certain level of responsibilities specific to defense area, regardless of the structure where he works in, and exercising the right to strike on these conditions will seriously disturb the activities. Besides, making a distinction regarding the right to strike within a personnel category could be interpreted as a discriminatory measure.

According to article 28 in Law no.188/1999 regarding the Statute of Civil Servants, republished with its subsequent modifications, civil servants have an acknowledged right to strike.
Concerning the right to strike for the public servants, the only one amendment that was brought by the Statute of Civil Servants through Law nr.251/2006 refers to the salary rights.

Thus, civil servants do not benefit by their salary and other financial benefits during the strike time.

We underline that the right to strike is recognized for all civil servants, regardless of the institution where they carry on their activity. The right could be forbidden; only by special statutes it shall be applied strictly to the targeted staff categories, for example The Statute of Policemen."

152. The 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 7§1 – Prohibition of employment under the age of 15

7§1 BULGARIA

"The Committee concludes that Bulgaria's situation is not in conformity with Article 7§1 of the revised Charter, on the ground that it is not able to assess whether the application of the legislation on prohibition of employment under the age of 15 is effective."

153. The Bulgarian delegate stated that in March 2005, a draft memorandum of co-operation had been signed with the ILO on child labour. Furthermore, the national IPEC programme, which was scheduled to run until 2007, provided protection and rehabilitation for children who had been victims of exploitation and illegal work. The authorities had also set up an administrative board made up of representatives of public bodies working in this field and NGOs. The aim of the board was to ensure that policies would be consistent with the IPEC Programme. A first meeting of the board had already been held and a new project known as "the child labour survey scheme" had been adopted. The results of this survey would be presented in the next report.

154. The Committee noted the progress made and welcomed the fact that the Government intended to remedy the situation. It invited the Government to provide detailed information in the next report so that the ECSR could assess the situation.

7§1 CYPRUS

"The Committee concludes that the situation in Cyprus is not in conformity with Article 7§1 of the Revised Charter because the prohibition on the employment of under 15 year olds does not apply to children employed in occasional or short-term work in domestic service."

155. The Cypriot delegate said that Section 3 of the Protection of Young Persons at Work Act of 2001 did not apply to children's occasional or short-term work in domestic service. However, this legislation was in the process of being amended and it was planned to delete this passage which was not in compliance. The draft bill would be submitted to the Labour Advisory Committee at its next meeting.

156. In reply to a question from the ETUC representative on when this amendment might take place, the Cypriot delegate said that the Labour Advisory Committee met merely every three months, and that it would therefore be at least three months before the matter was addressed.

157. The Committee took note of the information provided and asked the Government to speed up the amendment process.

7§1 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 7§1 of the revised Charter because the rules governing the minimum age for employment and the nature of the

tasks permitted do not in practice apply to all children working in family enterprises, in domestic work or on family farms."

158. The Estonian delegate said that the Conclusions 2006 (Estonia) were discussed in the parliament. The social committee of the parliament promised that when the Government submits the draft statutory amendment to the Labour Law Act, it will get the highest priority. By now, the draft law with the amendments to the Labor Law Act has been prepared and will be sent to the other ministries and social partners in the nearest future. It is possible that the new law would be adopted in early 2007.

159. The Committee welcomed the fact that the Estonian parliament was intending to amend the law and asked the Government to bring the situation into conformity with Article 7§1 of the revised Charter.

7§1 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 7§1 of the Revised Charter on the ground that the minimum age of 15 years does not apply to children employed by a close relative."

160. The Irish delegate said that in law the situation had not changed. Nonetheless, there were other laws regulating child employment and ensuring their education, such as the Education Act.

161. In reply to a question from the Chair, the Irish delegate said that if a child was absent from school because he or she worked too much in the family business, the school headmaster would summon the parents; after that, the National Educational Welfare Board became involved, and if the matter was a serious one, the legislation on child exploitation and abuse applied. Accordingly, the system worked, even if there were no specific legislation.

162. The ETUC representative noted that Ireland had no intention of changing approach. He asked whether there were any precise figures on how often the National Educational Welfare Board became involved.

163. The Secretariat noted a contradiction with the way the Irish delegate had presented the subject the last time, as he had said that the Irish government was preparing to review the legislation which was not in compliance with the Revised Charter and, in this context, was due to look at the question of children employed by a close relative.

164. The Irish delegate said that he had made a general statement on the review process at the Committee's last meeting, and that this process had been interrupted, as the Government was busy with an agreement with both sides of industry which would last until 2016. With regard to figures, the number of family businesses employing children had fallen sharply, and this was therefore becoming an increasingly more peripheral problem.

165. The Swedish delegate pointed out that children working in family businesses should be given the same protection as other young people at work and suggested that a strong message be sent to the Government.

166. The ETUC representative and the Portuguese delegate suggested voting on a recommendation.

167. The Committee held a vote. The following recommendation was adopted (21 votes for, 1 against and 8 abstentions).

Recommendation on the application of the European Social Charter (revised) by Ireland during the period 2003-2004 (supervision cycle 2006 – part I, "hard core" provisions of the Revised Charter)

(Adopted by the Committee of Ministers on …
at the …th meeting of the Ministers' Deputies)

The Committee of Ministers,[1]

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

Whereas the European Social Charter (revised), signed in Strasbourg on 3 May 1996, came into force on 4 November 2000 with respect to Ireland and whereas, in accordance with Article A Part III, Ireland has accepted 92 of the 98 paragraphs contained in the Revised Charter;

Whereas the Government of Ireland submitted in 2006 its 3rd report on the application of the Revised Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Revised Charter;

Having examined Conclusions 2006 of the European Committee of Social Rights, appointed under Article 25 of the Charter, and the report of the Governmental Committee, established under Article 27 of the Charter;

Having noted that the European Committee of Social Rights had concluded that the situation in Ireland is not in conformity with Article 7, paragraphs 1 and 3, of the Revised Charter on the ground that the prohibition of employment children provided by the Protection of Young Persons (Employment) Act 1996 does not apply to children employed by a close relative;

Following the proposal made by the Governmental Committee;

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

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

7§1 ITALY

"The Committee concludes that the situation in Italy is not in conformity with Article 7§1 of the revised Charter, on the ground that the legislation on prohibition of employment under the age of 15 is not effectively enforced."

168. The Italian delegate pointed out that the only statistics on the subject produced by the National Institute for Statistics (ISTAT) dated from 2002. According to these, only 0.66% of children between the ages of 7 and 14 were forced to carry out illegal work and that was a only a tiny proportion of the total children in that age range. The Government had taken measures to combat poverty and exclusion and reduce school dropout rates. The National Children's Fund also supported specific campaigns against child labour. The Government had also signed an agreement with employers' and workers' representatives to improve children's rights and eradicate illegal child labour.

169. The Committee expressed concern about the seriousness of the situation. It noted that Italy had devised a strategy to combat child labour but asked the Government nonetheless to do everything possible to remedy the situation. The Committee emphasised how important it was to conduct a detailed study to gain a more accurate idea of the extent of the problem and asked the Government to provide detailed information on measures taken to combat illegal child labour together with statistics.

7§1 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 7§1 of the Charter for the following reasons:

– young people employed as domestic staff are not covered by labour legislation;
– the prohibition of employment of persons under the age of 15 is not guaranteed in practice due to the ineffective application of the legislation."

Grounds of non-conformity (for the first time)

170. The Romanian delegate provided the following information in writing :

"With regard to the legislative aspects that were pointed out, we mention that the National Authority for the Protection of Child's Rights (NAPCR) together with the Labour Inspection (LI) have developed a Governmental Decision project that regulates the types of work that is harmful for the health, security or morality of children by their nature or conditions in which they are carried out. The project defines a series of terms and expressions, as follows:

- Light work;
- Hazardous labor;
- Unconditional labor;
- Domestic labor;
- art and sport activities;
- Working period;
- Resting period;
- Child labor in both the formal and the informal sector;
- Technological education;

- Practice training;
- Workplace education.

The characteristics and duration for each type of work are defined based on the age and development characteristics of the child, for both children under and over the age of 15.

Hazardous child labour and the types of work in the informal sector are listed in the appends of the GD project, and all cases of children involved in hazardous and unconditional child labour are to be reported, according to the law, to the General Direction for Social Assistance and Child Protection (GDSACP) that are coordinating the work of the Inter-sectoral County Team (ICT) for the prevention and combating of child labour and ensure the supervision of these cases.

The project also regulates the activities performed by children under 15. Thus, they can perform:

- Activities in the formal sector, cultural, artistic, sports, advertising, modeling or other light work activities),
- Technological education, practical training, practice probation at economic agents on the basis of a convention/ protocol of collaboration between the education unit and economic agent, if these activities are carried out according to the legal provisions.

These activities can be performed based on: a license released by the local labour inspectorate, the written consent of both parents or legal guardian, the professional risks exposure fiche for the child filled up by the employer and the aptitude fiche for the child comprising the work medicine doctor's conclusions.

The authorization can be released if the activities don't harm the security, health or morality of children, school attendance and participation in orientation or professional training programs approved by the competent authorities and if the legal provisions regarding the working time, type of activity and age of child are respected.

The project stipulates contraventions and sanctions, as well as the institutions responsible for the intimation of the cases, ascertaining the contraventions and enforcing the sanctions.

The GD project, attached to the present material, is currently under revision by the responsible authorities and it will be improved based on their observations and suggestions.

With regard to effectively enforcing the existing legislation, NAPCR has unreeled, starting 2005 – this is the year the Law 272 on the protection and promoting children rights came into force – a series of actions meant to lead to the implementation of the right to protection against child labour.

The main activities that NAPCR is running aim at:

I. Initiating and implementing a number of national interest programs;
II. Establishing a Child Labour Unit within NACRP;
III. Developing standards and methodological guides.

I. National Interest Programs (NIP)

The NIP is financed from the state budget by the NAPCR, and the implementation is done by NGOs following some biddings.

NIP 4/2005 "Prevention and combating child labour" aimed at developing and diversifying the ways of intervening with regard to the prevention and combating child labor.

II. The Child Labour Unit (CLU) has been established within NAPCR in 2000 and it has been officially recognized in august 2005 by Order no 294/16.08.2005 of NAPCR's Secretary of State. CLU's main responsibility is to monitor and assist ICTs. CLU's main activities starting 2005 have been:

III. Elaboration of methodological guides

CLU is participating in the elaboration of the methodological guide for the intervention in ICT to prevent from and to fight against child labour exploitation, financed by PROTECT-CEE.

The Labor Inspection controls the application of legal protection measures for young persons who perform a working activity based on an individual employment contract or who have a work relationship defined by current legislation. For instance, the Labor Inspection controls the way of providing protection to persons performing a working activity at home on a determined/undetermined period. The Labor Inspection registered, 61 full time individual employment contracts at home on an undetermined period and 184 part-time individual employment contracts at home in 2005. Also, 41 full time individual employment contracts at home on a determined period and 34 part-time individual employment contracts at home were registered in 2005.

We mention that, the Government's Emergency Ordinance (GEO) no. 65/2005 amended and updated the Labour Code. Consequently, Article 280^1 stipulates that "employing young people under full legal age by failing to comply with the provisions of the law as regards the age of the use of such persons for performing certain working activities in violation of the provisions of the law on the minors' work regime" is an infringement, and is punished by imprisonment from 1 to 3 years."

171. The 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 7§2 – Prohibition of employment under the age of 18 – for dangerous activities

7§2 FRANCE

"The Committee concludes that the situation in France is not in conformity with Article 7§2 of the revised Charter on the grounds that, except in vocational training, legislation does not provide for a general prohibition of employment under the age of 18 for dangerous activities."

172. The French delegate stated that a draft reform of Articles R. 234-16 and R. 234-20 was being prepared because of the 2006 Action Programme for Health and Safety at Work. The reform should be completed by the end of 2006.

173. The Committee welcomed this development. It invited the Government to include all the relevant information in its next report and decided to await the next assessment of the ECSR.

7§2 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 7§2 of the revised Charter on the following grounds:

– young people employed as domestic staff are not covered by labour legislation;
– the prohibition of employment of persons under 18 in dangerous occupations is not guaranteed in practice due to the ineffective application of the legislation."

Grounds of non-conformity (for the first time)

174. The Romanian delegate provided the following information in writing :

"In the draft law regarding the types of work which, by their nature or circumstances in which they are carried out, are likely to harm the health, safety or moral of children, in the framework of art.3. let c, through hazardous work" is defined all types of work, in both formal and informal sectors, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children and has the following characteristics:

(i) it is carried out in hazardous economic activities and occupations in which child work is prohibited by law;

(ii) it has a duration over 2 hours/week for the children in the age group 5 - 12, over 10 hours/week for the children in the age group 12 - 15 and over 30 hours/week for the children over 15 years old.

Article 4 from this draft-law provides that hazardous works for children are determined by the following criteria:

a) exposure to the risk of physical, psychological or sexual abuse;

b) developing activities underground, under water, at dangerous heights or in confined spaces;

c) developing activities with dangerous machinery, equipment and tools, or which involve the manual handling or transport of heavy loads;

d) developing activities in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations affecting their health or other similar conditions;

e) developing activities under particularly difficult conditions, for many hours or during the night or work where the child is unreasonably confined to the premises of the employer or other similar conditions.

f) Developing activities in places under special work conditions that are established by law.

g) exposure to the risk of accidents or professional diseases.

At the article 5 from the above mentioned project are provided the following:

(1) Hazardous works and unconditional worst form of child labour represent the worst forms of child labour and are prohibited, according to art.1 of the Convention of the International Labour Organization no.182/1999, ratified through Law no.203/2000.

(2) The types of hazardous works, which, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or moral of children are mentioned in Annex no.1 of the present decision.

The GD project, attached to the present material, is currently under revision by the responsible authorities and it will be improved based on their observations and suggestions.

With regard to effectively enforcing the existing legislation, NAPCR has unreeled, starting 2005 – this is the year the Law 272 on the protection and promoting children rights came into force – a series of actions meant to lead to the implementation of the

right to protection against child labor. Law 272/2004 stipulates, in article 87, the following:

(1) the child has the right to protection against child labor and cannot be forced to work that poses a potential risk or which is likely to undermine his education or harm his health, physical, mental, spiritual, moral or social development.

(2) it is forbidden for a parent or legal guardian to give the child in return of a reward or not for the purpose of child labor.

(3) if children don't attend school, working outside the law, the schools are to notify at once the public service for social assistance. In such cases the public service for social assistance together with the local school inspectorate and other public institutions relevant for this situation are compelled to take the necessary measures for the re-integration of the child in the schooling system.

(4) The Labor Inspection, together with NAPCR, has the obligation to run awareness raising campaigns:
a) for children – about the protection measures they are entitled to and about the risks posed by child labour;
b) for the general public – including parental education and training activities for the professional categories involved with children, to help them ensure a real protection against child labour for children;
c) for employers or potential employers.

These provisions have been debated upon during the training sessions organized by NAPCR in 2005 within the 2002 Phare Program. These training sessions included about 1800 professionals: teachers, social workers, medical staff, policemen, priests and judges. The aim was to make the stipulations of Law 272/2004 known, and in the following training sessions during October 2006 – June 2007 the issue of child labour will be further analyzed. Thus there will be a chapter on this subject in all the manuals for the above mentioned professional categories. Currently the manuals are being finalized.

According to Article 4 of ILO Convention no. 182/1999 Romania ratified by its Law no. 203/2000, and according to the National Action Plan for the elimination of the child labour, and approved through the Government's Decision no. 1769/2004, an interministerial group of experts, coordinated by the National Steering Committee for the Prevention and Combating Child Labour has elaborated the Bill of a Government's Decision concerning the types of occupations that, by their nature or by the circumstances under which they are performed, are assumed to be unhealthy, unsafe or to alter the child's developing morality. The ministries involved have to give the notifications for the project, and to be approved in a Government meeting by the end of 2006, at the latest.
The project, which includes, in its annexes 1 and 2, an extended list of the occupations regarded as dangerous, will have the power to correct the approach ant the solution of the cases relating to the employment of young persons under 18 in occupations regarded as dangerous."

175. The 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 7§3 – Prohibition of employment of children subject to compulsory education

7§3 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§3 of the revised Charter, on the ground that children's right to compulsory education is not guaranteed due to non effective enforcement of the legislation prohibiting employment up to the age of 15."

176. The Bulgarian delegate referred to his statement with regard to Article 7§1.

177. The Committee referred to its decision with regard to Article 7§1.

7§3 CYPRUS

"The Committee concludes that the situation in Cyprus is not in conformity with Article 7§3 of the Revised Charter because the prohibition of employment of children subject to compulsory education does not apply to children employed in occasional or short-term work in domestic service."

178. The Cypriot delegate referred to his statement regarding Article 7§1.

179. The Committee referred to its decision on Article 7§1.

7§3 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 7§3 of the revised Charter for the following reasons:

– there is no statutory minimum rest period during the school holidays for children aged 15, who are subject to compulsory schooling;
– in practice, children working in family enterprises, undertaking domestic work or working on family farms are not covered by the regulations on working hours or periods of rest."

Ground of non-conformité (for the first time)

180. The Estonian delegate provided the following information in writing:

> "We have discussed the negative conclusion. Hopefully the existing legislation can be supplemented. The amendments shall be prepared as soon as possible."

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

Second ground of non-conformity

182. The Estonian delegate referred to her statement with regard to Article 7§1.

183. The Committee referred to its decision with regard to Article 7§1.

7§3 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 7§3 of the Charter on the following grounds:

– the compulsory rest period during the school holidays for young persons still subject to compulsory education is not of sufficient duration to enable them to benefit from their education;
– the prohibition of employment of children subject to compulsory education does not apply to children employed by a close relative."

First ground of non-conformity

184. The Irish delegate said that the situation had not changed and continued to be of the opinion that 21 rest days were sufficient. Children had to find something to do during the long summer holidays (12 weeks). If the rest period were to be increased, children would remain unoccupied for six weeks which could lead to problems.

185. The Icelandic delegate said that the problem was to be found in other countries and suggested that the case be dealt with in the same way.

186. The ETUC representative agreed to this logic, but also stressed that in this particular case the Committee also had to take into consideration that it concerned a very longstanding non-conformity and that it heard no intention by the Irish government to change the situation.

187. The Swedish and Norwegian delegates agreed that in their respective country school holidays were long and that similar problems were encountered.

188. The Bulgarian, Finnish and German delegates thought that there seemed to be no logical approach to the matter and that the ECSR should be asked what criteria it applied in its case-law.

189. The Cypriot delegate said that education systems in the Council of Europe member States differed in line with the climate and asked why States which had longer summer holidays should be penalised in relation to other. A universal mandatory rest period needed to be agreed upon and the question reviewed in a much broader way.

190. The Secretariat confirmed that the ECSR could be approached with a view to an exchange of views on the case-law criteria.

191. The Committee urged the Irish government to look at the situation and do all it could to bring the situation into conformity with the Revised Charter. It asked it to provide full information on the situation in practice in its next report.

Second ground of non-conformity:

192. The Irish delegate referred to his statement regarding Article 7§1.

193. The Committee referred to its decision on Article 7§1.

7§3 ITALY

"The Committee concludes that the situation in Italy is not in conformity with Article 7§3 of the revised Charter, on the ground that it is not able to assess whether the legislation prohibiting employment under the age of 15 is effectively applied."

194. The Italian delegate pointed out that the only statistics produced by the National Institute of Statistics (ISTAT) dated from 2002. The Government had taken various measures to reduce the school dropout rate and make the legislation on compulsory schooling more effective. The school dropout rate had been relatively stable in recent years, at 0.35%.

195. The ETUC representative maintained that the information provided by the Italian delegate was not new.

196. The Committee referred to its decision with regard to Article 7§1.

7§3 NORWAY

"The Committee concludes that the situation in Norway is not in conformity with Article 7§3 of the revised Charter on the grounds that the rest period of young persons aged under 18 still subject to compulsory education who work is not sufficient during summer holidays and throughout the year."

197. The Norwegian delegate stated that, according to the relevant legislation, children under 18 who were still subject to compulsory education and worked had four weeks of leave including two in the summer. The legislation provided sufficient safeguards to ensure that there were no adverse effects on children's development.

198. The Portuguese delegate asked for information about the number of children working during summer holidays.

199. The Norwegian delegate said that summer jobs for young people were limited and subject to trade union controls.

200. The German and the Belgian delegates asked for information on the draft revision of the legislation referred to previously.

201. The Norwegian delegate said that there had not yet been any amendments to the legislation.

202. The Committee urged the Norwegian Government to investigate the situation and make every effort to bring the situation into conformity with Article 7§3 of the revised Charter.

7§3 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 7§3 of the revised Charter on the following grounds:

– definition of light work for children aged more than 15 still subject to compulsory education does not adequately reflect the notion of light work used under Article 7 of the revised Charter;
– children aged more than 15 still subject to compulsory education are not guaranteed the benefit of a sufficiently long rest period during holidays;
– children employed as domestic staff are not covered by labour legislation;
– the right of children to fully benefit from compulsory education is not guaranteed due to the ineffective application of the legislation."

<u>Grounds of non-conformity (for the first time)</u>

203. The Romanian delegate provided the following information in writing :

> **"**The same Government's Decision concerning the types of occupations that, by their nature or by the circumstances under which they are performed, are assumed to be unhealthy, unsafe or to alter the child's developing morality defines notions such as "easy work", "common work", "dangerous work", "intolerable work" and establishes the responsibilities of those working together in combating the phenomenon of child labour and in controlling all the fields in which it appears to be present (at a formal/informal level, that is including the household/domestic working activities).
>
> Art.3. – The terms and expressions below, in the meaning of the present decision, have the following definitions:

a) „light work" defines all types of work which, by the nature of its supposed tasks and specific conditions it takes place, has the following characteristics:
(i) it is not harmful for a child's safety, health and development;
(ii) it doesn't prejudice attendance at school of the child or participation in vocational training approved by the competent authority, nor the capacity to benefit by the instruction received;
(iii) it has a duration adjusted to the child's development, taking into consideration the following aspects, in both formal and informal sectors: up to 2 hours/week for the children in the age group 5 – 12 and up to 10 hours/week for the children in the age group 12 - 18.

Art.9. – (1) When children carry out activities with cultural, artistic, sport, publicity and modeling characteristics or other light works, on the basis of a contractual relationship or are hired for regular work, it is mandatory to obtain an authorization, for each case, from the territorial labor inspectorate that are on the range the activities are carried out.

Art.11. - In order to obtain authorization mentioned at art.9 there will be observed the following requests:

a) the activities will not be harmful for a child's safety, health and development and will not prejudice attendance at school of the child or participation in vocational training approved by the competent authority.

b) the time of work will not have a duration more than 6 hours/day and 30 hours/week for the children carrying out activities of technological education, practical training, practice probation at economic agents, on the basis of an apprenticeship contract at the work place or an individual labor contract.

c) the time of work will not have a duration more than 1 hour/day and 2 hours/week for the children up to 12 years old, respectively 5 hours/week for the children in the age group of 12 – 18, for the activities mentioned at art.8 line (1) during school period, out of the school hours.

d) to observe the General Norms of Labor Protection, specific norms of safety and health at work place and other legal provisions in force regarding the work regime for children.

With regard to effectively enforcing the existing legislation, NAPCR has unreeled, starting 2005 – this is the year the Law 272 on the protection and promoting children rights came into force – a series of actions meant to lead to the implementation of the right to protection against child labor. Law 272/2004 stipulates, in Article 87, the following:

(1) the child has the right to protection against child labor and cannot be forced to work that poses a potential risk or which is likely to undermine his education or harm his health or physical, mental, spiritual, moral or social development.

(2) it is forbidden for a parent or legal guardian to give the child in return of a reward or not for the purpose of child labor.

(3) if children don't attend school, working outside the law, the schools are to notify at once the public service for social assistance. In such cases the public service for social assistance together with the local school inspectorate and other public institutions relevant for this situation are compelled to take the necessary measures for the re-integration of the child in the schooling system.

(4) The Labor Inspection, together with NAPCR, has the obligation to run awareness raising campaigns:

a) for children – about the protection measures they are entitled to and about the risks posed by child labor;
b) for the general public – including parental education and training activities for the professional categories involved with children, to help them ensure a real protection against child labor for children
c) for employers or potential employers.

These provisions have been debated upon during the training sessions organized by NAPCR in 2005 within the 2002 Phare Program. These training sessions included about 1800 professionals: teachers, social workers, medical staff, policemen, priests and judges. The aim was to make the stipulations of Law 272/2004 known, and in the following training sessions during October 2006 – June 2007 the issue of child labor will be further analyzed. Thus there will be a chapter on this subject in all the manuals for the above mentioned professional categories. Currently the manuals are being finalized."

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

7§3 SWEDEN

"The Committee concludes that the situation in Sweden is not in conformity with the revised Charter on the ground that the mandatory rest period during school holidays for children still subject to compulsory education is not equal to half the holiday period and is therefore not sufficient to ensure that they benefit from such education."

205. The Swedish delegate stated that the relevant statutory rules did not call children's compulsory schooling into question as they only did light work and work approved by their parents.

206. The Committee urged the Swedish government to examine the situation and make every effort to bring the situation into conformity with Article 7§3 of the revised Charter.

Article 7§4 – Length of working time

7§4 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§4 of the revised Charter on the ground that young workers' right to limited working hours in accordance with the needs of their development is not guaranteed due to non effective enforcement of the legislation."

207. The Bulgarian delegate referred to his statement with regard to Article 7§1.

208. The Committee referred to its decision with regard to Article 7§1.

7§4 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 7§4 of the Revised Charter on the ground that it is not able to assess whether the duration of the work of the children employed by a close relative is reasonable."

Ground of non-conformity (for the first time)

209. The Irish delegate provided the following information in writing :

"Protection of Young Persons Regulations, 1996

The above Regulations were made under section 8 (1) of the Protection of Young Persons (Employment) Act 1996 and modified the application of the Act to young people employed in the fishing or shipping sectors. The Regulations provided that the provisions relating to working hours and night work will not apply to such young people. These sectors were exempted from these provisions of the 1977 Act and Articles 8.5 and 9.2 of the EU Directive also allow a derogation for those sectors from those provisions where there are objective grounds for doing so.

The employment of such workers is usually intermittent and seasonal and may entail long spells on and off duty. For these reasons, compliance with these provisions would be impractical.

It should be noted however that, young workers in these sectors are also covered by other provisions, including minimum age. Furthermore, any young person assigned to night work must have equivalent compensatory rest time. Under regulations made under the Safety, Health and Welfare at Work Act, 1989, a young person is entitled to free assessment of his or her capabilities before assignment to night work and at regular intervals thereafter.

The above 1996 Regulations - under section 9 of the of the Protection of Young Persons (Employment) Act 1996 also exclude close relatives from certain provisions of the Act. These provisions relate to the prohibition of employment of children, duties of employer, working hours and time spent in vocational training. These Regulations replaced similar regulations made under the 1977 Protection of Young Persons legislation.

"Close relatives" are defined as family members - spouse, father, mother, grandfather, grandmother, stepfather, stepmother, brother, sister, half brother or half sister - who are employed at a private dwelling house or on a farm where both employer and employee reside or in a family undertaking. These Regulations facilitate young people who wish to work on a family farm or in a family business.

In adopting the above Regulations in 1996, the Government mindful of the Constitutional Rights of the Family, under the Irish Constitution, felt that it was, at the same time, important for young people to be able to help out in the family business. It was also necessary to strike a balance between the need to protect young people and to ensure they got a proper education and the need to ensure employers did not exploit young workers.

The Irish Parliament's Debate on the above Regulations on 14 November 1996 can be accessed at the following website link:
http://historical-debates.oireachtas.ie/D/0471/D.0471.199611140005.html

Successive Governments in Ireland have taken a pragmatic approach to the employment of close relatives for the reasons outlined above. If, however, young persons made complaints against fellow family members in their capacity as that young person's employer, it would be open to the Labour Inspectorate of the Department of Enterprise, and Employment to investigate the complaint under other Employment Rights legislation (e.g. National Minimum Wage).

It would also be open to that young person to make complaints to other State Agencies involved in the Welfare of Children and Young Persons, (such as the Education Welfare Officer Service), if he/she wished to do so.

However, no such complaints have been made to the Department of Enterprise, and Employment in relation to employment by close relatives.

Department of Enterprise, Trade and Employment
Dublin 2
Ireland
September 2006

Appendix 1

Article 41 of the Constitution of Ireland - The Family

1. 1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.
2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.
2. 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.
3. 1° The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.
2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that
i. at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the five years,
ii. there is no reasonable prospect of a reconciliation between the spouses,
iii. such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
iv. any further conditions prescribed by law are complied with.
3° No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved.

Article 42 of the Constitution of Ireland - Education

1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

2. Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.

3. 1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.
2° The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.

4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

5. In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

The full text of the Constitution of Ireland can be accessed at the following website link:
http://www.taoiseach.gov.ie/upload/publications/297.htm "

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

7§4 ITALY

"The Committee concludes that the situation in Italy is not in conformity with Article 7§4 of the revised Charter on the ground that it is not able to assess whether the working hours of young persons are reasonable."

Ground of non-conformité (for the first time)

211. The Italian delegate provided the following information in writing:

"Section 17 of Act 977 of 17 October 1967, in conjunction with the changes in Legislative Decree 345 of 4 August 1999, provides that outside of periods of compulsory schooling children may not work more than 7 hours a day and 35 hours a week. For young persons, hours of work may not exceed 8 hours a day and 40 hours a week. Children are defined as minors who have not yet reached the age of 15 or who are still subject to compulsory schooling. Young persons are minors aged between 15 and 18 who are no longer subject to compulsory schooling. In both cases, under Section 20 of the Act, children and young persons may not work for more than 4½ hours without interruption. If the working day is more than 4½ hours, it must be broken up with an intermediate rest period of at least one hour."

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

7§4 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 7§4 of the revised Charter on the following grounds:

– young people employed as domestic staff are not covered by labour legislation;
– the right to restricted working hours, in accordance with their development needs, is not guaranteed in practice due to the ineffective application of the legislation."

Grounds of non-conformity (for the first time)

213. The Romanian delegate provided the following information in writing :

"In 2005 year, labor inspectors within the territorial labor inspectorates controlled 74 109 employers, with a total number of 2 473 681 employees. 3 213 out of that total were young persons aged between 18 and 15 years of age. Labor inspectors

identified, in their inspection visits, 8 492 persons performing a working activity without having an individual employment contract, and among them 135 were young people aged between 15 and 18 and also 12 children under the age of 15.

During January – June 2006, labor inspectors controlled 51 501 employers. Out of the 1 787 578 employees of the employers controlled, 1 238 were youngsters aged between 15 and 18.
Also, of the 7 642 persons working without an individual employment contract, 65 were youngsters aged between 15 and 18

Art.3. – The terms and expressions below, in the meaning of the present decision, have the following definitions:
a) „light work" defines all types of work which, by its nature supposed tasks and specific conditions it takes place, has the following characteristics:
(i) it is not harmful for a child's safety, health and development;
(ii) it doesn't prejudice attendance at school of the child or participation in vocational training approved by the competent authority, nor the capacity to benefit by the instruction received;
(iii) it has a duration adjusted to the child's development, taking into consideration the following aspects, in both formal and informal sectors: up to 2 hours/week for the children in the age group 5 – 12 and up to 10 hours/week for the children in the age group 12 - 18.

b) „regular work" defines all types of work in the formal sector which, by its nature or the circumstances in which it is carried out, has the following characteristics:
(i) it is not harmful for a child's safety, health and development;
(ii) it doesn't prejudice attendance at school of the child or participation in vocational training approved by the competent authority, nor the capacity to benefit by the instruction received;
(iii) it has a duration between 10 and 30 hours/week, but no more than 6 hours per day, adjusted to the development of the child over 15 years old;

c) „hazardous work" defines all types of work, in both formal and informal sectors, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or moral of children and has the following characteristics:
(i) it is carried out in hazardous economic activities and occupations in which child work is prohibited by law;
(ii) it has a duration over 2 hours/week for the children in the age group 5 - 12, over 10 hours/week for the children in the age group 12 - 15 and over 30 hours/week for the children over 15 years old.
Art.8. – (1) Children up to 15 years old may carry out activities, in the formal sector, in the field of culture, art, sport, publicity, modeling or other light works, in the conditions of the present decision.

Art.11. - In order to obtain authorization mentioned at art.9 there will be respected the following requests:
a) the activities will not be harmful for a child's safety, health and development and will not prejudice attendance at school of the child or participation in vocational training approved by the competent authority.
b) the time of work will not have a duration more than 6 hours/day and 30 hours/week for the children carrying out activities of technological education, practical training, practice probation at economic agents, on the basis of an apprenticeship contract at the work place or individual labor contract.
c) the time of work will not have a duration more than 1 hour/day and 2 hours/week for the children up to 12 years old, respectively 5 hours/week for the children in the

age group of 12 – 18, for the activities mentioned at art.8 line (1) during school period, out of the school hours,
d) respecting the General Norms of Labor Protection, specific norms of safety and health at work place and other legal provisions in force regarding the work regime for children."

214. The 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 7§5 – Fair pay

7§5 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§5 of the revised Charter on the ground that the right of young workers and apprentices to a fair wage and other appropriate allowances is not guaranteed due to non effective enforcement of the legislation."

215. The Bulgarian delegate referred to his statement with regard to Article 7§1.

216. The Committee referred to its decision with regard to Article 7§1.

7§5 FINLAND

"The Committee concludes that the situation is not in conformity with Article 7§5 because it cannot determine whether apprentices' allowances come to at least a third of the basic or minimum wage of an adult at the beginning of an apprenticeship and increase to at least two-thirds by the end."

Ground of non-conformity (for the first time)

217. The Finnish delegate provided the following information in writing :

"Most sectors have valid collective agreement between the employers' organisations and the trade unions that specifies the determination of pay and other terms of the employment. In addition the employment legislation and collective agreements, employees can observe mutual agreements in which terms and conditions of employment are set more specifically than in general provisions.

According to the Finnish legislation the remuneration of the apprentices and other employees is based on collective agreement except the cases where no such agreement is applied. These cases are rare covering usually 0,5 – 1 % of all apprentices. However, even in these cases the authorities responsible for apprentice training have to control the level of the remuneration of the apprentice to ensure that it adequately motivates the candidate in his/her pursuit.

The apprentices are paid for normally for theirs working hours. However, in some sectors e.g. graphic sector, the collective agreement provides that apprentices are also paid for the time spent in theoretical raining. If an apprentice is regular worker he/she is normally entitled to regular pay for e time spent in theoretical training.

Nearly all Collective Agreements (148 generally applicable) have special provisions regarding remuneration of apprentices. Most often remuneration is specified as percentage of the professional workers pay of the sector or the apprentices are regarded as separate group. In food industry e.g. the salary of an apprentice equals to the lowest salary of the professional worker for the first 12 months after which the salary will increase to the next level of the professional worker.

In mechanical forest industry an apprentice's pay during the first year is 6, 80 €/hr and 7,17 €/hr during the second year (since 1.6.2006). The level amounts approximately to 80% of the pay of the professional workers' starting pay agreed in the Collective Agreement.

The training usually occupies about 25 –15 % of the working time depending on the curriculum. In case the remuneration does not cover the time spent in theoretical training, the apprentice is entitled to student financial allowances that amounts to14 €/day and 16 €/day if he/she has family responsibilities (minor child).

Thus the income of an apprentice is made up primarily of remuneration. The student financial aid amounts only to 5-15% of his/her income. The level of the average income is at least 65- 80 % of the starting level of an adult worker working in the sector."

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

7§5 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 7§5 of the Revised Charter on the ground that the remuneration of the young workers is not sufficient."

219. The Irish delegate said that the situation had not changed. The minimum wage for people under 18 had risen slightly, but the National Minimum Wage Commission continued to believe that it was essential to dissuade young people from abandoning their studies to begin work in poorly paid jobs. Young people from disadvantaged backgrounds could be tempted to accept a better-paid job but without any career prospects and without proper training. The education of young people was a national priority.

220. The ETUC representative said that the last time, the Committee had asked the Irish government for alternative solutions and asked whether any such solutions had been put forward to keep young people in training.

221. The Irish delegate said that the Government had taken a number of initiatives in the education field, either for all students, or for those in disadvantaged areas, and taking account of society's needs had put forward a number of proposals for different forms of training to keep young people within the education system.

222. The delegate of the United Kingdom agreed with the Irish policy of wanting to keep young people between the ages of 16 and 18 in the education system.

223. Noting the validity of the comments from the Irish delegate and expressing regret that the Government had not provided any explanation on the pay differential between adults and workers under the age of 18, the Committee asked the Government to step up its efforts to comply with the ECSR criteria.

7§5 NORWAY

"The Committee concludes that the situation is not in conformity with Article 7§5 of the revised Charter on the ground that it is not able to assess whether young workers and apprentices receive a fair wage and appropriate allowances."

224. The Norwegian delegate regretted that the situation had been found not to be in conformity because of a lack of information. He said he would be asking for up-to-date statistics so as to be able to provide figures.

225. The Committee welcomed the fact that the Government was intending to provide up-to-date information so that the ECSR could assess the situation.

7§5 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 7§5 of the revised Charter on the following grounds:

– young people employed as domestic staff are not covered by the labour legislation;
– the right to young workers and apprentices to a fair wage or other appropriate allowances is not guaranteed in practice due to the ineffective application of the legislation."

Grounds of non-conformity (for the first time)

226. The Romanian delegate provided the following information in writing :

"In the budgetary sector
According to Government Decision no.1766/2005 for establishing the minimum national gross salary guaranteed in payment, starting with 1st January 2006, the minimum gross salary guaranteed in payment, is 330 RON monthly, for a monthly full labor programme of 169,333 hours on average in 2006, representing 1,95 RON/hour.

According to Law no.53/2003, the Labor Code, the system of remuneration for the personnel from authorities and public institutions entirely or partially financed by the state budget, state social insurance budget, local budget and special budget funds is established by law, by consulting trade unions organizations representatives.

The way of remuneration for the budgetary personnel is settled through specific laws in each field of activity.

In the budgetary sector, the way of remuneration for debutant persons and for young person is made according to the nature of their responsibilities, to the importance and complexity of their activity, or by case, to the activity they develop, according to each field of activity in this sector.

In the budgetary sector, the base gross wages for the debutants are higher than the level of the national minimum base gross wage guaranteed in payment.

In the competition system
According to the art.39, par.3 from the Additional Act no.710/3rd April 20006 at the Unique Labor Collective Agreement for 2005-2006, registered at the Ministry of Ministry of Labor, Social Solidarity and Family no.20/01/31.01.2005, the base minimum gross salary negotiated for a complete programme of 170 hours, in average, 370 RON, as 2,18 RON/hour, starting with 1st January 2006.

According to the same article from the Labor Collective Agreement Unique at the national level for the years 2005-2006, registered at the Ministry of Labor, Social Solidarity and Family no.20/01.2005, are established the following minimum coefficients of hierarchy, for the following categories of employees:

a) workers:
1. non-skilled = 1,
2. skilled=1,2;

b) administrative personnel employed in functions requiring:
1. high-school=1,1
2. post high school=1,1

c) specialty personal employed in function requiring:
1. post-high school=1,25,
2. school of foreman=1,3
3. overseer=1,4;

d) personnel employed in functions requiring university or post graduation studies = 1,5.

The above mentioned coefficients are applying at the minimum salary negotiated, which can not be, according to the provisions of Labor Code, inferior to the minimum gross base salary negotiated at the superior level: at the level of units groups, branch, and at the national level.

The benefits provided in this labor collective agreement are considered minimum; from this level it begins the negotiation of the labor collective agreement at the other levels.

When a labour collective agreement is not concluded at the branch level or groups of units, provisions of the labor collective agreement concluded at the national level are considered, according to the law, minimum levels, from that starting negotiation of the labor collective agreement and/or individual labor contract at the units' level.

Executing collective labor agreements is compulsory for the parts.

- As to the Governmental Committee of the European Social Charter about the apprentices, according to the Labor Code, with its amendments and completions, apprenticeship at the work place is organized according to apprenticeship contract.

The apprenticeship contract at the work place is an individual labor contract of a particular type.
The apprenticeship contract at the labor place is concluded for a determinate period of time.
The person employed on a basis of an apprenticeship contract has the statute of apprentice.

In the competition system, the young employees, and as well as the apprentices are paid according to the unique labor collective agreement at the national level.

In the budgetary system young workers are paid according to specific laws for each field of activity and have the base salaries regulated by the content of the law.

The provisions of the General Norms of Labour Protection (GNLP), whose enforcement is controlled by the Labour Inspection, apply to young people up to 18 years of age who have a contract or a work relationship as defined by the legislation in force. Still, they do not apply in case of occasional or short term working activities related to domestic service performed in a private household. (GNLP, Article 179).

Regarding the youth, according to draft-law article 9 when children carry out activities with cultural, artistic, sport, publicity and modeling characteristics or other light works, on the basis of a contractual relationship or are hired for regular work, it is mandatory

to obtain an authorization, for each case, from the territorial labor inspectorate that are on the range the activities are carried out."

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

7§5 SLOVENIA

"The Committee concludes that the situation in Slovenia is not in conformity with Article 7§5 of the Revised Charter because apprentices do not enjoy a right to appropriate allowances."

228. The Slovenian delegate said that a new law had been adopted in July 2006, fixing the salary to be paid to apprentices. This law had done away with the provision of the Vocational and Professional Education Act under which pay for apprentices was calculated as a percentage of the average wage. It was now for employers' and employees' organisations to negotiate pay levels.

229. The Committee welcomed the fact that the Government intended to bring the situation into conformity with Article 7§5 of the revised Charter. It asked the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

Article 7§6 – Time spent on vocational training

7§6 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§6 of the revised Charter on the ground that the right of young workers that the time spent in vocational training during the normal working hours be treated as forming part of the working day is not guaranteed due to non effective enforcement of the legislation."

230. The Bulgarian delegate referred to his statement with regard to Article 7§1.

231. The Committee referred to its decision with regard to Article 7§1.

7§6 NORWAY

"The Committee concludes that the situation in Norway is not in conformity with Article 7§6 of the revised Charter on the grounds that, in principle, young workers are not entitled to have their training time paid as working hours."

Ground of non-conformité (for the first time)

232. The Norwegian delegate provided the following information in writing:

"It seems that the conclusion of non-conformity may be based on a misunderstanding, due to lack of detailed information on the Norwegian apprenticeship system. The Ministry of Education and Research has contributed more detailed information on this:

The Norwegian system of vocational education and training includes several trades in which apprenticeship contracts are established as part of the 4-year -education and training period. This means that the pupil/apprentice attends both school and a training establishment in the course of this period. The time which is spent in the training establishment is considered as the productive part of the apprenticeship and this time is paid (See below).

Apprentices
Apprentices and training establishments are regulated by apprenticeship contracts and collective pay agreements regulating pay and working conditions. The apprentice receives payment for the period he/she is in the training establishment. The salary is remunerated according to collective pay agreements and corresponds to a percentage of a skilled worker´s pay: This means that in the course of the whole apprenticeship 4-year period the apprentice is paid about between 30% and in the fourth year about 80 % of a skilled worker´s pay in the same sector.

Young workers *without* apprenticeship contracts.
As regards pay for young workers who do not have an apprenticeship contract their wages is regulated by collective agreements and the national Basic Pay Agreement. Regarding costs for training the Basic Pay Agreement states that costs for continuing education and training is the responsibility of the employer. The parties (the employer and the employee), however, sometimes do not agree on who is to cover the costs for regular pay. Consequently the pay for young workers is negotiated and decided in each individual situation. Young workers without apprenticeship contracts are **not** under the auspices of the Ministry of Education and Research.

This and more detailed information will be given in the next report on Article 7§6."

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

7§6 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 7§6 of the revised Charter on the following grounds:

– young people employed as domestic staff are not covered by labour legislation;
– the right to have time spent on vocational training considered to be working time and remunerated as such is not guaranteed in practice due to the ineffective application of the legislation."

Grounds of non-conformity (for the first time)

234. The Romanian delegate provided the following information in writing :

"Referring to the employment of young people aged between 15 and 18, Law no. 279/2005 concerning apprenticeship at workplace became effective in March 2006. According to this law, the working time for the apprenticeship contract is of maximum 8 hrs/day, 5 days/week."

235. The 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 7§7 – Paid annual holidays

7§7 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§7 of the revised Charter on the grounds that the right of young workers to annual holiday with pay is not guaranteed due to non effective enforcement of the legislation."

236. The Bulgarian delegate referred to his statement with regard to Article 7§1.

237. The Committee referred to its decision with regard to Article 7§1.

7§7 FRANCE

"The Committee concludes that the situation of France is not in conformity with Article 7§7 of the revised Charter, on the grounds that young workers incapacitated by accident or illness during all or part of their annual leave are not entitled to extended or additional leave."

Ground of non-conformity (for the first time)

238. The French delegate provided the following information in writing:

"The European Committee of Social Rights has ruled that the situation in France is not compatible with Article 7§7 of the Social Charter, which reads: "With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay".

The Committee considers that young employees incapacitated by accident or illness during all or part of their annual holiday are not entitled to extended or additional leave.

France attaches particular importance to workers' right to annual holidays. For example, parliament has just voted for a provision to ensure that employees returning from maternity or adoption leave can still exercise their right to paid leave. A certain number of these employees who returned from maternity leave after their particular employer's paid holiday period were previously unable to benefit from their paid holidays.

Section 17 of Act 2006-340 of 23 March 2006 on equal pay between women and men stipulates that employees returning from maternity or adoption leave are entitled to their paid annual leave, whatever the period of paid leave adopted for the personnel of the undertaking, whether by collective agreement or by the employer.

Similarly, France undertakes to consider and change the situation of sick employees, including young workers, to enable them to benefit from their paid holiday entitlements should they return to work after the end of the holiday period."

239. The Committee invited France to bring the situation into conformity with Article 7§7 of the revised Charter.

7§7 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 7§7 of the revised Charter on the following grounds:

– young people employed as domestic staff are not covered by labour legislation;
– the right to paid annual leave is not guaranteed in practice due to the ineffective application of the legislation."

Grounds of non-conformity (for the first time)

240. The Romanian delegate provided the following information in writing :

"According to the Law of Civil Servants, shall be entitled to occupy a public position any person who is at least 18 years old.
Regarding the annual paid leave, the National Agency for Civil Servants is able to pronounce only regarding the guaranteed rights of civil servants. According to the paragraph 2 art.34 from Law no.188/1999, Civil Servants have the right to paid leave

and leave indemnity. This institution has not notified about the violation of this legal provision."

241. The 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 7§8 – Prohibition of night work

7§8 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§8 of the revised Charter on the ground the prohibition of night work for young persons is not guaranteed due to non effective enforcement of the legislation."

242. The Bulgarian delegate referred to his statement with regard to Article 7§1.

243. The Committee referred to its decision with regard to Article 7§1.

7§8 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 7§8 of the revised Charter on the ground that it is unable to assess whether children employed by a close relative are prohibited from performing night work."

Ground of non-conformity (for the first time)

244. The Irish delegate provided the following information in writing :

"The Government of Ireland does not collect the statistics on the number of young persons employed by close relatives and on any other categories of workers not covered by the Protection of Young Persons (Employment) Act 1996. With the major reduction of the number of family farms, the growth of supermarkets instead of small shops and the urbanization of Irish society over recent decades, the numbers of young persons employed on family farms and or other family businesses is believed to be quite small.

The current situation under this Act is summarized below.

Maximum weekly Working Hours for Under 16s *(on light work)* under the Protection of Young Persons (Employment) Act 1996

	Age 14	Age 15
Term-Time	Nil	8 Hours
Holiday Work	35 Hours	35 Hours
Work Experience	40 Hours	40 Hours

A maximum 35-hour week means a maximum 7-hour day. A maximum 40-hour week means a maximum 8-hour day. During the summer holidays, under 16s must have at least 21 days free from work.

Time Off and Rest Breaks for Under 16s under the Protection of Young Persons (Employment) Act, 1996

Half Hour Rest Break after	4 Hours Work
Daily Rest Break	14 Consecutive Hours Off
Weekly Rest Break	2 Days Off, As Far As Practicable To Be Consecutive.

Working Hours, Time Off and Rest Breaks for 16 and 17 Year olds under the Protection of Young Persons (Employment) Act 1996

Maximum Working Day	8 Hours
Maximum Working Week	40 Hours
½ hour Rest Break *after*	4½ Hours Work
Daily Rest Break	12 Consecutive Hours Off
Weekly Rest Break	2 Days Off, As Far As Practicable To Be Consecutive.

Limits on Night and Early Morning Work

Under 16s may not be required to work before 8.00am in the morning or after 8.00pm at night. In general, 16 and 17 year olds may not be employed before 6.00am in the morning or after 10.00pm at night. During school holidays and on week-end nights, where a young person has no school the next day, 16 and 17 year olds may work up to 11.00pm at night (where the Minister *for* Enterprise, Trade and Employment is satisfied, following consultation *with* representatives of the employers and employees concerned, that there are exceptional circumstances).

An example where this occurs is - young persons working in Licenced Premises (bars) up to 11.00 p.m., at night, where the following day is not a school day. Ministerial Regulations and a Code of Practice for Young Persons Working in Licenced Premises were launched on 24 July 2001. In such circumstances, the ban on early morning work then moves forward to 7.00am.

Exceptions

Work at Sea

Compensatory rest breaks in a day or a week can be given in place of the specified rest breaks for young workers employed in fishing or shipping, provided it is reasonable to vary the prescribed arrangements and the employees' trade union or representative has been consulted. The appropriate SI (Statutory Instrument) SI No. 1 of 1997 concerning the Protection of Young Persons (Employment) (Exclusion of Workers in the Fishing or Shipping Sectors) Regulations, 1997 are currently being revised by the Department of Communications, Marine and Natural Resources.

Defence Forces

The rules on hours of work, night work and minimum periods of rest do not apply to young people, who are members of the Defence Forces, when on active service; engaged on operational duties at sea or in aid of the civil power or in training associated with such activities.

The vast majority of the Defence Forces' recruits are 17-18 years of age on enlistment. The exceptions are a small number of Army apprentices, who enlist sometimes at 16 years of age.

Close Relatives

In relation to close relatives working (i) in a private dwelling house or on a farm, in or on which both the employer and employee reside, or (ii) in a family undertaking, on work which is not industrial work, there are regulations modifying the detail of the Protection of Young Persons (Employment) Act, 1996 provided that the conditions of employment meet the terms of the EU Directive, and the health and safety of the young people concerned is not put at risk. The sections of the Act which have been modified are set out below, (though not a "carte blanche") are provided under the Act in respect of close relatives in relation to the following sections of the Act.

Section 3 of the Act: This section generally prohibits the employment of children except in the circumstances set out in the section. It also enables the Minister to permit by licence in individual cases the employment of children in cultural, artistic,

sporting or advertising activities. Inter alia, it sets out maximum working hours for children over 14 on light, non-industrial work of 7 hours per day / 35 hours per week. It permits a child over 15 to do light work during school term for up to 8 hours per week.

Section 5 of the Act: This section lays down the duties of an employer who employs a child or young person, including the production, prior to employment, of a birth certificate; the written permission of the parents/ guardian of the child being employed; and the need to maintain a register recording the basic details of the young person's employment (full name, date of birth, the time the young person / child works).

Section 6*(1)(a)* of the Act: *This sub-section of the Act provides that an employer shall not employ a young person for more than 8 hours in any day or 40 hours per week.*

Section 11 of the Act: This section provides that any time spent on vocational training, with the consent of the employer, by an employee who is a young person working under a combined work/training scheme or an in-plant work experience scheme shall be deemed to be working time.

The practical difficulties in enforcing the Act in relation to close relatives were acknowledged in the drafting of the 1996 Act by the provision of the above exemptions. However, cognisance must also be taken of the parallel Education (Welfare) Act, 2000, which addresses the problem from the perspective of the completion of formal education (school leaving age). "

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

7§8 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 7§8 of the revised Charter on the following grounds:

– young people employed as domestic staff are not covered by labour legislation;
– the prohibition of night work for young persons is not guaranteed in practice due to the ineffective application of the legislation."

Grounds of non-conformity (for the first time)

246. The Romanian delegate provided the following information in writing :

"According to the legislation in force, night work is forbidden to young workers under the age of 18. There are no exceptions to this rule.
As for the young workers involved in household working activities, we mention that, in the absence of a work relationship such as defined by the legislation in force, the Labour Inspection has no competence in controlling the way household activities are performed.

According to the draft-decision above-mentioned, article 1, present decision regulates the definition, prohibition and elimination of the types of work which, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children.

Article 4 It stipulates that hazardous works for children are determined by the following criteria: having activities under particularly difficult conditions, for long hours or during the night or work where the child is unreasonably confined to the premises of the employer or other similar conditions.

Art.7.para 1 All cases of children engaged in unconditional worst form of child labour and hazardous works are reported, according to the law, to the General Department of Social Assistance and Child Protection, which coordinates the activity of the intersectoral county team for the prevention and combat of child labour and ensures the monitor of these cases."

247. The 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 7§9 – Regular medical examination

7§9 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§9 of the revised Charter on the grounds that the right of young workers to regular medical examination is not guaranteed due to non effective enforcement of the legislation."

248. The Bulgarian delegate referred to his statement with regard to Article 7§1.

249. The Committee referred to its decision with regard to Article 7§1.

7§9 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 7§9 of the revised Charter on the ground that medical examinations for young workers are not frequent enough."

Ground of non-conformité (for the first time)

250. The Estonian delegate provided the following information in writing:

"The ministerial regulation no. 74 of 24 April 2003 has been amended, the amendment entered into force on 1 April 2006.

In accordance with the order the employee's first medical examination shall be carried out within the first month as of the commencement of work and thereafter after the period of time specified by the occupational health doctor, but not less often than once in three years and in case of an employee who is a minor not less than once in two years."

251. The Committee took note of the positive developments announced and decided to await the next assessment of the ECSR.

7§9 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 7§9 of the revised Charter on the following grounds:

– young people employed as domestic staff are not covered by labour legislation;
– the right to regular medical examinations is not guaranteed in practice due to the ineffective application of the legislation."

Grounds of non-conformity (for the first time)

252. The Romanian delegate provided the following information in writing :

"At the draft-decision above-mentioned at the art 10 it is provided the following:

(3) The fiche of aptitudes for children mentioned at line (1) of the present article will include the approval from the doctor of labour medicine, according to the form stipulated at Annex no.6.

(4) The doctor of labour medicine will give the approval mentioned at line (3) on the basis of the certificate concerning the child health given by the family doctor and the fiche of exposure at professional risks for children.

The frequency and the type of examinations for each occupation considered as dangerous or difficult are established, as we also pointed out in the previous report, in annex 7 to the General Norms of Labour Protection."

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

7§9 SLOVENIA

"The Committee concludes that the situation in Slovenia is not in conformity with Article 7§9 of the revised Charter because it is unable to determine whether the right of workers aged under 18 to regular medical examinations is guaranteed."

Ground of non-conformity (for the first time)

254. The Slovenian delegate provided the following information in writing :

"The responsibility for health and safety at work is governed by two umbrella laws, the Employment Relationships Act and the Health and Safety at Work Act. The latter in Article 15 stipulates the obligation of the employer to provide medical examinations for workers in the scope and according to the method defined by the Rules on Preventive Medical Examinations of Workers (Official Gazette of the Republic of Slovenia 87/02, 29/03 - correction), which we have already written about in our 5th report. In terms of the scope, contents and deadlines for individual preventive examinations, these Rules instruct employers to assess risks with a special emphasis on health requirements determined by the employer on the basis of an expert evaluation by an authorised physician, results of relevant risk factor measurements and harmful effects in the working environment. The Rules define the types, scope, contents and deadlines of preventive medical examinations and specify the scope of a preliminary preventive medical examination which establishes if health requirements for the performance of certain work for the employer have been met.

Pursuant to the Employment Relationships Act (Official Gazette of RS, no. 42/02, 79/2006) that is harmonised with the Council Directive 94/33/EC of 22 June 1994 on the Protection of Young People at Work, the minister responsible for labour, family and social affairs in agreement with the minister responsible for health issued Rules on Protection of Health at Work of Children, Adolescents and Young Persons (Official Gazette of RS no. 82/2003) in 2003. The aim of the Rules is to protect health, mental and physical development of children, adolescents and young persons at work (Article 1). The Rules define the types of light work which may be performed by children over 13 years of age under certain conditions (Article 3). The general duties of the employer are defined in Article 4, which among other things says that within the framework of health protection the employer must provide protective and preventive measures for healthy and safe work of children and adolescents suitable for their age. For this purpose the employer must engage an authorised physician, other professionals and expert services.

If according to the risk assessment, a certain work place poses risks for safety, mental or physical health or for the development of young persons, the employer must provide regular health surveillance, and preliminary and periodical medical examinations for young persons. Periodical targeted medical examinations are carried out within periods specified in the risk assessment but these periods must not exceed one year (Article 4).
Article 5 of the Rules prohibits the exposure of young persons to the listed risk factors (physical, biological and chemical) and also prohibits them (Article 6) to perform other jobs for which the risk assessment established that they can have harmful effects on the young person's safety, health and development. Physical, biological and chemical factors which must be taken into account by employers in risk assessments are specified.

The field of health protection at work for children, adolescents and young persons is monitored by the Ministry of Labour, Family and Social Affairs and the Ministry of Health. The regulation is implemented by the Labour Inspectorate of the Republic of Slovenia and the Ministry of Labour, Family and Social Affairs.

Regular medical examinations of persons younger than 18 years are additionally governed by other specific regulations on work of young persons that were adopted on the basis of the Employment Relationships Act:
Rules on Issuing Work Permits for Children under 15 Years of Age (Official Gazette of RS no. 60/04), Rules on Protection of Health at Work for Pregnant Workers, Workers who have Recently Given Birth and Nursing Workers (Official Gazette of RS no. 82/03), Rules on Protection of Workers against Risks arising from Exposure to Carcinogenic and/or Mutagenic Substances (Official Gazette of RS no. 38/00), Rules on Exercising Health Surveillance over Exposed Workers (Official Gazette of RS no. 86/04)."

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

7§9 SWEDEN

"The Committee concludes that the situation in Sweden is not in conformity with Article 7§9 of the revised Charter on the grounds that a regular medical examination of young workers in the occupations concerned is not guaranteed by legislation."

256. The Swedish delegate said that the legislation offered sufficient protection for young workers. All aspects were taken into account to ensure that they were healthy and safe at work. A medical certificate was compulsory for dangerous work posing a health risk. The labour inspectorate was responsible for checking that this rule was complied with.

257. The Committee asked the Swedish government to provide information on the level of protection afforded to young workers, particularly statistics on the number of medical check-ups conducted.

Article 7§10 – Protection against physical and moral dangers

7§10 ALBANIA

"The Committee concludes that the situation in Albania is not in conformity with Article 7§10 of the revised Charter on the grounds that the number of minors involved is still too high and that the measures adopted have proven insufficient and ineffective."

258. The Albanian delegate provided the following information in writing:

"With regard to the given conclusions on the National Report for the Implementation of the Revised European Social Charter, we want to acknowledge the fact, that certain conclusions regarding the conformity of the situation in Albania, with article 7/10, need to be updated with new information on the efforts taken by the Albanian institutions in the fight against the trafficking of human beings during year 2005.

1. Regarding the given conclusions on the National Strategy against the Trafficking of Children and the Protection of the Children Victims of Trafficking;

The prevention and the fight against the trafficking of human beings is one of the priorities of the Albanian government to which is being given special attention. The main pillars on which this fight is focused are: investigation and prosecution of trafficking cases; victim and witness support and assistance, as well as the prevention of trafficking and re-trafficking. A special priority is being given to the efforts made by the government on the protection of the children victims of trafficking and to the prevention of such phenomenon. On May 31st, 2005 has been adopted by the Albanian government, the National Strategy against the Trafficking of Children and the Protection of the Children Victims of Trafficking on Children, 2005-2007, which aims at protecting, assisting and taking further the healthy development of children in Albania, a significant weight it has been given to the protection of the children, victims of trafficking. Regarding the implementation of this strategy we report that the assigned duties for each institution have been fulfilled sufficiently[1]. Human and financial resources are covered by the institutions involved; these institutions use their own financial and human capacities to accomplish the assigned duties in cooperation with the other actors from the civil society, NGOs, international organizations, etc.
Albania has a complete legal framework on which is based the fight against the trafficking of human beings. Below we mention the respektive articles.

- Article 110/a of Penal Code Trafficking in human beings: The recruitment, transport, transfer, hiding or reception of persons through threat or the use of force or other forms of compulsion, kidnapping, fraud, abuse of office or taking advantage of social, physical or psychological condition or the giving or receipt of payments or benefits in order to get the consent of a person who controls another person, with the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment of from five to 15 years and with a fine of from two million to five million lek. The organization, management and financing of the trafficking of persons is punished with imprisonment of from seven to 15 years and with a fine of from four million to six million lek. When this offence is committed in collaboration or more than once, or is accompanied by mistreatment and making the victim commit various actions through the use of physical or psychological force, or brings serious consequences to health, is punished with imprisonment of no less than 15 years and with a fine of from six million to eight million lek. When the offence has brought about the death of the victim as a consequence, it is punished with imprisonment of no less than 20 years or with life imprisonment, as well as with a fine of from seven million to 10 million lek. When the criminal offence is committed through the utilization of a state function

[1] A detailed information you will find in the attached material "Report on the Realization of the Albanian National Strategy to Combat Trafficking in Human Beings January-December 2005", p. 18-25 (appended to the file).

or public service, the punishment of imprisonment and the fines are increased by one fourth of the punishment given.

- Article 128/b of Penal Code Trafficking of Minors: The recruitment, transport, transfer, hiding or reception of minors with the purpose of exploitation for prostitution or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment of from seven to 15 years and with a fine of from four million to six million lek.
The organization, management and financing of the trafficking of minors is punished with imprisonment of from 10 to 20 years and with a fine of from six million to eight million lek.
When this offence is committed in collaboration or more than once, or is accompanied by mistreatment and making the victim commit various actions through physical or psychological force, or brings serious consequences to health, it is punished with imprisonment of no less than 15 years and with a fine of from six million to eight million lek.
When the offence has brought about the death of the victim as a consequence it is punished with imprisonment of no less than 20 years or with life imprisonment, as well as with a fine of from eight million to 10 million lek.
When the criminal offence is committed through the utilization of a state function or public service, the punishment of imprisonment and the fines are increased by one fourth of the punishment given.

- Article 114/a of Penal Code of Penal Code Exploitation or prostitution with aggravated circumstances: When exploitation or prostitution is committed:
1. with minors;
2. against some persons;
3. with persons within close consanguinity, in-laws or custodial relations or by taking advantage of an official rapport;
4. with deception, coercion, violence or by taking advantage of the physical or mental incapability of the person;
5. against a person that has been forced or coerced to exercise prostitution out of the territory of the Republic of Albania;
6. It is committed with accomplices or more than once or by persons who have state and public functions/duties;

is punished from 7 up to 15 years imprisonment.

2. Regarding the cited figures:
We would like to clarify the fact that the sources, from which the various international organizations and NGOs receive their information on the trafficking situation in Albania, are different and not always updated[1].
On the framework of the fight against trafficking in human beings as well as the measures taken in this regard as; the adoption of laws on anti-trafficking according to European standards as well as the assessment of the present data, the development of the trafficking of human beings to the other countries has declined. We can say that Albania doesn't represent a transit country of the trafficking victims. Albania has made obvious progress in adopting laws on anti-trafficking according to international standards, including here the amendments to the Penal Code, The Protection of Witnesses and Anti-Mafia Law, establishment of the Serious Crime Court and Regional Task Forces against the organized crime, to treat among other cases, the

[1] See statistics "Report on the Realization of the Albanian National Strategy to Combat Trafficking in Human Beings January-December 2005", p. 29-32.

serious cases of trafficking in human beings. Also a National Reference Mechanism has also been established for the identification and protection of the returned victims.

3. Regarding the measures taken by the Albanian government in the field of prevention, assistance of victims of trafficking, we can mention some of the most important accomplishments:

As far as it takes for the government engagements and priorities where as it has been mentioned above, the anti-trafficking efforts have priority, within this period, there have been undertaken these concrete steps:

- The functioning of the State Committee of Fight Against Trafficking in Human Beings which is chaired by the Minister of Interior is as well of such importance, which was recently changed by the decision of the Council of Ministers, nr. 653, on 10. 17. 2005. This Committee is drawn from high political level representatives of central institutions, who are responsible for the prevention and fight against trafficking in human beings in their respective fields;
- To monitor systematically the anti-trafficking efforts in all its aspects (investigation/prosecution, prevention and assistance to the victims) it has been assigned a National Coordinator for the fight against human trafficking /Deputy Minister of Interior, attached to this office is established the Anti-Trafficking Unit with the main tasks to:
  - to monitor the activities of institutions in charge with the implementation of the National Strategy to Combat Trafficking in Human Beings,
  - to coordinate with these institutions,
  - -to collect information and data on cases related to this phenomenon etc.

- An important progress was the drafting and signing of the Draft-Agreement on Protection and Assistance of Child-Victims of Trafficking with the Hellenic Republic, which will be signed on February, 27th 2006. In the future such agreements will be signed with other countries as well, extending in this way the action field not only regarding children, but for other groups too, vulnerable to this phenomenon.

- It is in its final stage the establishment of the Responsible Authority, which will coordinated the referral for help process and the long-term rehabilitation of all the victims of trafficking, in close collaboration with involved Albanian or foreign partners.

- Albania has continued to improve its preventable abilities in the main border check points, as well as the active participation with the neighboring countries and other waiting countries in the process of developing cooperation in the field of; uncovering, law implementation and legal etc.

- By the Decision of Council of Ministers, no. 368, dated on 31.05.2005, is enacted the "National Strategy for Children", and in its implementation is established an Inter-Ministerial Comitee for Children. Also in the Action Plan of this Strategy for the period 2005 - 2010 is provided:

  - Establishing an authority for Children Protection, National Commitee for Children;
  - Drafting of a Code for Children(within the periode 2006 - 2008);
  - Establishing a justice system for minors; as this issue will have effects in the budget it is foreseen and preliminarily agreed that these be covered by donators funds as UNICEF;
  - Prohibition in publication of personal data for the detained children; this issue is not foreseen to have any financial costs;

- Revision of the procedures for the family reconjunction, in accordance with the general principles of the Convention for the Rights of Children (CRC), this issue is not foreseen to have any financial costs;
- Monitoring and improving the legislation with regard to the functioning and organizing the Albanian Adoption Commitee as a central and competent authority for children adoption.

The Albanian delegate also provided additional written background information on the situation relating to Article 7§10 in her country."

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

7§10 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§10 of the revised Charter on the grounds that although there has been a downward trend in the number of children trafficked and several measures have been taken to address the problem, the number of children affected is still too high, indicating that the measures adopted have not yet been fully effective."

Ground of non-conformity (for the first time)

260. The Bulgarian delegate provided the following information in writing:

"Apart from the multilateral instruments, signed by Bulgaria, number of bilateral agreements has been signed concerning this issue.

The State Agency for Child Protection maintains specialized web-pages on Counter-action of the commercial sexual exploitation of children with commercial purpose (www.stopech.sacp.government.bg) and the Convention of the Rights of the Child.

The SACP with the assistance of the Bulgarian mission of the International Organisation on Migration (IOM) initiated the elaboration of the Coordination mechanism for referring and taking care for unaccompanied Bulgarian children – victims of trafficking abroad. This effective approach coordinates the efforts of all concerned institutions and responds to the actual recommendations of the European Union Monitoring Report for 2005 in the field of trafficking of persons.

A network of information and consultation centers on migration has been set up by the IOM mission in Bulgaria for preventing illegal migration and trafficking.

More detailed information and results on these and other initiatives will be presented in the next report."

261. The Committee took note of the positive developments and decided to await the next assessment of the ECSR.

7§10 MOLDOVA

"The Committee concludes that the situation is not in conformity with Article 7§10 of the revised Charter on the grounds that the number of children trafficked is too high and the measures adopted are insufficient."

Ground of non-conformity (for the first time)

262. The Moldova delegate provided the following information in writing:

“The Moldovan government is very concerned about trafficking, prostitution and pornography, particularly in the case of children. In ratifying the UN Convention on the Right of the Child and the revised Social Charter, the government has undertaken to respect and protect children's rights. In February 2002, Moldova signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. As part of its national human rights action plan for 2004-2008, approved by parliament on 24 October 2003, and its efforts to bring national human rights legislation into line with international standards, Moldova has undertaken to ratify the protocol by 2007. To that end, the interior ministry has set up a working group, with an international expert, to assess existing legislation and recommend amendments to make it compatible with the protocol.

A number of national programmes, such as the government's action programme for 2005-2009 – "modernisation of the country – well-being of the people", the "Republic of Moldova – European Union" national plan and the national human rights action plan for 2004-2008, all give priority to preventing and combating organised crime, including trafficking in human beings.

The "modernisation of the country – well-being of the people" programme
The government has established a national council to combat human trafficking. In its Decision 903 of 25 August 2005, it approved the national plan for preventing and combating human trafficking for 2005-2007. The Anti-Trafficking Act was passed on 20 October 2005.

The "Republic of Moldova – European Union" national plan
Item 5 of the plan provides for the development and implementation of an appropriate legal framework for preventing and combating human trafficking and helping its victims, revision of the anti-trafficking legislation to bring it into line with international standards, closer collaboration with international bodies such as the OSCE, the UN and the Council of Europe and ratification of the relevant international instruments, namely the UN "Palermo" Convention against Transnational Organised Crime and its protocols to prevent, suppress and punish trafficking in persons, especially women and children. The protocols were ratified by Acts 15-XV and 16-XV of 17 February 2005.

Item 52 of the plan calls for greater efforts to combat trafficking, particularly of women and children, and new measures to prevent trafficking and aid and rehabilitate its victims. This involves a number of practical steps, such as implementing the recommendations in the OSCE action plan to combat trafficking in human beings (approved in Maastricht in December 2003), implementing the national human rights action plan for 2004-2008, encouraging regional co-operation between police, border guards, customs and judicial officials and the development of psychological and social support for victims to help them reintegrate into society.

The plan also calls for draft legislation to protect public morals, which would also include provisions on pornography that took account of developments in information technology.

In its decision 727 of 16 June 2003, the government approved the national child and family protection strategy, which covers such issues as poverty, violence, lack of a family environment and the growing number of children at risk, such as orphans, street children, children from large families, abandoned children, children suffering abuse and/or trafficking and ones requiring a new social policy approach.

One of the aims of the strategy is to develop the capacity of families and the community to assist children and prevent institutionalisation. It is concerned with all the country's children, though with a particular emphasis on those in difficulty, that is children who are abandoned, abused, mistreated or neglected, street children and disabled children.
There are five aspects to the strategy: a legal framework, an institutional framework, capacity development, community services and finance. These include the following elements:

- Developing and expanding the legislation on abuse, discrimination, trafficking and other violations that might pose a threat to children;
- Amending the legislation on guardianship and adoption (national and international);
- Revising and drawing up model regulations governing the operations of services to protect, look after and foster the development of children in difficulty;
- Developing facilities at all levels to assess the needs of children and families and help to prevent problems arising;
- Establishing a national and local information system on children and families in difficulty and at risk and bodies responsible for protecting children and families;
- Helping parents to be better able to meet the needs of their children, particularly when those children are at risk;
- Offering technical and organisational support and information to communities to help them identify problems of children and families and organise and administer the relevant social services;
- Developing ways of involving the private sector in tackling these problems and in establishing community social services.

There is also a draft national plan to prevent and combat violence against children, covering the period 2006-2009. It will take account of the conclusions of the European Committee of Social Rights."

263. The Committee invited Moldova to bring the situation into conformity with Article 7§10 of the revised Charter.

7§10 PORTUGAL

"The Committee concludes that the situation in Portugal is not in conformity with Article 7§10 of the revised Charter on the grounds that the simple possession of child pornography is not a criminal offence."

264. The Portuguese delegate informed the Committee that a draft bill remedying the situation had been approved by the Government in July 2006 and it had now been submitted to Parliament. She added that the new legislation would also remedy the problem relating to corporal punishment which was currently the subject of a collective complaint (OMCT v. Portugal, Collective Complaint No. 34/2006).

265. The Committee welcomed this development and decided to await the next assessment of the ECSR.

7§10 ROMANIA

"The Committee concludes that Romania is not in conformity with Article 7§10 of the Revised Charter on the grounds that although significant measures have been taken to address the problem of trafficking of minors, the number of children affected is too high, indicating that the measures adopted have not yet been fully effective."

Ground of non-conformity (for the first time)

266. The Romanian delegate provided the following information in writing :

"Trafficking in children - measures undertaken and perspectives for the effective implementation of the law and making these measures more efficient at national level

During 2006, it was elaborated, by an inter ministerial collaboration, „The National strategy to prevent and to fight against human trafficking 2006-2010", which includes the issue of trafficking of children, and as well as the Plan of Action to implement this strategy for 2006-2007. These documents are currently in process of being approved by the Romanian Government.

By Order No.295/16.08.2005 of the State Secretary of NAPCR, the technical secretariat of the subgroup for the coordination of the prevention and fight against trafficking of child was set up, as a specialized working body created by the Government Decision no. 1295/2004 for the approval of the national plan to prevent and fight trafficking of children.

In order to make more efficient the actions at national level in this field, the technical secretariat was re-organized in 2006 by the Order No.191/03.05.2006 of the State Secretary of NAPCR, having complementary responsibilities in the field of sexual exploitation of children for commercial purposes and in the field of migration and exploitation of children in other countries. This revised body has at present a supplementary functional capacity - through the time and resources allocated by NAPCR, UNICEF and ILO-IPEC – and it also assures the full complementarity with the SUCL.

It was elaborated the project of the „National strategy in the field of protection and promotion of child's rights 2006-2013" and the National Plan for its implementation, which is currently in the process of being approved by the Romanian Government. In this Strategy, children victims of traffic and of the sexual exploitation are included as a special target group. For these children, the strategy stipulates the following provisions:
- The creation, at national level, of a complete database with all the information regarding internal and international children trafficking;
- The development of the national network of emergency centers for protection and assistance for children victims of trafficking;
- The establishment of the framework regulations for the functioning of these centers, and the quality compulsory minimum standards.

These provisions for action are developed in the National Plan for implementing the strategy, which has an entire chapter (chapter 7) for „Respecting the child's right to protection, through interdisciplinary and inter institutional intervention, against abuse, neglect and exploitation".

I. Initiation and implementation of national interest programs
During 2005 was developed the national interest program "*the reintegration and support of children who are repatriated or victims of trafficking"* aimed at setting up special child welfare services for repatriated and/or trafficked children, as well as activities meant to prevent child trafficking. The allocated budget was of 7.000 RON, (cca.200.000 EURO). The projects were implemented by 3 NGO - The „SOS Copiii Gorjului" Foundation, the Romanian Foundation for Children, Community and Family (RFCCF) Save the Children Organization in 23 counties of Romania and had the following results:

- 2 new transit centers were set up in Meredith and in Giurgiu counties, with a total accommodation capacity of 16 places / so that the total number of such centers in Romania is 12, with a total capacity of 122 places;
- 10 interinstitutional teams were created and trained, in order to coordinate the activities dedicated to the prevention and fight against the illegal migration, exploitation and trafficking of children – thus, the teams became formal in nature by the conclusion of partnership agreements and now there are 19 teams; likewise, the team members were trained in this particular field;
- 109 employees from 23 GDSACPs (2-3 people from each county received 2-3 day training courses) were trained;
- An information and public-awareness campaign was organized; to this effect 10,000 posters and 2,000 leaflets were made, which were distributed in schools, GDSACPs, hospitals and other public places of great impact (there is an estimated number of about 5.500 beneficiaries for the schools involved in the project);
- upfront services were provided to 362 families at risk (financial support for 255 children at risk, assistance for the preparation of the repatriation of 16 children, support for the family reintegration of 24 children).

II. Initiation and implementation of bilateral partnerships and programs
The Project on the "Romanian-Austrian interprofessional exchange on the domestic and bilateral system for protecting unescorted migrant children and children who are victims of exploitation and trafficking in human beings" – co-financed by the Viena City Hall and the PROTECT-CEE Project.

III. Elaboration of standards and methodological guides
In addition to the programs financed by ILO-IPEC, there were implemented other 24 small programs with a total budget of 507.284 USD. Until now, 755 children benefited by specialized services of psychosocial counseling, informal educations, free time activities, like skills, professional orientation and vocational training. Also, 250 specialists (social workers, psychologists, teachers, members of trade unions, schools counselors, career counselors, local and central authorities) participated in training courses. In these pilot projects were or will be elaborated and tested the following manuals/guides/ brochures:
- Manual for the psychosocial counseling of children victims of trafficking;
- Manual for the training of educators from equal to equal to prevent the trafficking of children and educative reintegration of children victims of trafficking;
- Manual for career education and counseling]n order to reduce the vulnerability in trafficking for children and youth from segregated communities;
- "A small guide for a big career" - manual for professional orientation for pupils and teachers.

With the support of the UN Agencies from Romania and USAID were published and distributed the "Specialized Manual of training for the psychosocial counseling of children victims of trafficking" (2004) – translation of the manual produced by ILO-IPEC, in the „Trafficking of children in South Asia" program, 2002.

At present, there is implemented a project with the financial support and technical assistance from UNICEF and Child Net, for the creation of some methodological documents concerning trafficking of children, abuse, neglect and exploitation."

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

7§10 SLOVENIA

"The Committee concludes that Slovenia is not in conformity with Article 7§10 of the Revised Charter on the grounds that the simple possession of child pornography is not a criminal offence."

268. The Slovenian delegate confirmed that the simple possession of child pornography in Slovenia was not a criminal offence. However she further stated that amendments to Penal Code were under to be considered in 2007 and that this issue would be examined, including of course the ECSR's conclusion.

269. The Swedish delegate supported by the Bulgarian delegate, recalled that this was a serious case as child pornography involved the exploitation of children. She hoped that the planned amendments to the criminal code in 2007 would remedy the situation and stated that the Committee should wait before taking further action.

270. The Committee urged the Slovenian Government to bring the situation into conformity with the revised Charter.

Article 12§1 – Existence of a social security system

12§1 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 12§1 of the revised Charter on the grounds that the minimum levels of the unemployment benefit, of the old-age pension, of the invalidity pension and of the survivors' pensions, and the social old-age pension are manifestly inadequate."

271. The Bulgarian delegate stated that new legislation on the calculation of pensions entered into force in 2006. Every year the Committee of Ministers will set the amount of the minimum pension in the budget and all other pensions will be calculated on that basis. After the increase, the minimum pension was 50% higher than the amount provided in the last report. The unemployment benefit also increased every year by 7-10%. Full information will be provided in the next report.

272. The Committee took note of the changes and decided to await the next assessment of the ECSR.

12§1 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 12§1 of the revised Charter on the grounds that the level of the state unemployment allowance… [is] manifestly inadequate."

First ground of non-conformity

273. The Estonian delegate explained that the unemployment insurance allowance is provided only to those persons who worked and paid contributions for a certain period of time, while the unemployment allowance is for all the unemployed persons. In 2006, two third of the unemployed people received the unemployment allowance and one third the unemployment insurance allowance. The number of persons entitled to the latter allowance should increase as a consequence of an amendment to the legislation which reduced from three to two years the time frame within which the unemployed shall have worked for 12 months. The amount of the unemployment allowance will also increase and it may be complemented by other labour market measures or social assistance.

274. The Committee welcomed the positive developments and decided to await the next assessment of the ECSR.

12§1 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 12§1 of the revised Charter on the grounds that […] the minimum old-age pension, the national pension, and the minimum invalidity pension are manifestly inadequate."

Second ground of non-conformité (for the first time)

275. The Estonian delegate provided the following information in writing:

"The level of minimum old-age pension and incapacity pension has increased after 2003 and exceeds the poverty threshold (103 euros).

1. Since 1 April 2006
- the amount of the old-age pension of a person with the length of employment of 15 years is 1,729 kroons ;
- the amount of the incapacity pension of a person with a 100 percent loss of capacity for work is 2,456 kroons.

2. The level of national pension has also increased. In addition to the ordinary increases it has been increased by extraordinary increases in pension. While in 2003 the amount of the national pension was 931.37 kroons, since 1 April 2006 the amount of the national pension has been 1,269 kroons (the increase has been 36 percent). Unfortunately the level of the national pension still remains below the level indicated by the Committee of Social Rights. As of today, an additional increase in pension (including in the national pension) has been planned for the next year. It has not been decided yet how much the level of pensions will be increased, but the proposals have been delivered to the Government.

However, the number of elderly people depending on minimum guarantees is relatively small – as of 31 December 2005 the number of people receiving national pension on the basis of age was 2,969, which is approximately 1 percent of all the people of pension age.

3. The Ministry of Social Affairs has prepared the draft Act to amend the State Pension Insurance Act. While now in case of working no national pension is paid to a person of old-age pension age, in accordance with the amendment the person receiving national pension may work. The draft is under coordination between the ministries."

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

12§1 FINLAND

"The Committee concludes that the situation in Finland is not in conformity with Article 12§1 of the Revised Charter on the ground that the sickness and maternity allowances and the minimum national pension for single persons are manifestly inadequate."

Ground of non-conformity (for the first time)

277. The Finnish delegate provided the following information in writing :

"Minimum daily allowance

The Committee considers that the minimum daily allowance under the Finnish Health Insurance Act does not fulfil the requirements for minimum income security under Article 12 (1).

The amount of benefit
After the date of reference, the amounts of sickness and parents' daily allowance have been raised by EUR 3.75 per day, and as of 1 January 2005 the minimum amount of daily allowance has been EUR 15.20 per day. This benefit is payable for six (6) days a week. As the computational number of payment days per month is used 25 days. The gross amount of the benefit is EUR 380 per month.

Income during the period of entitlement to parents' allowance
In addition to the minimum parents' allowance, child allowance is paid for the maintenance of a newborn child from the beginning of the month when the child is born, subject to provisions on delayed application or other circumstances. The child allowance for the first child is EUR 100 per child per calendar month and is tax-free income. Single parents are entitled to a child allowance increased by EUR 36.60 per calendar month. If the recipient of minimum daily allowance is also in receipt of child allowance[1], the security for income and maintenance is at least EUR 480 per month. In addition, an insured person whose income is solely based on the minimum parents' allowance may be entitled to housing allowance or, as a last-resort benefit, to social assistance. In 2004 the average general housing allowance was EUR 213.8 per household per month.

Income during the period of entitlement to sickness allowance
An insured person whose income is solely based on the minimum parents' allowance may be entitled to housing allowance or, as a last-resort benefit, to social assistance. In 2004 the average general housing allowance per household was EUR 213.8 per month.

Measures
The focus in the development of daily allowance benefits under the Health Insurance Act has been to reduce the number of the daily allowances payable in the minimum amount. To that effect, two amendments concerning the definition of daily allowance came into force at the beginning of 2004.

1. Consecutive births
A considerable proportion of the minimum daily allowances has been due to consecutive births. By consecutive births is meant a situation in which a parent, most often the mother, has cared for the child born first at home on the home care allowance and the mother has become pregnant again during the period of entitlement to home care allowance. In such situations the mother has no income from employment immediately before the daily allowance period that begins on the basis of the new calculated date of birth. From the beginning of 2006, in these situations the daily allowance may be determined based on the income on which the previous parents' allowance was based. The condition is that the older child has not achieved the age of three years before the expected date of birth of the new child.

2. Temporary jobs
Another important reason for receipt of minimum daily allowance is the low level of the earnings preceding the benefit period. Based on the computation rules in force previously, the income of an insured person in temporary employment was 'stretched ' over a period of twelve months. From the beginning of 2006 it has been possible to determine daily allowance by multiplying for instance the earnings for one month so as

[1] Child allowance can also be paid to the parent that is not recipient of parents' allowance.

to constitute income for the year in question. This amendment applies to both sickness allowance and parents' allowances.

In 2005 the average parents' allowance payable to the mother was EUR 39.8 per day and to the father EUR 59.3 per day. The average sickness allowance was EUR 44.1 per day in 2005. The averages also include minimum daily allowances.

Minimum level of national pension

The European Committee of Social Rights points out in its conclusions regarding Finland's State Report that Finland does not conform to the provisions set out in Article 12.1 of the Revised European Social Charter as the minimum level of national pension is below the poverty level defined in the Social Charter. As a response to this remark Finland states the following:

The statutory pension scheme in Finland consists of two parallel schemes. Pension under the earnings-related pension scheme is meant to compensate for income loss due to old age, disability or death of the family provider. National pension, the size of which is determined by earnings-related pension, secures subsistence income.

The level of national pensions is adjusted annually by the national pension index, which ensures that the pensions retain their purchasing power. In addition to the index increase, the level of national pensions has been raised twice since 2004. In March 2005, national pensions were raised with EUR 7 and in September 2006 full national pensions were raised with EUR 5. At the moment, the full national pension of a pensioner living alone is EUR 515.86 in category I municipalities and EUR 494.91 in category II municipalities. If a pensioner provides for an under-age child, a child increase is payable to the pension. The increase is EUR 18.68 for a child under 16 years of age.

The national pension forms the basis for the pensioners' subsistence income, but its purpose is not to cover the entire subsistence of a pensioner. A person entitled to full national pension can receive additional earnings-related pension income for a maximum of EUR 47.29 per month. Also, national pension is not affected by, for example, earnings-related pension or child increase paid to earnings-related pension acquired after 63 years of age.

Low-income pensioners are entitled to apply for pensioners' housing allowance for their housing expenses. Housing allowance for pensioners covers 85 per cent of reasonable housing costs exceeding the basic deductible and the income-related additional deductible. In 2006, the full housing allowance was EUR 288.66–361.19 per month depending on the place of residence. The maximum amount of housing cost that entitle to housing allowance is raised annually in accordance with the change in the national pension index, or so that the maximum amount sufficiently corresponds to the general change in housing costs. In addition, the Government plans to propose an additional increase in the maximum amounts for housing costs that would enter into force at outset of 2007. The economic position of especially low-income pensioners who live on rent is difficult, and the increase in the maximum level of eligible housing costs would improve their situation.

According to the National Pensions Act, the pensioners' care allowance is mean to support the care of an ill or disabled pensioner who lives at home as well as to compensate for the special expenses he or she incurs due to an illness or injury. The care allowance is divided into three allowance categories in accordance with the need for help, guidance and supervision as well as on the basis of the special expenses due to an illness or injury. The allowance is EUR 52.55–261.64 per month. The amount of the care allowance is adjusted annually in accordance with the changes in the national

pension index. In addition, the Government will propose an increase of EUR 15 in the higher allowance category from the outset of 2007. This increase is meant for those pensioners, who incur very significant amounts of expenses due to an illness or injury.

The Government has also proposed to the Parliament that the categories of municipalities are repealed from the outset of 2008. If the category system were repealed, the place of residence would no longer affect the amount of national pension and the national pension of pensioners living in the municipalities of the present category II would increase with around EUR 20.

Increases in the national pension will also raise other related benefits such as survivors' pension, special support for immigrants, front veterans' supplements and farmers' early retirement aid. Also the size of the pension income deductions in the national taxation and in the municipal taxation are defined by the size of the full national pension. Increases in the national pension will, therefore, always raise the size of the pension income deductions. Due to the pension income deductions, a person receiving only national pension do not have to pay taxes.

In 2005, the average full pension of persons who are resident in Finland and who receive national pension was EUR 646 per month. The number of persons receiving full national pension has continuously decreased since the share of earnings-related pensions is on the increase. At the moment, there are less than 100.000 persons receiving national pension. A little over half of them receive their national pension as unemployment pension.

Securing the subsistence of pensioners requires also comprehensive social welfare and health care services where the client fees are not disproportionate in relation to the pensioners' income. In Finland, social welfare and health care is mainly tax-paid and everyone residing in Finland has access to the services. Some of the services are free of charge, some have an income-related fee, and some have a fixed fee. In addition, there are several payment ceilings in use in the service fee system in health care. After reaching the ceiling, all services are free of charge until the end of the year. The medicine reimbursement system ensures that everyone can afford to buy the medicines they need. Also the reimbursement system has a payment ceiling.

In order to secure subsistence income, the last-resort benefit in the Finnish system is income support. Income support is applied at the municipality's social services. Also pensioners can be if necessary eligible for this discretionary benefit."

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

12§1 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 12§1 of the Revised Charter on the ground that sickness benefits and the unemployment benefits for single persons are manifestly inadequate."

Ground of non-conformity (for the first time)

279. The Irish delegate provided the following information in writing :

« Reference to the third Irish report concerning the revised Charter :
12.1.7 50% of the median equivalised income in 2003 on the OECD method of calculation was €9015 per annum or €172.77 per week. The figure for 2004 will not be available until December 2005.

12.1.8 In the period 1994 to 2004 in Ireland the median income threshold rose by 140%, whereas the consumer price index rose by 35%, and gross average industrial earnings by 62%. Over the same reference period, the personal rate of (for example) unemployment benefit and disability benefit rose by 74%, and the personal rate of old age contributory pension by 86%.

12.1.9 The main reason for the disproportionate change in the median income compared with GAIE is the move from 1 income to 2 income households, reflecting in particular the significant increase in the number of women in paid employment. The Irish Government therefore does not accept that the median equivalised income is a reliable basis for an expenditure target at a time when significant structural changes are occurring in the labour market. We note that the EU also rejects it as a reliable indicator of the experience of poverty.

12.1.10 A recent EUROSTAT study calculated the monetary value of the 60% threshold in terms of purchasing power standards terms in 2003 for a household of 2 adults and 2 children. This shows that the value of the threshold for Ireland is above the EU average and is ranked 8th highest overall in the EU 25. This means that many households in Ireland with incomes below the 60% threshold may have a better standard of living than similar households classified as not at risk of poverty in other Member States.

12.1.11 This indicator also measures income alone and does not take account, for example, of the high level of home ownership, and entitlement to household allowances such as electricity, fuel, TV licence and Telephone rental, which are particularly important in Ireland in the case of the elderly.

12.1.12 Social transfers in Ireland have nearly halved the numbers below the 60% median income line. In 2003, for instance, the numbers at risk of poverty (that is with less than 60% of average income) before social transfers was 38.4% and after social transfers was down to 22.7%. This was amongst the biggest reductions achieved by social transfers of any country in the EU.

12.1.13 The Economic and Social Research Institute of Ireland performed a series of analyses to ascertain why our rate of relative income poverty is so high compared to other Member States. The report estimated that if Ireland were to achieve the same relative income poverty levels as, for example, in Denmark, increased levels of expenditure would be required of the order of 2.4 billion euro, equivalent to a 25 per cent increase in the current social welfare budget, which would require increases in the standard and top rates of income tax of the order of 11 per cent. Such an increase could seriously weaken our economic position, crowd out other needed extra expenditure and be ultimately self defeating. The Government's strong commitment is to reduce and ideally eliminate instances of consistent poverty in Ireland and this requires a careful balance between key economic and social objectives, if we are to reach a sustainable level of social provision."

We would also refer to sub-Paras. 12.2.1 and 12.2.2 of Ireland's Third Report.

12.2.1 The Government of Ireland through the Department of Social and Family Affairs has ratified the European Code of Social Security. The parts accepted at present are:

- Part III – Sickness Benefit
- Part IV- Unemployment Benefit
- Part V – Old Age Benefit
- Part VII – Family Benefit
- Part X – Survivor's Benefit

12.2.2 The Department continues to examine the question of undertaking compliance with additional Parts. A question was raised as to whether Part IX could be undertaken in addition to Parts VI and VIII and a technical assistance visit by experts from the Council of Europe and the ILO was arranged in April 2005. The Department is finalising its examination as quickly as possible and will shortly progress a recommendation to Government in the matter.

The Department queries why the acceptance by Ireland of the Council of Europe's European Code of Social Security is not sufficient. If the Department adopted the poverty threshold defined as 50% of median equivalised income yardstick, would the Government be expected to reduce the above mentioned payments in the event of a reduction of the median equivalised income in the event of a downturn of the Irish economy? Politically it would be very difficult to do so, but financially it could become imperative.

It should also be noted that many people receiving social security payments (sickness benefit, unemployment benefit etc.) may also qualify for a supplementary payment – further details at website http://www.welfare.ie/publications/sw54.html ."

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

12§1 LITHUANIA

"The Committee concludes that the situation in Lithuania is not in conformity with Article 12§1 of the Revised Charter on the ground that the Government's information does not allow to assess the adequacy of state social insurance old age pension and the unemployment benefit."

Ground of non-conformity (for the first time)

281. The Lithuanian delegate provided the following information in writing :

"Corresponding figures for the reference period for pension calculation are provided:

Table 1. Calculation base and Old age and Disability pensions for 2003-2005 year period

Year	2003	2004	2005
Base pension (yearly amount)	150 LIT (43 €)	167 LIT (48 €)	186 LIT (54 €)
Insured income (yearly amount)	894 LIT (259 €)	931 LIT (270 €)	1037 LIT (300 €)
Average old age pension	340.5 LIT (99 €)	371.6 LIT (108 €)	420.3 LIT (122 €)
Average old age pension with mandatory (30) years of contribution	346.6 LIT (100 €)	378.5 LIT (110 €)	428 LIT (124 €)
Disability pension	296.8 LIT (86 €)	325.6 LIT (94 €)	355.7 LIT (103 €)

Old age pension
Lithuanian legislation does not define minimum levels of social insurance pension. Minimum qualifying period of 15 years ensures the eligibility for old age social insurance pension. As it is mentioned in description part, social insurance pension consists of two parts – main and supplementary. The main part of the pension is proportionally decreased if insured person do not qualify for mandatory (30 years) social insurance record. The additional part of social insurance pension is directly

linked to individual earnings. 4.2% of old age pensioners in 2003 and 4,4 % in 2004 were awarded the partial old age pension (not minimum, as mentioned in your notice), they had insurance period less than 30 years.

Invalidity pension
There is no possibility to indicate minimum level of invalidity pension due to sophisticated scheme of minimum and mandatory qualifying periods, granted records and supplementary pension calculation.

Survivors' pension
Social insurance survivorship pensions are paid as additional to old age social insurance pension. Its amount is calculated as the part of the social insurance old age pension of the deceased person and does not relate to substance level of survived person.

Table 2. Calculation base and Survivor's pensions for 2003-2005 year period

Year	2003	2004	2005
Base pension	138 LIT (40 €)	138 LIT (40 €)	138 LIT (40 €)
Insured income	886 LIT (257 €)	886 LIT (257 €)	886 LIT (257 €)
Average widow's, widower's pensions 1) granted after 1995-01-01, 2) granted until 1994-12-31.	 82.7 LIT (24 €) 35.6 LIT (10 €)	 81.0 LIT (23 €) 35.5 LIT (10 €)	 80.3 LIT (23 €) 35.5 LIT (10 €)
Orphan's pension	2 LIT (21 €)	90.8 LIT (26 €)	107.3 LIT (31 €)

Social assistance pension
During the last few years, Lithuania has reformed the provisions of minimal income, especially for disabled and for elderly people.

From the July of 2005 disabled persons and from January of 2006 retirees who are not entitled to social insurance pensions are entitled to social assistance pension. The standard amount of social assistance pension for retired persons is 0.9 of basic pension.

Persons entitled to social insurance pension or other pensions, the size (total sum) of which is smaller than social assistance pension, are entitled to the difference between the social assistance pension and other pension (pensions). Social assistance pensions are not granted for those who have work income.

Unemployment benefit
Up to the year 2005 an unemployed person received temporary assistance due to the loss of income – the unemployment benefit, which amount belonged from the working record. From May 1998 the amount of the unemployment benefit did not change, i.e. the minimum unemployment benefit was equal to the amount of state supported income of LTL 135, and the maximal amounted to LTL 250 (two minimum subsistence levels). The average amount of the unemployment benefit fluctuated from LTL 182.9 in 2001 to LTL 175.7 in 2004, and in comparison to 2003 it has only slightly increased.

The Law of the Republic of Lithuania on the Unemployment Social Insurance (official Gazette, No.4-26, 2004) come into force from 1 January 2005 legitimized the

introduction of principally new approach of benefits' allotting and shift from payment of an unemployment benefit to the unemployment insurance benefit, which size and duration of payment depend on former insured income and working record of an unemployed.

The amount of insurance benefits awarded to unemployed persons increased. According to the new system of insurance of unemployment, the social benefit consists of a fixed amount of LTL 135 and 40 per cent of the previous wage within the period of the last three years. According to this system, the social insurance benefit of a person, who received the minimum wage of LTL 500 will be LTL 335. The maximal limit of the whole benefit is the amount of LTL 693.

Unemployment benefit is paid for 6 months to persons with the working record less than 25 years, for 7 months to persons with the working record over 25–30 years, 8 months to persons with the working record of 30–35 years, and 9 months to persons with the working record over 35 years. In comparison to the previously operating system, the requirement for the obligatory working record of 24 months for the entitlement to the unemployment benefit is reduced to 18 months (within the period of three previous years). Those people without work experience and the long-term unemployed are covered by the Law on Cash Social Assistance (persons who live alone) came into force from 1 April, 2004.

Individuals, who were dismissed through no fault of themselves, but on the initiative of the employer and due to circumstances irrespective of the employee or in the case of bankruptcy of the employer, or after return from the military or alternative service in the national defence, are entitled to the social insurance unemployment benefit.

According to the Law, to encourage unemployed to be more active in job-seeking, the full amount of unemployment benefit is paid during the first three months starting from registration with labour exchange, during the remaining established period of payment of the unemployment benefit –the fixed part of the unemployment benefit and half of its variable part, which depends upon former insured income of the unemployed, is paid.

The payment of unemployment insurance benefit is cancelled if a person becomes an employee or self-employed. The payment of the unemployment insurance benefit is suspended in case a person participates in the active labour market policy measures and gains work pay; or informed labour exchange about the placement according to the terminated work agreement not exceeding 6 months' duration; or gained a business certificate for no longer than 6 months' duration.

No payment of unemployment insurance benefit is prescribed if before the official prescibtion of the benefit a person rejected an offered job appropriate to his/her professional competence, health state and in appropriate distance from home, or refused to participate in the active labour market policy measures planned in the personalised action plan without justifiable reason, or did not visit labour exchange in time defined to him/her to apply the offered job or to participate in ALMP (active labour market policies) without justifiable reason, or refused to pass health test to define his/her availability for work. Sanctions are not taken in case of justifiable reasons defined by the Law (e.g. natural disaster, an accident, death of parents, children or spouse and etc.)."

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

12§1 NORWAY

"The Committee concludes that the situation in Norway is not in conformity with Article 12§1 of the revised Charter on the grounds that legislation does not foresee an initial reasonable period during which an unemployed person may refuse an offer of employment not corresponding to his previous qualifications without losing the right to unemployment benefits."

Ground of non-conformité (for the first time)

283. The Norwegian delegate provided the following information in writing:

"The basic requirement to be entitled to unemployment benefit in Norway is to be considered a "genuine jobseeker". This means inter alia that the unemployed in principle is obliged to accept any job he or she is offered.

The ECSR considers the Norwegian legislation on unemployment benefit not in compliance with the Charter, because the unemployed has no initial period in which he or she may refuse an offer of employment which does not correspond to his or her qualifications.

Firstly, the Norwegian delegate would like to inform the Committee that there have been amendments in the legislation. Two terms to obtain unemployment benefit are abolished: The first one the possibility of compelling unemployed persons to accept jobs offering less income than the unemployment benefit, and the second one to accept to generate income for the creation of self-employment. These amendments came into force 1 January 2006.

Secondly, the Norwegian delegate would like to underline some main reasons why there is no initial period in which the beneficiary may refuse jobs offered:

- The alternative to less skilled jobs for the unemployed, in this context, is not skilled jobs, but unemployment benefits.
- Research shows that persons staying in less skilled jobs than they are qualified for, are in a better position while applying for suitable jobs, than persons being on unemployment benefits, and will easier be offered better jobs.
- Research also shows that even short-term unemployment rapidly reduces the unemployed persons' opportunities on the labour market.

The Norwegian delegate would also like to draw your attention to the fact that the Committee of Experts on Social Security (CS-SS) will have a debate on the concept of "suitable employment" in relation to unemployment benefit next week (9-11 May 2006). The outcome of this debate may be of importance also for the interpretation of Article 12§1 of the European Social Charter, and should therefore be taken into consideration."

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

12§1 PORTUGAL

"The Committee concludes that the situation in Portugal is not in conformity with Article 12§1 of the revised Charter on the ground that the level of sickness benefit is manifestly inadequate."

Ground of non-conformité (for the first time)

285. The Portugese delegate provided the following information in writing:

"The amount of sickness benefit results from the application to the concrete situation of a percentage to the reference wage of the beneficiary. This percentage is variable and it is calculated having in mind:

- the length of employment period,
- the period of time during which there is incapacity to work (55% to 100%),
- the specific characteristics of the sickness.

In 2005 a new law was adopted and the above mentioned percentage was raised from 65% to 100%. If the beneficiary has to provide for the support of the family this percentage is also raised.

It is also important to point out that the level of protection guarantee by the portuguese legislation complies with the European Code of Social Security, namely the requirements related with the personal and material scope of the sickness benefit."

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

12§1 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 12§1 of the Revised Charter on the ground that there is no evidence that the adequacy of social security benefits is secured."

287. The Romanian delegate provided additional written background information on the situation relating to Article 12§1 in her country.

288. The 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 12§4 – Social security of persons moving between States

12§4 CYPRUS

"The Committee concludes that the situation in Cyprus is not in conformity with Article 12§4 of the Revised Charter on the following grounds:

– the length of residence requirement for social pension for non-nationals uncovered by Community legislation is excessive;
– the legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by agreement with Cyprus."

First ground of non-conformity

289. The Cypriot delegate indicates that the reform of the pension system is going on with a view to firstly insure the sustainability of pension regimes and social security, and that it did not change so far the length of residence requirement for non-nationals uncovered by the European Union legislation. The second stage of the reform foreseen for the near-future might deal with the issue of

290. The ETUC representative confirmed that the reform process is still going on though slowly, so that there is a possibility of change in the future.

291. The Committee took note of the information provided by the Cypriot Government, expressed concern for the excessive length of the residence requirement (20 years) and urged the Government to speed up the reform process in order to bring the situation into conformity with the Revised Charter.

Second ground of non-conformity

292. The Cypriot delegate explained that no change had occurred with respect to the accumulation of insurance or employment periods completed, which is still possible only for nationals of EU/EEA States or States with which Cyprus is linked through bilateral agreements. The delegate emphasised that new bilateral agreements will be negotiated if there is a mutual interest of the countries concerned and where movements between the countries are significant.

293. The Committee refers to its position for the second ground of non-conformity with the Charter under the conclusion concerning Denmark, Article 12§4.

12§4 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 12§4 of the revised Charter on the following grounds:

– the legislation does not provide for retention of accrued benefits when persons move to a state party not bound by Community regulations or by agreement with Estonia;
– the legislation does not provide for the aggregation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by

Grounds of non-conformité (for the first time)

294. The Estonian delegate provided the following information in writing :

> "Article 12, paragraph 4, of the Charter prescribes that the Parties undertake to take steps with the aim of retention of accrued benefits and aggregation of insurance or employment periods. The wording refers to the fact that it concerns progressive right.
>
> 1. We are in opinion, that we have made good progress during the period under review – while before the accession to the European Union we had made and entered into social security agreements only with three Member States that had ratified the Social Charter (Finland, Latvia and Lithuania) and an emergency care agreement with Sweden, from 1 May 2004 the social security regulations of the European Union include Member States of the European Union, the states of the European Economic Area (Iceland, Liechtenstein and Norway) and from 1 April 2006 Switzerland. It means that the number of states where, upon the establishment of the social security rights, working in the states is also accorded consideration increased almost tenfold.
>
> In addition, it is important to take into consideration, that from 1 June 2003 all residents of third country nationals (including nationals of non EU/EEA members, who have ratified the Charter) are also covered with EU social security regulations.
>
> We had a lot of work in order to put EU social security regulations into practice and therefore we have not yet managed to take any more measures which would already be applicable.
>
> 2. The Estonian laws do not generally make any difference between the right of the citizens of Estonia and that of citizens of other states or of stateless persons residing in Estonia with regard to the receipt of social security benefits. Estonia has also

ratified the temporary social security agreements of the Council of Europe which shall ensure equal treatment of the citizens of the Contracting States residing in the state.

The state pension insurance coverage in Estonia is practically universal. From residents of pension age 97% of men and 99% of women receive pension from the state of Estonia. A bigger part from the rest receives pension from another state (mainly from Russia, incl. military pensioners).

2.1.The need for aggregation of insurance periods necessary for receiving state pension is relatively small – in order to receive the old-age pension one has to work only for 15 years (in other European states the term is 20-30-40 years). If a person has worked in Estonia for 15 years, the insurance periods acquired in the territory of the former USSR shall also be accorded consideration in addition.

In addition, it is possible to receive national pension under relatively easy conditions

- a person of the old-age pension age shall receive national pension if directly before the retirement he or she has resided in Estonia for 5 years;
- in order to receive survivor's pension and incapacity pension it is required that the person has resided in Estonia only for one year.

At the moment we are considering the possibility of supplementing the State Pension Insurance Act with a provision in accordance with which, the period of residence in another state who has ratified the Social Charter shall also be accorded consideration.

2.2. State family benefits are paid with regard to all the children residing in Estonia regardless of the citizenship thereof, there exist no requirements with regard to the length of the period of residence, and thus it shall not be necessary to add the insurance periods. A child can already receive benefits in the same month when he or she settles in Estonia.

3. What concerns the retention of accrued rights then it is more complicated to take unilateral measures as payment of benefits is related to fulfilling certain requirements.

For example the right of an adult child to receive the survivor's pension depends on whether the person studies or not. Upon interrupting studies, the right to receive the survivor's pension is lost. A spouse's right to receive the survivor's pension depends on whether the person works or not, whether he or she has remarried, or receives any other pension (e.g. the incapacity pension). The receipt of the incapacity pension depends on the state of health of the person, which may change; it may also be that in another state there are more jobs suitable for the person, wherefore the percentage of incapacity for work of a person may change. The receipt of old-age pension also depends on several circumstances.

It is difficult to unilaterally pay social security benefits into another state if there is no objective information with regard to the fulfilment of the aforementioned requirements. In Estonia everything is based on registers – different registers exchange information between one another. In case there are any changes, the Social Insurance Board shall become aware of this at once. We are of the opinion that in order to pay benefits into another state we should at least have bilateral or multilateral agreements in the field of information exchange.

4. In addition to taking unilateral measures we have also considered taking other measures.

So for example we sent to several states that have not acceded to the European Union letters with a proposal to commence measures in order to make and enter into bilateral agreements. Unfortunately we received feedback only from one state (Croatia).

We have also considered ratifying the European Convention on Social Security, but no corresponding resolutions have been adopted yet (one reason is that the Convention is ratified only by 8 countries and last ratification is from 1990).

5. We are of the opinion that finding a solution to the questions related to the aggregation of insurance periods and retention of accrued benefits takes some time.

Although in this case the experts have made a negative conclusion with regard to Estonia, it cannot be said, however, that we ignore what is stipulated in Article 12, paragraph 4, of the Social Charter and that we have not taken steps in order to ensure the right."

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

12§4 FINLAND

"The Committee concludes that the situation in Finland is not in conformity with Article 12§4 of the Revised Charter on the following grounds:

– the legislation does not provide for retention of accrued benefits when persons move to a state party not covered by Community regulations or bound by agreement with Finland;
– the legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by agreement with Finland."

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

296. The Finnish delegate provided the following information in writing :

"The European Social Charter (revised) has examined especially the national pension in Finland. There are two pension schemes in Finland. For employees the main pension insurance is provided by an earnings-related scheme that covers all employed persons, self-employed persons and civil servants. Pension accrues from all employment, also short-term and atypical work contracts. These pensions are also paid abroad, to all countries. This scheme is nowadays the main one.

This scheme is completed by a residence-based scheme, the national pension scheme. The aim of the national pension scheme is to ensure minimum pension provision in particular for non-active people. In line with this aim a pension under this scheme is only payable to those persons that do not at all receive an earnings-related pension or whose earnings-related pension is very small. All other pensions and pension-type incomes –both from Finland and abroad– reduce the amount of the national pension. The amount of the pension is also proportioned to the length of residence in Finland.

The national pension scheme is financed by tax revenues and employers' tax-type contributions. From the socio-political and economical point of view it is not considered justified to pay a minimum pension to a person who receives a pension large enough for ensuring his/her income or who is not resident in Finland. The povision would not lead to discrimination based on nationality since national pension accrues on the basis of residence in Finland irrespective of nationality.

However there is also a missunderstanding in the conclusion because the occupational accident or disease benefits are exportable."

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

Second ground of non-conformity

298. As regards accumulation of insurance or employment periods, the Finnish delegate explained that Regulation (EEC) No. 1408/71 applies in Finland, thereby covering EU and EEA nationals. Furthermore, bilateral agreements will be negotiated only where there is a mutual interest of the countries concerned and where movements between the countries are significant. She also added that Finnish legislation has few requirements of completion of insurance or employment periods. She gave the example of the maternity/paternity benefit for which 180 days of residence is required to everybody, Finnish or non-Finnish nationals. Finally, the Government considers completion periods necessary for the sustainability of the social security system.

299. The representative of the ETUC, joined by the Portuguese and the German delegates, asked for information on on-going or future agreements.

300. The Finnish delegate answered that all relevant information will be given in the next report.

301. The Secretariat recalled that, at the occasion of the 113th meeting, the Committee opted for a common conclusion in every case of non-conformity on accumulation of insurance or employment period (see Denmark, Article 12§4, second ground of non-conformity).

302. The Chair suggested doing the same.

303. The Dutch delegate was of the opinion that States party cannot be pushed to conclude bilateral agreements if they do not want to do so; furthermore he considered that in a field such as accumulation of insurance and unemployment periods unilateral measures were impossible to adopt.

304. The Cypriot delegate underlined the necessity of the mutual interest to conclude agreements.

305. Both the Swedish and the Belgian delegate highlighted that the exact the meaning of the common conclusion adopted at the previous session was to highlight the technical difficulties States party encounter to put the situation into conformity with Article 12§4 on this issue.

306. The Dutch delegate proposed to include in the conclusion the encouragement to ratify the European Code of Social Security.

307. The Estonian delegate was of the opinion that it is up to the states to decide whether to ratify multilateral instruments (as the European Convention on Social Security) or to conclude bilateral agreement.

308. The Swedish, German and Belgian delegates agreed with the Estonian delegate.

309. The Committee invited the Government to provide all the relevant information in the next report and referred to its position under Denmark, Article 12§4, second ground of non-conformity (report of the 113rd meeting).

12§4 FRANCE

"The Committee concludes that the situation in France is not in conformity with Article 12§4 of the revised Charter on the following grounds:

– under the social security agreement between France and Turkey, the age below which a child is considered to have a dependant status is different in France and in Turkey;
– the legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of States Parties not covered by Community regulations or bound by agreement with France."

First ground of non-conformity

310. The French delegate acknowledged that under the social security agreement between France and Turkey a difference in the age below which French and Turkish children are considered to have "dependent" status remained. She emphasised, however, that:

- the measure concerning the provision of child benefits under the agreement between France and Turkey is unilateral;
- school attendance levels for corresponding age groups was lower in Turkey. Furthermore, the age limit for Turkish children had evolved having initially been fixed at 15 years before being increased to 16 years and then 18 years if the child was enrolled in education (for French nationals the age limit was 20 years).

311. The President observed that there was an international agreement in which unilaterally France provided Turkish citizens with family benefits. The Portuguese delegate observed that there was no discrimination in the present case. The Turkish delegate answered that there was one since Turkish citizens who work in France and pay all contributions there receive a lessened benefit. If it is true that in Turkey there is no family benefits system, equal treatment is given for all the other social security benefits.

The President was of the opinion that it is for France to decide whether to open discussion in the view of changing the agreement. The French delegate explained that these agreements are regularly revised and that it is up to Turkey to bring the issue to the attention of the French Government. The Turkish delegate affirmed that it will be done.

312. The Committee took note of the information provided by the Government and decided to await the next assessment of the ECSR.

Second ground of non-conformity

313. The French delegate explained that accumulation of insurance or employment periods completed by nationals is not possible in respect of non-EU/EEA states or

states with which France is not linked through bilateral agreements. She added that her Government is open to negotiate new agreements, but so far it has not received any request by states which are parties to the Charter and the Revised Charter but not to the EU/EEA.

314. The Committee refers to its decision for the second ground of non-conformity under Danemark, Article 12§4.

12§4 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 12§4 of the Revised Charter on the ground that legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by agreement with Ireland."

315. The Irish delegate explained that following to the enlargement of the European Union, accumulation of insurance or employment periods completed is now covering a higher number of nationals of EU/EEA states. The delegate emphasised that new bilateral agreements will be negotiated if movements of people between the countries are significant.

316. The Committee refers to its position for the second ground of non-conformity with the Charter under the conclusion concerning Denmark, Article 12§4.

12§4 LITHUANIA

"The Committee concludes that the situation in Lithuania is not in conformity with Article 12§4 of the Revised Charter on the following grounds:

– entitlement to certain contributory benefits (state social insurance pensions), is subject to a residence requirement;
– the legislation does not provide for retention of accrued work accidents and occupational diseases benefits when persons move to a state party not covered by Community regulations or bound by agreement with Lithuania."

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

317. The Lithuanian delegate indicates that the reform of the pension system did not change the length of residence requirement for non-nationals uncovered by European Union legislation or bilateral agreements. She added that Lithuania will start negotiating new bilateral agreements if the need is expressed by other States.

318. The ETUC representative underlined that not only there was no change in the legislation, but also no will to enter into new bilateral agreements. He was therefore in favour of a warning.

319. Since the situation of non-conformity dated back only to 2004, the Bulgarian delegate proposed to send a strong message to Lithuanian authorities instead of a warning to Lithuania.

320. The Estonian delegate asked whether the persons who do not fulfil the five years of residence requirement are entitled to other kind of benefits.

321. The Lithuanian delegate answered they are entitled to social services.

322. The Committee requested the Lithuanian Government to reconsider the issue and intensify its efforts to bring the situation into conformity with the Revised Charter as soon as possible.

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

323. The Lithuanian delegate provided the following information in writing :

> "Benefits in the case of employment injuries and occupational deceases
> According to the Law of Social Insurance of Occupational Accident and Occupational Diseases there isn't directly provided that the beneficiaries couldn't move to the other state and in such time couldn't get benefits of employment injuries and occupational deceases. Referring to the Law, persons are insured irrespective of their citizenship and the status of a permanent citizen. Thus foreigners, permanently or temporarily residing in Lithuania, including the citizen of the members of the Charter, can receive benefits without any restrictions in cases of employment injuries or occupational deceases subject to pursuance of the procedure defined by the Law.
>
> In laws related with social insurance, including occupational accidents and occupational diseases is provided that if the beneficiary goes to live abroad, he (she) could get benefit into account of Lithuania credit office, independent of international agreements or European law. In practice there weren't any situation when beneficiary, who get the benefit according the laws, leave Lithuania. In our opinion, the main reason for paying benefits of employment injuries and occupational deceases should be paid contributions, but not beneficiary's location."

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

12§4 MOLDOVA

"The Committee concludes that the situation in Moldova is not in conformity with Article 12§4 of the revised Charter on the ground that it is not able to asses whether legislation and bilateral agreements provide equal treatment for non-nationals."

Ground of non-conformité (for the first time)

325. The Moldova delegate provided the following information in writing:

> "Migration currently raises numerous problems for Moldova. Clearly, in the context of globalisation, Moldova cannot restrict the exodus of its own manpower towards foreign labour markets. It is nevertheless important to exercise some control over this exodus by offering social security safeguards to citizens working abroad.
>
> The main approach is to conclude bilateral agreements with countries to whom these workers migrate. Moldova has concluded a series of social security agreements with CIS states:
>
> – Uzbekistan – signed on 30 March 1995 and entered into force on 28 November 1995 (ratified by decision of parliament 530-XIII of 13 July 1995);
> – Russian Federation – signed on 10 February 1995 and entered into force on 4 December 1995 (ratified by decision of parliament 447-XIII of 5 May 1995);
> – Belarus - signed on 12 September 1995 and entered into force on 15 November 1996 (ratified by decision of parliament 739-XIII of 20 February 1996);

– Ukraine – signed on 29 August 1995 and entered into force on 29 November 1996 (ratified by decision of parliament 740-XIII of 20 February 1996);
– Azerbaijan – signed on 27 November 1997 and entered into force on 8 January 1999 (ratified by decision of parliament 1615-XIII of 2 April 1998).

The aim of these agreements is to establish conditions of equality for the citizens concerned with regard to social security if they settle permanently in the other state. They enable persons reaching age of entitlement to a benefit to choose freely where they will work or live.

Benefit-related costs are met by the state granting the benefits. There is no system of reciprocal payments.

Since these agreements came into force, various types of benefit have been paid to persons who have settled in the contracting parties, in accordance with the agreements and the legislation of the country in which they permanently reside. Disputes are settled by mutual agreement.

Following social security reforms in both Moldova and other contracting parties, there is a need to adjust the relevant agreements.
Negotiations must be reopened between the contracting parties in order to update certain aspects of these agreements and ensure the social protection of citizens of these countries.

It should also be noted that a significant number of persons of Bulgarian ethnic origin, most of whom have Moldovan citizenship, live in the country's southern regions.
Negotiations were started with Bulgaria in 2004 on a bilateral social security agreement based on principles laid down in relevant international law, in order to offer adequate protection to migrant workers with temporary residence in Bulgaria and our citizens who are permanently settled there.

Other bilateral agreements on social protection reached between 1960 and 1963 by the Soviet Union and certain other countries (Czechoslovakia, Germany, Romania and Hungary) remain in force. Even though the rules they embody still apply, they are fairly obsolete and fail to reflect current social security systems.

Negotiations took place in Chişinău between 17 and 19 April 2006 aimed at securing a draft social security agreement. The parties agreed that the next stage of the negotiations would take place in the second half of 2006.

Consideration will be given in the coming years to updating the old treaties and negotiating bilateral social insurance agreements with other countries, including Romania (2006), Bulgaria (2006), Portugal (2006), Italy (2007), Greece and Spain (2008). The new bilateral agreements will ensure equal treatment between nationals of each of the contracting parties. These agreements will also exclude the possibility of aggregation of benefits. Under the new agreements, which will abide by the principles of the European Code of Social Security and the European Social Charter, each contracting party will calculate benefits purely on the basis of the period of activity in its own territory.

The information requested in the Committee's other conclusions will appear in the next reports."

326. The Committee invited Moldova to bring the situation into conformity with Article 12§4 of the revised Charter.

12§4 NORWAY

"The Committee concludes that the situation in Norway is not in conformity with Article 12§4 of the revised Charter on the ground that legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by agreement with Norway."

327. The Norwegian delegate explained that accumulation of insurance or employment periods completed by nationals is not possible in respect of non-EEA states or states with which Norway is not linked through bilateral agreements. Moreover, it added that the fact that Norwegian legislation does not provide for aggregation cannot be construed as an infringement of the Revised Charter.

328. The Committee refers to its decision for the second ground of non-conformity under Denmark, Article 12§4.

12§4 ROMANIA

"The Committee concludes that the situation in Romania is not in conformity with Article 12§4 of the Revised Charter on the following grounds:

– the legislation does not provide for retention of accrued benefits when persons move to a state party not bound by agreement with Romania;
– the legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not bound by agreement with Romania."

First ground of non-conformity

329. The Romanian delegate indicates that Law No. 19/2000 provides for the retention by foreign nationals of benefits for which contributions have been paid in Romania when this is provided by bilateral or international agreements. In case there is no agreement the delegate explained that special mandatory procedures are available for Romanian citizens settled abroad.

330. The Committee took note of the information provided by the Romanian Government and asked this information to be provided in the next report, in particular with respect to whom the special procedures on retention of accrued benefits apply.

Second ground of non-conformity

331. The Romanian delegate listed the bilateral agreements in force, signed and under negotiation. With respect to non EU/EEA States, an agreement exists with Albania; one has been signed with "the former Yugoslav Republic of Macedonia", and others are under negotiation with Croatia, Moldova, and Ukraine. The delegate emphasised that new bilateral agreements will be negotiated with all the States parties to the Charter or the Revised Charter.

332. The Committee refers to its position for the second ground of non-conformity with the Charter under the conclusion concerning Denmark, Article 12§4.

12§4 SLOVENIA

"The Committee concludes that the situation in Slovenia is not in conformity with Article 12§4 of the Revised Charter on the following grounds:

– the Government information does not allow the Committee to assess that equal treatment is ensured with respect of health insurance cover;

– several benefits (pension and disability insurance, maternity benefit and partial payment for lost income) are subject to a nationality condition and therefore not available for nationals of states party which are not EU/EEA members."

First ground of non-conformity

333. The Slovenian delegate indicated that non-nationals are treated equally to Slovenian citizens insofar as they fulfil the conditions of compulsory health insurance in Slovenia. Insured non-nationals and their family members holding temporary residence permits are also treated equally to those holding permanent residence permits. Permanent residence is required only in exceptional cases, i.e. when the person cannot be insured in any other way.

She added that equal treatment of non-nationals is guaranteed by Slovenian legislation and on the basis of contractual obligations Slovenia has undertaken as a signatory state of the European Social Charter and of bilateral or other agreements. Citizens of countries with which agreements have not been concluded (Albania, Andorra, Armenia, Azerbaijan, Georgia, Moldova, and Turkey) or to whom agreements do not apply must satisfy the requirements for compulsory health insurance in Slovenia or must obtain insurance prior to entering the country. The delegate concluded that Slovenia is willing to negotiate bilateral agreements if there is a mutual interest of the countries concerned.

Upon request of the President, the Slovenian delegate clarified that foreigners who are temporary in Slovenia and are employed there are covered by health insurance.

334. The Bulgarian delegate asked the next report provides information demonstrating that temporary residents are insured.

335. The Committee took note of the information provided by the Slovenian Government and decided to await the next assessment of the ECSR.

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

336. The Slovenian delegate provided the following information in writing :

"Republic of Slovenia takes note of the observations of the European Committee of Social Rights regarding the application of Article 12/4 of the revised European Social Charter.

We are aware of the fact that Slovenia is not fully in conformity with the provisions of the ESC as regards entitlement to the family benefits. However, Slovenia has already made numerous changes in the field of family benefits legislation. In recent years the Parental Care and Family Benefits Act has undergone several changes, among others:

- with the accession of the Republic of Slovenia to the European Union the scope of the entitled persons to the family benefits has been extended substantially (to the nationals of the European Union and European Economic Area),
- and in addition, the condition of citizenship has been deleted for all the family benefits, with the exception of parental allowance and partial payment for lost income.

In this context we would like to point out that, in view of overall reform of the social security legislation also further changes of the legislation in the field of family benefits are foreseen. Given the fact that such fundamental reforms usually take time, we hope that within the changes planned for 2007, which would in details stipulate conditions for entitlement as well as procedure for acquirement of the social rights, also the right to parental allowance and partial payment for lost income would be granted to the nationals of the states party which are not EU/EEA members.

As regards the Committee's question concerning conclusion of bilateral agreements we would like to inform you that at present negotiations for the conclusion of the bilateral agreement in the field of social security with Argentina and Bosnia and Herzegovina take place. Considering the fact that such negotiations are extremely difficult we would like to conclude the ongoing negotiations before starting discussions with other countries."

337. The 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 13§1 – Adequate assistance for every person in need

13§1 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 13§1 on the following grounds:

– the level of social assistance paid to a person under 65 living alone is manifestly inadequate;
– the granting of social assistance to nationals of other states party to the Charter is conditional on a continuous presence in Bulgarian territory that is excessively long."

First ground of non-conformity

338. The Bulgarian delegate said that his government's policy was aimed at reducing rather than abolishing poverty. As well as financial benefits, there were benefits in kind to help cope with the costs of heating, electricity and so on. There was no legal relationship in Bulgaria between the level of financial benefits and the poverty threshold, but a working group was examining ways of establishing an official poverty line using the Eurostat method. He noted finally that Bulgaria had made constant efforts to increase assistance benefits, which were up 37.5% since June 2005.

339. The ETUC representative said that in principle the poverty threshold should be 60% rather than 50% of median income, and that according to this criterion the situation was even worse.

340. The Secretariat said that the ECSR's decision to choose the 50% threshold had been quite deliberate, and that such a level meant that it only adopted negative conclusions where the situation was manifestly unsatisfactory.

341. The Committee invited Bulgaria to bring the situation into conformity with the revised Charter.

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

342. The Bulgarian delegate provided the following information in writing :

"The foreigners with permanent residence permit and those granted with asylum, statute of refugee or humanitarian statute have the rights of Bulgarian citizens as far as it concerns social assistance.

The permit for continuous residence to foreigners (up to one year) could be granted if they meet some of the following requirements:

1. want to work under employment relationship, after preliminary agreement from the Ministry of Labour and Social Policy
2. have legal commercial activity within the country, resulting in creation of at least 10 jobs for Bulgarian citizens, unless other is stipulated in international agreement, ratified and entered into force for Bulgaria.
3. are admitted for education in regular form at licensed educational establishments.
4. are foreign specialists, residing in the country under international agreements to which Bulgaria is a party.
5. have the grounds for permanent residence permit or have married Bulgarian citizen or foreigner with permanent residence permit.
6. are representatives of foreign trade companies, registered with the Bulgarian Chamber of Commerce and Industry.
7. are financially secured parents of permanently residing in the country foreigners or of Bulgarian citizens.
8. have been admitted for continuous medical treatment in medical establishment and have sufficient resources for treatment and support.
9. are correspondents of foreign medias and have accreditation in Bulgaria.
10. are socially secured with pension and have sufficient means of livelihood in the country.
11. carry out activities under the Promotion of Investments Act.
12. are members of the family of foreigner granted with continuous residence permit.
13. are parents of foreigner or are at factual cohabitation with foreigner, with continuous residence permit under art. 18, para. 2
14. want to carry out freelance activity after permission from the authorities of the Ministry of Labour and Social Policy in accordance with art. 24a.
15. want to carry out activity with non-profit purpose after permission of the Ministry of Justice under conditions and order set out in a Ordinance of the Minister of justice, coordinated with the Minister of foreign affairs.

In all conditions as set above, foreigners shall have secured accommodation, allowance, compulsory insurances and social security under the legislation of Republic of Bulgaria.

In case where the above-mentioned conditions are not met, the continuous residence permit shall be not granted to the foreigner. In case that the ground for granting such permit cease to be valid, the right to residence shall be no longer applicable and the foreigner shall leave the country. Possible stay in such case is not legal and the foreigner could not be considered as legally residing, including for the purposes of the social assistance."

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

13§1 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 13§1 on the grounds that the level of social assistance for persons living alone is manifestly inadequate."

344. The Estonian delegate repeated her government's explanations in the report on the method of calculating the subsistence allowance, in particular the fact that the subsistence allowance was never equalised with the subsistence minimum. She cited examples to show that a standard beneficiary might receive considerably more each month than the figure quoted by the ECSR. She also said that the subsistence minimum would rise to EEK 900 in January 2007. These figures would appear in the next report, updated as appropriate.

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

13§1 FRANCE

"The Committee concludes that the situation in France is not in conformity with Article 13§1 of the revised Charter on the following grounds:

– young persons aged under 25 are not entitled to an adequate social assistance;
– the minimum income (RMI*)* entitlement for non-Community foreigners is subject to their holding a residence permit and therefore to their having resided in French territory for five years;
– it is unable to assess whether the right of appeal in the social assistance field is effective."

First ground of non-conformity (age limit)

346. The French delegate recalls that while France has chosen not to introduce a minimum income for young people between the ages of 18 and 25, preferring to place the emphasis on income from integration measures rather than assistance, its commitment to this age bracket, as described below, is still highly significant.

Firstly, she underlines that it should be said that France provides general support for young people between 18 and 25 which was calculated by the National Youth Independence Commission in 2002 to amount to 31.57 billion euros (EUR), broken down into five main areas of expenditure: education – EUR 16 billion; vocational integration – EUR 7.92 billion; housing benefits – EUR 1.48 billion; family benefits – EUR 4.45 billion; assistance for students – EUR 1.72 billion.

Expenditure on integration measures as a whole is the second highest area of spending after education and is of particular relevance to us insofar as we are interested in young school-leavers. It provides income for 1 184 000 young people (figures for 2000) in the form of employment assistance or integration measures.
This figure can be broken down as follows: "sandwich" training: 607 000 young people; non-market jobs: 197 000; exemption from employers' social contributions: 300 000; regional council placements: 80 000.
The number of recipients is on a similar scale to that of the RMI, the minimum income intended for people over the age of 25 and their dependants. The state allocates 60% more funding to these measures than to the RMI – the overall cost of the RMI was EUR 5 billion in 2003, just before the system was decentralised.
These figures should be seen in the light of the total number of 16 to 25 year olds – 7.4 million, the number of these in employment – 2.8 million, and the number of unemployed young people – 550 000 according to the ILO's definition, on 1 March 2001.

The considerable effort that has been made has to be viewed in the light of the specific features of the situation of young people in France:

– the high percentage of the 16-25 age bracket still in full-time education, i.e. 70%;
– the small number of unemployed if it is accepted that account should be taken not just of those in the labour market, i.e. who have left full-time education (which is the usual approach), but rather the entire age bracket.
Unemployment affects one in five young persons in the labour market but only one young person in sixteen in the total 16-25 age bracket (2002 figures).
If all the categories of young people under 25 are taken together, they represented 14% of the people registered at the national employment office in June 2002.

Secondly, she underlines that vocational integration for young people is the subject of unrelenting efforts. The Equal Opportunities Act of 31 March 2006 includes a number of relevant measures:

– The number of young people taking up 'professionalisation' contracts was scheduled to increase from 120 000 in 2005 to 160 000 in 2006.

– The *contrat jeune en entreprise*, which encourages employers to take on young people between the ages of 16 and 26 on permanent contracts, was backed up by two further measures: henceforth, the recruitment of people under 26 will no longer be taken into account when calculating the main thresholds beyond which companies are required to make social contributions, and a tax credit of EUR 1000 will be granted to any young person who accepts a job in a sector finding it difficult to recruit.

– The promotion of apprenticeship, which began successfully in 2005 (with a 10% increase in the number of apprentices), will continue in 2006 in France's major firms. The Government has decided to progressively introduce a requirement for companies with over 250 employees to employ a mandatory percentage of young people on sandwich training courses. This will be 1% of their annual average workforce for 2006, 2% for 2007 and 3% for all the years thereafter. Employers who do not reach these targets will have to pay increased apprenticeship levies.
As a result, apprenticeship should increase in line with the forecasts made in the Social Cohesion Act and reach 500 000 in 2009.
Budget appropriations for this programme in 2006 amount to some EUR 846 million, to which can be added tax exemptions of EUR 645 million.

Certain new measures are aimed more specifically at young people who encounter the most serious problems, are marginalised or are generally not covered by more conventional arrangements:

– The social integration contract has been extended to cover young people serving prison sentences of less than one year. Before their release they will be able to attend literacy, remedial and health education classes. 6000 young people are affected by this.

– The Ministry of Defence's "second-chance" scheme was set up in September 2005 to experiment with a new form of job support.
It is aimed at young male and female volunteers, aged 18 to 21, approached during the national defence awareness day (JAPD) and experiencing difficulties ranging from failure at school to social exclusion, and offers three forms of training – behavioural, academic and pre-vocational – designed to foster access to employment.

The programme is based on the experience of former service personnel combined with the skills of teachers employed by the national education authorities. The scheme is built up primarily around links with the business community.

During the first stage of the scheme, 5000 young people, selected from the 60 000 considered eligible among the 800 000 young people who attend the JAPD every year, should have reaped the benefits of this measure by the end of 2007.

– The social cohesion programme also sets out to foster social diversity in the public services via the PACTE scheme (promoting access to public service jobs in local government, hospitals and central government), which includes measures to recruit young people from disadvantaged neighbourhoods other than by competitive examinations. This should concern 20 000 people between the ages of 16 and 25 who have left full-time education without any qualifications at all or with less than the higher school leaving certificate (the *baccalauréat*).
PACTE scheme jobs are in category C posts and last one to two years. Throughout the contract, young people are guided by tutors and given vocational training.
At the end, once they have obtained their qualification, they are offered a permanent post in the corresponding area of work. During the scheme, they are paid 70% of the minimum public service wage (EUR 1260) (50% for persons under 21).

The various vocational integration measures are supported by social funds which make it possible to provide financial security for young people in their chosen career paths or to meet certain specific needs (housing, enhanced support, emergency or one-off assistance).

CIVIS allowance
Persons between the ages of 18 and 25 with a social integration contract are entitled to a state-funded allowance for periods during which they receive no pay or benefits. The annual ceiling on such allowances is EUR 900. In 2005, EUR 52 million was allocated for this measure.

The Young Persons' Vocational Integration Fund (FIPJ) was established by the 2005 Finance Act and is designed to support young people encountering a variety of problems by means of direct or indirect assistance.
It should have a budget of EUR 70 million in 2007.

The Social Cohesion Fund set up by the Social Cohesion Act guarantees loans, thus helping young people who are just beginning work to deal with problems linked, in particular, to access to housing and not covered by existing schemes such as LOCA-PASS, the Housing Solidarity Fund (FSL), the Youth Assistance Fund (FAJ) or the Young Persons' Vocational Integration Fund (FIPJ). To take one example, the social micro-credit scheme, which is guaranteed by the social cohesion fund, will enable those concerned to purchase small office fixtures and furniture and pay their compulsory insurance premiums.
The fund will have a five-year budget of EUR 73 million.

LOCA-PASS loans
These are designed to help with housing costs in the form of loans covering deposits, guarantees or advance rent.

They were granted to 300 000 people under the age of 30 in 2003 at a cost of EUR 1 billion.

Youth Assistance Funds (referred to in the 2005 note).

347. In answer to the Icelandic delegate's question concerning young persons who were not covered by any of the schemes, the French delegate said that the objective was precisely to allocate them to one or other of the various measures, to enable them to survive, and that everyone had to be accommodated somewhere.

348. The ETUC representative did not dispute the French government's financial efforts. Nevertheless there were more and more young persons under 25 with no means of support, either because they had been thrown out of their homes for creating an excessive financial burden (at best, family allowances were paid up to the age of 20 in the case of those continuing their studies or undertaking vocational training), or because they were not eligible for these schemes or because they had been working on fixed-term contracts that had not made them eligible for unemployment benefits and had no other sources of income. He thought that compliance with the Charter implied more than admission to *restos du cœur* charity restaurants and that survival as one's sole prospect was not enough. He noted that the government did not intend to change this age provision and therefore considered that the situation was incompatible with the Charter.

349. The Committee urged the French government to bring the situation into conformity with Article 13§1 of the revised Charter.

Second ground of non-conformity (length of residence)

350. The French delegate pointed out that the ECSR's conclusion raised the problem of a conflict between legal rules and European Community law, as a result of which French legislation was considered not to be in conformity with the European Social Charter because of the application of other Community-law rules and principles, including the principle of equal treatment (Article 12 of the Treaty establishing the European Community), Directive 2004/38 on the right of citizens of the Union and their family members to move and reside within the territory of the member states and the case-law of the Court of Justice of the European Communities (Trojani and Grzelczyk cases). Directive 2004/38/EC did not grant eligibility for social assistance benefits to all European Union citizens and their families. Under Community law and case-law, eligibility for social assistance benefits was dependent on the right to temporary residence (paragraph 16 of the preamble to the aforementioned Directive, Judgment of the CJEC in the case of Rudy Grzelczyk, § 42, Judgment of the CJEC in the case of Trojani, § 43). Moreover, the right to temporary residence depended in turn on the status of the foreign nationals concerned, including their nationality (EU or non-EU national), their length-of-residence rights (up to three months, more than three months or permanent) and their economic and social circumstances (employed or self-employed, with or without an adequate income and health insurance, whether registered with a private or public establishment and whether or not a family member of an EU national). The requirement for non-EU nationals to have a residence permit derived from Article 20 of the Directive of 29 April 2004, which provided that member states must issue permanent residence permits to members of families who did not have the nationality

of an EU member state and had been living continuously on the territory for five years (Article 16 et seq.). Bearing in mind these circumstances and the principle of equality, the French Government took the view that since the Directive required members of families of EU nationals to have a residence permit, non-EU nationals living in an EU member state should also be required to have one. The RMI was awarded without a length-of-residence requirement to many categories of non-EU nationals, including refugees, stateless persons, beneficiaries of subsidiary protection and holders of a residence permit. Other benefits were also accessible irrespective of length of residence, including family allowances, allowance for disabled adults (AAH), loan parent benefit (API) and housing benefit. Lastly, the delegate informed the Committee that, following the European Committee of Social Rights' conclusion, a working group had been established to consider the respective merits of the Charter and Community law in this area.

351. The Portuguese delegate, supported by the ETUC representative, said that the situation in France was worse than before and proposed that a warning be issued.

352. The Committee proceeded to vote on a warning to France which was not adopted (9 for, 5 against and 23 abstentions).

353. The Committee urged the French government to bring the situation into conformity with Article 13§1 of the revised Charter.

Third ground of non-conformity (for the first time)

354. The French delegate provided the following information in writing :

> "Persons entitled to social assistance benefits enjoy the right to an effective remedy as Articles L134-1 et seq. of the Social Action and Family Code provide for a specific type of tribunal for disputes on statutory social assistance benefits.
>
> The tribunal is made up of social assistance commissions in each *département*, whose decisions are open to appeal to the national social assistance commission. The *Conseil d'Etat* is the supreme judicial authority in this system, being responsible for hearing appeals on points of law against decisions by the appeal body.
>
> The authorities have shown a concern to improve procedures before these specialised tribunals, which has grown since the report adopted by the General Assembly of the Court of Cassation on 4 December 2003 (on *The future of specialised tribunals for social affairs*). The statutes and regulations on social assistance tribunals are moreover currently being brought up to date. The changes are intended to offer litigants more procedural safeguards. This work is attracting considerable attention at present on account of the current reform of public services, whose aim is to co-ordinate government activities more effectively and improve public management."

355. The Committee took note of the positive developments announced and decided to await the next assessment of the ECSR.

13§1 ITALY

"The Committee concludes that the situation in Italy is not in conformity with Article 13§1 the revised Charter on the ground that all decisions concerning eligibility for the minimum income (RMI) are not subject to appeal before an independent authority."

[Decision of the Committee, 113th meeting (Strasbourg, 12-14 September 2006)]

356. It was clear that the ECSR's description in Conclusions 2006 had changed radically. The Committee decided to defer discussion until it had received a complete and clear overview of the social assistance situation and to include it as an item on the agenda of the meeting of october (114th meeting). The Committee therefore asks the Italian government to provide this information for this next meeting, particularly the following aspects:

Has new legislation been approved following the Constitutional Court's decision No. 423/2004, which found certain aspects of Outline Act No. 328/2000, on the implementation of the integrated system of social intervention and services, to be unconstitutional, thus preventing the extension of the RMI experiment.

More specifically:

- in regions where the RMI has been tried, has it been replaced by another universal social assistance benefit for persons in need who do not fall into a precise category such as the elderly, the disabled, families or maternity?
- if so, is there a right of appeal to an independent body against any decision concerning the benefit replacing the RMI - including refusal to grant assistance on the ground that the individual concerned will not accept a job or training?

- in regions where the RMI has not been introduced, are there other universal social assistance benefits for persons in need who do not fall into a precise category such as the elderly, the disabled, families or maternity?
- if so, is there a right of appeal to an independent body against any decision concerning the relevant benefit - including refusal to grant assistance on the ground that the individual concerned will not accept a job or training?

[Decision of the Committee, 114th meeting (Strasbourg, 10-12 October 2006)]

357. The Italian delegate provides with the following information. As regards the Constitutional Court's decision No. 423/2004 and the extension of the RMI, she states that several provisions of the 2003 Finance Act (law No 289, 27 December 2002) and the 2004 Finance Act (law No. 350, 24 December 2003,) have been declared unconstitutional, and therefore not more enforced as a result of this sentence, which decided that there had been an invasion of the Regions' jurisdiction by the State, with regard to financial provisions. This judgment did not find unconstitutional the provisions concerning the RMI (minimum income). Therefore the law introducing it (Legislative Decree No. 237/1998) or Act No. 328/2000 on the implementation of the integrated system of social interventions and services that extended the RMI, as a measure for the fight against poverty, remained in force. Hence it was not the constitutional sentence that ended the experimentation on the RMI. Under article 2 of Legislative Decree No. 237/98, which set it up, it was to run until 31 December 2000. This date was extended by successive laws (the last being Act No. 43/2005) to 30 April 2006. The budget bill for 2007 is currently being debated in Parliament and will be approved by the end of 2006. In particular, an article of this

bill provides for a further extension of the RMI experience from 30 April 2006 to 30 June 2007. Therefore, the RMI experience will continue if this article will be approved. For the new Government, the fight against social exclusion and poverty is indeed a priority. This is confirmed by the fact that the "economic and financial programming document"- EFPD, which has been approved by law and guides the Governments economic policy interventions over a five-year period (2007-2011), provides for reform measures that increase the efficiency and effectiveness of social policies. In particular, with regard to the generalised introduction of the RMI system, on a national basis, it provides for the renewal of RMI on new bases, utilising the results and the experience of the RMI experimentation for those who are being on particularly disadvantaged economic conditions and for whom it is appropriate to construct paths for reintegration in work and society. This general measure on RMI will be included in the general reform on safety valves that the new Italian Government will perform (it could be by 2007). Meanwhile in some Regions, in particular in South Italy (Campania and Basilicata), the RMI experience has been pursued by setting up the citizenship income scheme, which consists of a package of active policy measures alongside financial income support subsidies, to be adopted in territorial situations characterised by extreme situations of poverty and deprivation, and strongly directed at the individual and his cultural, social and material needs. That scheme includes several measures aiming at supporting the integration in the labour market and fighting social exclusion by means of grants, of the access to vocational training and employment for disadvantaged young people, etc. In regions where RMI has not been introduced, such as the Marches, the Emilia Romagna, there are social welfare programmes at local level for persons in need. These are, in particular, measures for the support of indigent families, which are financed with funds allocated to the municipalities, and they involve mostly money transfers.

As far as the right of appeal is concerned, according to a general legal principle in force in the Italian system, all administrative decisions, including any adopted in respect of RMI and, in general in the field of social assistance, can be appealed against by the persons concerned, at the first instance before an (administrative) court. It is therefore true that, for RMI, it was possible to appeal to the mayor in respect of all administrative decisions that concerned him, but this was only an alternative possibility, because, in any case, the individual concerned, instead of appealing to the mayor in the first instance, could appeal to the Administrative Tribunal (the Court of First Instance (TAR Law of 6 December 1971 No 1034). Where the person concerned does not wish to appeal in the first instance to a judge and decides to contest the decision on RMI directly before the mayor, the mayor's decision itself could be contested before the President of the Republic (DPR of 24 November 1971 N. 1199), who is without doubt an independent authority. The Head of the State's decision cannot be contested.

358. The Committee invited the Government to provide all the relevant information in its next report, including examples of judgments or rulings concerning the award of assistance benefits (particularly minimum income - RMI), and decided to await the next assessment of the ECSR.

13§1 LITHUANIA

“The Committee concludes that the situation in Lithuania is not in conformity with Article 13§1 of the Revised Charter, for the following reasons:

– the level of social assistance paid to a living alone person not yet of retirement age is manifestly inadequate;

– the grant of social assistance to nationals of other States party to the Charter is subject to an excessive condition of residence.

359. The Committee decided to consider Articles 13§1 and 13§3 of the Revised Charter jointly with regard to Lithuania.

360. The Lithuanian delegate pointed out that social assistance levels had been raised four times since 2004. The monthly guaranteed minimum income for a single person was currently 184.50 Lithuanian Litas (LTL) (about € 53), whereas it had been LTL 121.50 (€ 35) in 2004.

361. Following a statement by the Portuguese delegate, the Committee welcomed these positive developments. At the same time, it noted that the situation was still a cause for concern and asked the Government to provide all the relevant information in its next report.

13§1 MOLDOVA

"The Committee concludes that the situation in Moldova is not in conformity with Article 13§1 of the revised Charter on the ground that there is no system offering appropriate social assistance to all persons in need."

Ground of non-conformity (for the first time)

362. The Moldova delegate provided the following information in writing :

"The social and political changes of the last thirteen years have had an impact on the entire population of Moldova, which has had to face the triple problems of unemployment, poverty and migration.

The economic growth and poverty reduction strategy approved by parliament on 2 December 2004 lays down a policy framework for the country's sustainable development in the medium term.

The Moldovan government is committed to reducing poverty, the basic precondition for which is sustained economic growth. To that end, its economic policy has a pronounced social element directed towards improving the quality of life of the population as a whole and greater social protection for the poorest members of the community, coupled with the development of a system of social guarantees.

The main objectives of social assistance are to:

- make the social benefits system more effective by concentrating on the poorest members of the community and targeting social groups at risk;
- develop the social services system by diversifying and improving the quality of social assistance and giving civil society a more active role in the process;
- frame and implement specific programmes concerned with child and family protection and persons with disabilities.

To achieve these objectives, steps have been taken to:

- reform the benefits system and adapt those benefits to the individuals concerned;
- introduce a poverty allowance;
- diversify the forms and types of social services;
- improve the quality of social services.

The Social Assistance Act, No. 547 – XV of 25.12.2003, makes entitlement to social benefits and allowances in whatever form dependent on the assessed needs of the

applicants, based on their overall personal or family income. Poverty is a complex phenomenon and a complex system has therefore been introduced to identify and assess families' well-being and their needs, in order to provide an overall picture of poor families' situation in the Moldovan context. The assessment includes certain general features and other aspects of family well-being. The regulation on the method of determining individuals' or families' total income was approved in government decision 1084 of 4.10.2004. There is now an urgent need to approve the legislation on the minimum means of subsistence, which will be serve as a reference for setting the poverty allowance.

The first step in the reform of the social benefits system, in accordance with government decision 1117 of 27.10.2005, was to frame and approve efficiency targets and an action plan for social assistance to secure the effective administration of individual benefits. In accordance with the action plan, the government then approved its decision 1119 introducing a pilot project to test the machinery for granting benefits.

The current social assistance system is based on a series of social benefits, most of which are individual benefits paid to some 263 700 recipients. The purpose of the reform is to ensure that benefits are channelled towards the poorest members of the community, as the most effective way of redistributing existing financial resources (focusing initially on individual benefits).

The Ministry of Health and Social Protection is fully committed to these objectives and is taking every possible step to secure implementation of the pilot project in 2007, so that the results can then be applied nationally.

As part of a reform of domiciliary services to adapt them to current requirements, that is to the individual social and financial circumstance of all those concerned, a model domiciliary care regulation and minimum standards for such services have been drawn up. The draft decision has been sent to relevant ministries and NGOs and to the local bodies responsible for social assistance and family protection.

Currently, 2 245 social workers are providing domiciliary services to 22 980 elderly persons and persons who are unfit for work, to offer greater social protection to the socially vulnerable. Under current legislation, eligibility for domiciliary services extends to elderly persons living alone, invalids and elderly or disabled spouses who need assistance and have no children capable of working or a spouse in the locality where they reside, and who are not alcoholic and do not suffer from psychiatric or contagious conditions.

Eighty-four social assistance canteens operate under the Social Assistance Canteens Act and offer services each month to 4 187 elderly and disabled persons affected by poverty and families with numerous children. The level of service provided by social assistance canteens depends on the financial resources of the local authority concerned. The following categories of socially vulnerable persons, whose monthly income in the previous year must not exceed 1 - 2 minimum old age pensions, are eligible for these services:

a. persons who have reached pensionable age and who are homeless, have no lawful means of support, are on low incomes or receive no income at all;
b. invalids;
c. children under 18 from large or one-parent families or families that are considered socially vulnerable, based on social enquiry reports drawn up by the local social assistance authorities.

There are currently 61 rehabilitation centres in Moldova, attended by 3 190 persons.

There are also 20 other establishments with 418 occupants. The latter include Moldovan citizens who are elderly or disabled or persons over 16 living alone who receive no family support and require help from the community and social and medical assistance either at home or in the establishment concerned.

Finally, it should be noted that the centres, social assistance canteens and other establishments referred to are generally funded from local budgets, donations and charitable non-governmental organisations."

363. The Committee took note of the positive developments and decided to await the next assessment of the ECSR.

13§1 PORTUGAL

"The Committee concludes that the situation in Portugal is not in conformity with Article 13§1 of the revised Charter on the grounds that the level of social assistance for persons living alone is manifestly inadequate."

Ground of non-conformity (for the first time)

364. The Portugese delegate provided the following information in writing :

"The social assistance for people living alone (or not) depends of several conditions as it was explained in the portuguese report.
In fact, people who are granted a social pension can get the basic benefit plus supplementary benefits according to the specific conditions they face : disability, housing, vocational training course, medical assistance, etc.

Between 2001 and 2004 the public expenditure with pensions increased 28% and the contributions only increased 9%. This data as well as the data presented in the national report show that there has been some improvement in the level of social assistance provided by the portuguese authorities although the risk of poverty is still high particularly in some groups.
It is important to stress that the portuguese economic growth declined, from 4% in 1995/2000, to 0,5% in 2001/2005. Portugal has been strengthening the budgetary consolidation through the reduce of public deficit.
Nevertheless, the XVII Government, elected in 2005, has the main goal of fighting poverty and social exclusion as well as granting better social conditions for the people in need through the creation of new forms of financing the social security system in order to make it sustainable, just and adequate to the promotion of social cohesion.
The new social policy measures will be explain in the next report but it is important to inform that the Government intends to reduce poverty as well as increasing the value of all the minimum social pensions to the level of the minimum salary in the next 4 years. It was also created, in 2005, a new extraordinary allowance for elderly people living alone and with a very low income."

365. The 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 13§3 – Prevention, abolition or alleviation of need

13§3 ITALY

"The Committee concludes that the situation in Italy is not in conformity with Article 13§3 of the revised Charter on the grounds that it is not able to assess that special arrangements have been made to provide personal advice and assistance to prevent or alleviate want."

Ground of non-conformité (for the first time)

366. The Italian delegate provided the following information in writing:

"It is clear that the non-compliance conclusion is the result of inadequate information on the Italian social system, which has just been described in our most recent report following the reforms in Act 328/2000, particular Section 14 on the right to social services.
In response therefore to the request for more detailed information on the subject, the Committee is advised of the following:
Act 328/2000 recognises the fundamental role of the family, to whom it pledges support, but also recognises the autonomy of the individual components of the family and offers them an integrated range of benefits and services to deal with invalidity, need and deprivation.
Particular attention is paid to:

- children in general
- disabled children
- unaccompanied foreign children and young persons
- young persons
- children and young persons coming before the courts
- children and young persons receiving assistance as part of the criminal justice system
- persons in distress
- persons in extreme poverty
- persons on low incomes
- elderly persons who are not fully autonomous
- persons with physical and mental disorders
- disabled persons
- immigrants
- drug addicts
- alcoholics

Particular attention is paid to certain persons' living conditions. For example, persons living in poverty – persons on low incomes, those who are partially or totally unable to look after themselves for physical or psychological reasons, persons who find it difficult to integrate into society or the labour market and those who are subject to court orders requiring them to be granted assistance – have priority in the allocation of services and benefits under the integrated social services system.
The legislation makes available annual funding to support reception centres and services, social and health activities and social support and reintegration services for persons in extreme poverty or who are homeless.
To ensure that services are constantly adapted to local needs, regions plan social services in collaboration with local bodies, and introduce consultation and co-ordination arrangements and procedures, some of them permanent, to ensure that such co-operation takes place. There are arrangements for collaboration between local and regional services and local authorities, in the context of local social solidarity, and with other community resources.

In allocating benefits, the legislation takes account of the differing requirements of urban and rural areas and the varying characteristics of the population concerned.

As previously noted, although the new Part V of the Constitution makes social assistance exclusively a regional responsibility, the state is still responsible for defining what are known as *essential benefit levels*, in the context of civil and social rights. The essential benefit levels are the government's main instrument for determining national social policies, which are implemented at various constitutional levels and by a network of public and private bodies that together provide a range of services and benefits. They contribute greatly to the coherence of the system, as they are a means of safeguarding the right to certain forms of social assistance in response to needs.

The following "catalogue" of benefits dates from March 2004 and is still in force. It was drawn up on the basis of an agreement between the ministry of labour and social policies, the regions and the Italian national local authorities association. These are benefits and services derived from regional programming documents (regional social plans), with the assistance of technical tables provided by the regions and the local authorities association. The latter follows a comparative study of benefits, based on a pilot study questionnaire of benefits provided by each municipality, and the associated expenditure. The catalogue summarises benefits and services to individuals and families at local level.

SERVICES AND BENEFITS

	BENEFIT	ACTIVITIES
Access	Social advice centres	Information and guidance
	Social secretariat/professional social services	Needs assessments, identification of problems and support and assistance to find solutions Liaison with educational and occupational institutions. Drawing up individual treatment plans.
	Family consultation centres	Assistance with parental responsibilities
	Information management	Management of open (or suspended) files each time users are in contact with the responsible body
Assistance	Domiciliary assistance (children and young persons)	Social and educational support or to encourage school attendance
	Domiciliary assistance (elderly persons)	Individual assistance and care Domiciliary support and services to enable individuals to remain in their own homes Help with other individual needs
	Domiciliary assistance (disabled persons)	Individual assistance and care Assistance with social rehabilitation

Social and educational	Social and educational services	Nursery schools, crèches and mini-crèches Additional services for infants Innovatory services for infants Social and educational support or to encourage school attendance Local and regional social and educational support Assistance with social integration for vulnerable persons and those at risk Assistance with social integration for prisoners and ex-prisoners, nomads and foreign nationals
	Fostering and adoption	Support for fostering and adoption
Residential	Residential establishments (children and young persons)	Emergency reception centres Children's homes Foster care
	Residential establishments (elderly persons)	Sheltered housing for elderly persons who are fully autonomous Sheltered housing for elderly persons who are not fully autonomous Residential homes
	Residential establishments (disabled persons)	Social rehabilitation centres Shared flats Accommodation for severely disabled persons with no appropriate family support
Semi-residential	Semi-residential facilities (children and young persons)	Day centres Youth activity centres Centres for parents and children
	Semi-residential facilities (elderly persons)	Social centres for elderly persons
	Semi-residential facilities (disabled persons)	Sheltered workshops Day care social rehabilitation centres
	Other practical benefits	Restaurants or canteens Social transport Shopping or meal vouchers
	Housing services	Measures to support renting
	Telephone assistance and emergency telephones	Green numbers system Telephone assistance points close to persons' homes
	Emergency social action	Emergency residential facilities Reception facilities for battered women Night-time reception facilities during cold spells Mobile unit for drug addicts and alcoholics

Income support	Emergency income support

Our next report will also include a recent monitoring report by the ministry of labour published in March 2006 on social policies and expenditure in municipalities and regions.
As examples, under Article 14 we have included the social assistance plans of the Lazio, Lombardy and Tuscany regions and the cities of Rome, Milan and Naples."

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

13§3 LITHUANIA

"The Committee concludes that the situation of Lithuania is not in conformity with Article 13§3 of the Revised Charter, on the ground that access to social services for nationals of other States party to the Charter is subject to a condition of continuous presence on Lithuanian territory for an excessive period."

368. The Lithuanian delegate emphasised that the situation with regard to access to social services had changed in 2006 as it was now open to nationals of states party with a permanent or temporary residence permit. Nationals who already had authorisation to stay in the country could easily obtain a temporary residence permit.

369. The delegate also explained that entitlement to certain social benefits such as social assistance for pupils was not subject to a residence requirement.

370. The Committee took note of the efforts being made by Lithuania and asked the Government to provide all the relevant information in its next report.

13§3 ROMANIA

"The Committee it is unable to determine whether there is an effective right to services offering advice and personal assistance to persons without adequate resources or at risk of becoming so."

Ground of non-conformity (for the first time)

371. The Romanian delegate provided the following information in writing :

"Various benefits are aimed at fulfilling the obligation under Article 13§3 of the Charter :

Family allowances
During the period 2005-2006, was continued the process of annual increasing of the social assistance allowances quantum in the report of growth (increasing) index of consumption prices. Thus, given the 2004 year, in the I term of 2006 year the medium growth of the quantum is about 12% for the family allowances, indemnities and social aids granted to the population.

Also, during the period 2005-2006 was continued the implementation of the existent programmes of social benefits Thus for the state allowances for children, in the 2005 year was registered an increasing of the beneficiaries number with 6,07% given 2004, and also an increase of this amount (quantum) with 4,16%.

Thus, was approved Emergency Ordinance for modifying of Law No. 61/1993, republished, that regulates mainly the following:

- granting children allowances till the of age 18, inclusively, without conditioning of scholarship;
- granting state allowances for the youth who reached the age of 18 with condition that these will attend high school or professional classes, till their end.

Supplementary given the present beneficiaries of the state allowances, following the legislative changes, this benefit will grant of a number of 10.000 children registered at the private schools that are not in the evidence of National Commission for Evaluation and Accreditation of the Pre-universitary Education, or who reached the age of 16 years and do not attend any education form.

Starting on 1st January 2007 (Government Ordinance No.148/2005) the quantum of allowances for children will be increased to 2 million ROL (200 RON) and be granted on the basis of the universality principle, for all children, till they reached the age of 2 years, respectively of 3 years, in the case of the child with disability.

In order to bring up and educate the child in care or given the child whom was institute de guardian (guardianship/tutelage) is granting a monthly placement allowances in quantum of 82 ROL (an increase of 5,1 % given 2005). For children with disability, the quantum of this benefit is increased by 50%.Number of beneficiaries raised in 2005 year with 58% given 2004 year.(from 48.930 beneficiaries to 84.205 beneficiaries) following the policies assumed/ enforced in the child protection domain, namely developing the alternatives services of institutionalize, through that is the family placement. In the first 5 months of the 2006 years, the monthly average number of beneficiaries is about 51.735.

In 2005 was initiated a new program of family allowances namely complementary family allowances and allowances for supporting the mono-parental families. All the families with children who have the monthly incomes till 168 ROL for the family member are benefiting from the provisions of this regulation The amount/quantum of this allowances is different in accordance with the number of children in the family. For 2006 year, the amounts/quantum were increased by an average percentage of 5% given 2005 year.

Comparative with the wintry season 2003-2004, in the wintry season 2004-2005 and 2005-2006, heating allowances registered for the entire mentioned period a total increasing of the amounts about 60%, (34% in the case of energy, 120% for natural gases and 37% for woods, coals, gas).

The programme for granting the house allowances was continued, the number of beneficiaries increased by 8% respectively from 1.364.000 beneficiaries in the wintry season 2003-2004 (588.593 beneficiaries for energy, 383.774 for natural gases and 392.283 for woods, coals, gas) to 1.487.000 beneficiaries in the wintry season 2005-2006 (512 000 for thermal energy, 599.000 for natural gas and 376.000 for wood, coals, gas). The granted amounts increased given the wintry season 2003-2004 by 16% in the wintry season 2004-2005 (from 315 millions ROL to 365,56 millions ROL) and by 74% in the wintry season 2005-2006 (547 millions ROL)

For the period of wintry season November 2006-march 2007 Ministry of Labor Social Solidarity and Family issued an Emergency Government Ordinance for modification and completion of Emergency Government Ordinance No. 5/2003 regarding granting heating allowances, and also some facilities for energy payment through that was proposed the replacement of the actual system for granting of heating allowances on the basis of value vouchers with an more rapid and efficient system.

The main changes aim at:

- responsibility for granting the heating allowances returns, mainly, to the local public authorities, contractors and associations of ownership/boarders, following that MLSSF, through its territorial directorates, to insure the payment of allowances in the accounts of type escrow directly to the contractors, from the state budget;
- the right to allowance is establishing once for all the wintry season period and it is shorten/ reducing the number of papers, thus improving the activity at the mayoralty and the associations of boarders/owners level;
- heating allowance with energy supplied in the centralized system is granting through percentage compensation of the effective value of the invoice at the thermal energy;
- increasing and completion of the present incomes of the families with about 14%, thus will benefit from heating allowances the alone persons too whom monthly net average income for the family member is till 500 Rol.
- granting some compensation bigger with 10% for the alone person,

- granting some compensation of 100% for families and alone persons who are benefiting from the social aids according to the provisions of Law No. 416/2001 regarding the guaranteed minimum income, with its subsequent modifications and completions.

Another measure granted for improvement the quality of life is granting of pecuniary benefits of 1.500 ROL for supplying, setting and installation of individual thermical centrals and of 300 ROL for supplying and covering of automatic burning instituted in 2005 year. Till present were benefited from allowances/ aids a number of 463 of families, the granted amount is setting at the value of 581.100 ROL.

In 2006 years the programs of social benefits were diversified aimed, mainly, the support of the family and birth-rate increasing. Thus, besides the allowances for child raise till reach the age of 2, respectively of 3 years in case of disabled child, this allowance externalized from the social insurance system and is insured from exclusively the state budget, were introduced another measures for example monthly incentive, nursery tickets, pecuniary allowances/ aids for thermal station and automatic burning.

Till the date of 30 June 2006 were benefited from the allowance for child raise 194.408 persons, for those were paid about 147,1 million RON, from the incentive were benefited 4.272 persons, for that were paid about 3,23 million RON.

From 2006 is granted the monthly incentive, as a support form granted to the parents that are return to their work (professional activities). Till 31 May 2006 were benefited from this allowance 8.600 of persons and were paid 8,5 million ROL.

The quantum of state allowances for the children till the age of 2, respectively of 3 years in case of the disabled child, is increased at 200 ROL starting with 1st January 2007, that represents an increasing by 8,3 times given the present level.

For the employees whom children are benefiting from the services in nurseries, from the second term of the 2006 year, employees will grant nursery vouchers in the value of 300 ROL.

A new measure taken into account for the 2007 year is represented by granting one benefit, in the value of 200 Euro, calculated in ROL, at the family foundation. The draft law regarding granting of the supply at the family foundation provides granting of a family aid to the new constituted family, the condition is that at least one of the spouses is at the first marriage.

The program regarding the guaranteed minimum income was initiated based on the solidarity principle with the aim of having a direct impact on the poverty decreased and especially on the extreme poverty.

The guaranteed minimum income is defined in accordance of the size and constitution of the household. The household has the right to a social assistance equal with the difference between the social minimum and the real income obtained from any other sources, inclusively the possible income realized from the assets, as are the lands and animals. This means that household can have the employed members (with low salaries and/or employees with part-time program) that have the right to social assistance. The existence of a member from the household who is working, leads to increasing the right to social aids by 15%. The members of the household able to work have to develop a communitarian work, in the case that they are not employed on the basis on a labor contract. If a person does not perform the communitarian labor that was assignment, he is losing his right to social assistance, the remainder of the household keeping this benefit.

GMI (guaranteed minimum income) is administrated by the public local administrations. The eligibility is established at the local level, according to the criteria defined by the Ministry of Labor, Social Solidarity and Family (MLSSF). The eligibility criteria are defined at a general level, the local administration being responsible for the establishing the possible income realized from lands and other assets. The local administration is, also, responsible for the allocation and supervision of the communitarian labor.

The average number of beneficiaries in 2004 was 420.000 families and alone persons, diminishing in 2005 at 390.000 and in 2006 (the first 3 months) to 381.000 families and alone persons. The granted accounts increased given 2004 years with 7% in 2005, respectively from 440 million ROL to 472 million ROL and raised at 93 millions ROL in the first months of the 2006. This measure was addressed of an average monthly number of 834.402 persons in 2005 year, with 6% less then 2004 year, following the increasing the population incomes. In 2005 year the average allowance granted increased by 13% given 2004, respectively from 116 ROL to 132 ROl.

Granting GMI is conditioned by performing an activity for community and represents a complementary measure with granting other benefits as follows: medical insurance, emergency aids, heating allowances.

In order to support the families being in the necessity situations owned to the natural calamities, conflagrations and accidents were granted in 2005 years a number of 8.160 of emergency aids expending thus 7,21 million ROL. In 2006 year, were granted 13.954 emergency aids for supporting the families and persons affected by the inundations.

4.730 families and persons who are confronting with difficulties because of the poverty or disease were benefited from the financial allowances and the allocated acount was 4,8 million ROL."

372. The 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 16 – Right of the family to social, legal and economic protection

16 BULGARIA

"The Committee concludes that the situation in Bulgaria is not in conformity with Article 16 of the revised Charter on the following grounds:

– it is not able to assess whether family allowances are of sufficient amount;
– it is not able to assess whether Roma families are guaranteed equal access to family benefits."

First ground of non-conformity (family benefits)

373. The Bulgarian delegate said that the Bulgarian Government had recently embarked on reform in this area. It had, for example, launched a new policy to assist families with children, and an action plan based on the 2006-2010 Strategy for Families to simplify the payment of family benefits. Under a new bill, benefits would now be paid annually, and might not fall short of the previous year's sum.

There were also plans to increase the maternity allowance in 2007, introduce financial support measures for families with dependent children, including an allowance for those whose children were just starting school, and increase the period for which the maternity allowance was paid from 135 to 315 days.

Replying to the representative of the ETUC, he said that the allowance paid to mothers on maternity leave came to 90% of their wage before taking leave.

He explained that Bulgaria had several types of social assistance system, and that this made it hard to furnish detailed information and figures. Furthermore, some benefits (e.g. maternity allowances) were paid in cash, and this made it difficult to obtain a percentage figure on the Eurostat model. Nonetheless, the next report would remedy this lack of information.

374. The Committee underlined that the intention of the Government to start introducing reforms had already been announced in the past. It invited the Government to provide all the relevant information in the next report and, if possible, submit figures calculated using the Eurostat method and decided to await the next assessment of the ECSR.

Second ground of non-conformity (vulnerable families)

375. The Bulgarian delegate disagreed with the ECSR's findings in this area. Administrative practice was not discriminatory towards Roma and other vulnerable groups, who had equal access to social assistance.

He questioned whether refusing assistance to persons not eligible for it could be considered discriminatory. Compiling statistics on this question would itself be discriminatory – which was why there were none.

The percentage of Roma entitled to social assistance was relatively high, but he had no detailed figures. The Government had launched a number of special programmes for Roma, the most important being the Programme for Equal Integration of Roma, which was funded from the state budget for Roma.

376. Replying to the representative of the ETUC, he said that the next report would provide further information and figures on the results of these programmes.

Nonetheless, he could already supply a few figures. For instance, under the 2005-2006 programme for vulnerable families with children, 1752 families had received supplementary social assistance. During that same period, the social services had received 172 applications per month from (mostly Roma) families.

377. Referring to the integration plan for Roma, the Portuguese delegate suggested that the Bulgarian Government should be asked to supply very detailed information on equal access to family benefits for Roma, the number of recipients, and budget provision for implementation of the programme – which would show if it was really aware of the problem.

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

16 LITHUANIA

"The Committee concludes that the situation is not in conformity with Article 16 of the Revised Charter on the grounds that there is no equal treatment of nationals of other States Parties in respect of the payment of family benefits because of an excessive residence requirement."

379. The Lithuanian delegate pointed out that, where the payment of family benefits was concerned, the residence condition still had to be met in most cases, although welfare assistance to pupils was no longer subject to the same regime.

380. The Committee emphasised that, in the absence of a timetable for further legislative amendments, Lithuania showed no intention of remedying the situation, and this for the second consecutive time.

381. In reply to a question raised by the Polish delegate, the Lithuanian delegate said that bilateral agreements had been concluded in this respect between Lithuania and Ukraine, Belarus and Russia.

382. The ETUC representative pointed out that many states did not seem to be covered by such bilateral agreements.

383. The Portuguese delegate, for her part, proposed that a strong message be sent to the Lithuanian government, inviting it to provide details in its next report of the number of persons involved in this discrimination, so that a better assessment could be made of the economic and social reasons which constituted obstacles in the present situation.

384. The Committee regretted that the Government had not taken the necessary measures, failing to act on its initial intention to amend the legislation in respect of length of residence. The Committee urged the Government to reconsider its position in this respect, and to take the most appropriate measures to bring the situation into conformity with Article 16 of the Revised Charter.

16 ROMANIA

"The Committee concludes that the situation of Romania is not in conformity with Article 16 of the Revised Charter for the following reasons:

– the social protection of Roma families is manifestly insufficient because of the shortage of housing;
– the level of family benefits is inadequate."

First ground of non-conformity

385. The Romanian delegate said that the national Agency for Roma, in pursuance of Decree No. 1124/2005, had, in collaboration with the state and non-governmental organisations, begun a number of specific projects intended to improve economic and social conditions for Roma in fields such as housing, employment, health and education. Around 30 specific programmes had been started in 2006, relating to infrastructure, renovation of housing for Roma families, water supplies and electrification. The Romanian delegate added that, in 2007, the national Agency for Roma was due to start 7 new projects relating to infrastructure for Roma communities, financed through the State budget.

386. The Romanian delegate said that, in pursuance of Law No. 114/1996 on housing, the Government had also launched several programmes linked to the building of social housing to be managed by local authorities specifically for vulnerable population groups, including the Roma. There were also further home-building programmes, at the initiative of the national Housing Agency, more specifically intended for young members of the Roma population. A total of 3,000 housing units had thus been built in 2006 under these two types of home-building programmes.

387. She also pointed out that, in pursuance of Law No. 12/2007, a new programme of Government subsidies for housing in course of construction was due to start in 2007, inter alia for the benefit of Roma who had been evicted.

388. The Committee took note of the information supplied by the government, which it invited to continue its efforts. The Committee decided to await the next ECSR assessment.

Second ground of non-conformity

389. The Romanian delegate pointed out that, between 2006 and 2007, there had been significant changes in the system of family benefits, which were inflation-linked: continuation of the support programme for supplementary family benefits and introduction of new benefits, as well as a change in the conditions for the granting of child allowance.

390. The Romanian delegate said that the programme for the granting of supplementary family benefits, and particularly the allowance for single-parent families, had continued in pursuance of newly adopted Law No. 41/2004. She said that records showed a total of 651,555 recipients of supplementary family benefits and 244,845 beneficiaries of the allowance for single-parent families.

391. She also pointed out that a programme put into effect in pursuance of Government Emergency Order approved by Law No. 7/2007 was intended to guarantee a minimum wage through the grant of welfare assistance in the form of a supplementary family benefit on the same footing as medical insurance, emergency medical assistance or home heating assistance. This assistance had been granted to some 420,000 families and single persons in 2004. Other supplementary financial assistance, such as that intended for families facing health problems or having

suffered the death of a family member, could also be granted, as could birth grants. Other supplementary measures (Decree No. 148/2005), such as monthly incentives to persons who had returned to paid work while bringing up a child under the age of two, had also been introduced.

392. The Romanian delegate also pointed out that, in pursuance of Law No. 508/2006, child allowance could now be granted in respect of children who reached the age of 18, without any condition relating to school attendance. Records showed a total of 4,270,759 beneficiaries of this legislative measure. She added that the amount of this child allowance had also, in pursuance of Decree No. 148/2005, been increased for children reaching the age of two (or three if they suffered from a disability) and was now 200 Romanian leu (ROL 200 = almost EUR 60).

393. The Committee took note of the measures taken by the Government, but also invited it to do everything to improve the situation. It decided to await the next assessment of the ECSR.

16 SLOVENIA

"The Committee concludes that the situation in Slovenia is not in conformity with Article 16 of the Revised Charter because:

– Roma families have insufficient legal protection;
– equal treatment of nationals of other States party in the payment of family benefits is not ensured because the length of residence requirement is excessive."

First ground of non-conformity (legal protection of Roma)

394. The Slovenian delegate said that the Government was aware of the need to provide better protection for Roma and help them to integrate in the community. Several social security, schooling and training programmes had been, or were being, implemented for them. One of the aims was to improve their chances of finding work through education and training. Slovenia had signed a memorandum, recognising Roma as a "vulnerable social group", in 2003. This covered measures to help such groups, who lived apart from the rest of the community, to integrate. Regional Planning Act No. 110/2002 (amended by Acts Nos. 8/2003 and 58/2003) had also made funds available to improve social conditions for Roma.

A special working group had recently been set up to prepare a bill aimed at systematic normalisation of the situation of Roma in the community.

395. Replying to the representative of the ETUC, she said that this bill had been finalised in the summer, but had not yet been tabled in Parliament. The delays were due to changes in leadership and management.

396. The Committee urged the Slovenian Government to table the bill without delay, for the purpose of bringing the situation into line with Article 16 of the revised Charter, and decided to wait for the next assessment of the ECSR.

Second ground of non-conformity (equal treatment)

397. The delegate said that the amendment to Aliens Act No. 7/2003, reducing the residence requirement to five years, had been adopted in October 2005.

398. The Portuguese delegate said that this was a positive step, but that the residence requirement was still too long and undermined the rights of nationals of states party to the Charter and the revised Charter.

399. The Swedish, French and Estonian delegates agreed.

400. The Committee welcomed the progress made on reducing the length-of-residence requirement, but strongly urged the Slovenian Government to bring the situation into line with Article 16 of the Charter.

Article 19§4 – Equality regarding employment, right to organise and accommodation

19§4 SLOVENIA

"The Committee concludes that the situation in Slovenia is not in conformity with Article 19§4 of the Revised Charter on the ground that equal treatment as regards access to non-profit housing is not secured for all migrant workers who are nationals of states parties to Charter."

401. The Slovenian delegate mentioned that there continued to be a big gap between the supply and demand for non-profit housing, and long waiting periods for such accommodation. The authorities were aware that the nationality condition in the legislation on access to non-profit housing violated the Charter, but requested time to bring the situation into conformity. In response to certain delegates, she stated it was not possible to give an exact time-frame for bringing the situation into conformity. Although the nationality requirement had not been deleted from the relevant Act when it had last been amended, the authorities would bear in mind the Committee's remarks for the future.

402. The representative of the ETUC expressed disappointment given that on the previous occasion the Slovenian Government had mentioned that the nationality condition would be abolished, whilst now there were no clear indications that this would be done.

403. Given the lack of progress, the Chair proposed to vote for a warning.

404. The Committee proceeded to vote on a warning, which was not adopted (5 votes in favour, 13 against and 11 abstentions). The Committee nevertheless considered it important that the Government introduced non-discriminatory legislation as regards foreign nationals and their access to non-profit housing as soon as possible.

Article 19§6 – Family reunion

19§6 ESTONIA

"The Committee concludes that the situation in Estonia is not in conformity with Article 19§6 of the revised Charter on the ground that a five year residence requirement which is imposed on migrant workers who are not citizens of members states of the European Union, nor citizens of member states of European Economic Area is excessive."

405. The Estonian delegate indicated that the Aliens Act had been amended on 19 April 2006. The length of residence requirement for a foreigner to bring in his/her spouse had been reduced to two years residence in Estonia. She indicated that this was in accordance with Directive 2003/86/CE on the right to family reunification.

406. The ETUC representative asked if the new provision applied to citizens from all States party. The Estonian delegate replied that she was not sure, but would verify it.

407. The Committee welcomed the information on the new law, and requested the Government to submit detailed information in the next report if it applied to citizens from all contracting parties. It decided to await the next assessment of the ECSR.

Article 19§7 – Equality regarding legal proceedings

19§7 LITHUANIA

"The Committee concludes that the situation in Lithuania is not in conformity with Article 19§7 of the Charter on grounds that migrant workers from non-European Union States Parties to the Charter are not entitled to apply for state-guaranteed legal aid."

408. The Lithuanian delegate mentioned that there had been a misunderstanding of the new law on 'State-Guaranteed Legal Aid' by the ECSR, since such a law did in fact entitle non-European Union migrant workers to apply for legal aid.

409. This was confirmed by the Secretariat, who would draw the attention of the ECSR on this question.

Article 19§8 – Right of migrant workers and their families to protection and assistance

19§8 FINLAND

"The Committee therefore concludes that the situation in Finland is not in conformity with Article 19§8 of the Revised Charter on the ground that a migrant worker's minor children who have settled on Finnish territory as a result of family reunion may be expelled when the migrant worker is expelled."

410. The Finnish delegate referred to previous explanations given on this matter and indicated that legislation had not changed. In the event of the expulsion of a person who was the sole custodian of a child under the age of 18 years, the expulsion of the child was not automatic. The child was normally heard, full account of his/her circumstances were taken into account and the best interest of the child was the prevailing criteria.

411. Taking into account social considerations, the Committee did not find it necessary to take any further steps in this case.

19§8 IRELAND

"The Committee concludes that the situation in Ireland is not in conformity with Article 19§8 of the Revised Charter on grounds that migrant workers have no appropriate means of appeal against a deportation order."

412. The Irish Delegate indicated that the Government had embarked on a review of immigration legislation. The draft bill was in its final stages of preparation, and, whilst he did not know how the question of the right of appeal of foreign nationals served with deportation orders would be regulated, the authorities were aware of the ECSR's comments on this matter.

413. The Committee recalled the validity of the two recommendations which had been issued by the Committee of Ministers to Ireland on this issue. Whilst noting that immigration legislation was being reviewed, it expressed its concern that this problem had still not been solved and urged the Government to bring the situation into conformity with the Revised Charter.

19§8 SLOVENIA

"The Committee concludes that the situation in Slovenia is not in conformity with Article 19§8 of the Revised Charter because migrant workers can be deported if they do not have sufficient financial resources to ensure their subsistence."

414. The Slovenian delegate recalled that the Aliens Act permitted the annulment of a temporary residence permit if a foreigner no longer had financial means to ensure his/her subsistence. Therefore, if a migrant worker lost his job, and he no longer was entitled to social benefits, he could be asked to leave the country. The authorities were not considering making changes to this legislation.

415. The Portuguese and French delegates expressed their concern with this situation in Slovenia.

416. The representative of the ETUC asked for a clarification on what was understood in this context as social benefits, given the severe consequence of expulsion for migrant workers who had lost their jobs and were no longer entitled to social benefits.

417. The Committee agreed that the warning was still valid, and requested the Government to submit more information in the next report, in particular whether there had been cases in practice on the withdrawal of temporary permits for lack of means. The Committee decided to await the next assessment of the ECSR.

19§8 SWEDEN

"The Committee concludes that the situation in Sweden is not in conformity with Article 19§8 of the revised Charter on the ground that migrant workers against whom an expulsion order has been issued on account of their posing a threat to national security have no right of appeal to an independent body."

418. The Swedish delegate indicated that changes had been made to the Act on Special Control in Respect of Aliens in 2006 (after the reference period). A decision on expulsion by the Migration Board could be appealed to the Government, but now such an application would also be sent to the Migration Board and to the Migration Court of Appeal. The court would hold a hearing on the case and give its opinion, before handling the file back to the Government.

419. The Committee took note of the information, welcomed the development and decided to await the next assessment of the ECSR.

Article 19§10 – Equal treatment for the self-employed

19§10 ESTONIA
"Accordingly, the Committee concludes that the situation in Estonia is also not in conformity with Article 19§10 of the revised Charter."

420. The Estonian delegate referred to his statement under Article 19§6.

421. The Committee referred to its decision under Article 19§6.

19§10 FINLAND
"Accordingly, the Committee concludes that the situation in Finland is not in conformity with Article 19§10 of the Revised Charter."

422. The Finnish delegate referred to her statements under Article 19§8.

423. The Committee referred to its decision under Article 19§8.

19§10 IRELAND
"Accordingly, the Committee concludes that the situation in Ireland is also not in conformity with Article 19§10 of the Revised Charter."

424. The Irish delegate referred to his statements under Article 19§8.

425. The Committee referred to its decisions under Article 19§8.

19§10 LITHUANIA
"Accordingly, the Committee concludes that the situation in Lithuania is also not in conformity with Article 19§10 of the Revised Charter."

426. The Lithuanian delegate referred to her statements under Article 19§7.

427. The Committee referred to its decision under Article 19§7.

19§10 SLOVENIA
"Accordingly, the Committee concludes that the situation in Slovenia is not in conformity with Article 19§10 of the Revised Charter."

428. The Slovenian delegate referred to her statements under Articles 19§4 and 19§8.

429. The Committee referred to its decisions under Articles 19§4 and 19§8.

19§10 SWEDEN
"Accordingly, the Committee concludes that the situation in Sweden is not in conformity with Article 19§10 of the Revised Charter."

430. The Swedish delegate referred to her statements under Article 19§8.

431. The Committee referred to its decisions under Article 19§8.

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

20 CYPRUS

"The Committee concludes that the situation in Cyprus is not in conformity with Article 20 of the Revised Charter on the ground that domestic law does not make provision for comparisons of pay and jobs outside the company directly concerned where this is necessary for an appropriate comparison."

Ground of non-conformity (for the first time)

432. The Cyprus delegate provided the following information in writing :

"Regarding the conclusion of the Committee that the situation in Cyprus as to domestic Law No. 177(II) of 2002 on Equal Pay, is not in conformity with article 20 of the Revised European Social Charter, we would like to inform the following:

- we have requested and received the opinion of the government Legal Service in Cyprus, which seems to be in line with the conclusion of the Committee;
- we are planning to follow the established procedure, including consultation with our social partners, with the aim of ensuring that the domestic law will be in conformity with article 20."

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

20 FINLAND

"The Committee concludes that the situation in Finland is in non-conformity with Article 20 of the Revised Charter on the ground that the amendment to the Act on Equality between men and women was adopted outside the period of reference".

Ground of non-conformity (for the first time)

434. The Finnish delegate provided the following information in writing :

"The European Social Charter (revised) considers that the remedy available to the victims of discrimination must be adequate, proportionate and dissuasive and without predefined upper limit as this may preclude damages from being awarded on a proper way.

The Act on Equality between Women and Men (609/1986) prohibits discrimination based on gender. The Act was amended most recently, in 2005.

Compensation under the Act on Equality between Women and Men
If the employer violates the prohibition of discrimination the employee can take the employer to court to demand compensation. The liability for compensation is independent of fault and does not require deliberate or indirect (through negligence) action of the discriminator.

Compensation may be adjudged for immaterial loss. A sentence does not require evidence of the quantity of the insult but the basis for compensation is the nature of the act. The compensation must be paid even if the discrimination has not caused any financial loss, as the sum in question represents compensation for the discrimination offence itself. The compensation is payable by the party violating the prohibition of discrimination and the minimum sum payable is 3000 € (June 2005).The maximum amount of compensation was on the reference period 15 000 euros.

However the amended Equality Act has now removed the limit on the compensation. Only in cases concerning employee recruitment the compensation payable shall not exceed 15 000 €. When the amount of compensation is being determined the nature and extent and duration of the discrimination shall be taken into account.

The employee can also seek compensation under other laws. Receiving the compensation does not prevent the injured party from demanding compensation on the basis of other legislation such as the Employment Contracts Act or the Tort Liability Act.

Indemnification under the Tort Liability Act
In case discrimination has caused material loss for the injured, he /she may resort to the Tort Liability Act for indemnification. The liability of indemnification provides that the party causing the damage has caused it through his/her fault or negligence. The injured party must give evidence of the amount of the loss. The indemnification is based on the amount of the loss and has no predefined ceiling.

Indemnification under the Employment Contracts Act
The Employment Contract Act provides that an employer who illegally dismisses an employee has to pay indemnification the amount of which varies between 3 and 24 months' pay depending on case (in case of shop steward 30 months pay). In addition to the compensation the victim is entitled to unemployment benefit security if he/she cannot find another job."

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

20 PORTUGAL

"The Committee concludes that the situation is Portugal is not in conformity with Article 20 of the revised Charter on the ground that under Portuguese law the scope of the comparison of wages for determining equality or equal value of jobs is limited to the same enterprise."

436. The Portuguese delegate explained that in 2004 the Labour Code was amended and legislation regulating these changes adopted. However, the definition of equal pay was not amended as to make it possible to carry out comparison beyond the same enterprise. She added that there is no consensus on the issue also in other international contexts, such as the ILO and EU. The delegate recalled that the right to equal pay is provided by law; its definition allows comparison within the same enterprise; there is a right of appeal and protection from reappraisal from the employer. She also pointed out that the reduction of the salary gap is a Government priority in the recent action plans on employment and equal treatment. Progress was accomplished since women salary increased from 77% of the men salary in 2000 to 80% in 2002. She finally added that there is no domestic court decision on the point raised by the ECSR.

437. The Belgian delegate observed that although the recent Labour Code reform, as confirmed by the Portuguese delegate, did not bring the situation into conformity with the Charter, it showed an effort to change the legislation.

438. The representative of the ETUC suggested that since the Portuguese delegate herself recognised the situation not to be in conformity, notwithstanding the effort to change the legislation, the Committee should take note of the information provided and urge the Government to make the changes to bring the situation into conformity with the Charter.

439. The representative of the IOE agreed with the representative of the ETUC.

440. The Committee takes note of the information provided and urges the Government to make the changes to bring the situation into conformity with the Charter.

20 SWEDEN

"The Committee concludes that the situation in Sweden is not in conformity with Article 20 of the revised Charter on the ground that the employment insurance legislation implies an indirect discrimination against women working part-time."

441. The Swedish delegate explained that to qualify for unemployment benefits a worker shall be member of an unemployment fund for twelve months; to become member the person must have worked at least 17 hours per week for four weeks during a five weeks period. She also recalled the conditions to become entitled to unemployment benefits: first, during the twelve months preceding unemployment the person must either have worked for at least 70 hours per month (i.e. 17 hours per week) during six of the twelve months; or have worked at least 450 hours during a continuous period of six months. Second, the worker must be prepared to take on work for at least 17 hours per week (at least 3 hours per day). The rationale behind these rules is the need to establish a definite link with the labour market.

The Swedish delegate also provided figures and information in order to give a broader overview going beyond a mere description of the unemployment system: level of compensation (about 80% of previous salary up to a certain level), statistics on part-time work (32% of women, compared with 9.7% of men), statistics on the proportion of employees not qualifying for unemployment benefit because they worked less than 20 hours (4.7% of the labour force - 6.4% of women compared with 3.2% of men; 23% of part-time employees – 20% of women compared with 33% of men). These figures showed that while it was true that a higher proportion of women did not qualify for unemployment benefit, the number of employees concerned was nevertheless very low; 93-94% of women were covered. Long travel distances to work and the broad availability of child-care are reasons enough for few people to wish to work as little as three hours per day. Moreover, those not qualifying for unemployment benefit were entitled to social welfare.

442. The representative of the ETUC asked whether the figures mentioned by the Swedish delegate were similar to those provided on the occasion of the previous cycle of control (2004) and whether the study announced then had been carried out and what are the conclusions.

443. The Swedish delegate indicated that figures are almost unchanged and that the study reached the conclusion that it was unreasonable to change the legislation since, as it is, it represents an incentive to promote the will to work.

444. The Dutch delegate was of the opinion that the Government considered the question and did a choice it is not for the Committee to assess.

445. The Estonian delegate noted that if social assistance is higher than the unemployment benefit a person working less than 17 hours per week would get, there is no incentive to work for such small time.

446. The Swedish delegate confirmed this to be the case and that, in case the person would receive unemployment benefit for less than 17 hours per week, it would be necessary to cumulate it with social assistance to reach an adequate level.

447. Since there is social assistance, the French delegate did not see any problem with the legislation.

448. The Bulgarian delegate instead noted that this was the third conclusion of not conformity; therefore the Committee should ask the Swedish Government to present all relevant arguments and take contact with the ECSR to discuss the issue.

449. The representative of the ETUC agreed with the opinion of the Bulgarian delegate and asked whether the ECSR knew the conclusions of the study carried out.

450. The Secretariat indicated that the study has not been transmitted to the ECSR.

451. The Committee invited the Swedish Government to provide all the relevant information, including the study, in the next report and decided to await the next assessment of the ECSR.

Appendix I

LIST OF PARTICIPANTS

(1) 112th meeting : 2-4 May 2006
(2) 113th meeting : 12-14 September 2006
(3) 114th meeting : 10-12 October 2006
(4) 115th meeting : 16-19 April 2007

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UKRAINE *(20/12/2006 = Ratification)*
Mrs Natalia POPOVA, Senior Officer, European Integration and International Partnership Division, International Relations Department, Ministry of Labour and Social Policy (4)

UNITED KINGDOM / ROYAUME-UNI
Mr Stephen RICHARDS, Head of ILO/COE/UN Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills (1)

Mr Robert Tudor ROBERTS, International Negociator, ILO, UN & CoE (Employment) Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills (2) (3) (4)

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 (ETUI-REHS) (1) (2) (3) (4)

M. Henri LOURDELLE, Conseiller, Confédération Européenne des Syndicats (1) (2) (3)

BUSINESSEUROPE
(former UNION OF INDUSTRIAL AND EMPLOYERS' CONFEDERATIONS OF EUROPE /
ex- UNION DES CONFEDERATIONS DE L'INDUSTRIE ET DES EMPLOYEURS D'EUROPE)
– (1) (2) (3) (4)

INTERNATIONAL ORGANISATION OF EMPLOYERS /
ORGANISATION INTERNATIONALE DES EMPLOYEURS
Mrs Lidija HORVATIC, Director of International Relations, Croatian Employers' Association (1) (3) (4)

SIGNATORIES STATES / ETATS SIGNATAIRES

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE
Ms Azra HADŽIBEGIĆ, Expert Adviser for Human Rights, Ministry for Human Rights and Refugees, Department for Human Rights BIH (1) (2) (3) (4)

LIECHTENSTEIN
(Apologised / Excusé) (1) (2) (4)

MONACO
M. Stéphane PALMARI, Secrétaire, Département des Affaires Sociales et de la Santé, Ministère d'Etat (3) (4)

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) (3) (4)

SAN MARINO / SAINT-MARIN
– (1) (2) (3) (4)

SERBIA AND MONTENEGRO / SERBIE-MONTENEGRO [*]
Mrs Vjera SOC, High Advisor for International Cooperation, Ministry of Labour and Social Welfare of the Republic of Montenegro (1)

SERBIA / SERBIE [*]
Ms Jelena NADJ, Head of Department for Harmonisation of Regulation with EU Law, International Relations and Project Management, Ministry of Labour, Employment and Social Policy (1) (2) (3)

Ms Dragana RADOVANOVIC, Head of Unit for Harmonization of Regulations with EU Law and International Relations (4)

[*] Depuis le 3 juin 2006, la République de Serbie continue à assumer la qualité de membre du Conseil de l'Europe jusqu'alors dévolue à l'Union d'Etats de Serbie-Monténégro (Décision du Comité des Ministres du 14 juin 2006).

SWITZERLAND / SUISSE
[Apologised / Excusé) (1) (2) (4)

UKRAINE *(20/12/2006 = Ratification)*
Mrs Natalia POPOVA, Senior Officer, European Integration and International Partnership Division, International Relations Department, Ministry of Labour and Social Policy (1) (2) (3)

Appendix II

CHART OF SIGNATURES AND RATIFICATIONS

Situation at 29 June 2007

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	**29/10/69**	
Azerbaïjan		18/10/01	02/09/04	
Belgium		03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina		11/05/04		
Bulgaria		21/09/98	07/06/00	07/06/00
Croatia		**08/03/99**	**26/02/03**	26/02/03
Cyprus		03/05/96	27/09/00	06/08/96
Czech Republic		04/11/00	**03/11/99**	
Denmark	*	03/05/96	**03/03/65**	
Estonia		04/05/98	11/09/00	
Finland		03/05/96	21/06/02	17/07/98 **X**
France		03/05/96	07/05/99	07/05/99
Georgia		30/06/00	22/08/05	
Germany	*	29/06/07	**27/01/65**	
Greece		03/05/96	**06/06/84**	18/06/98
Hungary		07/10/04	**08/07/99**	
Iceland		04/11/98	**15/01/76**	
Ireland		04/11/00	04/11/00	04/11/00
Italy		03/05/96	05/07/99	03/11/97
Latvia		29/05/07	**31/01/02**	
Liechtenstein		**09/10/91**		
Lithuania		08/09/97	29/06/01	
Luxembourg	*	11/02/98	**10/10/91**	
Malta		27/07/05	27/07/05	
Moldova		03/11/98	08/11/01	
Montenegro		22/03/05		
Monaco		05/10/04		
Netherlands		23/01/04	03/05/06	03/05/06
Norway		07/05/01	07/05/01	20/03/97
Poland		25/10/05	**25/06/97**	
Portugal		03/05/96	30/05/02	20/03/98
Romania		14/05/97	07/05/99	
Russian Federation		14/09/00		
San Marino		18/10/01		
Serbia		22/03/05		
Slovak Republic		18/11/99	**22/06/98**	
Slovenia		11/10/97	07/05/99	07/05/99
Spain		23/10/00	**06/05/80**	
Sweden		03/05/96	29/05/98	29/05/98
Switzerland		**06/05/76**		
«the former Yugoslav Republic of Macedonia»		**05/05/98**	**31/03/05**	
Turkey	*	06/10/04	**24/11/89**	
Ukraine		07/05/99	21/12/06	
United Kingdom	*	07/11/97	**11/07/62**	
Number of States	47	**4**+ 43 = 47	**16** + 23 = 39	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 CASES OF NON-COMPLIANCE

A. Conclusions of non conformity for the first time

Albania	– Article 6§3 – Article 6§4 – Article 7§10
Bulgaria	– Article 5 – Article 7§10 – Article 13§1
Cyprus	– Article 20
Estonia	– Article 1§2 – Article 7§3 – Article 7§9 – Article 12§1 – Article 12§4
Finland	– Article 1§2 – Article 7§5 – Article 12§1 – Article 12§4 – Article 20
France	– Article 7§7 – Article 13§1
Ireland	– Article 1§2 – Article 7§4 – Article 7§5 – Article 7§8 – Article 12§1
Italy	– Article 1§3 – Article 6§4 – Article 7§4 – Article 13§3
Lithuania	– Article 1§2 – Article 12§1 – Article 12§4
Moldova	– Article 1§2 – Article 6§3 – Article 6§4

– Article 7§10
– Article 12§4
– Article 13§1

Norway
– Article 6§4
– Article 7§6
– Article 12§1

Portugal
– Article 12§1
– Article 13§1

Roumania
– Article 1§1
– Article 1§3
– Article 5
– Article 6§4
– Article 7§1
– Article 7§2
– Article 7§3
– Article 7§4
– Article 7§5
– Article 7§6
– Article 7§7
– Article 7§8
– Article 7§9
– Article 7§10
– Article 12§1
– Article 13§3
– Article 16

Slovenia
– Article 7§9
– Article 12§4

B. Renewed conclusions of non conformity

Bulgaria
– Article 1§2
– Article 5
– Article 6§3
– Article 6§4
– Article 7§1
– Article 7§3
– Article 7§4
– Article 7§5
– Article 7§6
– Article 7§7
– Article 7§8
– Article 7§9
– Article 12§1
– Article 13§1
– Article 16

Cyprus	– Article 6§4 – Article 7§1 – Article 7§3 – Article 12§4
Estonia	– Article 6§4 – Article 7§1 – Article 7§3 – Article 12§1 – Article 13§1 – Article 19§6 – Article 19§10
Finland	– Article 1§2 – Article 6§4 – Article 12§4 – Article 19§8 – Article 19§10
France	– Article 1§2 – Article 5 – Article 6§4 – Article 7§2 – Article 12§4 – Article 13§1
Ireland	– Article 1§2 – Article 5 – Article 6§4 – Article 7§1 – Article 7§3 – Article 7§5 – Article 12§4 – Article 19§8 – Article 19§10
Italy	– Article 1§2 – Article 7§1 – Article 7§3 – Article 13§1
Lithuania	– Article 5 – Article 6§4 – Article 12§4 – Article 13§1 – Article 13§3 – Article 16 – Article 19§7 – Article 19§10

Norway	– Article 7§3 – Article 7§5 – Article 12§4
Portugal	– Article 1§2 – Article 6§4 – Article 7§10 – Article 20
Roumania	– Article 1§2 – Article 5 – Article 6§4 – Article 12§4 – Article 16
Slovenia	– Article 7§5 – Article 7§10 – Article 12§4 – Article 16 – Article 19§4 – Article 19§8 – Article 19§10
Sweden	– Article 5 – Article 7§3 – Article 7§9 – Article 19§8 – Article 19§10 – Article 20

Appendix IV

WARNING(S) AND RECOMMENDATION(S)

Warning(s)[1]

Article 5

– Ireland
(Certain closed shop practices are authorised by law.)

Article 6, paragraph 4

– Ireland
(Only authorised trade unions, i.e. trade unions holding a negotiation licence, their officials and menbers are granted immunity from civil liability in the event of a strike.)

– Romania
(A trade union may take collective action only if it fulfils representativeness criteria and if more than 50% of its members agree to do so, which unduly restricts the right of trade unions to take collective action.)

Non-submission of report(s)

– Ireland
(3rd warning for non-submission of the report for Conclusions 2006)

Recommendation(s)

Article 7, paragraphs 1 and 3

– Ireland
(The minimum age of 15 years does not apply to children employed by a close relative (Article 7, paragraph 1), and the prohibition of employment of children subject to compulsory education does not apply to children employed by a close relative (Article 7, paragraph 3).)

Renewed Recommendation(s)

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[1] 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.