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**GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER**

**REPORT CONCERNING**

**CONCLUSIONS XVII-1**

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

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<sup>1</sup> The detailed report and the abridged report are available on [www.coe.int/T/E/Human\\_Rights/Esc](http://www.coe.int/T/E/Human_Rights/Esc).



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## I. INTRODUCTION

1. This report is submitted by the Governmental Committee of the European Social Charter made up of delegates of each of the thirty-five states bound by the European Social Charter or the European Social Charter (revised)<sup>1</sup>. Representatives of international organisations of employers and workers (presently the European Trade Union Confederation (ETUC) and the International Organisation of Employers (IOE)) attend in a consultative capacity meetings of the Committee. The Union of Industrial and Employers' Confederations of Europe (UNICE) is also invited but did not participate in meetings in 2004.

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. According to the Charter, the States Parties are under the obligation to consult the national organisations of employers and the national trade unions on the content of the report. Reports are published on [www.coe.int/T/E/Human\\_Rights/Esc](http://www.coe.int/T/E/Human_Rights/Esc).

3. The first responsibility for the analysis lies with the European Committee of Social Rights (ECSR) (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 27 of the Charter, the Governmental Committee has examined national reports submitted by Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Malta, the Netherlands (Kingdom in Europe and Aruba), Poland, Portugal, Spain, Turkey and the United Kingdom in application of the European Social Charter. Reports were due on 30 June 2003 at the latest. The Governmental Committee repeats that it attaches a great importance to the respect of the deadline by the States Parties.

Iceland, Luxembourg and the Netherlands (the Netherlands Antilles) did not present a report.

5. Conclusions XVII-1 of the ECSR were adopted in February 2004 for the following States: Denmark, Greece, Malta, Netherlands (Kingdom in Europe and Aruba), Portugal, Spain, Turkey, the United Kingdom and in May 2004 for the following States: Austria, Belgium, Czech Republic, Finland, Germany and Poland.

6. The Governmental Committee held three meetings (11-14 May 2004, 21-24 September 2004 and 19-22 October 2004), which were chaired by Mrs Marie-Paule URBAIN (Belgium). The list of participants appears in Appendix I.

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<sup>1</sup> List of the States Parties on 1 November 2004 : Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Turkey 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) (Azerbaijan, Bosnia and Herzegovina, Georgia, the Russian Federation, "the former Yugoslav Republic of Macedonia" and Ukraine) 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 Andorra, Liechtenstein, Monaco, San Marino, and Switzerland).

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

- on 21 January 2004 Armenia had ratified the Revised European Social Charter;
- on 23 January 2004 the Netherlands had signed the 1995 Additional Protocol providing for a system of collective complaints, as well as the Revised European Social Charter;
- on 2 March 2004 Belgium had ratified the Revised European Social Charter;
- on 11 May 2004 Bosnia-Herzegovina had signed the Revised European Social Charter;
- on 2 September 2004, Azerbaijan deposited the instrument of ratification of the revised Charter;
- on 5 October 2004, the Principality of Monaco signed the revised Charter;
- on 6 October 2004, Turkey signed the revised Charter and the Amending Protocol (1991);
- on 7 October 2004, Hungary signed the revised Charter, as well as the Additional Protocol (1988) and the Collective Complaints Protocol (1995).

9. The state of signatures and ratifications on 1 November 2004 appears in Appendix II to the present report.

## II. EXAMINATION OF NATIONAL SITUATIONS ON THE BASIS OF CONCLUSIONS XVII-1 OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

10. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix III to the present report.

11. The Committee took note of the cases where the conclusion is deferred because of new questions put by the European Committee of Social Rights as they appear in Appendix IV to the present report. It asked governments to reply to the questions in their next reports.

12. During its examination, the Committee took note of important positive developments in several States Parties. It urges governments to continue their efforts with a view to ensure compliance with the European Social Charter. In particular, it asked governments to take into consideration Recommendations adopted by the Committee of Ministers. It adopted the warning(s) and recommendation(s) set out in Appendix V.

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

### **Resolution on the implementation of the European Social Charter during the period 2001-2002 (seventeenth supervision cycle – part I, “hard core” provisions of the Charter)**

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

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

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

Having regard to Article 29 of the Charter;

Considering the reports on the European Social Charter submitted by the Governments of Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Malta, the Netherlands (Kingdom in

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<sup>1</sup> At the 492<sup>nd</sup> meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those States which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter". The states having ratified the European Social Charter or the European Social Charter (revised) are Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, 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" (entry into force: 30 April 2005), Turkey and the United Kingdom.

Europe and Aruba), Poland, Portugal, Spain, Turkey and the United Kingdom (concerning period of reference 2001-2002);

Considering Conclusions XVII-1 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;

Draws the attention of the Government concerned to the recommendation adopted for the 17th supervision cycle (part I);

Recommends that governments take account, in an appropriate manner, of all the various observations made in the Conclusions XVII-1 of the European Committee of Social Rights and the report of the Governmental Committee.

14. With this Resolution, the Committee proposes that the Committee of Ministers adopts a recommendation relating to the United Kingdom, Article 6, paragraph 4 (see §§ 170 to 180).

15. Moreover, the Governmental Committee took note of the conclusions of non-conformity relating to Article 12, paragraph 4, but did not consider it possible, in particular for practical and technical reasons, to comply with the requirements following from the interpretation of Article 12, paragraph 4, for the time being. It therefore decided not to take any measures in respect of States concerned and await the next assessment by the ECSR.

## **EXAMINATION ARTICLE BY ARTICLE**

### **A. CASES OF NON-COMPLIANCE**

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

##### **POLAND**

16. The Polish delegate referred to the background against which labour policy had been implemented, namely the economic difficulties facing her country. She found it regrettable that the ECSR had initially based its conclusions on statistical information. Nonetheless, the government had considerably stepped up its efforts and in 2001 and 2002 had taken and implemented a range of measures, described in detail in the third report, which also set out the economic and social reasons why it had proved impossible to increase expenditure on active measures. Expenditure on employment policy had been increased and from 2003 the number of beneficiaries of these active measures had more than doubled; this had been helped by the fact that since 2003 growth in the Polish economy had moved up a gear. Outside the



reference period, on 20 April 2004, a new law on employment promotion and labour market institutions had been passed. She also commented that the effects of the programmes and the new legislation would not become apparent overnight, given the specific nature of factors affecting the labour market. She asked the Committee to be patient and to allow her government to pursue further these positive developments.

17. The representative of the ETUC acknowledged the progress made in Poland, but the situation was nevertheless very serious given the obligation contained in Article 1§1 and in his opinion the Committee should strongly urge the Government to do its utmost to remedy the situation, especially as far as the most vulnerable groups in the labour market were concerned.

18. The representative of the OIE agreed that the situation was a matter of concern, but it was important to realise that unemployment was a fact of life and situations such as that in Poland could not be changed overnight.

19. The Cypriot, Greek and Romanian delegates felt that the Committee should welcome the positive developments, especially the doubling of those benefiting from active measures, despite the very difficult economic situation, and that due account should be taken of economic and social factors in assessing the situation. Nonetheless, they stressed the need to do still more, particularly for vulnerable groups.

20. The Committee observed that the situation in Poland was of serious concern, especially in respect of certain vulnerable groups. However, in view of the measures taken outside the reference period and the progress made it decided to await the next examination of the ECSR.

## **TURKEY**

21. The Turkish delegate explained that Turkey was in the process of overcoming a serious economic crisis and the Government considered employment to be an absolute priority area as witnessed by the declaration of 2004 as “the year of combating unemployment”. The Government was actively working with the European Commission to prepare for Turkey’s participation in the European Employment Strategy. The delegate further provided an overview of different active employment programmes and projects initiated recently which involved significant amounts of expenditure and benefited a significant number of unemployed persons.

22. The representative of the ETUC considered the efforts minor in comparison to the extent of the problem. He considered that the Committee should ask the Government to intensify its efforts.

23. The Committee took note of the information provided and expressed its concern at the situation. It called upon the Government to intensify its employment policy efforts.

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

**AUSTRIA**

24. The Austrian delegate stated that, as it was indicated in the report, the provision in question was no longer applied and that no violations had been detected. She informed the Committee that the Ministry of Employment had decided to repeal the provision but that no timetable had yet been defined.

25. The Cypriot delegate considered that this was a clear case of progress although no timetable had yet been defined.

26. The representative of the ETUC welcomed the decision of the Austrian Government to amend the legislation but suggested that the Committee urge the Austrian Government to speed up the amendment process.

27. The Committee took note of the intention of the Government to amend the legislation and urged it to proceed as soon as possible.

**BELGIUM**

28. The Belgian delegate regretted not to be in a position to announce the repeal of the provisions in question. However, he confirmed that pursuant to a landmark decision of the Court of Cassation, international conventions ratified by Belgium had authority over national law. Accordingly, since Belgium had ratified Conventions No. 98 and No. 105 of the ILO, national courts cannot apply provisions of the Merchant Navy Disciplinary Code that would be contrary to these conventions. He stated that the legal situation would be brought in conformity at the time of a general revision of the Code. However, he pointed out that the repealing of obsolete legal provisions was not a priority of the Belgian Government.

29. The representative of the IOE agreed that the repealing of obsolete provisions is never a priority and is often a long, complicated and costly process. She wondered whether it was useful and necessary to consider such cases as violations of the revised Charter.

30. The representative of the ETUC welcomed the fact that international conventions had authority on national law and asked that the next report provide some case-law in this respect. He considered that the repealing of obsolete provisions could look like a waste of time but that workers must have a clear picture of their rights even if the situation in practice is satisfactory. He suggested that the Committee requests the Government to speed up the repealing process.

31. The Dutch delegate considered that the provisions in question were dead letter and that anyway the Belgian Government had the clear intention to repeal them.

32. The Spanish delegate considered that the repealing of obsolete legal provisions was more an esthetic waste of time than a real need.

33. The Greek delegate stated that the situation clearly gives rise to no concern since the provisions in question are obsolete and that the Committee should simply go along with the suggestion of the representative of the ETUC and request the Belgian government to speed up the repealing process.

34. The Cypriot delegate recalled that, generally speaking, provisions which are obsolete in practice may however be used at some point in time. She understood that under Belgian case-law this was not the case and agreed with the Dutch delegate.

35. The Maltese delegate stressed that although Belgian courts may sanction violations of the revised Charter or of relevant ILO conventions, the sanctions would be decided a posteriori, once the worker's rights under Article 1§2 of the revised Charter would have already been violated. This is why the repealing of the provisions of the Merchant Navy Disciplinary Code, which are contrary to the revised Charter, must be repealed.

36. The Committee took note of the Belgian Court of Cassation's case-law and of the Government's intention to repeal the provisions of the Merchant Navy Disciplinary Code that have been criticized by the ECSR. It urged the Government to speed up the repealing process without waiting for the general revision of the code.

## **FINLAND**

37. The Finnish delegate stated that the reason why non-military alternative service was longer than the compulsory military service was because it was carried out in much more favorable conditions, in particular with regard to working time. She informed the Committee that this was the reason why the Finnish Parliament rejected a Government proposal to shorten the non-military alternative service. She also pointed out that the reading of relevant data by the ECSR, according to which the majority of conscripts served 180 days, was not correct, since the majority of conscripts (52.3%) actually served at least 270 days.

38. The Secretariat explained that the ECSR had not yet defined, in absolute terms, what is a reasonable ratio between the length of compulsory military service and the length of alternative service. In the case of Finland, it considered that the length of the alternative non-military service was more than double of that of the compulsory service performed by the majority of conscripts, and that that was not reasonable.

39. The Committee asked the Government to provide detailed information in its next report and decided to await the next assessment of the ECSR.

## **GERMANY**

40. With regard to the first ground of non-conformity, the German delegate did not understand the criticism of the ECSR since, as he stated on previous occasions and as it was stated in the report, the provisions of the Unification Treaty, which were said to discriminate against former DDR officials, were no longer in force. He confirmed that exceptional dismissal on grounds relating to a civil servant's past activities within

administrative of political organizations of the former DDR was still possible. However exceptional dismissals were not automatic but were decided on a case by case basis. Furthermore they were subject to judicial scrutiny. He pointed out that the provisions of the Unification Treaty were very complicated and that their interpretation was only possible by German courts. He recalled that relevant case-law was quoted in the report.

41. The Cypriot delegate supported by the Maltese delegate considered that the legal situation was not very clear and that the Committee should not take a stand at this moment.

42. The Secretariat confirmed that, according to the German report, exceptional dismissals were still possible. It stated that there was still a doubt on the legal situation and suggested that direct contacts be made between the ECSR and the German Government in order to clarify the issue.

43. The German delegate agreed that there was a need for an exchange of views with the ECSR.

44. The Committee took note of the information provided by the German delegate and suggested that the ECSR and the German Government exchange their views to clarify the issue.

45. With regard to the second ground of non-conformity, the German delegate confirmed the information provided in the report. She stated that there is no formal requirement for a prisoner's consent to work for private employers within the prison facilities. However, given that the offer of private employment within prisons' facilities is so low, in practice, there are no prisoners working for private employers against their will. In support of this argument, she referred to a survey conducted in various Länder showing that only 21% of prisoners nationwide were working within prisons' facilities for private employers. She confirmed that prisoners' remuneration was lower than that of regular workers, since their material needs were mostly borne by the administration, and did not know when further pay increase would take place. She also confirmed that these prisoners received free health care from the prison administration and that they were covered by unemployment insurance.

46. The Secretariat confirmed that, according to the German report, there was no formal requirement with regard to the prisoners' consent to work for private employers within prisons' premises.

47. The Committee took note of the information provided by the German delegate and, at the request of the Maltese delegate, suggested that the issue of prisoners work be raised during the exchange of view between the ECSR and the German Government.

## **GREECE**

48. With regard to the first ground of non-conformity, the Greek delegate stated that restriction to the access of foreigners to the civil service are only applied in some 20% of civil service activities, which are generally linked to the exercise of public

authority. Foreigners have access to positions linked to health, welfare and education, which account for the majority of public employment and cannot be regarded as “rare exceptions” which is the description they are given in the Conclusions of the ECSR. He also stated that Greek authorities were considering the possibility to extend the access of national of the Contracting Parties to the civil service taking into account what is being done in other countries. He indicated that detailed information on the number of foreigners having access to public employment will be provided in the next report.

49. The representative of the ETUC pointed out that what is done in other countries makes no difference with regard to Greece’s obligations under Article 1§2.

50. The Committee asked Greece to provide all relevant information on the categories of employment concerned in its next report.

51. With regard to the second ground of non-conformity, the Greek delegate stated that a draft statute amending the rules on compulsory military service would shortly be presented in Parliament. The bill authorizes early termination of alternative service and reduces the length of both military and alternative service. According to the Greek delegate, by 2008 compulsory military service will be reduced to 6 months and alternative service to 12 months. All relevant information will be provided in the next report.

52. In addition, the Greek delegate pointed out that the reform of the rules governing the status of career officers that was mentioned in the conclusion of the ECSR had not yet been adopted and that all relevant information would be provided in the next report.

53. The representative of the ETUC and the Dutch delegate pointed out that under the new legislation, the length of alternative service still seemed to be double that of compulsory military service. Since the main criticism of the ECSR had not been removed ETUC proposed to vote for a warning.

54. The Committee took note of the information provided by the Greek delegate and decided to await the next assessment of the ECSR.

#### **NETHERLANDS (Aruba)**

55. The Dutch delegate apologized for the absence of the representative of the Aruban Government due to circumstances. She gave some general information about Aruba and particular on the role of the Labour Department. This role consist inter alia of offering appropriate and effective remedies in the event of an allegation of discrimination in employment, promoting awareness among the Aruban community, and providing protection against dismissal and/or other retaliatory action by the employer against an employee who has lodged a complaint or has taken legal action. She then reported that the Aruban Government declared that it will make all necessary efforts to adopt more precise legal measures against discrimination in employment. She also stated that an ad hoc tripartite committee had been appointed to provide advice, comments and suggestions with a view to amending Aruban

labour law. A report from this committee should be ready in December 2004 and will take into consideration the conclusion of the ECSR.

56. On the initiative of the Maltese delegate, the Committee recalled that Article 1§2 is a hard-core provision, urged the Dutch Government (Aruba) to put the situation in Aruba in compliance with the Charter and decided to wait the next assessment of the ECSR.

## **POLAND**

57. The Polish delegate confirmed that the nationality requirement for those wishing to become a sworn translator had been lifted on Poland's accession to the European Union (EU). In 2003, the law on the profession of nursing auxiliary had been amended, as announced in the report. Polish nationality was no longer required to exercise this profession. The law on access to the medical and dentistry profession would be amended in early 2005 and non-nationals would be able to practise, subject to certain objective conditions, including proven knowledge of Polish and relevant professional qualification.

58. The Committee took note of the information provided by the Polish delegate and requested that the new legislation on the access to the medical profession enter into force as soon as possible.

## **PORTUGAL**

59. The Portuguese delegate stated that there was unfortunately no change in the situation and that she had no information on the amendment of relevant legislation. She recalled however that following a Constitutional Court's decision the provisions in question were not applied in practice.

60. The representative of the ETUC (and the Maltese delegate) asked for a warning as this would be a clear signal to the Portuguese Government that the problem should be treated as a priority.

61. The Committee adopted a warning by 15 votes in favour, 1 against and 15 abstentions.

## **TURKEY**

62. With regard to the first two grounds of non-conformity, the President recalled that the ECSR has found that there have been changes although these changes were not taken into account because they took place outside the reference period.

63. With regard to the third ground of non-conformity, the Turkish delegate stated that the provisions in question still existed in legislation although they have not been implemented for many years. He stressed that other provisions related to national security had been repealed and that the Turkish Government had made substantial efforts to bring the situation into conformity with the Charter and should be encouraged to continue on this way. He also observed that state of emergency

legislation exists in most countries but only Turkey had been found not to be in conformity on such grounds so far.

64. In reply to a question from the German delegate, the Secretariat explained that with regard to this particular ground of non-conformity, one member of the ECSR, Mr. T. Akillioglu, reiterated the dissenting opinion that he made in Conclusions XVI-1.

65. The representative of the ETUC stated that the provisions in question are a serious threat against workers' rights, although not implemented. He asked the Committee to adopt a warning against Turkey.

66. The Romanian delegate asked what categories of local government officials were concerned by the provisions in question.

67. The Maltese delegate pointed out that last time the Committee did not take any action because, according to the Turkish delegate, the Ministry of Justice had informed the Ministry of Employment that there was no obstacle in principle to an amendment to the state of emergency legislation.

68. On the proposal of the German, Greek, Dutch, Portuguese and Maltese delegates, the Committee asked that the next report provide detailed information on the situations which could trigger the implementation of state of emergency legislation and on the measures that could be adopted pursuant to such legislation. It also expressed concern at the situation and asked what action would be taken following the opinion of the Ministry of Justice.

69. With regard to the fourth ground of non-conformity, the Turkish delegate informed the Committee that the delay in the amendment of Section 1467 of the Commerce Code is due to the extensive overall amendment process of the Code.

70. The representative of the ETUC stated that the Committee should adopt a second warning like it did in the case of Portugal.

71. The Committee adopted a warning by 21 votes in favour, 1 against and 6 abstentions.

## **UNITED KINGDOM**

72. The delegate of the United Kingdom informed the Committee that there had been consultations between social partners with regard to Section 59 and that all agreed that sanctions against striking seamen should only be possible where their action could put life in danger or cause a risk to the vessel. The Government opinion is that although Section 59 is still in force, it is contrary to the Bill of Rights introduced in 1998 to incorporate the European Convention on Human Rights and therefore cannot be considered as valid by national courts. This information was not in the report.

73. The representative of the ETUC acknowledged the introduction of the Bill of Rights but pointed out that the situation was not in conformity on this ground since 1970 and that it had been similarly criticized by the ILO. He observed that it was

dangerous to keep Section 59 in force and to trust national courts with not accepting its validity. Given one of the longest, if not the longest period of non-conformity as well as a recommendation by the Committee of Ministers without any will to rectify the situation a very clear signal to the United Kingdom was necessary. Accepting the situation as it stands would be the wrong signal to other countries even those who had not accepted Articles 5 and 6 of the Charter and were confronted with similar problems. The representative of the ETUC therefore asked for the voting on the renewal of the recommendation.

74. The Dutch delegate recalled that the Bill of Rights does not incorporate the European Social Charter but the European Convention on Human Rights. Unlike the representative of the ETUC, however, she did not consider it problematic to await a decision of the national courts on the matter. In the mean time, the UK Government could be asked to express its own interpretation of the legal situation in its next report. Besides, the Committee of Ministers adopted a recommendation in 1997 against the United Kingdom which was still valid.

75. The Portuguese delegate asked why Section 59 is not simply repealed. She noted that following the introduction of the Bill of Rights the situation of the United Kingdom was the same as that of Portugal and asked the Committee to address a warning to the United Kingdom.

76. The Hungarian delegate agreed with the Portuguese delegate and with the representative of the ETUC.

77. The Irish delegate observed that in substance the matter has been tackled by the Bill of Rights and that the Committee should not take a too legalistic view.

78. The Executive Secretary of the European Social Charter recalled that the Bill of Rights was adopted in 1998 and that last time the Government of the United Kingdom took a different stand and expressed its intention to amend Section 59. It further observed that so far no courts had declared Section 59 contrary to the Bill of Rights and that the only change in this respect was the Government's opinion. Finally it asked whether the Government had any intention to incorporate the European Social Charter in domestic law.

79. The Maltese delegate observed that the Committee should wait for the assessment of the ECSR concerning the Government opinion.

80. The Committee voted on the renewal of the recommendation against the United Kingdom. There were 12 votes in favour, 7 against and 11 abstentions. The renewal was not adopted.

81. The Committee noted that Recommendation RecChs(1997)3 of 15 January 1997 is still in force and asked the Government of the United Kingdom to explain the changes in the legal situation following the introduction of the Bill of Rights in its next report.



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

### **TURKEY**

82. The Turkish delegate explained that the fee imposed on employers in connection with the notification of vacancies served to administrative expenses of the employment services and the fee was only about 3.50 € per vacancy. Nevertheless, the Government recognised the problem and it was in the process of studying the possibilities of abolishing the fee.

83. The representative of the OIE considered that the situation was contrary to all logic and should be brought into conformity.

84. The representative of the ETUC agreed that charging fees in this manner was counterproductive in employment policy terms. He asked what was the approximate time-frame for abolishing the fee.

85. The Turkish delegate could not give a precise time-frame, but it would not take several years in his opinion.

86. The Cypriot and Portuguese delegates agreed with the views expressed by the social partners and proposed that a strong message, if not a warning, be sent to the Turkish Government.

87. The Maltese delegate was not in favour of a warning, but agreed that a strong message was called for, especially in view of the high unemployment in Turkey.

88. The Committee took note of the information provided and expressed its concern at the fee system which seemed to be unique in Europe. It called upon the Government to rapidly abolish the fee.

## **Article 5 – Right to organise**

### **AUSTRIA**

89. The Austrian delegate said that the last parliamentary debate on the eligibility for works councils of foreign nationals who did not have the nationality of a Member State of the EU or a State Party to the European Economic Area (EEA) Agreement had taken place in March 2004. Before amending the law, Parliament had decided to await the relevant judgment of the Court of Justice of the European Communities<sup>1</sup>. The Court had just decided that by denying workers who were nationals of a non-member state with which the Community had concluded an agreement the right to stand for election to works councils, Austria had failed to fulfil its obligations under those agreements. She said that the situation would be brought in conformity before the end of 2004.

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<sup>1</sup> Secretariat note: CJEC, 16 September 2004, case C-465/01, Commission of the European Communities v. Austria, not yet published (may be consulted on the European Union Internet site: [www.europa.int](http://www.europa.int))

90. The Committee took note of the planned changes to the law and asked the Government to rectify the situation as soon as possible.

## **DENMARK**

### First ground for non-conformity

91. The Danish delegate said that once the parliamentary situation was more favourable the Government would resubmit the draft legislation. A case was also pending before the European Court of Human Rights.

92. The Portuguese delegate, supported by the Icelandic delegate, thought that under these circumstances Denmark should be given time to remedy the violation.

93. However the Maltese delegate thought that the Committee should express its concern that nothing had been done to rectify the situation.

94. The Committee noted that it was firmly opposed to closed shop clauses in any form and insisted that the violation of the Charter be remedied.

### Second ground for non-conformity

95. The Danish delegate repeated the explanations that she had already given and said that the Danish International Shipping Register (DIS) had been introduced in 1988 to prevent merchant ships from sailing under other flags and being lost from view. The measure had been very effective and the merchant fleet currently accounted for 15 000 jobs, or one-fifth of the maritime sector workforce. In the case of working conditions, foreign sailors could join the trade unions of their choice and a framework agreement had been reached between the ship owners' associations and seafarers' unions laying down minimum working conditions. The agreement had been gradually extended. In January 2004, for example, it had been agreed that seafarers' unions could represent foreign sailors in disputes over employment contracts. The agreement covered various areas, including repatriation, sickness benefits and so on. The Danish delegate referred to various comparative studies of merchant fleets, including one prepared by the International Labour Office, which placed the Danish fleet in first place in terms of working conditions.

96. The Dutch delegate thought that the Committee should take account of the balance struck by the Danish authorities between foreign sailors' rights and the economic risks involved and of the efforts they had made to improve the situation.

97. The representative of the ETUC said that the central problem remained, namely that collective agreements on wages and working conditions were only applicable to seafarers resident in Denmark, and that no information had been supplied to show that it was intended to rectify the situation.

98. The Danish delegate confirmed that his Government did not intend to amend the legislation, particularly in view of the important steps taken by the social partners.

In answer to the Maltese delegate, he confirmed that the residence requirement applied, whatever a sailor's nationality.

99. The Portuguese delegate thought that this clearly amounted to discrimination. Supported by the German delegate, she said that it would be interesting to see a study of all the other countries with a second shipping register.

100. The Committee took note of the positive changes that had taken place. It acknowledged that the establishment of two systems governing working conditions had been the result of economic factors. It asked the Danish Government to take steps to bring the working conditions of Danish and foreign seafarers into line and to supply full information in its next report to the ECSR.

#### Third ground for non-conformity

101. The Danish delegate said that the answers to the questions asked would appear in the next report.

### **NETHERLANDS (Kingdom in Europe)**

102. As the ECSR had noted that the situation had been brought into conformity outside the reference period, the Committee decided to await the next assessment of the ECSR.

### **POLAND**

#### First ground of non-conformity

103. The Polish delegate informed the Committee that the proposed amendment authorising civil servants to perform trade union functions had not been approved by the Council of Ministers. Following this setback, a working party had been set up to draft new legislation, including on this matter. Work on this project was due to be completed in December 2004.

104. The Committee expressed regret that the proposed amendment had been rejected and urged that the situation be brought into line with the Charter as soon as possible.

#### Second ground of non-conformity

105. The Polish delegate informed the Committee that the Ministry of the Economy and Labour would shortly be looking into the practicalities of granting those working at home the right to form trade unions. With regard to the unemployed and those who were retired, she explained that trade unions in Poland represented employed workers; this was consistent with the requirements of ILO Convention No. 87. Polish legislation (the law on associations and the law on foundations) made it relatively easy to set up organisations in various legal forms. The people referred to explicitly in the negative conclusion (the unemployed, pensioners and those working at home) could set up organisations to defend their interests. She gave some relevant examples and added that the unemployed and pensioners were free to join existing

trade unions or remain members of the unions to which they had belonged while working. She underlined the fact that the setting up of trade unions by, for instance, the unemployed created practical difficulties as it was impossible to decide which employer they would be negotiating with. It would also be difficult to guarantee the right to collective bargaining or the right to strike, which were the prerogatives of trade unions.

106. The representative of the ETUC supported the broad definition retained by the ECSR of what constituted a worker, which had to be put into practice. He acknowledged the practical problems arising from this approach and agreed that these issues had to be discussed with the trade unions.

107. The Committee took note of the practical difficulties arising from the formation of trade unions for unemployed and retired persons and asked the Polish Government to give consideration to this problem. It asked the Government to demonstrate in the next report that the rights of unemployed and retired persons are fully taken into account at the political level of the State.

## **UNITED-KINGDOM**

108. The United Kingdom delegate said that the bill to amend the Employment Relations Act 1999 was awaiting its first reading in the House of Lords. The new legislation would amend several provisions covered by Articles 5 and 6 of the Charter. However, Sections 15 and 65 of the 1999 Act, on which the first finding of non-conformity was based, would not be amended.

109. The Cypriot delegate said that in the light of this information there was no need to await the enactment of the amending legislation and proposed the renewal of Recommendation RecChS(1997)3 relating to the United Kingdom concerning Section 65.

110. The Committee voted on the renewal of the recommendation, which in the absence of a majority of Parties to the Charter, was not adopted (15 votes for, 3 against and 13 abstentions).

111. On a proposal of the Cypriot delegate and the representative of the ETUC, the Committee urged the Government of the United Kingdom to bring the situation into line with the Charter, bearing in mind Recommendation RecChS(1997)3 and the importance of Article 5.

## **Article 6§2 – Negotiation procedures**

### **DENMARK**

112. Reference is made to explanations and discussions under Article 5.

### **GERMANY**

113. The German delegate again explained why employees of the privatised railway and postal services with civil service status had not been granted the right to bargain collectively and underlined that the situation had changed as a result of a Federal Administrative Court decision of 7 June 2000. In accordance with this decision, the restrictions on eligibility for the rights embodied in Articles 6§2 and 6§4 of the Charter that normally applied to civil servants could not be imposed on civil servants now employed by privatised companies.

114. The representative of the ETUC agreed that the supreme administrative court appeared to have accepted one aspect of the position of the ECSR and said that the new approach should cover all the persons with civil service status at least all those employed by privatised undertakings. The Government should include a detailed account of the Federal Administrative Court's position in the next report.

115. The Committee took note of this decision and asked the Government to apply it to all employees of privatised undertakings with civil service status and describe the practical consequences of the decision in the next report.

## **UNITED KINGDOM**

116. The United Kingdom delegate said that the possibility of offering more favourable terms and conditions of employment to workers who agreed to forgo collective bargaining while preventing other workers from claiming that such favourable treatment constituted detriment to them would be dealt with in the changes to the Employment Relations Act 1999, currently awaiting its first reading in the House of Lords. In particular, Section 17, considered by the ECSR not to be in conformity with the Charter, would be repealed.

117. The Committee took note of this positive development.

## **Article 6§4 – Right to collective action**

### **BELGIUM**

#### First ground of non-conformity

118. The Belgian delegate said that the situation had not changed since 2002 and that it corresponded to the description in the conclusion of the ECSR. His Government had announced its intention of legislating on the subject but the social partners had preferred to reach a gentlemen's agreement, as a result of which the judicial practices in question had almost disappeared.

119. The representative of the ETUC confirmed this information.

120. The Committee decided to await the next assessment of the ECSR.

#### Second ground of non-conformity

121. The Belgian delegate said that there was no specific legislation prohibiting the dismissal of striking workers. However his Government considered that Belgian law – as reflected in the case-law of the Court of Cassation – offered sufficient protection. Striking workers had the right not to fulfil their employment contracts and taking part in a strike was not an unlawful act justifying workers' dismissal. Employers wishing to dismiss striking workers had to show that there were serious grounds. Participation in a strike did not constitute a serious ground whereas other offending actions committed during strikes, such as the destruction of equipment or tools, could be so considered. Any dismissal could be challenged in the courts and if dismissal was found to be unjustified the employee concerned was entitled to compensation with damages.

122. The Secretariat said that the assessment of the ECSR matched that of the delegate but that it also wanted strikers' objectives to be taken into account when determining whether there were serious grounds (Court of Cassation judgment of 28 January 1991).

123. The Belgian delegate said that there would be a further examination of the case-law to clarify the matter.

124. The Committee decided to await the next assessment of the ECSR.

## **CZECH REPUBLIC**

### First ground of non-conformity

125. The Czech delegate again explained that, although there was no detailed legislation on the subject, following the Act No. 23/1991 Coll. (the Charter of Fundamental Rights and Freedoms) the courts had made it clear that strikes not aimed at concluding collective agreements were not illegal. Furthermore, the delegate informed about the amendment to the Constitution concerning international treaties. At the request of the ECSR, the next report would supply relevant decisions.

126. The representative of the ETUC welcomed the fact that international obligations took authority over national law and invited the Czech delegate to provide in the next report as much as possible examples of case-law which confirm that strikes not aimed at concluding collective agreements are not illegal.

127. The Committee invited the Czech Government to provide further information on the legal position in the next report on this provision.

### Second ground of non-conformity

128. The Czech delegate said that the Government is aware of the problem and that draft legislation to bring the situation into conformity would be submitted to the Government in January 2005.

129. The representative of the ETUC welcomed the developments but highlighted that the foreseen changes were already announced at the last occasion and still not

adopted. He therefore asked the Committee to urge the Czech Government to treat this item as a priority.

130. The Committee asked the Czech Government to treat this matter as a priority and invited it to supply full information on the changes in the situation in the next report on this provision.

#### Third ground of non-conformity

131. Firstly, the Czech delegate referred to a mistake in the working document (concerning the previous conclusions of the Governmental Committee). Secondly, she said that although mediation was compulsory, the results of the procedure were not binding. Moreover, the social partners could agree on shorter periods. The Czech Republic regards its regulation of the mediation as a way of fulfilment of the Article 6§3 of the Charter. Strikes that were called before the mediation period had expired would be considered illegal.

132. The representative of the ETUC said that this situation was also incompatible with ILO conventions. He proposed the Committee to vote for a warning as there seemed to be no intention for bringing the situation in conformity and it was a second time negative conclusion and concerned a hard core article. If this line were not followed, a very strong message should in any case be sent to the Czech Government. In reply to the criticism, the Czech delegate stressed once more that the proposal of the mediator is not binding.

133. The President pointed out that the criticism of the ECSR concerns the excessive length of the period, not the mediation procedure itself.

134. In reply to the Dutch delegate, the Secretariat said that the requirement to exhaust conciliation/mediation remedies before calling a strike was in conformity with Article 6§4 so long as the period concerned was not excessive. Periods of notice and cooling-off periods in association with conciliation procedures before strikes were also compatible with Article 6§4 if they were reasonable in length. The ECSR had not indicated what maximum period was acceptable.

135. The German delegate thought that the only answer in this case was a shorter period.

136. The Committee was concerned by the violation of such a fundamental right as the right to strike and asked the Czech Government to do all in its power to bring the situation into line with the revised Charter.

## **DENMARK**

#### First ground for non-conformity

137. The Danish delegate recalls that trade unions are traditionally built up as national associations based on crafts and are subdivided into local unions. Denmark does not have industrial unions. The Danish labour market is characterised by a high union density rate and a big number of collective agreements concluded between, on

the one hand, the individual nation-wide association and, on the other hand, the relevant employer organisation. Most collective agreements - both in the private and in the public sector - run for a period of three or four years and must be renewed on 1<sup>st</sup> March or 1<sup>st</sup> April the year they expire. The Public Conciliator is to assist the social partners in connection with the renewal of the agreements and settlement of disputes. It is one of his powers that he can link together his proposals for compromises for different occupational fields. The evaluation of whether the bargaining possibilities must be considered to have been exhausted is undertaken by the Public Conciliator alone. This rule ensures solidarity in those situations where a majority of the employees concerned have voted in favour of the proposal. Furthermore the delegate stresses that the Danish system is not only built up in co-operation with the social partners, but springs directly from their wishes. The delegate outlines that given the characteristics of the Danish system a change would be devastating.

138. The Icelandic delegate, supported by the Finnish, Swedish and Irish delegates, was concerned to see this further challenge to the Nordic system of industrial relations.

139. In reply to Portugal, the Danish delegate said that the clause in question was applied each time there was a disagreement.

140. The Romanian delegate thought that this was an example of the dictatorship of the majority.

141. The Committee noted that there seemed to be a consensus on the system among the social partners but it asked the Government to re-examine the conclusion of the ECSR, with a view to bringing the situation into conformity.

#### Second ground for non-conformity

142. The Danish delegate referred to the information she had already supplied and said that the problem would be resolved of its own accord with the disappearance of civil service status. However no precise timetable could yet be given for this.

143. The German delegate supported Denmark and said that his Government's view was that civil servants had a different status and therefore enjoyed different protection. He also pointed out that the Committee's interpretation had varied considerably over successive supervision cycles.

144. The representative of the ETUC, supported by the Maltese delegate, asked the Committee to vote for the renewal of Recommendation RecChS(1995)2.

145. The Committee voted on the renewal of the Recommendation: 14 for, 3 against and 9 abstentions. The Committee of Ministers was not asked to renew the recommendation. However, the Committee noted that Recommendation RecChS(1995)2 was still in force. It was concerned about continued violation by Denmark of a right that was one of the "hard-core" provisions of the Charter and the absence of any timetable for rectifying the situation.



### Third ground for non-conformity

146. The Danish delegate said that as a general rule striking workers were reinstated. However, there were no safeguards against dismissal as a consequence of loss of orders resulting directly from a strike.

147. The Committee asked the Danish Government to supply full information on this provision in the next report on this provision.

### Fourth ground for non-conformity

148. The Danish delegate said that the ground for this situation was that in Danish law the right to strike was closely bound up with collective bargaining and strikes could only be called by trade unions.

149. The representative of the ETUC, supported by the Romanian and Cypriot delegates, said that this information was not new and that a strong message must be sent to the Danish Government calling on it to remedy the violation.

150. The Swedish delegation said that the ground for non-conformity appeared to conflict with the new case-law of the ECSR, which recognised, under certain circumstances, that the right to call strikes should be restricted to trade unions.

151. The Secretariat said that it would forward this observation to the ECSR.

152. The Committee was concerned about the violation of such a fundamental right as the right to strike but decided to await the next assessment of the ECSR.

## **FINLAND**

153. The Finnish delegate described in detail the ban on civil servants calling strikes in pursuance of objectives not covered by collective agreement.

154. The Executive Secretary of the European Social Charter emphasised the importance of clear and detailed information in reports to the ECSR.

155. The representative of the ETUC agreed. Without precise information from governments, the Committee could not get a clear idea of national situations. This needed to be clearly indicated to the governments.

156. The Committee asked for the next report to be as detailed as possible to enable the ECSR to make a proper assessment of the situation.

## **GERMANY**

### First ground of non-conformity

157. The German delegate again explained the reasons for the ban on strikes that were not aimed at achieving a collective agreement. He said that in a decision handed down on 12 December 2002, the Federal Labour Court had referred explicitly

to the Conclusion of the ECSR and had stated that the matter should be reviewed in the light of the conclusion.

158. The representative of the ETUC stressed the importance of this longstanding problem, which already had led the Committee of Ministers to adopt a recommendation, as well as the new developments contained in the Federal Labour Court's decision and proposed that the Government state in its next report whether it had introduced the necessary changes.

159. The Committee took note of this change in the case-law and insisted on the need for the Government to bring the situation in conformity with Article 6§4 of the Charter. In the mean time, Recommendation RecChS(1998)2 would remain in force.

#### Second ground of non-conformity

160. The German delegate explained the situation.

161. The Committee insisted on the need for the Government to bring the situation into line with Article 6§4 of the Charter. In the mean time, Recommendation RecChS(1998)2 would remain in force.

#### Third ground of non-conformity

162. Turning to the right to strike of employees of the privatised railway and postal services with civil service status, the German delegate referred to his observations under Article 6§2 on the Federal Administrative Court decision of 7 June 2000.

163. The Committee took note of this decision. It asked the Government to draw the consequences for all persons with civil service status employed by privatised undertakings and describe the practical consequences of the decision in detail in the next report. In the mean time, the warning that had been renewed in the previous supervision cycle would remain in force.

### **NETHERLANDS (Kingdom in Europe)**

164. The Dutch delegate said that her Government had done what was in its power, having regard to the principle of separation of powers, to inform the courts, via the ministry of justice, of the previous non-conformity decision. The same procedure would be followed regarding the current conclusion.

165. The representative of the ETUC thought that the Government should offer assurances to the trade unions on its legal position to avoid any uncertainty in this area, which reduced the effectiveness of legal proceedings.

166. The Committee noted that the Government had done everything in its power to improve the situation. It stressed the importance of compliance with such a fundamental right as the right to strike and asked the judicial authorities to take account of the ECSR's case-law.

### **PORTUGAL**

167. The Portuguese delegate said that the first ground of non-conformity – the fact that only trade unions could call strikes and that constituting a trade union was subject to excessive formalities – represented a change in the case-law of the ECSR. The maximum period of 30 days to form a trade union was not excessive and the right to organise was embodied in Portuguese law, which took account of the principles laid down by, among others, the ILO Committee on Freedom of Association.

168. The Committee took note of the Portuguese delegate's explanations.

169. As regards the second ground of non-conformity – the Government's power to define minimum services by order – the Portuguese delegate said that Act No. 65/77 of 26 August 1977, to which the ECSR referred, had been replaced by new legislation that had come into force in December 2003.

## **UNITED KINGDOM**

170. With regard to the first ground of non-conformity, the delegate of the United Kingdom informed the Committee that a bill amending the the bill amending the Employment relations Act 1999 (ERA) was before Parliament but that it did not provide for any changes in this part of the legislation.

171. The representative of the ETUC recalled that last time, the delegate of the United Kingdom stated that the finding of non-conformity of the ECSR would have been duly taken into account by the Government in the drafting of the new legislation. This was not the case. He suggested that the Committee adopts a warning.

172. The Committee adopted a warning by 26 votes in favour, 1 against and 6 abstentions.

173. With regard to the second ground of non-conformity, the delegate of the United Kingdom acknowledged that relevant legislation was far too complex and that the bill amending the ERA does provide for changes in this respect. However he did not explain in detail what the changes will be.

174. The representative of the ETUC wondered why there was no more information on the proposed changes to the ERA and suggested that the Committee adopts a warning given that last time the Committee already urged the Government to bring the situation into conformity.

175. The ETUC's proposal was backed by the Portuguese delegate while the Cypriot delegate and the representative of the IOE suggested that the Committee expresses concern.

176. The Committee expressed concern for the situation and for the lack of clear information on the ongoing reforms.

177. With regard to the third ground of non-conformity, i.e. the inadequate protection against dismissal, the delegate of the United Kingdom stated that the bill

amending the ERA provides for some changes, in particular with regard to the definition of the eight weeks period which would ignore lock out periods. However he did not explain in detail what the changes will be.

178. The Cypriot delegate, supported by the representative of the ETUC, observed that the changes in question seemed of a mere procedural nature and wondered whether the bill provided for some substantial amendments. She further recalled that last time the Committee did not renew its recommendation only because the delegate of the United Kingdom stated that the Government would carry out the appropriate reforms and she therefore asked to vote on the renewal of the recommendation.

179. The Secretariat specified that although Recommendations RecChS(1993)3 and RecChS(1997)3 are concerned in substance with strikers' inadequate protection against dismissal, neither of them deals precisely with the current grounds of non-conformity, since the situation has changed since the Employment Relations Act 1999 (ERA) was passed. Therefore it would be a new recommendation.

180. The Committee adopted a proposal for a new recommendation by 25 votes in favour, 1 against and 5 abstentions:

**Recommendation on the application of the European Social Charter by the United Kingdom during the period 2001-2002 (seventeenth supervision cycle – part I, “hard core” provisions of the Charter)**

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

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

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

Whereas the European Social Charter, signed in Turin on 18 October 1961, came into force on 26 February 1965 with respect to the United Kingdom and whereas, in accordance with Article 20, the United Kingdom has accepted 60 of the provisions contained in the Charter;

Whereas the Government of the United Kingdom submitted in 2003 its 23rd report on the application of the Charter, and whereas this

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<sup>1</sup> At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those States which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter." The states having ratified the European Social Charter or the European Social Charter (revised) are Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, 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 » (entry into force : 30 April 2005), Turkey and the United Kingdom.

report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined Conclusions XVII-1 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 legislation of the United-Kingdom (Schedule 5 of the 1999 Employment Relations Act) was not in conformity with Article 6, paragraph 4, of the Charter on the ground that the period of eight weeks beyond which strikers lost their employment protection was arbitrary and that protection against dismissals applied only to official strikes;

Following the proposal made by the Governmental Committee;

Recommends that the Government of the United Kingdom 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 Charter.

## **Article 12§1 - Existence of a social security system**

### **POLAND**

181. The Polish delegate questioned the correctness of decision of the ECSR to assess the level of benefits under Article 12§1. In her view it was only Article 12§2 that required States to fix benefits at certain levels, namely the levels provided for by ILO Convention No. 102. New case-law of the ECSR could lead to an unfortunate double standard with divergent assessments of the levels under Article 12§1 on the one hand and under Article 12§2 (and ILO 102) on the other hand. Lastly, such a dual assessment would give rise to the question of the well established legal principle of *lex specialis derogat legi generali* (special law has priority over general law). That was the relationship between those two sub-paragraphs.

182. By way of information, she said that the level of unemployment benefit was indeed low in relation to workers' wages. It should be noted that many unemployed persons were entitled to additional family and early retirement benefits and secondly it was important to realise that keeping benefits at too high a level would run counter to the strategy of activating and motivating the unemployed. Finally, the delegate provided information on economic difficulties experienced by Poland and referred in the context to her explanations given under Article 1§1. She added that positive trends in the national economy and the possibility of obtaining significant resources from the structural funds of the EU to implement the labour market policy would make it possible to contemplate increasing expenditure for cash benefits in future. A further positive factor was the fall in the unemployment rate which had begun in 2004.

183. The Committee took note of the information provided by the Polish delegate, in particular as regards the economic situation, and asked the Government to increase its effort to comply with Article 12§1 of the Charter.

### **Article 12§3 – Development of the social security system**

#### **POLAND**

184. The Polish delegate referred to her explanations regarding Poland's difficult economic and social situation given under Article 1§1 and Article 12§3. The aim of the measures taken was not exclusively to afford protection in the traditional sense of the term to the unemployed, but also to combat social exclusion to provide opportunities to re-enter the labour market. She added that since the reference period under consideration a number of measures, notably a new law on family benefits, had been taken which together ensured that social security recipients could lead a decent life. In general terms, states had to consider the different functions of the social security system: those related to protection and those related to activation and motivation. There was widespread acceptance today that greater emphasis had to be placed on the latter in order to help address the situation on the labour market and the problems relating to the funding of the system.

185. The Committee took note of the information provided by the Polish delegate, in particular as regards the economic situation, and asked the Government to increase its effort to comply with Article 12§3 of the Charter.

### **Article 12§4 – Social security of persons moving between states**

#### **General discussion**

186. The Maltese delegate took the floor and referred to the very generalised situation of non-conformity under Article 12§4 relating to exportation of social security benefits (child benefits) and accumulation of insurance periods, a problem that affected no less than 19 countries. He further recalled CS-CO had submitted a detailed memorandum on the issue of child benefits to the ECSR, but he had been informed that no reply had been forthcoming and the ECSR had merely repeated its position. He proposed to postpone examination of the country cases until the October meeting with a view to giving delegates an opportunity to study the memorandum and to discuss it during the October meeting.

187. The representative of the ETUC asked whether this would not involve a legal discussion and thus a questioning of the legal assessment of the ECSR.

188. The Maltese delegate underlined that the memorandum was a key to understanding the situation in substantive terms and it was important to resolve a conflict which more or less involved three committees of the Council of Europe.

189. The German, Greek, Irish, Dutch, Spanish delegates and the delegate of the United Kingdom supported the views and proposals put forward by the Maltese delegate. The Irish delegate suggested that a meeting between the Governmental Committee and the ECSR might be useful. The delegate of the United Kingdom proposed that the ECSR be asked to make a written reply explaining its position in detail.

190. The representative of the ETUC suggested that the Secretariat consider the situation with a view to resolving this issue in a procedurally acceptable way.

191. The Executive Secretary of the European Social Charter explained that the issue of the residence requirement in respect of children and the CS-CO memorandum had been the topic of intense discussions within the ECSR. He underlined that receipt of the memorandum had been duly acknowledged and substantive reply of the ECSR was indeed contained in its general introduction to Conclusions XVII-1 and 2004. He further recalled the supervisory procedure and the status and competence of the ECSR as an independent body. It would appear strange, in the least, if other committees were to "advise" the ECSR on legal issues. With respect to the substance of the matter he pointed out that it was not really about "export" of benefits. The problem was to a large extent linked to restrictive policies on family reunion which made it difficult for migrant workers to have their children residing with them. It should also be taken into account that the ECSR considered the reduction of child benefits when the child was resident in another country where the cost of living was lower as being in conformity with the Charter. Furthermore, it should not be forgotten that certain countries were not concerned by the finding of non-conformity of the ECSR and so apparently had found a way to solve the problem.

192. The Executive Secretary of the European Social Charter finally proposed that the Committee examine Article 12§4 case by case, otherwise it would set a bad precedent for the Committee's work and it would not adequately take into account any nuances between the national situations.

193. The President wondered whether it would not be possible for all the States concerned to agree on a solution whereby the Committee usual agree that it was not possible to comply with Article 12§4 on this point for economic reasons.

194. The German delegate proposed more specifically that the Committee should:

- i) note in its report the findings of violation of the ECSR;
- ii) recall that the Contracting Parties of the Charter were of the opinion that an unlimited export of social benefits would be impossible for social, economic and technical reasons;
- iii) consider this reasons relevant up to now;
- iv) and that no measures should be taken for the time being.

195. The Finnish and Estonian delegates said that recent case-law of the ECSR was incompatible with the residence-based benefit systems in their respective countries, where benefits were paid to all children residing in the country, irrespective

their parents are engaged in employment or not. They referred in this respect to the dissenting opinion made by one member (Mr. Mikkola) of the ECSR.

196. The Spanish delegate considered the problem to be mainly a technical one because in practice it was impossible for the authorities to verify whether children resident in other States fulfilled the eligibility criteria for child benefits.

197. Referring to the possibility of reducing the child benefit in respect of children resident in “low-cost” countries, the Polish delegate wondered whether this would not logically imply that Poland had to increase the normal benefit where the child was resident in a country with higher living costs than Poland. She added that the Polish report had set out detailed reasons for maintaining the system which had been criticised, but the ECSR had not discussed these in its conclusions.

198. The Maltese delegate asked the Secretariat to transmit to the ECSR a request for an explanation of how its case-law can be implemented in practice.

199. The representative of the ETUC said he favoured treating the situations individually and not “en bloc”. The Committee should keep in mind that core human rights were at stake.

200. The Committee decided to treat the situations related to child benefits (and the accumulation of insurance periods) collectively (see below “Common issues”), without going into the details of each national situation. The examination would be based on the proposal put forward by the German delegate (see above). Other grounds of non-conformity under Article 12§4 would be examined in the usual manner.

## **AUSTRIA – BELGIUM – CZECH REPUBLIC – DENMARK – FINLAND – GERMANY – GREECE – POLAND – SPAIN – TURKEY**

### **Common issues**

201. The President, referring to the previous discussion, proposed to deal collectively with the issues of the residence requirement in respect of children re payment of child benefits and accumulation of insurance or employment periods.

202. The representative of the ETUC said that as a matter of principle national situations should be dealt with individually and that if a collective approach was nevertheless embarked upon it should be an exception without any precedent for the future.

203. The Maltese delegate proposed that the Committee refer to the practical and technical difficulties in implement the legal interpretation adopted by the ECSR and he further suggested that the Committee ask the ECSR to explain how the interpretation could be implemented in practice. The German and Spanish delegates supported this proposal.



204. The Turkish delegate said that it was not merely a technical problem, but a question of the human rights of migrant workers. Having participated in CS-CO meetings he did not consider the memorandum on Article 12§4 drafted by this committee to be objective in any meaning of the word.

205. The Estonian delegate said that there was a collision between the rights of children and the rights of migrant workers and she did not understand why the rights of migrant workers should automatically take precedence.

206. The Lithuanian delegate pointed out that different countries had different systems and he considered that the Charter allowed room for choice.

207. The Committee took note of the conclusions of non-conformity reached by the ECSR but did not consider it possible, in particular for practical and technical reasons, to comply with the requirements following from the interpretation of Article 12§4 for the time being. It therefore decided not to take any measures in respect of States concerned and await the next assessment of the ECSR.

### **Specific issues**

#### **AUSTRIA**

208. The Austrian delegate referred to her statement under Article 16.

209. The Committee referred to its decision under Article 16 (warning adopted).

#### **BELGIUM**

210. As regards the Belgian delegate announced that the residence requirement to which payment of the guaranteed family benefit was subjected had been abolished by a law adopted on 24 December 2002. Full details would be included in the next report.

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

212. With respect to the condition applicable to the disability allowance, the Belgian delegate stated that in the view of his Government this allowance was a means-tested benefit which did not come within the scope of social security in the meaning of Article 12 of the Charter. However, a study was being carried to examine the possibility of lifting the condition in question.

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

#### **DENMARK**

214. The Danish delegate acknowledged that the retention of invalidity pensions was not possible in respect of non-EU/EEA States or States with which Denmark was not linked through bilateral agreements. She pointed out that in her Government's

view bilateral agreements could only be negotiated where there was a mutual interest of the countries concerned and where movements between the countries were significant. She finally emphasised that according to established practice occupational accident benefits could be exported to any country in the world.

215. The Committee took note of the information, part of which had not been included in the report. It asked the Government to provide this information in the next report and decided to await the next assessment of the ECSR.

## **GREECE**

216. The Greek delegate stated that pensions are exported through bank transfers to beneficiaries residing in States Parties with which Greece has not concluded bilateral agreements. This has become possible pursuant to the issue of Decisions of the Bank of Greece lifting foreign exchange restrictions. More information on the relevant procedure would be included in the next report.

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

## **POLAND**

218. The Polish delegate announced that an amendment to the farmers' social insurance system had been adopted which would extend coverage to all farmers and their family members, including foreigners.

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

## **TURKEY**

220. The Turkish delegate informed the Committee that as announced in the past Section 3-II A of the Social Insurance Act had now been repealed thus bringing the situation into conformity with the Charter.

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

## **Article 13§1 – Adequate assistance for every person in need**

### **DENMARK**

#### First ground of non conformity (continued assistance):

222. The Danish delegate wished to address this ground in the context of repatriation since the two points were linked (see below). He further wished to point out that all foreigners who gain lawful residence in Denmark are entitled to social assistance from the first day on a completely equal footing with Danish citizens.

223. The Committee asked the Danish Government to provide all the necessary clarifications in the next report with a view to the assessment of the ECSR.

Second ground of non-conformity (repatriation)

224. The Danish delegate explained the situation on the two first grounds of non-conformity together as they were closely linked. He emphasised that repatriation linked to social assistance only takes place after a person has been destitute for a long time and few persons were concerned in practice. Furthermore, any repatriation was carried out under close observance of the requirements of the 1953 Convention on Social and Medical Assistance, requirements which were even expressly written into the Danish legislation on social assistance. The delegate further said that foreign nationals who might be deemed to potentially be in need of continued social assistance would never gain entry into any country with any kind of social assistance system. Social assistance systems are generally not open to everyone. He finally emphasised that his Government considered the rules in question to be necessary to prevent “social tourism”. Due to the very high social assistance rates (up to 1,500 € per month), Denmark was a very attractive place for destitute persons.

225. The representative of the ETUC said that the “social tourism” argument was well known, but it was in particular not relevant since only those persons were protected under this provision of the Charter who already were legally residing in the country. There had not been any substantive changes to the situation and there was nothing to misunderstand. In his view the situation merited a second warning.

226. The representative of the OIE said the situation was complex, but the Government should be given an opportunity to sort out any misunderstandings in the next report.

227. In reply to a question from the Armenian delegate, the Danish delegate explained that persons holding a job may not claim social assistance.

228. The Greek delegate asked whether the information given by the Danish delegate had been taken into account by the ECSR.

229. The Executive Secretary of the European Social Charter confirmed that this was the case and that no new elements had been brought forward. He pointed out that the 1953 Convention applies to Article 13§4. Whereas under Article 13§1 complete equality of foreigners lawfully resident should be ensured and repatriation is not permitted, under Article 13§4, the personal scope of which relates to those lawfully present in the territory, repatriation is permissible subject to observance of the requirements of the 1953 Convention. Having noted that the Danish legislation already referred to international treaty obligations, the Executive Secretary of the European Social Charter asked the Danish delegate whether the legislation could not be amended to also take explicit account of Denmark’s obligations under the Charter.

230. The Danish delegate felt that there was a misunderstanding, because in the view of his Government the requirements of the 1953 Convention applied to Article 13§1 also and the text of paragraph 4 was quite clear in this respect.

Consequently, the situation in Denmark as regards repatriation was therefore in compliance with Article 13§1.

231. The Cypriot and Romanian delegates considered that the situation was in clear violation of the Charter and would support a second warning.

232. The German, Greek and Irish delegates supported the views put forward by Danish delegate and suggested that the Committee take no measures in this case.

233. The Committee proceeded to vote on a warning as regards repatriation which was not adopted (7 votes in favour, 13 against and 12 abstentions).

Third ground of non-conformity (starting allowance/indirect discrimination)

234. The Danish delegate said that it had been important to the Government when it introduced the starting allowance that all international obligations were fully honoured. In his view the criteria for awarding the allowance are objective and impartial and so do not lead to discrimination of any sort.

235. The Committee took note of the explanation provided and asked the Government to include the detailed arguments as well as information on the situation in practice in the next report.

**GERMANY**

236. The German delegate stated that the conclusion of non-conformity in this case could only rest on a misunderstanding by the ECSR of the German situation. He emphasised that foreigners resident in Germany were guaranteed the right to social assistance and dignity in the same way as nationals. The special benefits provided for under Sections 30 and 72 of the Social Assistance Act (BSHG) were in fact granted on a discretionary basis and therefore granting them to foreigners as of right would entail more favourable treatment of them than of German nationals.

237. The representative of the ETUC recalled the necessity to have accurate reports in particular if two warnings had already been adopted by the Committee.

238. The Committee asked that the next report contain all the necessary explanations concerning Sections 30 and 72 and a confirmation that the benefits in question are indeed granted to nationals and all foreigners on a completely equal footing. It decided to await the next assessment of the ECSR recalling that the two warnings remained valid.

**GREECE**

239. The Greek delegate indicated that the newly elected Government intended to take a close look at the social assistance system with a view to making any necessary improvement. He further explained that a variety of new social assistance measures were already being implemented or were foreseen within the framework of the National Action Plan for Social Inclusion.

240. The representative of the ETUC pointed out that the information did not address the core of the problem of non-conformity, namely that there was no individual right to social assistance in Greece.

241. The representative of the OIE took note of the information provided and encouraged the Government to include all the necessary information in the next report indicating that the situation had been brought into conformity with Article 13§1.

242. The Cypriot delegate explained that the Government had to demonstrate clearly in its next report, that Article 13§1 was respected, i.e. that the right to social assistance is clearly defined in law and based on objective criteria, is not subject to any condition other than need and is enforceable before an independent body.

243. The Portuguese delegate supported the views expressed by the Cypriot delegate and the representative of the ETUC.

244. The Greek delegate from the Ministry of Health and Social Solidarity commented that the right of the individual to demand or to benefit from certain welfare benefits stems directly from the rule of law and the administration or its organs are bound when the conditions of this rule apply. The role of the administration or its organs is limited to the examination or the verification of those conditions the fulfilment of which allows the inclusion of the individual in a particular benefit-program. Any exercise of discretionary power from the part of the administration is limited both by the obligation that the administration has to justify its actions as well as the fact that any report that is the result of a social investigation is subject to judicial supervision. Finally, the Greek Ombudsman is an independent authority that examines the actions of the administration.

245. The Executive Secretary of the European Social Charter recalled that the Greek Government had informed the ECSR that the 2002 Act would be implemented so that an individual right to social assistance would be recognised. He was therefore surprised that this information was not confirmed and asked whether this indicated a change in the position of the Greek authorities.

246. Replying to the question, the Greek delegate said that in his understanding the finding of non-conformity of the ECSR was primarily due to the large number of criteria applied when granting social assistance and at the extent of the discretionary powers of the authorities in this field. On the latter point he contested that the discretionary powers were so wide as assumed by the ECSR. The public authorities are obliged to apply the provisions of the existing institutional framework. Only in certain poverty linked benefits the judgement of the specialized body (i.e. social worker) comes in. He assured that detailed information on this point would be included in the next report.

247. The Committee expressed its serious concern at a situation where the individual right to social assistance was not guaranteed and it urged the Government to include thorough information clearly describing the legal situation in Greece.

## **SPAIN**

248. As regards the first and second grounds of non-conformity (length of residence requirement and age limit), the Spanish delegate explained that social assistance was managed and implemented at the regional (provincial) level and this decentralisation had led to different eligibility requirements in different regions. The main reason for the length of residence requirements was a desire to avoid artificial migration between the regions. However, the regions concerned had been informed of the Conclusion of the ECSR and in February 2004 the Government had established a task force to look into how a more uniform management and implementation of social assistance could be ensured throughout the country.

249. The Committee took note of the measures taken and urged the Government to bring the situation into conformity to the Charter as regards the length of residence requirement and the age limit. It decided to await the next assessment of the ECSR.

250. With respect to the third ground of non-conformity (absence of a right to appeal in certain regions), the Spanish delegate was pleased to announce that a right to appeal in respect of the minimum guaranteed income had now been established in all the autonomous regions.

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

## **TURKEY**

252. The Turkish delegate stated that according to the 8<sup>th</sup> Five-year Development Plan social assistance would be much more accessible, including at local level. A network of social centres would be established and more funding would be allocated. Furthermore, a draft bill was presently in consultation which would address the specific criticisms raised by the ECSR.

253. In reply to questions raised by the Cypriot and Dutch delegates and the representative of the ETUC, he confirmed that the new legislation would guarantee an individual and enforceable right to social assistance, however he could not give details of the appeals procedures at this stage. He expected that the bill would be passed by Parliament in 2005.

254. The Committee voted on a warning which was not adopted (12 votes for, 8 against and 6 abstentions).

255. The Committee expressed its serious concern at the situation, but in view of the announced legislation it decided to await the next assessment of the ECSR.

## **UNITED KINGDOM**

256. The delegate of the United Kingdom referred to his statement under Article 19§4 concerning the habitual residence test.

257. The Committee asked the Government to ensure that the modalities for ascertaining habitual residence do not lead to discrimination against nationals of other States Parties. It decided to await the next assessment of the ECSR.

### **Article 13§3 – Prevention, abolition or alleviation of need**

#### **GERMANY**

258. The German delegate referred to his statement under Article 13§1.

259. The Committee referred to its decision under Article 13§1.

#### **TURKEY**

260. The Turkish delegate referred to his remarks under Article 13§1 and the reforms underway. He further gave information on expenditure on social assistance services in 2003 and indicated that it would increase in the coming years.

261. The Committee insisted that all the information which had been requested repeatedly by the ECSR be contained in the next report. Meanwhile, it decided to wait the next assessment of the ECSR.

### **Article 13§4 – Specific emergency assistance for non-residents**

#### **NETHERLANDS**

262. The Dutch delegate emphasised that the criticism of the ECSR only concerned tourists. She then recalled that Article 13§4 contains the obligation to treat foreign and Dutch tourists equally. She stated that foreign tourists in the Netherlands were indeed receiving assistance on an equal footing with Dutch tourists (all differences between Dutch and foreign tourists are taken into account, particularly the latter's language problems and the longer distances to their homes): in case of an emergency tourists can turn to the police who had a legal duty to refer people to the necessary assistance (Victim Support offices). Moreover, there were several voluntary organisations which offered help to tourists in such situation. They already exist in Amsterdam, The Hague and the province of Zeeland and a new organisation had recently been established in the Euro-region Twente. The Dutch delegate furthermore assured the Committee that the services of all these organisations had proven to be very successful in practice.

263. The Portuguese delegate said that there seemed to be no doubt that in practice equal treatment was guaranteed and that the assistance provided was adequate, but she invited the Government to explain more clearly the legal obligation incumbent on the police in this respect in the next report.

264. The Estonian delegate made reference to the recent EU Directive on victims' rights.

265. The Committee took note of the information provided and asked the Government to explain in detail in the next report the legal obligation of the police to intervene as necessary to ensure that foreign tourists receive the assistance to which

they are entitled as of right under Article 13§4. It decided to await the next assessment of the ECSR.

## **PORTUGAL**

266. The Portuguese delegate stated that the right to emergency social assistance of foreigner lawfully present in Portugal is fully ensured in practice and the next report would contain all the necessary statistical information demonstrating. She further stated that new legislation had been introduced which would reorganise the provision of social assistance at local level and ensure more possibilities and more autonomy in the financing of social assistance.

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

## **Article 16 – Right of the family to social, legal and economic protection**

### **AUSTRIA**

268. The Austrian delegate explained that the three months employment's condition regulating the entitlement to family benefits for non-EEA nationals is still in force. The appropriate bodies took note of the situation of non-conformity, but so far there is no indication of the intention to amend the legislation. As regards the nationality or residence's conditions applying to the Childcare Benefit or the large-family allowance, she indicated that the next report would provide further information.

269. With respect to nationality or residence's conditions applying to housing benefits, the Austrian delegate explained that this is an exclusive *Länder* competence and that the situation varies largely. Certain *Länder* granted equality of treatment for non-EEA nationals, while others considered this impossible without altering the whole functioning of the benefit system. She added that the next report would provide up-to-date information.

270. Following the suggestion of the Cyprus delegate, supported by the representative of the ETUC, the Committee voted a warning on the issue of family benefits. The warning was adopted (10 votes in favour, 2 against and 14 abstentions).

### **GERMANY**

271. The German delegate indicated that, following the decisions of the federal courts, rules were changed in the *Länder* concerned (Bavaria and Baden-Württemberg) so that there is no longer discrimination for all nationals of the States Parties to the Charter. The other concerned *Länder* will provide the relevant information in the next report.

272. The Committee took note of the evolution and decided to await the next assessment of the ECSR.



## **GREECE**

273. As to the first ground of non-conformity, the Greek delegate from OAED explained that the general framework for family benefits paid to employees by the OAED is still set by Act no. 3868/56. The level of family benefit is related to the contributions paid by the employee. She added that the level of family benefits granted by the OAED has been increased by 40% as from 1st January 2004 and that other forms of family benefits exist for target groups on the basis of Collective Agreements or Administrative Decisions or Legislative Provisions applicable each time. These family benefits are considerably higher than those granted by the OAED. Therefore, the percentage of 1.9% (linking the level of family benefit and level of income of a family with 3 children) based on the Eurostat Data and mentioned in the conclusions of the ECSR does not fully reflect the reality at present.

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

275. As to the second ground of non-conformity, the Greek delegate confirmed that family benefits do not exist for the self-employed. He added that the General Confederation of Self-employed and the Greek Authorities will be informed of the conclusion of non-conformity.

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

277. As to the third ground of non-conformity, the Greek delegate from the Ministry of the Interior indicated that there are no precise figures on the number of Roma in Greece, since they form an integral part of the Greek Population and are not registered on a separate basis during the general census. Upon the commencement of the Integrated Action Program in 2002, the Municipalities proceeded to a special recording which showed that the Roma Population is 70,000 to 80,000 individuals. She added that as concerns the civil status of Romas and as a result the legal protection that is granted to them, it must be made absolutely clear that no special administrative formalities are in place for the registration of Romas in the municipal records, given that they are Greek Citizens and there is no discrimination between Roma and non-Roma. The Government had taken measures to issue birth certificates by judicial decision to Roma who did not have it. This allows them to subsequently register with the municipality, to receive an identity card and to have access to social services. This was done in the framework of the housing programmes for Roma, for which 90,643 applications were received.

278. Referring to the fact that a collective complaint had been filed against Greece on this subject the representative of the ETUC stressed the importance of a secure legal status of the Roma population and asked the Government to improve the situation.”

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

## **NETHERLANDS (Aruba)**

280. The Dutch delegate indicated that the legislation was amended and provides now for the full equality of spouses.

281. The Committee welcomed the change in the legislation and decided to await the next assessment of the ECSR.

## **POLAND**

282. As to the first ground of non-conformity, the Polish delegate was of the opinion that the assessment of the adequacy of the amount of family benefits should be carried out only under Article 12 and more specifically under Article 12§2. She referred to her comments on that occasion, i.e. that the evaluation should be consistent with that carried out under other international instruments (as ILO conventions) and it should take into consideration the whole system of benefits implemented by a state and the policy on the matter. The level of expenditure allocated under the state budget complied with the thresholds laid down in ILO Convention No. 102. She added that a new law on family benefits had been passed on 28 November 2003 and that its entry into force had already led to an increase in the number of beneficiaries and the amount of benefits paid to families. She explained that the adequacy of the benefits should be assessed taking also into consideration a whole range of supplements and deductions from school, housing and transports costs. She indicated that all this information would be provided in the next report.

283. The Committee took note of the evolution in the amount of the benefits and, taking into consideration the past and present difficult economic situation of Poland, asked the Government to undertake any possible effort to improve the situation. It decided to await the next assessment of the ECSR.

284. As to the second ground of non-conformity, the Polish delegate noted that Moldova, Romania and Turkey were the only countries with which there were no bilateral agreements, and the question of beginning negotiations with these countries was currently being looked at. However, these agreements would apply only to a limited number of people. Poland was of the opinion that drawing up special rules for granting family allowances could be achieved through international agreements, as family allowances were a non-contributory benefit, financed out of the state budget, with the allowance being paid to everyone who satisfied the resource-related criterion; furthermore, it was necessary to guarantee the reciprocity of state obligations which entailed significant financial expenses.

285. The Committee took note of intention of the Polish Government to open negotiations with the remaining countries and asked the Government to undertake all necessary efforts to guarantee equality of treatment to all nationals of Parties to the Charter.

## **SPAIN**

286. As to the first ground of non-conformity, the Spanish delegate indicated that the current family benefits system is in force since 1991 and it has never been

questioned by social partners. He added that the amount of the benefits is annually increased and that a range of other corollary benefits are available for families.

287. As to the second ground of non-conformity, the Spanish delegate explained that family benefits depend on family income and are provided only to the most disadvantaged ones. She also indicated a wide range of measures the Government is planning to take to improve the family policy.

288. The Committee took note of the information and asked the Government to provide it in the next report. It also asked the Government to undertake any possible effort to improve the situation and decided to await the next assessment of the ECSR.

## **TURKEY**

289. As to the first ground of non-conformity, the Turkish delegate indicated that a family benefit system was not yet in place, but that it is provided in the bill on social services.

290. The Committee took note that the bill under preparation will cover family benefits and urged the Turkish Government to transform it into legislation as soon as possible to bring the situation in conformity with the Charter.

291. As to the second ground of non-conformity, the Turkish delegate indicated that the figures provided in the report were so low because they only concerned orphans. At any event, children under the age of compulsory schooling are traditionally kept home.

292. The Committee urged the Turkish Government to provide all necessary information about the demand and offer of childcare in the next report in order to demonstrate that there is adequate coverage. It decided to await the next assessment of the ECSR.

## **UNITED KINGDOM**

293. The British delegate indicated that a bill bringing the situation into conformity was pending when the Northern Ireland Assembly was dissolved. As soon as the Assembly will be reinstalled, the amendment would be resumed.

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

## **Article 19§1 – Assistance and information on migration**

### **TURKEY**

295. The Turkish delegate explained that Turkey is confronted with illegal immigration. Measures have been taken to eliminate misleading propaganda which leads to illegal migration. He stressed that there is no racist propaganda against

migrants in Turkey and that xenophobia is not widespread. In response to a question put by the President he affirmed that hate speech is punishable by law and that persons using hate speech are indeed prosecuted in court.

296. The Greek delegate welcomed the positive developments cited by the Turkish delegate and pointed out that the next Turkish report should include more information on questions put by the Committee on measures taken to combat racism and intolerance.

297. The Committee took note that progress is being made to combat misleading propaganda. It invited the Turkish Government to provide in its next report all the relevant information and decided to await the next assessment of the ECSR.

#### **Article 19§4 – Equality regarding employment, right to organise and accommodation**

##### **TURKEY**

##### First ground of non-conformity

298. The Turkish delegate stated that an amendment to the Trade Union Act (No. 2821) is underway. He expected that a draft bill would be enacted by the end of this year abolishing the condition of nationality and thus allowing for foreigners to also become founding members of trade unions.

299. The representative of the ETUC applauded the intention of the Turkish Government to remove restrictions with regard to trade union rights and called on the Government to include 'nationality' explicitly as ground for non-discrimination in the legislation and, more generally, accept Articles 5 and 6 of the Charter.

300. The Committee noted with satisfaction that the new law would bring the situation into conformity with the Charter but insisted that 'nationality' should be explicitly as ground for non-discrimination in the legislation and decided to await the Committee's next assessment.

##### Second ground of non-conformity

301. The Turkish delegate stated that the new Labour Code prohibits discrimination in employment on such grounds as language, race and religion, therefore prohibiting discrimination against migrants.

302. The Cypriot, Greek and Romanian delegates and the representative of the ETUC stressed that none of the grounds listed in the law prohibit discrimination on the ground of nationality. They urged that new legislation should include this ground.

303. The Committee took note of the new law in respect of non-discrimination. It urged the Turkish Government to include the term 'nationality' in the law indicating a ban on discrimination on this ground and decided to await the next assessment of the ECSR.

**Article 19§4 – Equality regarding employment, right to organise and accommodation**

**and**

**Article 19§10 – Equal treatment for the self-employed**

**GERMANY**

304. The German delegate stressed that the protection provided by the Employment Protection Act on Military Service does not fall under the scope of Article 19§4. He stated that if in individual cases workers are called for military service, the Ministry intends to influence their assimilation. Furthermore, a decision on whether compulsory national military service should be abolished will be taken by Parliament in October 2006, in which case the question of a possible discrimination between foreigners and nationals with regard to guarantees for retaining their jobs would be solved. Lastly, he stated that the statute by virtue of which only nationals are entitled to maintain their employment during compulsory military service does not apply to the self-employed and should therefore not be examined under Article 19§10.

305. The representative of the ETUC noted that the Government had no intention of changing the legal situation and that the German delegate had not indicated how the individual cases were precisely dealt with. He suggested that the Committee adopt a warning. He was joined by the Maltese delegate, although the Maltese and Spanish delegates stated that the situation concerned merely isolated cases.

306. The Executive Secretary of the European Social Charter pointed out that it was too soon to conclude that these were only isolated cases, in particular bearing in mind that migrant workers from future States Parties would also need to be treated equally.

307. The Irish, Dutch and Spanish delegates stated that the German Government should be granted some more time to bring about the changes.

308. The Committee urged the German Government to solve the problem of discrimination in order to bring the situation into conformity with the Charter, in particular in case compulsory military service is not abolished.

**UNITED KINGDOM**

309. The United Kingdom delegate stressed that there was nothing in UK legislation which required a length of residence in order to be eligible for housing benefits. Migrant workers merely needed to establish their intention to reside.

310. The Executive Secretary of the European Social Charter referred to the conclusion of non-conformity under Article 13§1 in which an explanation is given on the habitual residence test (HRT). He pointed out that no length of residence is accepted and that more information is needed to show which are the requirements a migrant worker is faced with when required to demonstrate his/her intention to reside.

311. The French, Maltese, Dutch and Romanian delegates considered that more clarification is needed concerning the meaning of the criteria of residence in the HRT.

312. The representative of the ETUC stressed that statistics and practical examples of cases were needed to show that there is no discrimination.

313. The Committee asked the Government to ensure that the modalities for ascertaining residence do not lead to discrimination against nationals of other States Parties. It decided to await the next assessment of the ECSR.

## **Article 19§6 – Family reunion**

### **AUSTRIA**

#### First ground of non-conformity

314. The Austrian delegate stated that the age limit for family reunification is 18 years, which is the age limit provided for in the revised Charter and also foreseen in EU Directives on this matter. She stated that it was not possible to provide statistical data.

315. The Committee asked the Government to speed up the ratification process of the revised Charter and urged it to bring the situation into conformity with the Charter.

#### Second ground of non-conformity

316. The Austrian delegate explained that there were no known cases of expulsion on health grounds. She stated that a list of diseases which may lead to expulsion on health grounds would be provided in the next report.

317. The Committee took note of this information and decided to await the next assessment of the ECSR.

#### Third ground of non-conformity

318. The Austrian delegate stated that there were no refusals for family reunion on the ground that fixed quota had been exhausted.

319. The Committee took note of this information. It invited the Government to provide in its next report all the relevant data for a full assessment of the situation. It decided to await the next assessment of the ECSR.

### **GREECE**

320. The Greek delegate from the Ministry of the Interior stated that a new law has been implemented which allows for family reunion up to the age of 21 years. In response to a question put by the President, she indicated that this information was not provided in the last report.

321. The Greek delegate also pointed out that the waiting period before one could apply for family reunion had been reduced to two years but will not be further shortened. She stressed that a two-year residence requirement was necessary to enable migrants to integrate and make their own living.

322. The representative of the ETUC welcomed the changes in law but expressed concern that there was no intention from the Greek side to further shorten the waiting period.

323. The Committee took note of the legislative changes and invited the Greek Government to provide in the next report all the new relevant information needed for a complete assessment of the situation. It furthermore expressed its concern that the Government has no intention of reducing the waiting period so as to bring it into conformity with the Charter which allows for a maximum waiting period of one year. It urged the Greek Government to bring the situation into conformity with the Charter.

## **TURKEY**

### First ground of non-conformity

324. The Turkish delegate indicated that the Passports Act (No. 5682 and No. 5683) will be amended so as to include the right to family reunion for children aged between 18 and 21 years. Furthermore, a database will be set up enabling the collection of data. Statistics on family reunion will be provided in the next report. In response to a question put by the President, the Turkish delegate said he could not give a precise indication as to when the law would be enacted.

325. The representative of the ETUC welcomed the progress made by the Turkish Government and hoped that the next report would include information on family reunion in practice.

326. The Cypriot delegate expressed concern that no precise date could be given as to when the enactment of the law would take place.

327. The Committee took note of the intended change to the law and urged the Government to adopt it as soon as possible. It invited the Government to provide in its next report all the relevant data for a full assessment of the situation by the ECSR.

### Second ground of non-conformity

328. The Turkish delegate explained that legislative studies are underway to amend Section 8 of the Passports Act (No. 5682) in order to bring this Act into conformity with the Charter. He asked the ECSR to be more concrete in indicating how to bring the situation into conformity with the Charter.

329. The Cypriot and Greek delegates and the representative of the ETUC expressed concern that this was the third finding of non-conformity and that no reform was foreseen.

330. The German delegate was of the opinion that the ECSR placed the rights of the individual above the general interests which need to be protected by society at large. In light of this, respecting the position of the ECSR would lead to the weakening of the state.

331. The Cypriot delegate and the representative of the ETUC stated that the Committee should adopt a warning.

332. The Committee adopted a warning by 15 votes in favour, 3 against and 9 abstentions.

**Article 19§6 – Family reunion  
and  
Article 19§10 – Equal treatment for the self-employed**

**GERMANY**

333. The German delegate informed the Committee on new legislation (*Zuwanderungsgesetz*) coming into force in January 2005, in which the new detailed provisions on family reunion will take into account integration aspects of the children of the migrant worker.

334. The representative of the ETUC considered that the situation was not clear and that Germany should provide more details in its next report. In particular, explanations should be given on whether the age limit of 16 years with regard to family reunion has been lifted.

335. The Cypriot delegate recalled that two Recommendations had already been issued to Germany.

336. The Committee noted the information on the new legislation, recalled that the recommendations were still valid and decided to await the next assessment of the ECSR.

**NETHERLANDS**

First ground of non-conformity

337. The Dutch delegate confirmed that children of 18 years and over are eligible for family reunion if their position in the country of origin would amount to a disproportional harshness, for instance if the children are dependent. The concept of dependancy in Dutch law and policy, moral dependancy included, is the same as that of the Charter. Finally, she expressed the intention of the Government to ratify the revised Charter and, in the meantime, the intention to continue to pursue a favourable treatment for migrant workers.

338. The Committee asked the Government to provide in its next report the necessary figures with their explanations to prove that in practice family reunion is



granted up to the age of 21 years. It decided to await the next assessment of the ECSR.

#### Second ground of non-conformity

339. The Dutch delegate stressed that in Dutch immigration law and policy a difference is made between family reunion and family formation. Article 19§6 governs the reunion of a family already existing before the migrant worker comes to the Netherlands. According to the Netherlands delegate, the formation of a new family does not fall under the definition of family reunion as provided for under 19§6. The three-year waiting period does not apply to family reunion but to formation of a family and even then only to children who themselves entered the country through family reunion when they were aged 16 to 18 years. This policy aimed at allowing these children time to integrate. The delegate stated that all this and more detailed information would be provided in the next report.

340. The Committee asked the Government to provide all necessary information in its next report. It decided to await the next assessment of the ECSR.

#### Third ground of non-conformity

341. The Dutch delegate stated that the means requirement is justified. Social welfare is paid from public funds. If a person entitled to welfare support brings a partner/spouse from abroad, this will result in a higher pressure on these public funds and extra pressure on the Dutch social security system. Furthermore, the Dutch policy aims to prevent social exclusion of persons receiving social welfare. The assumption is that the income requirement is conducive to the social participation of the new family member. She also stated that all persons receiving social welfare, with certain exceptions, are afforded equal treatment with respect to the applicability of the income requirement. The Dutch delegate referred to the EU Directive on family reunification, which will enter into force in a years time. She stated that Article 7 thereof allows for a means requirement in line with Dutch policy. The Dutch delegate also added that even when the income requirement has not been met, family reunification may be permitted if that is compulsory under Article 8 ECHR.

342. The representative of the ETUC and the Cypriot delegate stated that the protection of Charter provisions goes beyond the EU Directive. The representative of the ETUC stated that more statistics would be needed to show how the Dutch system works in practice.

343. The Committee asked the Government to provide the necessary information in its next report to prove that the means requirement is not so restrictive that it leads to certain categories of migrant workers being rejected the right to family reunion. It decided to await the next assessment of the ECSR.

## **SPAIN**

344. The Spanish delegate stated that there had been amendments to the laws with regard to migration. However, the amendments had not changed the information

appearing in the report, namely that children between the ages of 18 and 21 did not have a legally recognised right to family reunion.

345. In reply to a question by the Cypriot delegate, the Spanish delegate stated that the ratification of the revised Charter was being studied by the Government. The Cypriot delegate asked for a warning. The representative of the ETUC stressed that the conclusion was negative for a second time and that the Government should be asked to provide statistics as well as to change its legislation.

346. The Spanish delegate stated that statistics were very difficult to collect. She also said that legislation on family reunion was in line with the EU Directive on this issue. She furthermore stated that ratification of the revised Charter would lead to Spanish legislation being in line with the revised Charter, since there would then be no requirement that the right to family reunion be granted up to the age of 21 years.

347. The Executive Secretary of the European Social Charter stressed that all states should ratify the revised Charter. He explained that case-law of the ECSR allows for states who do not provide for a legal right to family reunion for children until 21 years, to prove that this right is granted in practice.

348. The Committee expressed concern regarding the lack of statistics. It asked that the Government provide the necessary figures to show that in practice family reunion is granted up to the age of 21 years. It decided to await the next assessment of the ECSR, urging nevertheless that the Government do its utmost to bring the situation into conformity with the Charter.

## **UNITED KINGDOM**

### First ground of non-conformity

349. The delegate of the United Kingdom explained that it is not possible to provide statistics for children entering the country on the grounds of family reunion above the age of 18 since these children are considered to be adults. An application for reunification from a person above 18 can be granted if that person is dependant. He also mentioned that the United Kingdom had signed the revised Charter.

350. The Cypriot delegate considered that the Government of the United Kingdom should be urged to provide statistics and that it should ratify the revised Charter.

351. The Committee took note of this information. It urged the Government to provide in its next report all the relevant data for a full assessment of the situation by the ECSR and asked the United Kingdom to ratify the revised Charter. It decided to await the next assessment of the ECSR.

### Second ground of non-conformity

352. The delegate of the United Kingdom explained that the Social Security Amendment Regulation of 2000 lifts the requirement for nationals of States Parties, who have access to public funds on equal footing with nationals.

353. The Committee noted that this new information should be provided in the next report. It decided to await the next assessment of the ECSR.

## **Article 19§8 – Guarantees concerning expulsion**

### **FINLAND**

354. The Finnish delegate confirmed the information appearing in the national report. She said that the deportation of foreigners who had sole custody of children not yet of age may entail deportation of the said children, but that deportation was decided on on a case-by-case basis, with due regard of individual circumstances, such as the degree of integration of the persons concerned, and the best interest of the child. She stated that Article 19§6 cannot be interpreted as giving an independent right to residence.

355. The representative of the ETUC said states should not use family reunion as an argument to deport children. Furthermore, since there was no new information and no intention to change the Committee should express strong concern and urge the Government to bring the situation into conformity as soon as possible.

356. The German and Dutch delegates stated that the underlying aim of 19§6 was to keep the family unified.

357. The Committee asked the Government to fully respect the independent right of children to stay and to provide all the necessary information in its next report to establish that migrant workers who are expelled are protected and that in the case-by-case analysis the best interests of the child prevail. It decided to await the next assessment of the ECSR.

### **GREECE**

358. The Greek delegate informed the Committee that an expulsion is ordered when the presence of the person in question is dangerous for public order and not when it poses “a simple threat” to public order which is the formulation used in the Conclusions of the ECSR. She also added that the law on expulsion on the grounds of posing a dangerous threat to public order contains safeguards. When an expulsion is ordered on this ground, the conduct of the migrant worker is taken into consideration. There is also a possibility of filing an appeal towards a court against the expulsion decision. The Greek delegate stated that in the last report there was no clarification on expulsion on the grounds of posing a threat to public order. She stressed that they will do their best to provide more information in the next report.

359. In response to the Committee, the Greek delegate stressed it was not the third time that the Greek report was incomplete but rather the third time that the conclusion of the ECSR was negative. Over this period of six years the ECSR had expressed its criticism over two different legislative frameworks -there was a reform in the migration policy legislation in 2001- and as a result of this criticism progress had been made on certain points. He added that it is not a question of accuracy or completeness but of further clarification required pursuant to the judgement of the

ECSR. Finally, the Greek delegate made a general remark that given the large amount of information rightly required in the frame of the control mechanism of the Charter, as well as the large number of public authorities involved in the provision of this information, it is only natural that certain points in a national report might need further clarification after their examination by the ECSR.

360. The representative of the ETUC said that this was the third time that the Greek report was not complete and he therefore called on the Government to provide accurate reports.

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

## **POLAND**

362. The Polish delegate explained that a new Foreigners Act has been passed bringing the situation into conformity with the Charter. She stated that the next report would provide all necessary information on the new legislation.

363. The Committee took note of the legislative changes and asked the Government to supply full information on these changes in the next report.

## **TURKEY**

### First ground of non-conformity

364. The Turkish delegate explained that legislative studies are underway to assess the discretionary powers of the Minister of the Interior to expel migrant workers.

365. The Cypriot delegate and the representative of the ETUC considered that the Committee should adopt a warning.

366. The Greek and Spanish delegates voiced their opposition against a warning. They noted that legislative studies were underway and that the discretionary powers of the Ministry of the Interior may not be too broad in the year 2004 given the changing nature of internal security issues in comparison to the past.

367. Since a warning did not get the required majority (5 in favour, 12 against and 10 abstentions) the Committee decided to await the next assessment of the ECSR.

### Second ground of non-conformity

368. The Turkish delegate explained that minor children of a migrant worker are indeed expelled when the migrant worker is expelled.

369. The Dutch delegate expressed that the Dutch Government has some doubts with respect to the case-law of the ECSR. States are obliged to ensure that family reunion is respected. If the minor children of a migrant worker are not expelled when the migrant worker is expelled, then this would lead to a break up of the family. This

seems to be in contravention with the basic assumption underlying the obligation with regard to family reunion in Article 19§6, namely the right to respect for the family life of the migrant worker and his family members, which is laid down in Article 8 of the European Convention of Human Rights and Fundamental Freedoms.

370. The representative of the ETUC stressed that the case-law of the ECSR should be respected and referred to paragraph 30 of working document (T-SG (2004) 9), in which the reasoning of the ECSR is explained. The Cypriot and Maltese delegates supported the ETUC's point of view.

371. The Committee invited the Turkish Government to provide detailed information in its next report and to take the necessary steps to bring the situation into conformity with the Charter.

**Article 19§8 – Guarantees concerning expulsion  
and  
Article 19§10 – Equal treatment for the self-employed**

**GERMANY**

372. The German delegate explained that the new Immigration Act (*Zuwanderungsgesetz*) will come into force in January 2005. In the Act the term of residence is dealt with in detail. He said that the next report would contain all relevant information on this Act.

373. The Committee took note of the legislative changes underway and asked the Government to supply full information on these changes in the next report. It decided to await the next assessment of the ECSR.

**NETHERLANDS**

374. The Dutch delegate confirmed the information in the report. She stated that in principle the dependants of an expelled migrant worker should follow the migrant worker. However, they are never compelled to leave but usually leave out of free will. There is a possibility that they apply for a residence permit and their cases are analysed on a case-by-case basis, taking into account the best interest of the child.

375. The representative of the ETUC noted that the principle that Article 19§6 provides for an independent right to residence is not accepted by the Netherlands. He stated that the Government should take measures to bring the situation in conformity with the Charter.

376. The Committee asked the Government to provide full information in its next report to demonstrate that automatic deportation of children does not occur. It should also supply information on all exceptions to expulsion, and provide figures on the deportation of migrant workers families as a consequence of his/her expulsion and figures on family members remaining in the Netherlands. It decided to await the next assessment of the ECSR.

## **SPAIN**

377. The Spanish delegate confirmed the information contained in the national report. She expressed difficulty in understanding the interpretation by the ECSR of the concept of public interest or morality. She stated that the circumstances of each case are taken into account when a decision on expulsion is taken and that there were cases in which the Supreme Court cancelled expulsion orders due to personal circumstances of the offender.

378. The Committee stressed that the grounds on which migrant workers may be expelled according to Spanish legislation go beyond those permitted under the Charter. It urged the Government to bring the situation in conformity with the Charter. It decided to await the next assessment of the ECSR.

## **UNITED KINGDOM**

379. The United Kingdom delegate confirmed the information in the national report and said that members of a migrant worker's family are not automatically deported. The family members may apply for a residence permit to remain in the country. The situation is assessed on a case-by-case basis. In reply to a question by the representative of the ETUC and the Cypriot and Romanian delegates, he stressed that there was no discrimination between nationals of EU/EEA States and nationals of other States. If a foreigner demonstrates a link, he/she would have the right to stay.

380. The representative of the ETUC stressed that family members were still liable to be expelled if the migrant worker was expelled.

381. The Icelandic delegate mentioned that if children did not follow the deported parent, this would lead to custody problems. The Cypriot delegate shared this view. The German delegate said it would be irresponsible to allow the minors to be separated from their parents.

382. The Cypriot and Maltese delegates stated that the Government of the United Kingdom should provide more information and statistics on the case-by-case analysis.

383. The Committee asked that there be no difference in treatment between EU/EEA nationals and nationals of other States Parties in respect of expulsion. It asked that the Government provide full information in its next report to demonstrate that automatic deportation of children does not occur. It decided to await the next assessment of the ECSR.

## **MISCELLANEOUS**

384. The Executive Secretary of the European Social Charter pointed out that when new bills are under preparation texts of the drafts or draft amendments should be brought to the attention of the Committee, either in the original language or in translation into one of the official languages of the Council of Europe. In addition,

information as to the legislative phase in which the drafts find themselves in and their full reference numbers should be forwarded.

385. Whereas some delegates raised technical as well as more fundamental problems the representative of the ETUC welcomed this proposal because it would help to better understand any good intentions referred to in the debates of this Committee. The proposal was also supported by other Government representatives.

### **Article 19§10 – Equal treatment for the self-employed**

#### **GREECE**

386. The Committee referred to its decisions under 19§§6 and 8.

#### **POLAND**

387. The Committee referred to its decision under 19§8.

#### **TURKEY**

388. The Committee referred to its decisions under 19§§1, 4, 6 and 8.

### **B. DEFERRED CASES FOR REPEATED LACK OF INFORMATION**

- **Belgium: Article 1§3**
- **Denmark: Article 1§2, 13§3**
- **Greece : Article 1§1**
- **Malta: Articles 1§2, 13§3, 13§4, 16**
- **Poland: Articles 19§1,19§6**
- **Spain: Article 5**

#### **BELGIUM**

389. The Belgian delegate indicated that the requested information would be contained in the next report.

#### **DENMARK**

390. The Danish delegate said that not all of the information requested was available to the Government, but efforts would be made to ensure that the next report was as comprehensive as possible.

#### **GREECE**

391. The Greek delegate indicated that the request of the ECSR had been transmitted to the competent authorities and that all available information would be contained in the next report.

**MALTA**

392. The Maltese delegate said that it was not entirely clear what sort of information was being requested, but he was already in contact with the Secretariat with a view to ensuring that the necessary information was included in the next report.

**POLAND**

393. The Polish delegate indicated that the requested information would be contained in the next report.

**SPAIN**

394. The Spanish delegate indicated that the requested information would be contained in the next report.



## **Appendix I**

### **LIST OF PARTICIPANTS**

1. 106<sup>th</sup> meeting: 11-14 May 2004
2. 107<sup>th</sup> meeting: 21-24 September 2004
3. 108<sup>th</sup> meeting: 19-22 October 2004

#### **ALBANIA / ALBANIE**

Mr Arben SIMAKU, Conseiller du Ministre du Travail et des Affaires sociales (1, 2, 3)

Mrs Albana SHTYLLA, Director of the Legal Department, Ministry of Labour and Social Affairs (3)

#### **ARMENIA / ARMENIE**

Mr Aleksandr KOSTANYAN, Head of the Division of International Relations, Ministry of Labour and Social Affairs (1, 2)

#### **AUSTRIA / AUTRICHE**

Mrs Elisabeth FLORUS, Federal Ministry of Economic Affairs and Labour (1, 2, 3)

#### **BELGIUM / BELGIQUE**

Mme Marie-Paule URBAIN, Conseillère, SPF Emploi, Travail et Concertation sociale, Services du Président (1, 2, 3)

M. Laurent BAUDOUX, Conseiller adjoint, SPF Emploi, Travail et Concertation sociale, Services du Président (1, 2, 3)

#### **BULGARIA / BULGARIE**

Mr Nikolay NAYDENOV, Head of International Organizations Section in International Relations Unit of Directorate for European Integration and International Relations, Ministry of Labour and Social Policy (1, 2, 3)

Ms Elitza SLAVCHEVA, Expert, International Organizations Section, Directorate for European Integration and International Relations, Ministry of Labour and Social Policy (1)

#### **CROATIA / CROATIE**

Mr Nenad KAZIJA, dipl. iur, Junior Adviser, Directorate for Labour and Labour Market, Department for European Integration and International Cooperation in the Area of Labour and Social Security, Ministry of Economy, Labour and Entrepreneurship (1, 2, 3)

#### **CYPRUS / CHYPRE**

Ms Lenia SAMUEL, Permanent Secretary, Ministry of Labour and Social Insurance (1, 2, 3)

Ms Elena DAMIANOU, Ministry of Labour and Social Insurance (2)

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

Ms Zuzana SMOLÍKOVÁ, Head of the Unit for Integration of Foreigners, Ministry of Labour and Social Affairs (1, 2)

Ms Regina HOPLÍCKOVÁ, Officer of the Unit for Integration of Foreigners, Ministry of Labour and Social Affairs (1, 2, 3)

**DENMARK / DANEMARK**

Ms Dorte Rievers BINDSLEV, Senior Adviser, Ministry of Social Affairs (1, 2, 3)

Mr Kim TAASBY, Special Adviser, Ministry of Employment (1, 2)

Mr Leo TORP, Head of Section, The National Directorate of Labour (2)

Mr Einar EDELBERG, Ministry of Employment (1)

Ms Birgit SØLLING OLSEN, Director of Shipping Policy, Danish Maritime Authority, Ministry of Trade and Industry (1)

**ESTONIA / ESTONIE**

Mrs Merle MALVET, Head of Social Security Department, Ministry of Social Affairs (1, 2, 3)

**FINLAND / FINLANDE**

Mrs Riitta-Majja JOUTTIMÄKI, Ministerial Adviser (Legal Affairs), Ministry of Social Affairs and Health (1, 2, 3)

Mrs Liisa SAASTAMOINEN, Senior Officer, Legal Affairs, Ministry of Labour (1, 2, 3)

**FRANCE**

Mme Jacqueline MARECHAL, Chargée de mission au Bureau des Relations européennes, Ministère des Affaires sociales, du Travail et de la Solidarité (1, 2, 3)

**GERMANY / ALLEMAGNE**

Ms Iris KROENING, Head of Division, Federal Ministry of Economics and Labour (3)

Mr Holger MAUER, Verwaltungsangestellter, Federal Ministry of Economics and Labour (1, 2, 3)

Ms Christiane KOENIG, Oberregierungsrätin, Federal Ministry of Economics and Labour (2)

**GREECE / GRECE**

Mr Grigoris GEORGANES-KLAMPATSEAS, Official, Department of International Relations, Ministry of Employment and Social Welfare (1, 2)

Ms Panagiota CHONDROU, Official, Ministry of Employment and Social Welfare (2, 3)

Ms Kakara PARASKEYH, Ministry of Employment and Social Welfare (3)

Ms Vasiliki MAKRI, Ministry of Education and Religious Affairs (2, 3)

Ms Evangelia BAGGE, General Secretariat of Social Security (2)

Ms Panagiota ZABRA, Manpower Employment Organization (1, 2)

Ms Paraskevi KAKARA, Official, Department of International Relations, Ministry of Labour and Social Security (1)

M. Konstadinos GOGOS, Ministère de la Défense (1)

Mme Stella MANTZIARI, Ministère de la Défense (1)

Mme Militsa PISIMISI, OAED, Office pour l'Emploi et la Main d'œuvre (1)

Mme Louisa KYRIAKAKI, Ministère de l'Intérieur (1)

Mr Ioannis TASSOPOULOS, Head of Section, Ministry of Health and Social Solidarity (1)

#### **HUNGARY / HONGRIE**

Mr László BENCZE, Legal Expert, Ministry of Health, Social and Family Affairs (2, 3)

Mr György KÖNCZEI, Expert, Adviser, Ministry of Employment and Labour (1)

#### **ICELAND / ISLANDE**

Mrs Hanna Sigrídur GUNNSTEINSDÓTTIR, Director, Ministry of Social Affairs (1, 3)

#### **IRELAND / IRLANDE**

Mr John B. McDONNELL, International Officer, International Desk, Employment Rights Section, Department of Enterprise, Trade and Employment (1, 2, 3)

Mr Robert AHERN, Industrial Relations Section, Department of Enterprise, Trade and Employment (2)

#### **ITALY / ITALIE**

Mme Giorgia DESSI, Dipartimento per le Politiche del Lavoro e dell'Occupazione e Tutela dei Lavoratori, Direzione Generale per la Tutela delle Condizioni di Lavoro, Divisione II - Affari internazionali, Ministero del Lavoro e delle Politiche Sociali (1, 2, 3)

#### **LATVIA / LETTONIE**

Mr Ingus ALLIKS, Deputy State Secretary, Ministry of Welfare (1, 2)

#### **LITHUANIA / LITUANIE**

Mr Povilas-Vytautas ZIUKAS, Deputy Director, Department of the Social Policy Analysis and Forecasting, Ministry of Social Security and Labour (1, 2, 3)

#### **LUXEMBOURG**

M. Joseph FABER, Conseiller de Direction première classe, Ministère du Travail et de l'Emploi (1, 2, 3)

#### **MALTA / MALTE**

Mr Edward GATT, Director General, E.U. and International Affairs, Ministry for the Family and Social Solidarity (1, 2, 3)

#### **MOLDOVA**

Mrs Ala LIPCIU, Head of Foreign Relations Department, Ministry of Labour and Social Protection (1, 2, 3)

#### **NETHERLANDS / PAYS-BAS**

Mrs Claudia J. STAAL, Senior Policy Adviser, Directorate for International Affairs, Ministry of Social Affairs and Employment (1, 2, 3)

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**NORWAY / NORVEGE**

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**POLAND / POLOGNE**

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**ROMANIA / ROUMANIE**

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**SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**

Mrs Zora BAROCHOVA, State Councillor, Department of EU Affairs and International Relations, Ministry of Labour, Social Affairs and Family (3)

**SLOVENIA / SLOVENIE**

Mrs Jana TESTEN, Head of the International Cooperation and European Affairs Department, Ministry of Labour, Family and Social Affairs (2)

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**SPAIN / ESPAGNE**

Mme Belén LÓPEZ LÓPEZ, Conseillère technique, Sous-Direction générale des Relations internationales, Ministère du Travail et des Affaires sociales (1, 2, 3)

M. Crispin PÉREZ REDONDO, Directeur des Programmes, Sous-Direction générale de Réglementation juridique de la Sécurité sociale, Ministère du Travail et des Affaires sociales (2, 3)

**SWEDEN / SUEDE**

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**TURKEY / TURQUIE**

Mr Levent GENÇ, Deputy Director General, Ministry of Labour and Social Security (Çalışma ve Sosyal Güvenlik Bakanlığı) (1, 2, 3)

**UNITED KINGDOM / ROYAUME-UNI**

Mr Tudor ROBERTS, ILO, UN & CoE (Employment) Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills (1, 2, 3)

Mr Stephen RICHARDS, ILO, UN & CoE (Employment) Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills (1, 2, 3)

Ms Sara BRATTAN, ILO, UN & CoE (Employment) Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills (1, 2, 3)

Ms Carol WHEELER, International Relations Division, Department of Trade and Industry (1)

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

Mr Klaus LÖRCHER, ETUC Legal Adviser, Head of Department for European and International Legal Affairs, Vereinte Dienstleistungsgewerkschaft – Verdi, Bundesvorstand – Ressort 5 – Recht (1, 2, 3)

M. Stefan CLAUWAERT, NETLEX Coordinator, Institut syndical européen, Confédération européenne des Syndicats (1, 2, 3)

**UNION OF INDUSTRIAL AND EMPLOYERS' CONFEDERATIONS OF EUROPE /  
UNION DES CONFEDERATIONS DE L'INDUSTRIE ET DES EMPLOYEURS D'EUROPE**

*Apologised / Excusé*

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

Dr Lucia SASSO-MAZZUFFERI, Avocat, Conseillère pour les Affaires internationales (1, 2)

**OBSERVERS / OBSERVATEURS**

**ANDORRA / ANDORRE**

*Apologised / Excusé*

**AZERBAIJAN / AZERBAÏDJAN**

Mr Azad TAGHIZADA, Head of the International Cooperation Department, Ministry of Labour and Social Protection of Population (1, 2)

**BOSNIA AND HERZEGOVINA / BOSNIE-HERZÉGOVINE**

Ms Amela HASIC, Ministry for Human Rights and Refugees (2)

**GEORGIA / GEORGIE**

Mr Lasha TCHIGLADZE, Head of the Division of Multilateral Treaty, International Law Department, Ministry of Foreign Affairs (1, 2, 3)

**LIECHTENSTEIN**

*Apologised / Excusé*

**MONACO**

M. Rémi MORTIER, Représentant Permanent Adjoint de la Principauté de Monaco auprès du Conseil de l'Europe (3)

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

Mr Ivan DUBOV, Deputy Director, Department of Legal and International Activities, Federal Service of Labour and Employment, Ministry of Health and Social Development (2, 3)

Mme Maria TKACH, Directrice Adjointe du Département de la Coopération internationale, Ministère du Travail et du Développement social (1)

**SAN MARINO / SAINT-MARIN**

*Apologised / Excusé*

**SWITZERLAND / SUISSE**

Mme Elisabeth IMESCH, Secteur Organisations internationales, Office fédéral des Assurances sociales, Département fédéral de l'Intérieur (1, 2)

**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" /  
"L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE"**

Ms Adrijana BAKEVA, Head of the European Integration Department, Ministry of Labour and Social Policy (1, 2)

**UKRAINE**

Mrs Natalija SAPON, Head of International Relations Department, Ministry of Labour and Social Policy (1, 2, 3)

## Appendix II

## CHART OF SIGNATURES AND RATIFICATIONS

## Situation at 1 November 2004

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00		
Armenia	18/10/01	21/01/04	
Austria	07/05/99	<b>29/10/69</b>	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04		
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	<b>08/03/99</b>	<b>26/02/03</b>	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	<b>03/11/99</b>	
Denmark	*	03/05/96	<b>03/03/65</b>
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98 X
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00		
Germany	*	<b>18/10/61</b>	<b>27/01/65</b>
Greece	03/05/96	<b>06/06/84</b>	18/06/98
Hungary	07/10/04	<b>08/07/99</b>	
Iceland	04/11/98	<b>15/01/76</b>	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	<b>29/05/97</b>	<b>31/01/02</b>	
Liechtenstein	<b>09/10/91</b>		
Lithuania	08/09/97	29/06/01	
Luxembourg	*	11/02/98	<b>10/10/91</b>
Malta	<b>26/05/88</b>	<b>04/10/88</b>	
Moldova	03/11/98	08/11/01	
Monaco	05/10/04		
Netherlands	23/01/04	<b>22/04/80</b>	
Norway	07/05/01	07/05/01	20/03/97
Poland	<b>26/11/91</b>	<b>25/06/97</b>	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/00		
San Marino	18/10/01		
Serbia and Montenegro			
Slovak Republic	18/11/99	<b>22/06/98</b>	
Slovenia	11/10/97	07/05/99	07/05/99
Spain	23/10/00	<b>06/05/80</b>	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland	<b>06/05/76</b>		
«the former Yugoslav Republic of Macedonia»	<b>05/05/98</b>		
Turkey	*	06/10/04	<b>24/11/89</b>
Ukraine	07/05/99		
United Kingdom	*	07/11/97	<b>11/07/62</b>
Number of States	46	<b>8</b> + 37 = 45	<b>17</b> + 18 = 35

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

<b>Austria</b>	<ul style="list-style-type: none"><li>– Article 1§2</li><li>– Article 5</li><li>– Article 12§4</li><li>– Article 16</li><li>– Article 19§6</li></ul>
<b>Belgium</b>	<ul style="list-style-type: none"><li>– Article 1§2</li><li>– Article 6§4</li><li>– Article 12§4</li></ul>
<b>Czech Republic</b>	<ul style="list-style-type: none"><li>– Article 6§4</li><li>– Article 12§4</li></ul>
<b>Denmark</b>	<ul style="list-style-type: none"><li>– Article 5</li><li>– Article 6§2</li><li>– Article 6§4</li><li>– Article 12§4</li><li>– Article 13§1</li></ul>
<b>Finland</b>	<ul style="list-style-type: none"><li>– Article 1§2</li><li>– Article 6§4</li><li>– Article 12§4</li><li>– Article 19§8</li></ul>
<b>Germany</b>	<ul style="list-style-type: none"><li>– Article 1§2</li><li>– Article 6§2</li><li>– Article 6§4</li><li>– Article 12§4</li><li>– Article 13§1</li><li>– Article 13§3</li><li>– Article 16</li><li>– Article 19§4</li><li>– Article 19§6</li><li>– Article 19§8</li><li>– Article 19§10</li></ul>
<b>Greece</b>	<ul style="list-style-type: none"><li>– Article 1§2</li><li>– Article 12§4</li><li>– Article 13§1</li><li>– Article 16</li><li>– Article 19§6</li><li>– Article 19§8</li><li>– Article 19§10</li></ul>

<b>Netherlands (Kingdom in Europe)</b>	<ul style="list-style-type: none"><li>– Article 5</li><li>– Article 6§4</li><li>– Article 13§4</li><li>– Article 19§6</li><li>– Article 19§8</li><li>– Article 19§10</li></ul>
<b>Netherlands (Aruba)</b>	<ul style="list-style-type: none"><li>– Article 1§2</li><li>– Article 16</li></ul>
<b>Poland</b>	<ul style="list-style-type: none"><li>– Article 1§1</li><li>– Article 1§2</li><li>– Article 5</li><li>– Article 12§1</li><li>– Article 12§3</li><li>– Article 12§4</li><li>– Article 16</li><li>– Article 19§8</li><li>– Article 19§10</li></ul>
<b>Portugal</b>	<ul style="list-style-type: none"><li>– Article 1§2</li><li>– Article 6§4</li><li>– Article 13§4</li></ul>
<b>Spain</b>	<ul style="list-style-type: none"><li>– Article 12§4</li><li>– Article 13§1</li><li>– Article 16</li><li>– Article 19§6</li><li>– Article 19§8</li><li>– Article 19§10</li></ul>
<b>Turkey</b>	<ul style="list-style-type: none"><li>– Article 1§1</li><li>– Article 1§2</li><li>– Article 1§3</li><li>– Article 12§4</li><li>– Article 13§1</li><li>– Article 13§3</li><li>– Article 16</li><li>– Article 19§1</li><li>– Article 19§4</li><li>– Article 19§6</li><li>– Article 19§8</li><li>– Article 19§10</li></ul>

**United Kingdom**

- Article 1§2
- Article 5
- Article 6§2
- Article 6§4
- Article13§1
- Article16
- Article19§4
- Article19§6
- Article19§8
- Article19§10



## Appendix IV

### LIST OF DEFERRED CONCLUSIONS BECAUSE OF A QUESTION ASKED FOR THE FIRST TIME OR ADDITIONAL QUESTIONS

<b>Austria</b>	– Article 19§1
<b>Belgium</b>	– Article 1§3 – Article 5 – Article 13§1 – Article 19§6 – Article 19§10
<b>Czech Republic</b>	– Article 1§1 – Article 1§2 – Article 1§3 – Article 5 – Article 13§1 – Article 13§3 – Article 13§4 – Article 16
<b>Denmark</b>	– Article 1§2 – Article 12§3 – Article 13§3
<b>Finland</b>	– Article 1§1 – Article 12§3 – Article 19§4 – Article 19§6
<b>Greece</b>	– Article 1§1 – Article 1§3 – Article 12§3 – Article 13§3 – Article 19§1 – Article 19§5
<b>Malta</b>	– Article 1§2 – Article 5 – Article 6§1 – Article 6§2 – Article 6§3 – Article 6§4 – Article 12§1 – Article 13§1 – Article 13§2 – Article 13§3 – Article 13§4

	– Article 16
<b>Netherlands (Kingdom in Europe)</b>	– Article 12§1 – Article 12§4 – Article 13§1
<b>Netherlands (Aruba)</b>	– Article 1§3 – Article 5 – Article 6§1 – Article 6§2 – Article 6§4
<b>Poland</b>	– Article 1§3 – Article 6§2 – Article 12§2 – Article 19§1 – Article 19§3 – Article 19§4 – Article 19§6
<b>Portugal</b>	– Article 13§1
<b>Spain</b>	– Article 5 – Article 12§1 – Article 13§4
<b>Turkey</b>	– Article 12§1 – Article 12§3
<b>United Kingdom</b>	– Article 12§1

## Appendix V

### WARNING(S) AND RECOMMENDATION(S)

#### Warnings<sup>1</sup>

##### Article 1, paragraph 2

###### – Portugal

(The situation in Portugal is not in conformity with Article 1§2 of the Charter because Sections 132 and 133 of the Merchant Navy Penal and Disciplinary Code, providing for sanctions against seafarers who abandon their posts, remain in force. The situation is not in conformity on this ground since Conclusions XIV-1, 1998 (p. 649-650))

###### – Turkey

(The situation in Turkey is not in conformity with Article 1§2 of the Charter, on the following grounds:

- during the reference period the anti-discrimination legislation was not sufficient;
- the 1932 legislation, which barred nationals of other contracting parties from several categories of jobs not covered by Article 31 of the Charter, was still in force during the reference period;
- Section 2 of the Martial Law Act, No. 1402/1971, as amended by Act No. 4045/1994 and Legislative Decree No.285/1987, whose mere existence may entail restrictions on employment that are not admissible under Article 31, has not been amended or repealed;
- Section 1467 of the Code of Commerce (Act No.6762/1956), which authorises the captain of a ship to use force in order to bring sailors back on board to look after the ship and in order to maintain discipline, has not been amended or repealed)

##### Article 6, paragraph 4

###### – United Kingdom

(The scope for workers to defend their interests through lawful collective action is excessively circumscribed)

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<sup>1</sup> If a warning follows a notification of non-conformity (“negative conclusion”), it serves as an indication to the State that, unless it takes measures to comply with its obligations under the Charter, a recommendation will be proposed in the next part of a cycle where this provision is under examination.

**Article 12, paragraph 4, and Article 16**

– **Austria**

(Discrimination of the nationals of the other Contracting Parties to the 1961 Charter and of Parties to the revised Charter as regards the entitlement to certain family benefits (employment or nationality or length of residence conditions))

**Article 19, paragraphs 6 and 10**

– **Turkey**

(Refusal of family reunion on health grounds of persons concerned go beyond those accepted under Article 19§6)

**Recommendation(s)**

**Article 6, paragraph 4**

– **United Kingdom**

(The protection of workers against dismissal is insufficient)

**Renewed Recommendation(s)**

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