



Strasbourg, 23 January 2004

T-SG (2003) 27

## GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER

### 16<sup>th</sup> Report (II)

*This document contains the full report of the Governmental Committee established by Article 27 para. 3 of the European Social Charter. A summary of the report is 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-three 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 2003.

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 (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, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Slovak Republic, Turkey and the United Kingdom in application of the European Social Charter. Reports were due on 31 March 2002 at the latest. The Governmental Committee repeats that it attaches a great importance to the respect of the deadline by the States Parties.

In respect of Ireland and Luxembourg the Committee decided to send a letter to the authorities of these two countries (Appendix I).

5. Conclusions XVI-2 of the European Committee of Social Rights were adopted in February 2003 for the following countries: Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Malta, the Netherlands, Norway, Poland, Portugal, Turkey and United Kingdom; in April 2003 for Spain and in May 2003 for the Slovak Republic.

6. The Governmental Committee held three meetings (8-11 April 2003, 20-23 May 2003 and 23-26 September 2003), which were chaired by Mr Edward GATT (Malta).

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<sup>1</sup> List of the states parties : Albania, Austria, 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, Slovakia, Slovenia, Spain, Sweden, Turkey and the United Kingdom.

7. The list of participants appears in Appendix II.

8. 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) (Armenia, Azerbaijan, 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, San Marino, and Switzerland).

9. The Committee did not consider any issue in respect of which it was deemed necessary to consult non-Governmental organisations, as provided for in Article 27 paragraph 2 of the Charter.

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

- on 14 November 2002 :
  - Albania ratified the European Social Charter (revised);
- on 26 February 2003 :
  - Croatia ratified the European Social Charter, the 1988 Additional Protocol, the 1991 Amending Protocol and the Collective Complaints Protocol;
- on 23 June 2003 :
  - Belgium ratified the 1988 Additional Protocol and the Collective Complaints Protocol.

11. The state of signatures and ratifications on 30 September 2003 is therefore as it appears in Appendix III to the present report.

## II. EXAMINATION OF NATIONAL SITUATIONS ON THE BASIS OF CONCLUSIONS XVI-2 OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

12. The Committee examined the situations not in conformity with the European Social Charter listed in Appendix IV to the present report.

13. 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 V to the present report. It asked governments to reply to the questions in their next reports.

14. 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 warnings set out in Appendix VI to this report.

15. 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 1997-2000**

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

The Committee of Ministers,<sup>2</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, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Malta, the Netherlands, Norway, Poland, Portugal, Slovak Republic, Spain, Turkey and the United Kingdom (concerning period of reference 1997-2000);

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<sup>2</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, Austria, 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, Slovakia, Slovenia, Spain, Sweden, Turkey and the United Kingdom.

Considering Conclusions XVI-2 of the European Committee of Social Rights appointed under Article 25 of the Charter;

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

Recommends that governments take account, in an appropriate manner, of all the various observations made in the Conclusions XVI-2 of the European Committee of Social Rights and the report of the Governmental Committee.

## **EXAMINATION ARTICLE BY ARTICLE**

### **A. Cases of non-compliance**

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

##### **SLOVAK REPUBLIC**

16. The Slovak delegate stated as regards ECSR's conclusions in general that they were very useful and would certainly influence the on-going reforms aimed at guaranteeing social rights in Slovakia. He asked for the Governmental Committee's understanding of the special economic and social conditions obtaining in his country.

17. As regards unemployment progress had been made since the reference period. After reaching a peak of 19.7% in the beginning of 2002, the unemployment rate had dropped significantly and stood at 14.5% in July 2003. He also declared that new legislation, which would reinforce the combat against unemployment, was under preparation. Finally, he provided information in reply to certain specific questions raised by ECSR and said that all the relevant information would be included in the next report.

18. While welcoming the information provided and the progress that it indicated, the Committee urged the Government to intensify its efforts in the field of active employment measures and to provide ECSR with all the necessary evidence of these efforts (e.g. reliable figures on expenditure, participation, etc.).



## **Article 2§1 – Reasonable daily and weekly working hours**

### **BELGIUM**

19. The Belgian delegate emphasised that the range of flexibility was indeed limited only permitting a deviation of plus/minus two hours in relation to normal working time and fixing upper limits of 9 hours per day and 45 hours per week. She further recalled the rules concerning consultation prior to introduction of the limited flexibility scheme: the employer must inform employees who have 15 days to submit observations. In case of observations conciliation is undertaken in a first phase by the Social Inspector and if necessary in a second phase by the *Commission Paritaire*. She said that the Government on this basis considers that collective negotiations are ensured in a satisfactory manner although they do not result in a formal collective agreement.

20. The Portuguese delegate considered that, given the information provided on the procedures for consulting workers, the situation was not so serious and she proposed that the Committee ask the Government to explain the consultation procedures more clearly in the next report. The ETUC representative supported this proposal.

21. The Committee asked the Government to provide detailed explanations in the next report and decided to await the next assessment of the ECSR.

### **FINLAND**

22. The Finnish delegate recalled the general limits on working time (8 hours daily and 40 hours weekly) and overtime (a total maximum over the year, on average 6 hours per week) as well as the possibility of a temporary derogation permitting a reduction of the daily rest period down to 5 hours. She said that the derogation was only possible in certain specified and exceptional cases and in practice such derogations were rarely or never applied. She stressed that the social partners in Finland are closely involved in the drafting of all legislation in this field.

23. The ETUC representative wished to have more information on the nature of these exceptional situations as well as on the frequency with which the derogation was applied. The French delegate supported this request.

24. The Finnish delegate replied that the derogations were agreed within the framework of the normal consultations on working time between employers and employees. She added that in some of the situations a reduction of the rest period could be in the interest of the worker. The Finnish labour inspection had no information on how often the rest period was reduced to 5 hours.

25. The OIE representative noted that the legislation was the result of tripartite negotiations.

26. The Spanish delegate considered that certain exceptions should be acceptable under this provision of the Charter.

27. The Committee expressed its concern at the very short rest periods possible under certain circumstances in Finnish law and asked the Government to justify in more detail the exceptional cases concerned and to provide statistical information on how often the rest period was reduced in this manner.

## **GERMANY**

28. The German delegate referred to the limits on working time laid down in the Working Time Act and which the Government considered to be fully in compliance with Article 2§1 of the Charter. With respect to the long averaging period he emphasised that these resulted from the collective autonomy of the social partners and they were not a matter for the Government. The general statutory rule provided for an averaging period of 6 months. The delegate added that the collective agreements referred to by the ECSR concerned very specific and project-oriented work which justified longer averaging periods. Finally, he stated that the tense labour situation in Germany made flexibility a must.

29. The ETUC representative did not see a very serious problem given that the periods in question had been agreed in collective agreements, but he nevertheless thought that the discrepancy between the statutory norm and the collective agreements was rather extreme in these cases and could be a cause for concern.

30. The OIE representative said that it was important to observe the principle of respect for freely concluded collective agreements.

31. The Executive Secretary proposed that the parties to the collective agreements concerned submit their comments on the situation on the occasion of the next German report on Article 2.

32. The Committee encouraged the Government to include the comments of the parties concerned in its next report.

## **MALTA**

33. The Maltese delegate informed the Committee that new legislation (Act No. 22/2002 of 27 December 2002) had been adopted since the information given in the report, on which the ECSR's conclusion is based. Moreover, a proposal for a Legal Notice pursuant to the new legislation which would specifically address the problem identified by the ECSR was currently before the Employment Relations Board.

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

## **THE NETHERLANDS**

35. The Dutch delegate explained that the term “flexibility regulations” used in ECSR’s conclusion was misleading. In reality the legal framework for working time provided for two different norms: a standard norm and a consultation norm. Although the latter norm allowed for slightly longer, the limits were still strict both as regards ordinary working time and overtime. Application of the limits laid down in the consultation norm is allowed only with the consent of workers representatives on the sectoral (collective agreement) or enterprise level.

36. The ETUC representative did not consider that the situation raised a problem and appealed to the Government to explain the situation more clearly in the next report.

37. The Committee asked the Government to include all the necessary information in the next report.

## **NORWAY**

38. The Norwegian delegate explained that Norway implemented the EU Directive on working time and normal weekly working time was 37.5 hours. The possibility of working up to 16 hours in a 24-hour period was only rarely used and in any case under the applicable working environment legislation employers were obliged to ensure the general welfare of workers at all times. However, in the beginning of 2003 a committee had been set up by the Government with a view to preparing a new act on working life, including working time, and the this committee would be informed of ECSR’s conclusion.

39. The Portuguese delegate wondered how often the possibility of working 16 hours was used and she encouraged all States to provide statistical information on the various exceptional situations where long hours may be worked. However, in view of the legislative developments underway the Committee could await the next assessment by the ECSR.

40. The Icelandic delegate and the OIE representative also considered that the new development justified awaiting the next assessment.

41. The ETUC representative considered firstly that the EU Directive was not perfect and did not necessarily guarantee adequate protection in all cases and secondly it was not clear in what kind of situations the 16-hour possibility was used. He said that the Committee should send a strong message to the Norwegian Government.

42. The Committee asked the Government to provide detailed explanations in the next report and decided to await the next assessment of the ECSR.

## **POLAND**

43. The Polish delegate stated that the legal situation was under development: a proposal to amend the Labour Code limiting working hours to 11 hours per day and 48 hours per week, and with no deviation possible, was currently before Parliament. The absence of limits on working time in readiness work and in work supervising machines would also be remedied by the amendment. The delegate expected that the amendment would be adopted within the next few weeks.

44. The ETUC representative said that the new developments sounded promising and the Committee could await the next assessment. He wished to underline, however, that long and monotonous working hours supervising machines could be especially dangerous and the criticism of the ECSR in this respect was therefore fully justified.

45. The Executive Secretary asked whether the Parliament had been informed of the ECSR's conclusion and whether there was reference to it in the preparatory works to the new amendment.

46. The Polish delegate confirmed that the amendment took into account the Charter.

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

## **SLOVAK REPUBLIC**

48. The Slovak delegate emphasized that it is only possible to work 16 hours per day in exceptional cases, for example where public interests or emergencies were involved. He further described the penalties which could be imposed by the Labour Inspectorate in case of transgression of working time regulations. Details in this respect would be contained in the next report.

49. The French delegate reminded the Committee that the right to reasonable working hours is fundamental and that 16 hours per day is excessive. He considered it appropriate for the Committee to express its concern.

50. The Cypriot and Portuguese delegates supported the French delegate, even if it was not quite clear what was the exact nature of the “exceptional cases” referred to by the Slovak delegate and whether they actually constituted “*force majeure*”. However, there was no doubt that 16 hours per day was excessive for health and safety reasons. The Portuguese delegate emphasized the importance of sanctions being sufficiently dissuasive in case of violations against working time regulations.

51. The ETUC representative agreed: 16 hours per day was indeed unacceptable, even in transition countries. It would be important to know what the nature of the “exceptional cases” was and how often they occurred in practice.

52. The German delegate considered that the Slovak Republic was going through a difficult transition process. It was obvious that the Government had made considerable efforts, but it was not realistic to expect that the protection could be at the same level as in certain Western European countries.

53. The IOE representative supported the general view expressed by the German delegate. However, she also agreed that more clarity was needed on the part of the Slovak Government as far as the “exceptional cases” were concerned.

54. The Committee expressed its concern at the possibility of excessive working hours urging the Government to review the situation and bring it into conformity with the Charter.

## **SPAIN**

55. The Spanish delegate recalled that the Workers’ Statute stipulates 40 hours as the legal normal maximum weekly working time. However, the general rule may be deviated from by collective agreement and in exceptional cases it is possible to work more than 60 hours in one week provided that working time in the following week is reduced so that the average for the two weeks does not exceed 40 hours. The delegate gave information on average annual working hours, which had decreased slightly in recent years (1,765 hours in 1999, 1,761 hours in 2000 and 1,759 hours in 2001).

56. The Portuguese and Romanian delegates as well as the ETUC representative asked what was the minimum daily rest period guaranteed to workers, what was the nature of the exceptional cases in which more than 60 hours per week was possible, what sectors were concerned and how often did it take place in practice.

57. The Spanish delegate replied that it was difficult to give an exact answer, but evidently it was not very frequent, notably because of the requirement to observe the 40-hour per week average: it would be impractical for most enterprises to operate 60 hours in one week and 20 hours the next.

58. The ETUC representative wondered whether it was not possible to abolish this exception if it was rarely or never used.

59. The German delegate observed that under contemporary economic and labour market conditions the protection of workers has to be balanced against the necessity for flexibility and in this light he did not consider the Spanish situation unreasonable.

60. The United Kingdom delegate agreed that modern day realities had to be taken into account and it seemed to her that ECSR's concern here was the possibility of abuse of the exception. She suggested that the Committee urge the Spanish Government to provide evidence on the situation. The Portuguese delegate supported this proposal.

61. The French delegate found it a cause for concern that it was possible to work more than 60 hours per week and he recalled that the fundamental aim of Article 2§1 was to protect workers.

62. The ETUC representative agreed with this statement and proposed that the Committee express its strong concern while insisting on receiving the information on the situation in practice.

63. The Committee expressed its concern at the possibility of weekly working time in excess of 60 hours and urged the Government to provide detailed information in its next report on the exact circumstances under which such hours may be worked and on the frequency with which it happens in practice.

## **Article 2§2 – Public holidays with pay**

### **PORTUGAL**

64. The Portuguese delegate informed the Committee that new legislation had been put up for adoption which would eliminate the distinction based on the number of employees in a firm and thus remove the problem identified by the ECSR.

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

### **Article 2§3 – Annual holiday with pay**

#### **MALTA**

66. The Maltese delegate referred to the adoption of Act No. 22/2002 (see above under Article 2§1) and to legal notices to be issued which would remedy the situation on the two points identified by the Committee.

67. The Executive Secretary asked whether the Parliament had been informed of the ECSR's conclusion and whether there was reference to it in the preparatory works to the new amendment.

68. The Maltese delegate could not confirm this with certainty, but according to the Secretary of the Employment Relations Board the two problems would be remedied.

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

#### **SPAIN**

70. The Spanish delegate confirmed that there is no provision in legislation for the situation where illness or accident occurs during the holiday. According to domestic case law a worker is not entitled to take compensatory leave outside the stipulated leave period if he or she falls ill during the holiday.

71. The Portuguese delegate asked what happened if the leave could be taken during the stipulated period and whether collective agreements contained rules in this respect.

72. The Spanish delegate reiterated that the worker has no right to compensatory leave, but she added that it is becoming more and more frequent that collective agreements provide that the holiday is suspended in case of illness.

73. The Committee took note of the explanations and urged the Government to include all necessary information in the next report, including on the situation in practice.

### **Article 2§4 – Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations**

#### **BELGIUM**

74. The Belgian delegate referred to the Government's policy of risk prevention and in particular of reducing the length of exposure to any risk. The Government considered that the requirement of Article 2§4 was counterproductive from a health and safety point of view.

75. The ETUC representative considered that on the whole the Belgian approach was correct, but he nevertheless gave examples of appalling conditions which could still be found in certain sectors of the economy and for certain categories of workers. In addition, he would not rule out that reduced working hours or additional holidays could be at least one element in ensuring the health and safety of workers in certain situations. Finally, he recalled that Belgium had adopted specific regulations on the health and safety of workers in atypical employment relationships and he encouraged the Government to provide details on these regulations in the next report.

76. The United Kingdom delegate fully supported the Belgian stance; the key notions in ensuring the health and safety of workers were risk assessment and risk prevention. Her Government was concerned at the implication in Article 2§4 and the ECSR's approach to pay what for all practical purposes was equivalent to "danger money".

77. The Irish, Maltese and Portuguese delegates as well as the OIE representative supported the views expressed by the Belgian and United Kingdom delegates.

78. The Committee asked the Government to provide further details on its policy of prevention and on any relevant legislative developments in the next report.

## **FINLAND**

79. The Finnish delegate referred to Complaint No. 10/2000 and the resolution of the Committee of Ministers in this case. The Committee of Ministers had noted that the Finnish limits on ionising radiation were set at levels lower than the international standard and it had also referred to the new wording of Article 2§4 in the Revised Charter which Finland had now ratified. She also recalled that Finnish policy in this area was focused on elimination and prevention of risk and that the Government worked closely with the social partners in this respect.

80. The ETUC representative referred to his comments in respect of Belgium and appealed to all States to pay particular attention to the situation of workers in atypical employment relationships employed in dangerous or unhealthy occupations.

81. In reply to a question from the German delegate on the link between the collective complaint procedure and the reporting system, the Executive Secretary confirmed that the ECSR took its decision on the merits of complaints into consideration when examining national reports. Thus there was consistency in the assessment of the conformity of national situations with the Charter.

82. Taking into account that the situation in Finland will be examined under Article 2§4 of the Revised Charter in the near future the Committee decided to await the next assessment of the ECSR.



## **THE NETHERLANDS**

83. The Dutch delegate described health and safety legislation in the Netherlands as being very strict in addition to being rigorously enforced. On that basis the Government considered not only that there was no need whatsoever to introduce measures of the nature provided for by Article 2§4, but also that such measures would in fact be counterproductive. She confirmed that the Netherlands intended to ratify the Revised Charter.

84. The Committee asked the Government to provide further details on its policy and any relevant legislative developments, including progress made towards ratification of the Revised Charter, in the next report.

## **UNITED KINGDOM**

85. The United Kingdom delegate reiterated that her Government considered the approach implicit in Article 2§4 to amount to the payment of “danger money”, something that her Government could not accept. Her Government would continue to focus on risk assessment and risk prevention. She had noted with interest that the ECSR in the conclusion already more or less take into account the wording of the Revised Charter’s Article 2§4.

86. The Committee asked the Government to provide further details on its policy and any relevant legislative developments, including progress made towards ratification of the Revised Charter, in the next report.

## **Article 2§5 – Weekly rest period**

## **CZECH REPUBLIC**

87. The Czech delegate said that the exclusion of agricultural workers should be seen in the context of Article 33. Relevant statistical information in this respect would be included in the next report. In any case, a new Labour Code was currently under preparation with a view to entry into force in 2005 and the relevant actors involved in this work had been informed of ECSR’s conclusion.

88. The ETUC representative said that on this basis it was possible to await the next assessment but he wished to register his concern that under the rules presently in force the postponement of the weekly rest day for a prolonged period could take place on the basis of an individual agreement.

89. The Committee noted that all relevant information would be included in the next report and it decided to await the assessment thereof by the ECSR.

**MALTA**

90. The Maltese delegate had no new information to report on this situation. Under existing arrangements an increase of 100% was guaranteed for work on a day of rest and it would be difficult for the social partners to agree on equivalent compensatory rest in addition to the increased remuneration.

91. The Portuguese delegate asked if the rest day could be postponed repeatedly.

92. The French delegate asked whether there were safeguards against employers abusing this possibility to the detriment of the health and safety of workers.

93. The ETUC representative shared the concerns of the Portuguese and French delegates.

94. The Maltese delegate assured the Committee that this could not happen repeatedly over a prolonged period of time. He added that the next report would contain full information in this respect.

95. The Committee took note of the statement by the Maltese delegate and asked that the next report contain information on any safeguards in place and on any measures taken to bring the situation into conformity.

**Article 3§1 – Issue of safety and health regulations****AUSTRIA**

96. The Austrian delegate explained that under Austrian law, all workers including self-employed workers were covered by health and safety rules: she pointed out that a clearer description of the regulations regarding self-employed workers would be provided in the next report. She added that in response to an EU recommendation on the improvement of safety and health protection for the self-employed addressed in Summer 2002 to the organisation acting on the interests of self-employed workers, it was considered that current Austrian regulations are satisfactory.

97. The Committee took note of the information provided by the Austrian delegate and asked that the next report contain a clear and detailed account of the regulations concerning self-employed workers. It decided to await the ECSR's next assessment.

**GREECE**

98. The Greek delegate declared that his authorities are addressing the conclusion of the ECSR with the best possible attention.

99. He confirmed the information provided in the national report and clarifies some aspects of Greek law. Self-employed workers operating in a workplace together with contract workers are covered by the same statutes and regulations on safety and health applying to contract workers. Self-employed workers working alone are not covered by health and safety regulations but may undertake some training in risk prevention and have access to national health services like any other workers. The reason why these workers are not covered by general health and safety regulations is that most of the time they work at home and that the implementation of strict health and safety measures would imply a heavy financial and legal burden.

100. With respect to the agricultural sector, where self-employed workers frequently work with their family members, the Greek delegate confirmed that there are no specific health and safety regulations. However, it stated that where family members are employed they fall within the category of contract workers and are therefore protected by relevant health and safety regulations and where they are not employed then they are considered as business partners to which the health and safety regulations do not apply. He also stated that national authorities are conducting extensive awareness-raising campaigns on risk prevention in this sector.

101. The representative of the ETUC pointed out that there is no new information and suggested that the Committee decide for a warning.

102. The delegate of the United Kingdom was against the proposal as she considered that there was new information since the Government has undertaken extensive awareness-raising campaigns and suggested to wait for information on the trends of these campaigns, including information on the number of accidents in the agricultural sector. She also pointed out that only some workers in the agricultural sector are not covered by health and safety regulations since family members employed by self-employed workers are treated as employees.

103. The Romanian delegate stated that awareness-raising campaigns are a good thing but States have nevertheless an obligation to adopt regulations in order to protect all workers, including self-employed ones.

104. The Portuguese delegate stated that the situation was unclear, in particular with regard to the number of workers not covered by health and safety regulations in the agricultural sector. She suggested that the Committee express concern.

105. The Belgian, Hungarian, Maltese delegates and the representative of the IOE agreed with this statement.

106. The French delegate recalled that in 1995 the Committee of Ministers adopted a recommendation against Italy on the same grounds and that therefore a warning against Greece at this stage was not particularly shocking.

107. The Committee rejected the adoption of a warning. There were 3 votes in favour, 7 against and 18 abstentions.

108. The Committee decided to express concern at the situation and asked the Government to provide relevant information on the proportion of workers not covered by health and safety regulations in the agricultural sector and on the results of the awareness-raising campaigns conducted by Greek authorities.

## **SPAIN**

109. The Spanish delegate confirmed that self-employed workers are not included in the implementation field of Council Directive 89/391/EEC. Spanish legislation transposing this Directive does not expressly and directly include self-employed workers within its implementation field either, and this is the situation most often encountered in the European Union.

110. She explained that, as this matter is concerned, the situation in Spain is somehow *halfway between coverage and lack of coverage*: There is no express protection, but in the most dangerous sectors self-employed workers are protected, and, furthermore – and this is more important – if they perform their activities in other companies or in work-places of other companies, they are entitled to take part in the prevention and information activities that the main company must provide to the work-place.

111. With respect to domestic workers, the Spanish delegate stated that most of them are covered by the general statute of workers.

112. The Committee asked the Government to provide updated information on the evolution of the situation in its next report and decided to await the next assessment of the ECSR.

## **Article 3§2 – Provision for the enforcement of safety and health regulations by measures of supervision**

### **MALTA**

113. The Maltese delegate agreed with the ECSR's conclusion concerning the lack of resources undermining the Labour Inspectorate's activities. He mentioned, however, that changes were being implemented such as the creation of an electronic database containing the nature and type of activities undertaken in industries, as well as a new claim form for injury benefits. More information would be included in the next report, in particular further details on the progress of the compilation of new statistics.

114. The Portuguese delegate proposed that, considering the changes being made, Malta could be given more time to provide a serious response.

115. This proposal was supported by the ETUC representative.

116. The Committee agreed to give Malta more time to improve the situation and hoped that more information would be provided in the next report. It decided to await the next assessment of the ECSR.

## **POLAND**

117. The Polish delegate believed that there had been a misunderstanding concerning the Polish response under this provision as concerns the enterprises and farms which may be inspected by the inspectors of the State Labour Inspection. She assured the Committee that a thorough explanation of the situation would be included in the next report.

118. The ETUC representative referred to the last Polish report concerning ILO Convention No. 129 (Labour Inspection, Agriculture) and pointed out that given the number of accidents in the agricultural sector, further explanations would indeed be necessary to clarify the situation in Poland.

119. The President agreed with the ETUC comment, and proposed that the Polish authorities provide further statistical comparisons in the next report including numbers of individual farms compared with other businesses and the number of persons working in each sector.

120. The Committee asked Poland to submit additional statistical information in its next report, and decided to await the next assessment of the ECSR.

## **PORTUGAL**

121. The Portuguese delegate informed the Committee that the number of fatal accidents was significantly down in 2002 and early 2003. This was the result of a range of measures. In particular, in 2001 an agreement on health and safety at work had been concluded with the social partners which placed greater responsibilities on building contractors and improved co-ordination on safety matters.

122. In addition the safety regulations in the building industry were being revised to take new technological realities into account.

123. There had been major construction projects in Portugal in recent years, such as the Universal Exhibition, a major dam, the Oporto underground and stadiums for the European football championships. The fatality rate for these large works had been very low.

124. In addition, to supplement inspections, an effort was being made to raise worker awareness. Accident-prevention handbooks were being produced, together with specialist documents for individual sectors. Awareness-raising in schools was also getting across the prevention message to children and adolescents.

125. Lastly, qualifications and professional certification of inspectors were being developed on ILO lines. In 2003 a further 54 inspectors had completed training.

126. The number and results of inspections broke down as follows:

- inspections: 40,000 in 2001, more in 2002;
- suspensions of works: 2,000 in 2001, 4,000 in 2002;
- notifications of measures: 8,000 in 2001, more in 2002;
- reports for contraventions: 8,300 (dealing with 11,000 offences), more in 2002.

127. The Chair congratulated Portugal on these measures, which were indicative that the CEDS conclusion had been taken very seriously.

128. The ETUC representative said that Portugal's approach was the best possible one and that it was important to pursue sector-based social dialogue. He asked if there was a breakdown of accident statistics by size of firm - accidents seemed to be more frequent in small or medium-sized firms than on large projects. He wondered if there were worksite delegates responsible for health and safety. Lastly he noted that Portugal had not ratified ILO Convention 167(1988) on safety in the building industry and asked if ratification was contemplated.

129. On the latter point, the Portuguese delegate said he had no information.

130. On the other matters, he said that:

- there were elected worker representatives with health and safety responsibilities and on some large projects there were committees;
- one difficulty in the building industry was the practice of sub-contracting. Spot checks were carried out to verify which firms were present on a given worksite at a given time;
- a European Union campaign due to start in June was concerned with small and medium-sized firms.

131. The IOE representative said that Portugal had made great progress. She welcomed the action targeted on children to change attitudes to prevention.

132. The Cyprus delegate congratulated Portugal on the work it had done.

133. The Chair stressed the importance of involving the social partners.

134. The Executive Secretary said that the right laid down in Article 3.2 of the Charter was intrinsically linked to the right to life as guaranteed by the European Convention on Human Rights. The CEDS had interpreted that provision as creating an obligation to achieve results and not simply an obligation to take measures. It was therefore important that the many positive measures taken achieve results if the position was to be in compliance with the Charter.

135. The Committee asked Portugal to provide all the above-mentioned information in its next report and decided to await the next CEDS assessment.

## **SPAIN**

136. The Spanish delegate declared that the Government is very concerned with the high general toll of accidents although fatal accidents have been decreasing in recent years. She recalled that to give an answer to this situation, the social partners and the Minister of Labour and Social Affairs met in order to promote social dialogue on this issue. After several meetings they made some proposals to reduce accidents at work, in particular those that take place in the construction sector. Measures are still being studied by different Departments and experts in order to improve the legal framework, in particular as far as the insurance system is concerned (employers with a high rate of accidents will pay more insurance fees). Furthermore the national authorities were trying to step up prevention, information and training activities. She also stated that in 2001 and 2002 there has been an increase in the activities of the Labour Inspectorate and that all relevant information will be given in the next report.

137. The Committee took note of the information provided by the Spanish delegate and decided to wait for the next assessment of the ECSR.

## **UNITED KINGDOM**

138. The United Kingdom delegate informed the Committee that since the submission of its 22<sup>nd</sup> report, measures had been taken to redress the significant decrease in inspections carried out in Northern Ireland as remarked by the ECSR. She pointed out that since the latest reporting period the exceptional circumstances leading to the significant decrease no longer applied: firstly new trainee inspectors to the Labour Inspectorate had been recruited and secondly, as the infrastructure of the Health and Safety Executive for Northern Ireland (HSENI) was now established, inspectors redeployed away from field work could resume work to improve compliance with health and safety regulations through inspection and investigation. She gave as examples the increase in visits to 3,800 recorded in 2000/2001 and explained that the lower figure of 3,510 recorded in 2001/2002 was due to the suspension of some inspection activities because of the outbreak of Foot and Mouth disease. The HSENI prediction for the number of visits carried out in 2002/2003 was around 4,000.

139. In addition, the United Kingdom delegate considered that the ECSR's comparison of figures concerning number of visits to number of employees was not appropriate, especially when it concerned high risk sectors of activity. She mentioned the particular attention paid by the labour inspectorate in Northern Ireland to quarrying industries, despite the relatively low number of persons employed in this sector.

140. The ETUC representative considered that from the information provided, it seemed that positive developments were underway to improve the particular situation in Northern Ireland.

141. The Committee decided to await the ECSR's assessment of the updated information in the next United Kingdom report.

## **Article 4§1 – Adequate remuneration**

### **AUSTRIA**

142. The Austrian delegate explained that the net average wage indicated in the report (about 1,700 € per month) took into account part-time wages transposed into full-time equivalents. However, the arithmetic mean of all wages was substantially lower (1,367 €). The delegate considered that the median net wage was a more appropriate measure and in 2000 the net median wage was about 1,250 €. She further stated that the lowest paid quartile (25%) of wage-earners earned on average about 62% of the net median or 57% of the arithmetic mean. Calculated in this way the situation in Austria would just about meet the requirement of the ECSR. She recalled that there was no statutory minimum wage in Austria and that wage-fixing took place by collective agreement. The Government had encouraged the social partners to fix a minimum wage of at least 1,000 € per month (about 790 € net) for full-time work. She finally said that the next report would contain much more detailed statistical information on wages, including possibly studies of the lowest wages actually paid.

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

### **GREECE**

144. The Greek delegate recalled that the minimum wage is determined by a national collective agreements concluded between the most representative employers' and workers' organisations. She confirmed the figures on the gross average wage and the gross minimum wage quoted in ECSR's conclusion. However, ECSR's calculations had not taken into account certain factors, which rendered a direct comparison of the average wage and the minimum wage problematic. Even more importantly the Greek report had not included information on the effects of taxation. The Greek Government was of the opinion that if all relevant factors were accounted for the minimum wage of manual workers would represent just over 60% of the average wage and the minimum wage of non-manual workers to about 54% of



the average wage. The Greek delegate confirmed that all the requisite information would be included in the next report.

145. The Committee took note of the information provided and decided to wait ECSR's next assessment.

## THE NETHERLANDS

146. The Dutch delegate said that the youth minimum wage was conceived with three main objectives in mind: providing a decent living standard, promoting employment and stimulating young people to complete their education. In the Government's view the level of the youth minimum wage met these objectives in an adequate manner and the performance of the Dutch labour market was a good illustration of this. The Dutch delegation handed out a sheet showing key labour market and education statistics for the Netherlands. Net participation rates for loweducated workers are low (table 1) and unemployment is relatively high (table 2). In the Netherlands the number of dropouts is significantly higher than in neighbouring countries and rising (table 4). Both these groups (low educated workers and dropouts) need low paid jobs to improve their position. The Dutch minimum youth wage differentiation is repeated voluntarily by employers and unions in collective bargaining agreements. Young people who have to support a family and who cannot find a job or join a training programme, receive social assistance at the same amount as adults.

147. The delegate said that the ECSR's calculation of the net youth minimum wage for an 18-year old as a share of the net average wage (31.4%) did not take into account the progression of the tax system. The real percentage was close to 40%.

### Annex (in English) Ministry of Social Affairs and Employment of the Netherlands

**Table 1 Net participation rates (%; 2001)**

	<b>Total</b>	<b>&lt; 25 years</b>	<b>25-49 years</b>	<b>50-64 years</b>
Low	49	35	66	36
Intermediate	72	58	82	56
High	82	61	89	66
<b>Total</b>	65	45	79	49

Source: Statistics Netherlands.

**Table 2 Unemployment according to education level (% , 2001)**

	<b>Total</b>	<b>&lt; 25 years</b>	<b>25-49 years</b>	<b>50-64 years</b>
Low	5,3	9,7	4,7	3,3
Intermediate	2,8	5,1	2,4	2,3
High	2,3	5,2	2,2	2,0
<b>Total</b>	<b>3,4</b>	<b>7,2</b>	<b>2,9</b>	<b>2,5</b>

Source: Statistics Netherlands.

**Table 3 % young workers earning the minimum wage and still earning the minimum wage after 1 year**

<i>Age in 2000</i>	<i>% earning the minimum wage in 2000</i>	<i>Still earning the minimum wage (2001; % of column 1)</i>
(1)	(2)	(3)
18	15,4	93,5
19	12,1	49,3
20	5,7	77,1
21	7,2	68,7
22	6,4	46,5
23	6,3	65,4

Source: Ministry of Social Affairs and Employment of the Netherlands.

**Table 4 Percentage of dropouts 1999-2001**

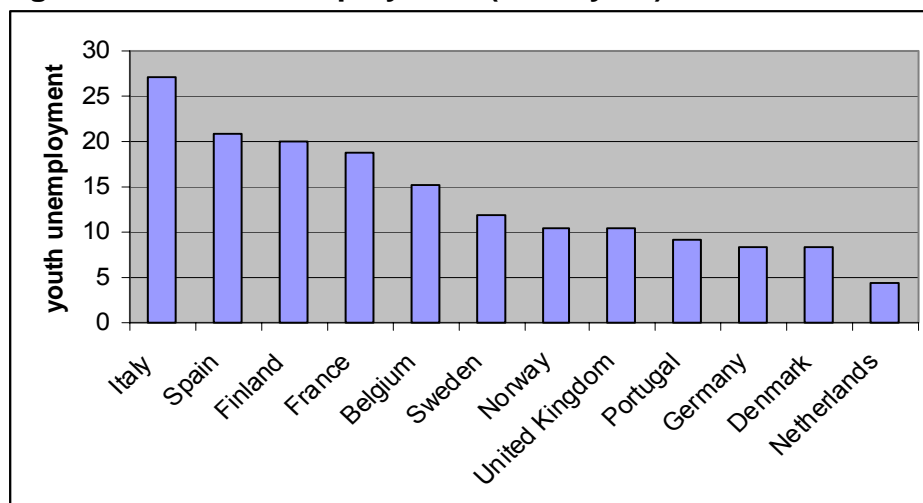
	<b>1999</b>	<b>2000</b>	<b>2001</b>
Reported premature school-leavers	39.4	39.9	47.1
percentage of which is replaced	16.2	18.1	22.4
<b>Net dropout</b>	<b>23.2</b>	<b>21.8</b>	<b>24.7</b>

Source: RMC-reports 1999, 2000, 2001; Sardes analyses 2000, 2001.

**Table 5 Minimum wage as a percentage of the gross average earned monthly wage (2001)**

Age	18	19	20	21	22	23
minimum wage as a % average wage	63,0	64,2	62,6	64,5	68,4	75,2

Source: Ministry of Social Affairs and Employment of the Netherlands.

**Figure 1 Youth unemployment (15-24 year): 2001**

Source: OECD, *Employment Outlook 2002*.

148. The Cypriot delegate wondered whether the positive developments in the Dutch labour market were really due to low youth minimum wages.

149. The ETUC representative asked whether there had been any radical changes to the minimum wage system examined by the ECSR. He also asked what were the supplementary benefits available to those on the minimum wage, how many received them and were young workers exempt from certain charges or taxes.

150. The Dutch delegate said that there had been no changes during the reference period. As to benefits he noted that almost nobody under the age of 21 received social assistance, but he pointed to the existence of rent subsidies and exemptions from local taxes which served to boost the low incomes.

151. The French and Maltese delegates considered the age of 23, which was the condition for receiving the full adult minimum wage, to be rather high and they wondered about the possible age discrimination involved.

152. The Portuguese delegate questioned the link between low minimum wages and high employment. She noted from the figures presented by the Dutch delegation that the drop-out rate had in fact increased in recent years. She was also concerned about the possibility of age discrimination.

153. The United Kingdom delegate said that the Committee should look at the evidence of policies. The evidence was clear that the best labour market results were obtained in those countries that had adopted a balanced approach which motivated young people and stimulated them to complete their education. The Irish delegate supported this view.

154. The German delegate asked whether those on the youth minimum wage received training as part of their employment and thus a degree of compensation for the low wages or whether it was solely a question of age.

155. The Dutch delegate confirmed that the applicable youth minimum wage was determined by the age of the person concerned.

156. The Romanian delegate was not against a certain differentiation of minimum wages, but in this case the differences were too extreme and amounted to unfair treatment.

157. The ETUC representative found that there was after all reason for the Committee to express concern at the situation, notably in respect of the age discrimination issue.

158. The United Kingdom delegate insisted that the meeting record reflect the two main "streams" of opinion in the Committee in a balanced way.

159. The President suggested that the Committee vote on a warning. The warning was not carried (5 votes in favour, 7 against and 18 abstentions).

## **SLOVAK REPUBLIC**

160. The Slovak delegate referred to the difficult economic situation and stated that although still at a comparatively low level the minimum wage had increased in recent years. In fact with an increase in the range of 25-35% since 1998 the minimum wage had grown significantly faster than the average wage. In 2002 the gross minimum wage amounted to 43.4% of the gross average wage. He further said that the monthly minimum wage (gross) currently stood at 5,770 Slovak koruna (SKK), but it would be raised to 6,080 SKK as from 1 October 2003.

161. The Greek delegate considered that under Article 4§1 the importance of socio-economic considerations was particularly striking and he felt reassured that progress had been made to the Slovak situation.

162. The Portuguese delegate recalled that this was the first time the situation had been found not to be in conformity and she was in favour of giving the Government more time to rectify the situation.

163. The Cypriot delegate felt that the Slovak Government should be encouraged to pursue its efforts to raise the minimum wage so as to ensure a decent standard of living.

164. The ETUC representative emphasized the aim of Article 4§1, namely to ensure a decent living standard of the worker. He suggested that this be brought to the attention of the Government.

165. The Committee took note of the information provided and urged the Government to pursue its efforts to raise the minimum wage so that it ensures a decent living standard.

## **SPAIN**

166. The Spanish delegate said that the statutory minimum wage is established annually bearing in mind the Retail Price Index (IPC) , productivity and the general state of the economy. She emphasised that the minimum wage level served as a reference indicator in connection with the allocation of certain benefits, for example the jobseeker's allowance. She also recalled that a relatively small number of workers were concerned (about 200,000), who are not covered by collective agreements. The Government was not against establishing a threshold below which wages should not fall, but due account should be taken of the complexities of the Spanish situation.

167. The ETUC representative was concerned that the Spanish minimum wage fell so very far below the threshold established by ECSR. The most alarming aspect of the situation was not so much the number of workers receiving the actual minimum wage but the probably very large of number of workers who received a wage somewhere in between the minimum wage and the 60%-threshold. The Government should be asked many workers were concerned in this manner. ETUC considered that a warning would be appropriate.

168. The Portuguese delegate also felt that the situation was a cause of some concern, especially as the minimum wage was used a reference in determining eligibility for certain social benefits. However, she was not sufficiently familiar with the economic imperatives, which had led the Spanish Government to fix the minimum wage at such a low level.

169. The United Kingdom delegate proposed to ask the Government to provide all the requisite information, especially on the value of the average and the minimum wages, as well as on the situation in practice (number of workers concerned, etc.).

170. The Committee urged the Government to provide all the information requested by the ECSR in the next report and decided to await ECSR's assessment on this basis.

## **UNITED KINGDOM**

171. The United Kingdom delegate recalled that the statutory minimum wage had been introduced in 1999 so it was still early days. She explained that the minimum wage rate was fixed on the basis of advice from the Low Pay Commission. The level set originally was designed to avoid damage to the economy, but it had already been increased several times. The Low Pay Commission had recently recommended that the minimum wage be increased above the forecast increase in average wages in both 2003 and 2004. In this way the gap between the minimum wage and the average wage was gradually being closed. The delegate further explained that the minimum wage was only one element in the Government's approach to increasing the low income levels. The next report would contain the details requested by the ECSR on the tax reforms implemented in recent years providing for important tax credits to low income groups.

172. The Cypriot delegate considered that the developments were positive and that the Committee could await the next assessment of the ECSR.

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

### **Article 4§2 – Increased rate of remuneration for overtime work**

## **BELGIUM**

174. The Belgian delegate stated that the royal decree that should have brought the situation in conformity with the Charter in 1999 has not been adopted because of the entering into force in 2000 of a new legislation on working time which should pave the way to a series of new Government regulations.

175. She also stated that the Ministry of civil service, which is in charge of the new regulations, is aware of the ECSR's conclusions and will take steps so that the new provisions will be in conformity with the Charter.

176. She also pointed out that, in practice, compensatory time off granted by the ministers is generally higher than the working time actually performed and that the ministerial regulation of 1978 which the ECSR refers to is not implemented any more.

177. The Committee took note of the Government's intentions and decided to wait for the next ECSR's assessment.

**FINLAND**

178. The Finnish delegate provided information on the issue of higher remuneration for overtime work of day family carers as well as on collective agreements which may derogate to the Working time Act.

179. With regard to the first issue, she confirmed that family day carers working at home are excluded from the scope of the Act and do not receive a higher remuneration for the initial 16 hours of overtime. She stated that this is due to the fact that, during the overtime, family day carers have fewer children to take care of than during their regular hours. The result of this situation is that overtime is compensated by a minor workload.

180. With regard to the second issue, the Finnish delegate stated that collective agreements usually provide for more favourable provisions on compensation for overtime work but that in some cases, they could provide for less favourable provisions. However, she considered that Article 4§2 does not require that collective agreements contain more favourable provisions than the relevant legislation as long as they provide for a higher remuneration for overtime work.

181. The Committee considered that this information should be presented in the next report and decides to wait for the next ECSR's assessment.

**POLAND**

182. Following the amendment to the Labour code, adopted in July 2002, workers should be given either a higher rate of remuneration or a 150% compensatory time off in compensation of over-time work. However this higher compensatory time off will only be granted where the initiative comes from the employer. Where the compensatory time off in lieu of a higher rate of remuneration is requested by the employee, overtime is only compensated by an equal number of hours.

183. The Committee considered that all information on the new provisions should be presented in the next report and decides to wait for the next ECSR's assessment.

**SPAIN**

184. The Spanish delegate confirmed the information provided in the national report, according to which, pursuant to section 35 of the Worker's Statute, the amount paid for overtime work cannot be lower than the rate paid for ordinary work and that any increased rate of remuneration for overtime work is left to collective bargaining.

185. She further explained that the legislator establishes as minimum rate of remuneration the rate foreseen for ordinary time, being two the principles on which this rule is based: the purpose to encourage collective bargaining of the matters concerned, including any remuneration higher than the minimum rate set for ordinary time, and to establish the possibility to choose equivalent leave time to compensate for overtime, being this option preferred if no individual or collective arrangement exists, with the dual purpose to discourage overtime, in order to create and to distribute employment, and furthermore to contribute to the improvement of the protection of workers' health.

186. The Portuguese delegate recalled that Article 4§2 requires that an increased rate of remuneration for overtime work be implemented either by general legal provisions or through collective bargaining. She therefore asked what is the proportion of workers covered by collective agreements providing for an increased rate of remuneration for overtime work.

187. The French delegate asked whether the Spanish Government had any intention to modify the present situation.

188. The German delegate stressed that this was the second conclusion of non-conformity and asked what the Committee had been the previous decision of the Committee on this issue. The Secretariat recalled that the Committee had taken note of the information of the Spanish delegate and decided to wait for the next assessment by the ECSR.

189. The representative of the ETUC stressed that a high unemployment is not an excuse for not granting workers a right to an increased rate of remuneration and suggested that a warning be addressed to the Spanish Government. The Portuguese and French delegates agreed with this statement.

190. The Committee adopted a warning by 16 votes in favour, 2 votes against and 9 abstentions.

## **UNITED KINGDOM**

191. The delegate of the United Kingdom confirmed the information provided in the national report.

192. She recalled that payment at enhanced rates for overtime is a matter for agreement between workers or their associations and employers and that surveys show that in general workers receive enhanced rates. She thought that further efforts should be made in the next report to persuade the ECSR of the validity of the statistical data in these surveys.

193. The Portuguese delegate asked how are overtime remuneration rates set and whether workers may take legal action to have their rights implemented.



194. The delegate of the United Kingdom stated that overtime remuneration rates are left to negotiation between employers and employees in the context of individual contracts which are the key feature of labour relations in the United Kingdom. Workers may therefore challenge violations of relevant contractual clauses before competent courts. She added that collective bargaining is developing in this particular field.

195. The Committee requested that more information be provided in the next report and decided to wait for the next ECSR's assessment.

### **Article 4§3 – Non-discrimination between men and women workers with respect to remuneration**

#### **BELGIUM**

196. The Belgian delegate confirmed that the situation as described in the ECSR conclusion was still in effect, namely that under Belgian law reinstatement in cases of dismissal in retaliation is an optional choice left up to the employer. Neither was there a special reintegration provision in the protection of pregnant workers or trade union representatives.

197. She stated that the Belgian authorities consider that an employment contract remains a contract and that to continue an employment relation when one of the parties, in addition to having authority over the other party, does not wish to continue is by no means a viable solution.

198. She repeated the solution currently offered by the regulations in force governing protection against dismissal, ie. that employers are obliged to pay requisite compensation, in line with length of service.

199. The Cypriot delegate on receiving confirmation that the situation was indeed as described in the report and taking into account that this was the first time that the situation was not in conformity, considered that the Committee should ask the Belgian authorities to take steps to remedy the situation.

200. This view was supported by the ETUC representative. He added that this matter was a contentious issue with trade unions in Belgium.

201. The Committee asked for the Belgian Government to re-open discussions with a view to find a solution to remedy the situation.

#### **CZECH REPUBLIC**

202. According to the delegate from the Czech Republic, legislation was introduced in 2001 concerning equal remuneration. Following the adopted legislation, the Ministry of Labour and Social Affairs elaborated in autumn 2002 detailed Methodological instruction for the labour inspection bodies (Labour offices) for monitoring and enforcing relevant gender equality legislation in practice, including the legislation on equal remuneration. This instruction includes very detailed methods of

job evaluation and their arrangement into several grades and it was elaborated in order to be used not only by the labour inspection bodies, but also by any other interested persons or institutions – legal experts, employers and workers organisation etc. This methodology is being translated into English and will be attached to the next report.

203. In autumn 2002 the Ministry initiated debate on this important subject with the social partners in the national tripartite body – Council of economic and social agreement. The Ministry invited the social partners to pay particular attention to the principle of equal pay for work of equal value during the process of collective bargaining aimed at conclusion of collective agreement for 2003 and following years.

204. In 2001 the Ministry of Labour and Social Affairs asked the Research institute of labour and social affairs to make an analytical study of the causes of unequal remuneration between men and women. This study was completed in November 2002 and the Ministry is now carefully studying the study and considering further measures which could be taken in order to diminish the difference between average wages between men and women. The study will be sent to the ECSR with the next report.

205. Thanks to the methodology enabling to make job evaluation (job assessment) generally applicable and accessible the comparison of values of works is possible – across the enterprise, sector or economy. But job evaluation and job classification is not that what finally determine the wage as such.

206. It should be possible to make such a comparison between wages – under the same collective agreement – within one enterprise or even within one particular sector for which one sectoral collective agreement was negotiated and agreed. And this is possible according to the existing methodology. However, to guarantee in practice general application of the principle equal pay for work of equal value in all enterprises, across the sectors and across the country is not possible.

207. The Executive Secretary stressed that this was one of the most important human rights. He recalled that, some years ago, the CDDH had selected this right as one of the social rights which could be introduced in the ECHR. Moreover, he pointed out that the ECSR's case law concerning wage comparison had been constant over many control cycles and added that the negotiating partners have a great role to play in order to achieve the full respect of this right.

208. The ETUC representative underlined how important it was that the Czech Republic was giving thought to a difficult matter: he pointed out however that collective agreements tended not to be so representative. He suggested that the Czech Republic try to find other criteria to balance out the issue.

209. The IOE representative agreed in principle, at the same time reiterating the importance of social and cultural factors. These were taken into account per sector of activity by social partners.

210. The Cypriot delegate also agreed and added that often if legislation was in place, in practice there were often difficulties. She considered that there was a gap in Czech legislation that should be filled after which the situation in practice could be focussed on.

211. The Committee considered that the Czech Republic should make efforts to remedy the situation and decided to await the next assessment of the ECSR.

## **FINLAND**

212. The Finnish delegate explained that the situation was indeed as stated in the ECSR conclusion: namely that there is no provision under Finnish law for declaring null a dismissal by reprisal and/or reinstating a victim of such a dismissal. Indeed, she confirmed that these provisions which existed in the original Employment Contracts Act had not been transposed to the revised Act of 2001.

213. The Cypriot delegate commended the good system of financial compensation in Finland, but stressed that without the provisions in question, the ECSR would continue to find the situation in Finland not to be in conformity with the Charter.

214. The IOE representative pointed out that the provisions were rarely used and could be too difficult to implement: she considered that efforts made to provide compensation offered wider opportunities.

215. The President disagreed that reinstatement was too difficult an option and used as an illustration a case supported by trade unions in Malta.

216. In answer to the Cypriot delegate's question as to why there was a distinction made between the public and private sectors, the Finnish delegate stated that it was more difficult to reinstate dismissed employees in small (private) firms.

217. The United Kingdom delegate said that experience showed that where workers are offered reinstatement or payment of compensation, the majority prefer to choose payment.

218. In considering solutions, the Romanian delegate wondered whether the original provisions could not be reinserted into the revised Act.

219. In response to the Icelandic delegate's question, the Executive Secretary explained the direct link between reinstatement and equal treatment and the importance of choice for a dismissed worker: The Icelandic delegate had described the Icelandic situation in this regard, as 80 % of Icelandic companies have fewer than 20 employees: it was thus experiencing the same problems as Finland in this matter.

220. In the Cypriot delegate's opinion, reinstatement should be possible in all sectors in order to ensure greater protection to employees. As this was a first finding of a violation by the ECSR she suggested reviewing the case after the ECSR had assessed the arguments to be presented in the next Finnish report.

221. The Committee asked for the Finnish Government to try to find a solution to remedy the situation and decided to await the next assessment of the ECSR.

## **GERMANY**

222. The German delegate stated that the ECSR had misunderstood the German law pertaining to compensation paid to an employee in case of dismissal in retaliation. He referred to the explanation of German law given on the subject on page 35 of the 20<sup>th</sup> German report. He was at a loss to see how the ECSR had found a violation of this provision: by way of example he stated that German law set no obligation for an upper limit to compensation levels. As the German government had not yet had time to react to the ECSR conclusions, he assured the Committee that a full and clear description of the situation would be provided in the next German report to prove that Germany was indeed in conformity with this provision. In addition, he asked, having heard that there was a dissenting opinion from Mr Birk on this matter, whether a copy of the text was available.

223. The French, Cypriot, Maltese and Portuguese delegates considered that further information would clarify the situation.

224. The Executive Secretary explained that Mr Birk had informed him of his intention to draft a dissenting opinion but had not yet done so.

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

## **ICELAND**

226. The Icelandic delegate described her government's position concerning the first issue found by the ECSR not to be in conformity with the Charter, namely that in Iceland the right to equal pay applies to men and women employed by the same employer. Icelandic law does not permit pay comparisons for determining equal work or work of equal value beyond a single employer.

227. The President also referred to the second issue concerning the reinstatement of a victim of a dismissal by reprisal. He remarked on the one hand that there was no indication that current legislation would be changed; on the other hand he pointed out that this was the first finding of non-conformity.

228. The Irish delegate considered that obliging pay comparisons outside the firm in law was excessively legalistic: he argued that too much legislation could risk choking economic growth;

229. The French delegate countered by observing that by making comparisons outside the firm, the rate of employing women was increased, which therefore promoted equality;

230. The German delegate agreed that the legal assessment was right in this context and although cultural and economic factors must be taken into account, wage comparisons outside the firm could not be dismissed out of hand;

231. The Romanian delegate pointed out that studies had been conducted in both the Czech Republic and Iceland which showed that firms did know what others were doing however it acknowledged the need to have in place non-discriminating legal provisions in conformity with the terms set by the Charter and expressed the view that the authorities in the two countries should take steps to remedy the situation;

232. The ETUC representative underlined the fundamental right to equal pay and stressed that effective comparisons could assist in ironing out problems in practice;

233. This was confirmed by both the Cypriot and Portuguese delegates who recalled the importance of equal treatment in general.

234. The Irish delegate could not argue with these views but asked whether companies could be obliged to offer similar wages. He stated that non-discrimination was the key element and which could be used as the broad spectrum for basing wages. He warned of becoming too bogged down with detail, that debate on the issue should not get overly complicated: he stressed that the Charter should remain an effective tool and guide.

235. The Executive Secretary reiterated that this provision expressed the fundamental human right to equal treatment. Each state should strive to attain parity in its workforce and therefore in the area of remuneration. It was up to the law to eliminate restrictions and not to create more hurdles.

236. He reminded the Committee that the finding of non-conformity in respect of Iceland concerned two separate issues: the first concerning comparisons of pay was a subject that the Committee had discussed in respect of the Czech Republic; the second concerned reinstatement, a subject which the Committee had discussed in respect of Belgium and Finland.

237. The Icelandic delegate pointed that pay comparisons outside the firm were not expressly forbidden.

238. The ETUC representative agreed with the Executive Secretary's comments regarding the importance of equal treatment: he expressed dissatisfaction with the Irish delegate's comments, considering that pay comparisons had nothing to do with economic progression.

239. In summary, the Committee considered that Iceland could make efforts to remedy the situation concerning both issues (pay comparisons and reinstatement). It decided to await the next assessment of the ECSR.

## **MALTA**

240. The Maltese delegate agreed that the report failed to answer the questions put by the ECSR. He indicated that new information would be provided in the next report.

241. The Committee considered that the ECSR must evaluate this new information, for example concrete figures on minimum and maximum wages, and on the distinction between full and part time workers.

242. The Committee requested Malta to include full information in its next report, and it decided to await the next assessment of the ECSR.

## **THE NETHERLANDS**

243. The Netherlands delegate considered that the ECSR's conclusion was based on a misunderstanding. The Equal Opportunities Act had been amended in 1998. She assured the Committee that in the Netherlands the principle of equal treatment did indeed apply to benefits and rights linked to a pension scheme. The Committee decided to wait for the next assessment of the ECSR.

## **NORWAY**

244. The Norwegian delegate confirmed that there was a substantial lack of information in the report and declared that relevant information will be provided in the next report.

245. The Committee decided to wait for the next assessment of the ECSR.

## **PORTUGAL**

246. The Portuguese delegate stated that a new law permitting pay comparisons is currently under preparation. This information would appear in the next report.

247. Taking into account this positive step to remedy the situation, the Committee decided to await the next assessment of the ECSR.

## **TURKEY**

248. The Turkish delegate informed the Committee that the draft legislation on the revised Labour Act, which is before the Grand National Assembly of Turkey, contains the notion of « equal pay for work of equal value ». It will be enacted soon.

249. As regards reinstatement of an employee in cases of dismissal as a retaliatory measure following an equal pay claim, the Turkish delegate informed that the Job Security Act came into force on 15 March 2003. According to Article 13/D of this Act, unfairly dismissed workers shall be reinstated within one month following the labour court's decision which annuls the termination of the contract by the employer. In cases concerning dismissal brought by the worker before the jurisdictions, the burden of proof will lie with the employer. Furthermore, the personal scope of the current Labour Act has been extended by the Job Security Act to the agricultural sector.

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

### **Article 4§4 – Reasonable notice of termination of employment**

## **CZECH REPUBLIC**

251. The Czech delegate confirmed the information provided in the national report and stated that a new labour code will enter into force in 2005. The code should contain new provisions on notices of termination on which there is no information available yet.

252. The Committee asked the Government to take into account the ECSR's conclusion in the drafting of the new code, requested that more information be provided in the next report and decided to wait for the next ECSR's assessment.

## **GREECE**

253. The Greek delegate recalled that the conclusion of non-conformity concerns manual workers with less than 10-years' service.

254. She informed the Committee that the Government has already started to work on an amendment to the present legislation in order to bring the situation in conformity with the Charter. The draft will be submitted to a newly created consultative body called the National Employment Committee. She stressed that the draft in question would be among the first documents to be submitted to the new structure and that it should not take long before the new legislation will be adopted.

255. The Dutch delegate welcomed these positive developments but stressed that a warning had already been addressed to Greece and that the situation should be remedied without delay.

256. The Committee took note of the efforts made by the Greek Government and asked that the efforts continue in order to bring the situation into conformity.

## **MALTA**

257. The Maltese delegate stated that new legislation relating to reasonable notices of termination was adopted in 2002. According to the new provisions, notices of termination will be calculated as follows :

- up to 5 years' service : 8 weeks;
- from 5 to 7 years : 1 added week for each year of service, up to 12 weeks.

258. The Committee decided to welcome the new legislative provisions and wait for the next ECSR's assessment.

## **POLAND**

259. The Polish delegate confirmed the information provided in the national report and stressed that a different approach between fixed-term contracts and contracts of indefinite duration is necessary because fixed-term contracts are designed to ensure more flexible labour relations. She further stated that social partners have never requested relevant legal provisions to be amended because they consider them as guaranteeing an acceptable degree of protection.

260. Moreover, Poland is transposing EU directive relating to reasonable notices of termination in the case of fixed-term contracts.

261. The representative of the ETUC stated that the EU directive affords a sufficient degree of protection in particular in cases of subsequent fixed-term contracts.

262. The German delegate pointed out that the ECSR's conclusion does not target subsequent fixed-term contracts but fixed-term contracts which are terminated by the employer before their natural termination for serious motives. He agreed with the Polish delegate on the different treatment between fixed-term contracts and contracts of indefinite duration.

263. The Committee expressed concern and asked the Government to bring the situation in conformity with the Charter.

## **PORTUGAL**

264. The Portuguese delegate stated that probationary periods lasting 8 months are exceptional and that in any events, the new labour code provides that in the case of a probationary period lasting 60 days or more workers will be granted a period of notice for termination of 7 days.



265. The Committee decided to welcome the new legislative provisions and wait for the next ECSR's assessment.

## **SLOVAK REPUBLIC**

266. The Slovak delegate stated that the situation had changed since the reference period. Henceforth it is possible to agree on notice periods longer than the two months stipulated by the Labour Code, either by collective agreement or in the individual employment contract.

267. The Portuguese delegate pointed out that the legal situation was not clear, but she recalled that the Committee adopted a warning in the case of Spain under Article 4§4.

268. The Cypriot delegate agreed with the Portuguese delegate and, for reasons of consistency, suggested that the Committee vote on a warning.

269. The ETUC representative agreed with the Cypriot delegate. Although some development had apparently taken place, the legal consequences were unclear, especially as regards on what criteria a longer notice period was possible.

270. The Committee voted on a warning which was adopted with 9 votes in favour, 1 against and 15 abstentions.

## **SPAIN**

271. The Spanish delegate recalled that in its conclusion, the ECSR addressed two issues: an insufficient period of notice for termination in the case of fixed-term contracts of more than one year and a lack of notice in the case of redundancies. Accordingly she asked whether the negative conclusion was based on both grounds.

272. The Secretariat stressed that the only ground of non-conformity was the insufficient period of notice in the case of the fixed-term contracts of more than one year. The issue of redundancies needed further investigation by the ECSR.

273. The Spanish delegate confirmed the information provided in the national report, including a presentation of the different types of fixed-term contracts that shows that all of them are based in causal reasons. In reply to a question by the delegate of Luxemburg, she confirmed that workers employed on the basis of a fixed-term contract might be dismissed before the expiration of the contract but that in that case the dismissal could be declared unfair when the reasons alleged for the dismissal are not proved or the formal requirements have been not been complied (as it happens when the contract is not fixed-term).

274. The Belgian delegate stressed that, pursuant to present Spanish law, workers employed on the basis of a 2-years fixed-term contract who are dismissed after 18-months' service will be only granted 15 days of period of notice, which is not sufficient according to the ECSR's case law.

275. The representative of the ETUC noted that a very large number of Spanish workers are employed on the basis of fixed-term contracts and that therefore the present legislation gives rise to serious concern.

276. The Dutch delegate recalled that in previous decisions the Committee expressed concern for a situation in which national law only granted a 2-weeks period of notice for fixed-term contracts of 6 months. She suggested that the Committee take at least the same decision with regard to the Spanish situation.

277. The Belgian delegate noted that the situation was being held not to be in conformity for the second time and that there were no signs that the Spanish Government intended to modify it.

278. The Committee adopted a warning by 16 votes in favour, 1 against and 10 abstentions.

## **UNITED KINGDOM**

279. The delegate of the United Kingdom confirmed the information provided in the national report. She stated that the issue is not seen as a priority by social partners and that anyhow minimum statutory notice periods may be raised in individual contracts by agreement of the parties. She added that in practice standards are higher and that care is needed to avoid damaging job growth and competitiveness for small companies which are most likely to have short service workers and higher labour turnover.

280. The Cypriot delegate stressed that workers with less than 3-years' service are not protected enough and wondered whether the Committee could consider issuing a warning.

281. The representative of the ETUC called for a warning given the repeated negative conclusions of the ECSR.

282. The French delegate asked why statutory standards are kept so low if, as the delegate of the United Kingdom stated, they are higher in practice.

283. The Secretariat pointed out that the situation has been found not to be in conformity for 27 years because the legal situation has never changed.

284. The delegate of the United Kingdom did not agree with this statement.

285. The Romanian delegate asked what are the standards deemed as reasonable by the ECSR.

286. The Secretariat recalled that the ECSR does not set particular standards but targets situations which are in violation of Article 4§4.

287. The Cypriot delegate reconsidered her warning option and proposed to express serious concern while asking the Government to bring the situation in conformity with the Charter.

288. The French and Dutch delegates supported the Cypriot proposal.

289. The Committee expressed concern and asked the Government to bring the situation in conformity with the Charter.

## **Article 4§5 – Limitation of deduction from wages**

### **CZECH REPUBLIC**

290. The Czech delegate explained the Czech legislation in question in more detail and promised to include the detailed information in the next report.

291. The Committee requested that more information be provided in the next report and decided to wait for the next ECSR's assessment.

### **NORWAY**

292. The Norwegian delegate confirmed the information provided in the report and gives some examples of deductions from wages agreed by the workers and the employer in writing (i.e. deductions in compensation of real estate accommodation). He further stated that the next report will provide information on the existence of such clauses in practice.

293. The Committee requested that more information be provided in the next report and decided to wait for the next ECSR's assessment.

### **POLAND**

294. The Polish delegate stated that the labour code will be amended shortly in order to bring the situation in conformity with the Charter by prohibiting deductions from wages that would deprive the worker of the minimum subsistence level.

295. The Committee requested that more information be provided in the next report and decides to wait for the next ECSR's assessment.

### **SLOVAK REPUBLIC**

296. The Slovak delegate described the legal framework and the various cases in which deductions from wages could be made. In general, the deductions should not lead to a situation where the worker would receive less than the subsistence minimum. However, should this be the case, the worker could apply for social assistance. He added that account should be taken of the rather low living costs in the Slovak Republic.

297. The Portuguese and Cypriot delegates **considered that** there was reason to express concern **over the situation** as it appeared that deductions could go beyond what was allowed by the Charter and it was not clear whether social assistance was adequate.

298. The Executive Secretary pointed out that the Slovak example clearly showed the inter-related nature of the rights under consideration and the need to take a global view of the situation: in fact, Slovak law allowed excessive deductions from a wage, the minimum level of which ECSR had ruled to be inadequate. Moreover, independently of whether or not social assistance was relevant in respect of Article 4§5, it should be noted that ECSR under Article 13 had found that the scope of the right to social assistance was not broad enough and that the level of social assistance benefits was not adequate.

299. The ETUC representative agreed that it was necessary to take a global view of the situation and he wondered whether the Committee should make a general statement on the social context applying in the Slovak Republic.

300. The Committee expressed concern at the situation and urged the Government to ensure that deductions from wages do not lead to workers being deprived of their very means of subsistence.

## **TURKEY**

301. The Turkish delegate confirmed the information provided in the national report and states that the personal scope of the current Labour Act has now been extended by the Job Security Act, which entered into force on 15<sup>th</sup> March 2003 to cover workers having employment in the agricultural sector as well including farming, horticulture and husbandry. Furthermore, the expected adoption of the Revised Labour Code will continue positive developments.

302. The Committee took note of the developments mentioned and decided to wait for the next ECSR's assessment.

## **UNITED KINGDOM**

303. The delegate of the United Kingdom stated that new legislation prohibits deductions from wages which would deprive the worker of the minimum guaranteed wage.

304. The Committee requested that relevant information be provided in the next report and decided to wait for the next ECSR's assessment.

## Article 6§4 – Collective action

### HUNGARY

305. The Hungarian delegate confirmed that a strike might only begin after a 7 days “cooling off period” has elapsed. Since only trade unions are authorised to start a “cooling off procedure”, they have *de facto* an exclusive right to initiate a strike.

306. The President asked a question concerning the length of the “peace obligation”, which forbids strike actions aimed at altering the provisions of a collective agreement that is still in force. The Hungarian delegate answered that the peace obligation lasts as long as the collective agreement in force.

307. The Portuguese delegate expressed concern as to the role of work councils in the exercise of the right to strike. The Hungarian delegate said that work councils do not restrict strike actions.

308. As to the question of the ETUC delegate, whether the power of work councils is conferred only to a single company or to a branch, the Executive Secretary stated that it was not the central issue in this case.

309. The ETUC delegate also raised the issue of the possibility for civil servants to initiate strikes. The Cypriot delegate asked, whether the term “majority of civil servants” concerned the whole professional branch or just a particular group. She underlined that if it were to be the majority of the branch that is needed in order to initiate a strike in this sector, it would constitute a severe breach of the Charter.

310. The Committee asked the Government to provide all necessary explanations in the next report and decided to await the next assessment of the ECSR.

### SLOVAK REPUBLIC

311. The Slovak delegate noted that ECSR’s conclusion contained many questions and he confirmed that the necessary information would be provided in the next report. He said that the provision whereby trade unions were required in advance of a strike to submit a list of the striking workers had been repealed. As regards ballots he confirmed that all employees at an enterprise take part in the ballot, which is secret. He also said that sickness benefits are paid to striking workers if the entitlement arose before the strike. He finally confirmed that ordinary groups of workers may not call a strike, but they are free to join a strike called by a trade union.

312. The Cypriot delegate recalled that ECSR’s conclusion indicated two grounds for the violation firstly, the objectives in pursuance of which collective action may be taken is too restrictive and secondly, the right to call a strike is reserved for trade unions. These situations existed too in other countries and she suggested that for reasons of consistency the Committee express its concern and ask the Government to bring the situation into conformity.

313. The Maltese delegate asked whether it was easy to form a trade union in the Slovak Republic and thereby to gain the right to call a strike.

314. The Slovak delegate replied that the minimum number of persons required to form a union was three and there was an obligation to register the union with the Ministry of the Interior.

315. The ETUC representative referred to other national situations where the situation had been found not to be in conformity on these grounds and he noted that in at least one case a recommendation had been adopted by the Committee of Ministers.

316. The Committee expressed concern at the restrictions on the right to collective action and urged the Government to bring the situation into conformity with the Charter.

## **Article 7§1 – Prohibition of employment under the age of 15**

### **CZECH REPUBLIC**

317. The Czech delegate confirmed that the employment of children under the age of 15 is prohibited only by labour law regulation and that there is no express prohibition of child labour performed under civil law regulation (for example contract for work done). She indicated that new legislation entering into force on the 1 of January 2004 (if passed by the Parliament) will remedy this situation and will also allow only “light work” to be performed by children under 15. Such work will be monitored by the Labour Offices.

318. The ETUC delegate recalled that prohibition of employment under the age of 15 is a fundamental right. He considered it worrying that in a certain number of countries the Labour Code does not prohibit child labour under the age of 15 in all sectors of the economy. The Governmental committee should have a firm stand on this issue.

319. The Committee took note of the statement by the Czech delegate and decided to await the next assessment of the ECSR.

### **SLOVAK REPUBLIC**

320. The Slovak delegate confirmed that an employment contract may not be concluded with minors under 15 years of age. The Labour Code provided only a few exceptions from this rule, which include participation in cultural, sport activities, artistic performances and light work, provided such activities do not clash with the child’s school obligations. The delegate underlined that the implementation of the above rule is supervised by the Labour Inspectorate.

321. The Portuguese delegate pointed out that the ECSR's decision of non-conformity concerned the fact that work performed on any other legal basis than the labour law was not supervised by an inspection authority. Should this indeed be the case then national legislation needed to be amended.

322. The Cypriot delegate agreed with the above statement. She also stressed the importance of an effective supervision.

323. The ETUC representative asked whether only work performed on the basis of the labour law was supervised by an inspection authority. The Slovak delegate confirmed that this was the case.

324. The Committee decided to express concern at the situation and asked the government to extend the scope of the Labour Inspectorate in order to bring the situation into conformity with the Charter.

### **Article 7§2 – Prohibition of employment under the age of 18 – for dangerous activities**

#### **SLOVAK REPUBLIC**

325. The Slovak delegate indicated that the Labour Code prohibits employment of minors in unhealthy or hazardous environment. Furthermore, he stressed that the Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work was in the process of transposition.

326. The Committee noted that Eurostat data concerning the number of labour inspections and percentage of workers covered by them would soon be available to the ECSR.

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

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

#### **CZECH REPUBLIC**

328. On this point, the Czech delegate referred to what has already been said under Article 7.1.

329. The Committee took note of the statement by the Czech delegate and decided to await the next assessment of the ECSR.

**Article 7§5 – Fair pay****CZECH REPUBLIC**

330. The Czech delegate stated that no changes, to the situation that the ECSR found to be not in conformity with the Charter, are planned at the moment. Nevertheless, the delegate expressed the willingness of the Czech government to bring the national legislation into conformity with the requirements of the Charter.

331. The Committee asked the next Czech report to provide information on the steps taken to improve the situation and decided to await the examination by ECSR.

**Article 7 §10 – Protection against physical and moral dangers****POLAND**

332. The Polish delegate confirmed that, as regards pornography, the Polish Penal Code only protects young persons under 15. She indicated however that an amendment to the Penal Code to protect young persons under the age of 18 is under discussion.

333. As to the insufficient number of activities to combat the sexual exploitation of children, the delegate indicated that activities are indeed undertaken, especially according to the Yokohama Global Commitment and that all necessary detailed information will be provided in the next report. She also underlined that the issue of children's pornography was not a serious one in Poland and that it was a transfrontier problem, the demand coming from other countries.

334. The Committee took note of the statement by the Polish delegate and asked that the next report include detailed information on measures taken in order to bring the situation into conformity with the Charter.

**Article 8§2 – Illegality of dismissal during maternity leave****CZECH REPUBLIC**

335. The Czech delegate confirmed the situation as depicted by the European Committee of Social Rights, i.e. that the employer can dismiss the employee during the absence on maternity leave in case of relocation. The Czech delegate expressed the opinion that in case the employer was not allowed to terminate the employment relationship with the woman on maternity leave, he would be in practice deprived of the possibility to carry out any organisational steps connected with the relocation.

336. The Cypriot delegate asked whether geographical distance was taken into consideration when relocating an enterprise.



337. The Czech delegate said that there was no definition of relocation in terms of geographical distance.

338. During the following discussion the case of the Slovak Republic was recalled and it was decided to proceed the same way.

339. The Committee considered that the Czech Republic should make efforts to change the legislation and asked that the next report contains information on steps taken to this effect.

## **POLAND**

340. As to the possibility of dismissal due to “reasons related to the enterprise”, the Polish delegate underlined that if a certain post ceases to exist, the employer is obliged to offer a different post to a pregnant woman. If the new post is of a lower rank, than a special allowance is paid to cover the income difference until the end of maternity leave. If the employee rejects the new terms of contract, then the dismissal is justified. The delegate also stressed, that such a possibility was needed as it could help companies, specially small and medium ones, which are undergoing structural difficulties, to avoid bankruptcy.

341. As far as termination of an employment assumed by an appointment is concerned, the Polish delegate underlined the limited scope of persons covered by this derogation. Accordingly, it was limited mainly to persons performing high political functions.

342. The Portuguese delegate supported by the Cypriot delegate and by the ETUC proposed to ask Poland to bring the situation into conformity with the Charter.

343. The Polish delegate reiterated, that the above derogations concern very exceptional cases.

344. The Committee took note of the statement by the Polish delegate and asked that the next report include information on measures taken to bring the situation into conformity with the Charter.

## **SLOVAK REPUBLIC**

345. The Slovak delegate underlined the fact that the Labour Code prohibits dismissal during protected periods i.e. maternity and parental leave. Exceptions from this rule included cases where an employer closes parts of its activities or relocates. The delegate further explained that cases of relocation were often cases of bankruptcies. The employer would then lose his capacity to employ the worker in the working place mentioned in the contract.

346. The Belgian delegate asked for clarification as to the meaning of the word “relocation” in Slovak Labour Code. He asked, whether the term refers to delocalisation or termination of activities.

347. The Cypriot delegate recalled that the case law of the ECSR allows only three derogations from Article 8§2, namely:

- if an employed woman has been guilty of misconduct which justifies breaking off the employment contract;
- if the undertaking concerned ceases to operate;
- if the period prescribed in the employment contract has expired.

348. She observed that the exceptions provided in the Slovak Labour Code went beyond those acceptable under the Charter.

349. The Committee urged the government to take the necessary steps to bring the situation into conformity with the Charter.

## **Article 9 – Right to vocational guidance**

### **GREECE**

350. The Greek delegate explained that the ECSR found the situation not to be in conformity with the Charter because the report gave incorrect information about the language requirement to have access to vocational guidance services. He stated that rectified information would be provided in the next report.

351. The Committee asked the Greek delegate to provide the correct information in the next report and decided to await the next examination by the ECSR.

### **POLAND**

352. The Polish delegate explained that the ECSR found the situation not to be in conformity because the report gave incorrect information about the length of residence requirement for nationals of other Parties to the 1961 ESC or to the Revised ESC to have access to vocational guidance services. All non-nationals who have a working permits are in fact entitled to access to these services on equal footing with Polish nationals. She added that rectified information would be provided in the next report.

353. The Committee asked the Polish delegate to provide the correct information in the next report and decided to await the next examination by the ECSR.

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

**AUSTRIA**

354. The Austrian delegate expressed surprise to the fact that, for the first time, the ECSR found the situation not to be in conformity with the Charter. The delegate affirmed that, pursuant to Article 33 of the Charter, the Austrian authorities considered the situation not to infringe the Charter since access of nationals of other Parties to the 1961 ESC or to the Revised ESC to higher education was given to the overwhelming majority of applicants.

355. The delegate added that the conclusion on non-conformity had been passed onto the Ministry of Education, which took note of it and is considering the further steps to take. She concluded that, this being the first assessment of non-conformity, it should be given time to Austrian authorities to adopt the appropriate measures.

356. The Greek delegate supported the Austrian proposal.

357. The Committee asked Austria to provide in the next report the new relevant information about measures to be adopted and decided to await the next examination by the ECSR.

**MALTA**

358. The Maltese delegate acknowledged the lack of information in the report and added that it will be provided in the next one. He also informed the Committee that nationals of other Parties to the 1961 ESC or to the Revised ESC are equally treated as far as access to primary and secondary education is concerned.

359. The Greek delegate proposed to ask Malta to provide the relevant information in the next report and to await the next examination by the ECSR.

360. The Committee endorsed the Greek proposal.

**POLAND**

361. The Polish delegate indicated that the ECSR conclusion does no longer reflect the real situation since the 1990 Higher Education Act has been amended in 2000. Foreigners may access higher education according to the principles established by international agreements. Moreover, the delegate indicated that, the European Social Charter being an international treaty, there is no discrimination in Poland with regards to the access of nationals of other Parties to the 1961 ESC or to the Revised ESC to higher education and training.

362. The Committee asked Poland to provide in the next report the new relevant information and decided to await the next examination by the ECSR.

## **TURKEY**

363. The Turkish delegate acknowledged the lack of information in the report and informed the Committee about new legislation and measures adopted in the field of education and training, figures on participation, and equality of treatment for nationals of other Parties to the 1961 ESC or to the Revised ESC. He also added that all this new information will be provided in the next report.

364. The Committee asked Turkey to provide in the next report all the new relevant information and decided to await the next examination by the ECSR.

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

### **BELGIUM**

365. The Belgian delegate acknowledged the lack of information in the report and added that it will be provided in the next one. She informed the Committee that, since 2003, in the Flemish Region, the three months residence requirement to accede to apprenticeship does no longer apply. She also provided figures on participation to apprenticeship for all of the three Belgian Regions.

366. The Committee asked Belgium to provide in the next report all the new relevant information and decided to await the next examination by the ECSR.

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

### **BELGIUM**

367. The Belgian delegate acknowledged the lack of information in the report and added that it will be provided in the next one. She also informed the Committee about the measures for long-term unemployed put in place by the three Belgian Regions and about figures on participation, including that of foreigners.

368. The Committee asked Belgium to provide in the next report all the new relevant information and decided to await the next examination by the ECSR.

## **TURKEY**

369. The Turkish delegate acknowledged the lack of information in the report and informed the Committee about legislation and measures that will be implemented in the field of continuing vocational training. He also added that all this new information will be provided in the next report.

370. The ETUC representative asked information to be provided also on the involvement of social partners with regards to continuing vocational training.

371. The Committee asked Turkey to provide in the next report all the new relevant information and decided to await the next examination by the ECSR.

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

## **GENERAL DISCUSSION ON DENMARK**

372. A general discussion was held on the basis of the Danish presentation on the issue of equality of treatment for nationals of other Parties to the 1961 ESC or to the Revised ESC with respect to student's financial assistance for higher education and training.

373. The Danish delegates explained the financial system for adult education, how the study-grant system applies to foreign students in higher education and training, and the way in which Denmark interprets the relevant provisions of the Charter (Article 10§4 b, the Appendix and the Preamble of the Charter).

374. The Danish delegate indicated that only 20% of foreigner recipients of study-grant (9982 in 2002) are applied a length of residence requirement of two years to be provided with financial assistance. In certain cases, an additional condition of having being, at least, part-time employed adds up. The remaining 80% is provided with study financial assistance on equal footing with Danish, subject to them meeting a series of other conditions not residence-related.

375. The Danish authorities considered that this situation is in compliance with the Charter since Article 10§4 b cannot be interpreted "as implying that in this context nationals of all Contracting parties should be treated exactly in the same way, on the sole condition that the foreign applicant is lawfully resident or regularly working on the territory of the Contracting Party in question". Denmark considers that "nationality of an applicant [can be taken] into account, if we do so in a reasonable manner".

376. The Danish delegate made also reference to European Court of Human Rights and the European Union Court of Justice case law to support its position.

377. The ETUC representative underlined that the Danish presentation focused mainly on the legal interpretation of the Charter, exercise that goes beyond the Governmental Committee competence. He made clear that equal treatment for nationals of other Parties to the 1961 ESC and to the Revised ESC lawfully resident is a basic principle of the Charter, thoroughly affirmed by the ECSR in its case law. Therefore, he proposed to the Committee to express to Denmark its concern about the discrimination pursued and to urge the Government to refrain from using length of residence requirement.

378. The President agreed with the ETUC representative that the length of residence requirement is not acceptable in view of the ECSR case law.

379. The United Kingdom delegate expressed her concern as to the fact that this issue, which previously concerned only a few countries, has now appeared for many of them. This implies to have a thorough discussion since waiving-up the length of residence requirement, even a short one, may be very difficult for states. A period of residence is fair in establishing justification for the use of resident taxpayers money. All countries put already enough resources into higher education, and an increased burden would be difficult to bear for them.

380. The Belgian delegate affirmed that now the case law makes clear that no grants shall be provided to those who enter the country only for study purpose.

381. The President proposed that the Committee takes note that the issue of the length of residence has been raised for several countries for the first time and waits for the next assessment of the ECSR. The Greek delegate agreed with the President proposal.

382. The ETUC representative proposed that, at least, the Committee stresses the importance of the principle of equal treatment for nationals of other Parties to the 1961 ESC and to the Revised ESC.

383. While the UK delegate underlined that the application of the principle of equal treatment to students financial assistance was a new issue, the Belgian delegate affirmed it was not unknown to them. The French delegate affirmed the principle of equal treatment to be a basic principle of the Charter. The ETUC delegate agreed about the principle's relevance and the fact that it was not new to the field of education.

384. The President agreed on the fact that equal treatment for nationals of other Parties to the 1961 ESC and to the Revised ESC lawfully resident is a basic principle of the Charter and its infringement by many countries is a serious concern.

385. The Romanian delegate agreed that equal treatment is a fundamental principle and recalled that the prohibition of the length of residence requirement, already raised under Article 13, is difficult to accept but it shall be so. Thus, she was in favour of expressing deep concern to Denmark and reminding the importance of equality of treatment.

386. The Danish delegate reaffirmed that in his view, Article 10§4 b cannot be interpreted as requiring states to waive the length of residence requirement for non-nationals.

387. The President clarified that it is the competence of the ECSR to interpret the Charter and the Governmental Committee should refrain from legally interpreting the Charter. He repeated that the ECSR does not require equality of treatment for students entering the country to pursue study, but only with respect to those already lawfully residents, for whom the length of residence requirement must be waived as it is contrary to the Charter. Thus he proposed that the Committee takes note that it is a first time violation and expressed the wish for Denmark to make steps towards compliance.

388. The Netherlands delegate considered the case law to be clearer now, but she was rather of the opinion of asking Denmark to provide new information on and clarification of its national legislation and practice in the next report, and to await the next assessment of the ECSR.

389. The Estonia and the Irish delegates, and the OIE representative supported this proposal.

390. The ETUC representative warned the Committee about loosening the application of the principle of equal treatment and repeated that the issue was not new. Therefore, it proposed the Committee express concern and ask Denmark to bring the situation in compliance with the Charter.

391. The Committee agreed to ask Denmark to provide in the next report all the new relevant information and decided to await the next examination by the ECSR.

## **AUSTRIA**

392. The Austrian delegate expressed surprise to the fact that, for the first time, the ECSR found the situation not in conformity with the Charter because of the application of the reciprocity clause for fees and of the length of residence requirement of five years for financial assistance with respect to lawfully resident non-EEA nationals of other Parties to the 1961 ESC and to the Revised ESC.

393. The delegate added that the criticism had been passed onto the Ministry of Education, which took note of it and is considering the further steps to take. She found the general discussion useful and she concluded that, this being the first assessment of non-conformity, it should be given time to Austrian authorities to adopt the appropriate measures.

394. The Committee asked Austria to provide in the next report the new relevant information about measures to be adopted and decided to await the next examination by the ECSR.

## **BELGIUM**

395. The Belgian delegate explained that, since the first finding of non-conformity in cycle XIII-4 (1996), Belgian authorities understood they should provide equal treatment with respect to financial assistance to all students. According to Belgium, this was financially unsustainable. The delegated added that the case law has been now clarified by the ECSR and, consequently, Belgian authorities can consider how to modify their legislation about length of residence requirements in order to bring the situation in conformity with the ECSR interpretation of the Charter.

396. The Netherlands delegate was of the opinion that the clarification in the case law is an important step forward and that, now, time should be given to Belgian authorities to reconsider the situation taking into account this clarification.

397. The French delegate agreed that the ECSR has clarified that it is the length and not the residence criteria per sé that infringes the Charter. Resident students are entitled to equal treatment with no length of residence requirement, but not those students who enter the country only for study purposes.

398. The ETUC representative recognised the clarification of the case law, but he also underlined the seriousness of the Belgian case and proposed to the Committee to urge Belgium to take measures to bring the situation in conformity with the Charter.

399. The United Kingdom and the Iceland delegates, and the OIE representative supported the Dutch proposal.

400. The Committee agreed to ask Belgium to reconsider the situation in the light of the ECSR assessment and its interpretation of the Charter provisions and decided to await the next examination by the ECSR.

## **FINLAND**

401. The Finnish delegate explained the current conditions for students' financial assistance, including the length of residence requirement of two years for certain categories of nationals of other Parties to the 1961 ESC and to the Revised ESC. She added that the Ministry of Education intends to draft a proposal for an Act amending the Student Financial Aid Act, which will determine the right of aliens to student financial aid in more detail. In this context, she added, the Ministry can take into consideration the ECSR assessment on the length of residence requirement as contrary to the Charter and rectify the legislation in order to bring the situation in conformity with the Charter.



402. The Committee insisted on the Finnish Government to adopt the necessary measures to bring the situation in conformity with the Charter and decided to await the next examination by the ECSR.

### **THE NETHERLANDS**

403. The Dutch delegate informed the Committee that the Act on Student Finance was adopted in 2000, but it brought no changes as far as treatment of foreigners is concerned. Nevertheless, she added, nationals of other Parties to the 1961 ESC and to the Revised ESC lawfully resident are equally treated in the Netherlands on the basis of the fact that they are covered by the provisions of an international treaty, namely the European Social Charter. She underlined that no length of residence is required from them.

404. The Committee asked the Netherlands to provide this information in the next report and decided to await the next examination by the ECSR.

### **NORWAY**

405. The Norwegian delegate acknowledged the one year length of residence requirement applying to certain categories of nationals of other Parties to the 1961 ESC and to the Revised ESC lawfully resident to receive study grants. He also expressed his surprise at this first conclusion of non-conformity and informed the Committee that he was not in the position to say which steps will be taken to bring the situation in conformity.

406. The Committee asked Norway to provide this information in the next report and decided to await the next examination by the ECSR.

### **SLOVAK REPUBLIC**

407. The Slovak delegate explained the financial assistance schemes. He added that the cost of living for student amounts to 4,000-5,000 SKK (about € 95-120) per month, but this sum can vary substantially according to the place and whether students live alone or with their family. He also indicated that amendments to the legislation on education were under preparation, but that they would not concern the permanent residence requirement imposed on foreigners to benefit from financial assistance.

408. The Committee asked the Government to provide more precise information on this issue in the next report and decided to await the next assessment of the ECSR.

## TURKEY

409. The Turkish delegate acknowledged the lack of information in the report and informed the Committee about the number of students who received grants (150 803 in 2002) and the grants' amount (€ 60), which is inflation indexed. He also added that all this new information will be provided in the next report.

410. The President considered that the Government has admitted the inadequacy of the situation and will take steps to remedy the situation.

411. The ETUC representative proposed the Committee express its concern as to the seriousness of the situation, especially taking in mind the budgetary situation of Turkey.

412. The Committee asked Turkey to provide in the next report all the new relevant information and decided to await the next examination by the ECSR.

## UNITED KINGDOM

413. The United Kingdom delegate explained that the length of residence criteria of three years applies to both British and EU/EEA citizens. The latter shall have been living for the last three years in the EEA area. In the opinion of the delegate a period of residence is fair in establishing justification for the use of resident taxpayers money. The British Government, she concludes, fears to waive the length of residence criteria because of the financial impact this would bring.

414. The Committee agreed to ask the United Kingdom to reconsider the situation in the light of the ECSR assessment and its interpretation of the Charter provisions and decided to await the next examination by the ECSR.

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

### SLOVAK REPUBLIC

415. The Slovak delegate confirmed that family benefits are granted to foreign nationals on condition that the children in respect of which the benefits are paid are present in the territory of the Slovak Republic. He further said that reforms of the social security systems were underway, notably a new pension system. This was part of the necessary reforms with a view to the accession to the European Union. In addition, he provided information in relation to certain questions raised by ECSR and said that the details would be contained in the next report.

416. The Dutch delegate asked whether the memorandum from the Committee of Experts on Standard-Setting Instruments in the field of Social Security (CS-CO) had been taken into account by the ECSR when examining the Slovak situation.

417. The Deputy Executive Secretary said that the ECSR had not yet examined the memorandum, but it would probably do so in the current supervision cycle.

418. The Dutch delegate suggested that the Committee take the same approach as had been adopted in respect of other countries under Article 12§4.

419. The Committee referred to its decision not to examine the conclusions relating to Article 12 para. 4 of the Charter and of the Revised Charter as far as the payment of family benefits in respect of children living abroad is concerned (16th Report (I), para. 329).

420. The ETUC representative referred to his remarks as they appear in the 16<sup>th</sup> Report (I) at para. 325.

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

#### **SLOVAK REPUBLIC**

421. The Slovak delegate explained the social assistance system. He stated that, if they were in need, legally residing foreigners were entitled to social assistance upon decision of the competent authorities.

422. The Cypriot delegate enquired about the length of residence period required in order to benefit from social assistance. The ETUC representative asked about the criteria used by competent authorities to decide about the provision of social assistance.

423. The Slovak delegate answered that information would be provided in the next report. He informed the Committee that the competent authorities in respect of social assistance are the local district offices and added that foreigners with the exception of refugees are not entitled to cash benefits.

424. The Committee urged the Government to provide precise information in the next report and decided to await the next assessment of the ECSR.

### **Article 15§1 – Vocational training arrangements for disabled persons**

#### **GREECE**

425. The Greek delegate stated that the next report would provide comprehensive information on the integration of children with disabilities into mainstream education, special education possibilities for children with disabilities and other relevant measures. The ECSR's finding of non-conformity had been transmitted to the relevant authorities.

426. The delegate of the Netherlands stated that it was not acceptable that the information had not been provided for so many supervision cycles.

427. In response to the remark made by the Dutch delegate, the Greek delegate stated that information had been provided but not to the extent that the ECSR would judge to be sufficient.

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

## **MALTA**

429. The Maltese delegate stated that his authorities had failed to provide enough information in the report and the situation was in fact quite different from the one described by the ECSR. There was new legislation on the integration of persons with disabilities into mainstream educational and training facilities and this was the practice. More detailed information would be provided in the next report.

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

## **Article 15§2 – Placement arrangements for disabled persons**

### **BELGIUM**

431. The Belgian delegate stated that new anti-discrimination legislation had recently been adopted. It covered discrimination based on disability and provided that the absence of reasonable accommodation for persons with disabilities was discriminatory. Information on this would be submitted in the next report.

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

### **DENMARK**

433. As regards the finding of non-conformity on the grounds that there is no anti-discrimination legislation on the grounds of disability in the employment field, the Danish delegate stated that there had never been any demand or support for such legislation in Denmark. However Denmark is obliged to transpose EU Directive 2000/78/EC on the Establishment of a general framework for equal treatment in employment and occupation. The Danish Government has sought an additional year for the implementation of the Directive and the Danish Social partners would come to an agreement on implementation. New legislation will be proposed in the second half of 2004. Once this Directive was implemented this would also satisfy the requirements of the Charter.

434. Concerning the low rate of wages in sheltered employment facilities the Danish delegate provided information on the three types of sheltered employment in Denmark. It is only wages in *protected employment* which amount to approximately 5% of the minimum wage. *Protected employment* is regarded as a type of social provision for persons with severe disabilities who cannot be otherwise employed. Its aim is to give such persons a better quality of life. Wages are paid according to the effort and value of the production. Individuals in *protected employment* are almost always in receipt of an anticipatory pension.

435. The Hungarian delegate stated that he wished to emphasise the importance of non-discrimination legislation in the field of disability. Discussions on the necessity of such legislation were held over ten years ago and there was now a strong consensus that such legislation is necessary. This was a key point of the ECSR's conclusion, which has given the issue of fresh impetus in Europe. He wished to underline the importance of such legislation.

436. The UK delegate stated that Denmark's implementation of Directive 2000/78/EC would also have the effect of fulfilling its requirements under the Charter. The process of implementation would be completed by the time the next report is to be submitted. As regards wages in certain types of sheltered employment the delegate stated that she believed that the ECSR had misunderstood the nature of the sheltered employment.

437. The ETUC delegate stated that as regards the wages in *protected employment*, 5 % of the minimum wage was very low and that the aspect of human dignity should be taken into account.

438. In light of the information provided the Committee decided to await the next assessment of the ECSR.

## **GREECE**

439. The Greek delegate stated that non-discrimination legislation in the disability field was under preparation and would be adopted before the end of the year.

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

## **NORWAY**

441. The Norwegian delegate summarised the current legislation regarding discrimination on the grounds of disability in employment. He stated that Norway has decided to implement EU Directive 2000/78/EC on the Establishment of a general framework for equal treatment in employment and occupation and work on this was underway. A new Chapter to the Working Time Act, *inter alia*, implementing the Directive would be presented to Parliament this summer.

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

## **PORTUGAL**

443. The Portuguese delegate stated that there was a law on rehabilitation and integration for persons with disabilities. Article 4 of this legislation stated that persons with disabilities should have equal opportunities. But it was correct to say that non-discrimination was not fully developed in the legislation. However the authorities are currently reviewing legislation in this respect and in the course of this review will transpose EU Directive 2000/78/EC on the Establishment of a general framework for equal treatment in employment and occupation. Next time the situation is examined by the ECSR, it would be in conformity.

444. In light of this, the Committee decided to await the next assessment of the ECSR.

## **SLOVAK REPUBLIC**

445. The Slovak delegate provided information on job opportunities for persons with disabilities. He stated that in April 2002 an amendment to the Labour Code had entered into force which inserted a non-discrimination clause covering disabled persons.

446. Several delegates highlighted that disability was not included in the list of prohibited grounds of discrimination which appears in the amendment to the Labour Code although certain delegates found that it could be covered by the words “or other status”, which would suggest that the list was non exhaustive.

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

## **SPAIN**

448. The Spanish delegate provided information on the current constitutional and legislative provisions providing for equal treatment for persons with disabilities. However the Spanish Government was in the process of transposing EU Directive 2000/78/ EC on the Establishment of a general framework for equal treatment in employment and occupation which would ensure that Spain fulfilled its requirements under the Charter.

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

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

### **BELGIUM**

450. Due to the cross-reference among Articles 1§4, 9, 10§3 and 15§1, the Committee referred to the position it adopted under Article 10§3.

**GREECE**

451. Due to the cross-reference among Articles 1§4, 9, 10§3 and 15§1, the Committee referred to the position it adopted under Article 15§1.

**MALTA**

452. Due to the cross-reference among Articles 1§4, 9, 10§3 and 15§1, the Committee referred to the position it adopted under Article 15§1.

**POLAND**

453. The Polish delegate explained that continuing vocational training in Poland addresses only unemployed people and, according to the Act on Employment and the Fight against Unemployment, equal access to it is provided to nationals of other Parties to the 1961 ESC or the Revised ESC who are permanent resident in Poland. She added that those non-nationals residing on temporary basis are not concerned by continuing vocational training since they are not considered to be unemployed and their working permit does not allow them to stay in Poland once they become unemployed. As the permit is issued for work carried out in a fixed position for which the foreigner already holds the necessary qualifications, there is no call for enabling the foreigner to gain new qualifications through training offered to unemployed persons by public employment services. A foreign worker is entitled to participate in training offered by his/her employer. In such cases, the equal treatment regulation (set in place by the Labour Code) must be observed.

454. The ETUC representative asked for clarification on the three year length of residence condition required from non-nationals to become permanent resident in Poland and, thereby, be given equal access to continuing vocational training.

455. The Polish delegate affirmed this to be the rule.

456. The ETUC representative expressed its concern about the infringement of equality of treatment and the lack of intention of amending the situation. He proposed the Committee to ask Poland to take steps to bring the situation in conformity.

457. The United Kingdom delegate was concerned by the probable small amount of people receiving continuing vocational training in Poland.

458. While the situation was clear for certain delegations (France), it was not for others (The Netherlands). Therefore, the Committee asked Poland to provide in the next report the new relevant information and decided to await the next examination by the ECSR.

## **TURKEY**

459. Due to the cross-reference among Articles 1§4, 9, 10§3 and 15§1, the Committee referred to the position it adopted under Article 10§3.

### **Article 11§1 – Removal of the causes of ill-health**

## **POLAND**

460. The Polish delegate pointed out that the outcomes of the 1999 health care system reform were not satisfactory. Due to financial difficulties and poor management, adequate access to health care was not effectively guaranteed. In January 2003, however, new legislation replacing 17 Health Insurance Funds with a single National Insurance Fund was introduced. This significant institutional change was followed by a regulation of the Ministry of Health on general admission to health care services. The regulation introduced the register of waiting lists, as well as clear rules governing the management of these lists.

461. The President of the Committee expressed the view that given the significant changes that had been undertaken, the Committee should await the next assessment by the ECSR.

462. The Hungarian delegate supported this view.

463. The UK delegate also found it appropriate to await the next assessment of the situation. Nonetheless, she asked whether the issue of prioritising waiting lists had been addressed.

464. The Polish representative confirmed that a mechanism, regulating the access to health care according to the patient's state of health, was in place.

465. The President of the Committee asked whether Poland concluded international agreements concerning medical assistance abroad.

466. According to the Polish delegate, treatment of Polish nationals abroad was possible subject to the approval of the Minister of Health. Respective bilateral agreements concerning temporary workers had also been concluded.

467. The Greek delegate underlined the importance of prioritising waiting lists. He proposed to await the next assessment of the ECSR.

468. The Committee agreed to this proposal.



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

### **SLOVAK REPUBLIC**

469. The Slovak delegate stated that new legislation had entered into force and that now family benefit was payable in respect of all dependent children under 15 years of age or under 25 years but still attending higher education irrespective of the income of the family. It was currently paid in respect of 1.3 million children. The rates of family benefit would be further increased by legislation due to enter into force in January 2004.

470. The Committee welcomed these positive developments and decided to await the next assessment of the ECSR.

## **Article 17 – Right of mothers and children to social and economic protection**

### **POLAND**

471. The Polish delegate confirmed that Polish legislation did not prohibit all forms of corporal punishment of children and provided information on the legal provisions which govern the situation.

472. As regards the length of detention on remand for young persons the delegate stated that it was only imposed for serious crimes and concerned a very limited number of young persons. Finally the Polish delegate informed the Committee that detention of a young person for reasons of “demoralisation” was only possible where the young person had also committed a criminal offence.

473. The delegate from the Netherlands requested the Secretariat to provide further information concerning the definition of corporal punishment as defined by the ECSR.

474. The Secretariat reminded the Committee that the ECSR had explained its interpretation of Article 17 in the General Introduction to Conclusions XV-2. The ECSR attaches great importance to the protection of children from all forms of ill treatment.

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

### **SLOVAK REPUBLIC**

476. The Slovak delegate provided further information on the situation of children in institutions and stated that more detailed information would be provided in the next report. As regards the protection of children from ill treatment and abuse he explained that specific provisions of the criminal law prohibited physical or mental violence, injury, abuse, maltreatment and exploitation of children, while in the care *inter alia* of their parents.

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

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

#### **SLOVAK REPUBLIC**

478. The Slovak delegate stated that new legislation had been prepared (but not yet adopted) which would transfer responsibility for immigration affairs from the police to civil administration. It was expected that the new legislation would contribute to simplifying the formalities concerned.

479. The Committee took note of the information provided, invited the Government to furnish all necessary information in the next report, and decided to await the next assessment of the ECSR.

### **Article 1 of the 1988 Additional Protocol – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

#### **CZECH REPUBLIC**

480. The Czech delegate recalled that the situation has been found not to be in conformity with Article 1 of the Additional Protocol on the same ground that under Article 4§3 of the Charter. She therefore referred to the information given under Article 4§3.

481. The Committee considered that the Czech Republic should make efforts to remedy the situation.

#### **B. Deferred cases for repeated lack of information**

None.

**APPENDIX I – COPY OF THE LETTER TO THE AUTHORITIES OF IRELAND AND LUXEMBOURG****SECRETARIAT GENERAL**

DIRECTORATE GENERAL OF HUMAN RIGHTS - DGII

SECRETARIAT OF THE EUROPEAN SOCIAL CHARTER

HD/ESC 297  
LK/EF

Strasbourg, 26 September 2003

Sir,

During its 105<sup>th</sup> meeting (23-26 September 2003), the Governmental Committee instructed me to bring to your attention that the 21<sup>st</sup> Report from Ireland which was due to be submitted on 31 March 2002 was exceptionally delayed. Indeed, the last part of the report only reached the Council of Europe by September 2003.

The Governmental Committee of the European Social Charter considers this situation to be a very serious issue since the non compliance with the reporting obligation prevents the control mechanism to function efficiently.

The Committee would therefore be grateful if you could bring the matter to the attention of your authorities with a view to find a proper solution in the future. The next report was due on 30 June 2003 but has not yet been received.

Yours faithfully,

Edward GATT  
President of the Governmental Committee  
of the European Social Charter

Mr James A. SHARKEY  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of Ireland  
to the Council of Europe  
15, avenue de la Liberté  
67000 STRASBOURG

**SECRETARIAT GENERAL**

DIRECTORATE GENERAL OF HUMAN RIGHTS - DGII

SECRETARIAT OF THE EUROPEAN SOCIAL CHARTER

HD/ESC 297  
LK/EF

Strasbourg, 26 September 2003

Sir,

During its 105<sup>th</sup> meeting (23-26 September 2003), the Governmental Committee instructed me to bring to your attention that the 6<sup>th</sup> Report from Luxembourg which was due to be submitted on 31 March 2002 was exceptionally delayed. Indeed, the last part of the report only reached the Council of Europe by September 2003.

The Governmental Committee of the European Social Charter considers this situation to be a very serious issue since the non compliance with the reporting obligation prevents the control mechanism to function efficiently.

The Committee would therefore be grateful if you could bring the matter to the attention of your authorities with a view to find a proper solution in the future. The next report was due on 30 June 2003 but has not yet been received.

Yours faithfully,

Edward GATT  
President of the Governmental Committee  
of the European Social Charter

Mr Ronald MAYER  
Ambassador  
Permanent Representative of Luxembourg  
to the Council of Europe  
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## **APPENDIX II**

### **LIST OF PARTICIPANTS**

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#### **AUSTRIA / AUTRICHE**

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#### **BELGIUM / BELGIQUE**

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#### **BULGARIA / BULGARIE**

*Apologised / Excusé*

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## **FRANCE**

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## **GERMANY / ALLEMAGNE**

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Mr William JESTIN, Principal Officer, ERIR Division (2)

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## **LATVIA / LETTONIE**

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#### **SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**

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#### **TURKEY / TURQUIE**

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#### **UNITED KINGDOM / ROYAUME-UNI**

Ms Rita GILFELLON, Senior Policy Adviser, Joint International Unit, Department for Work and Pensions (DWP) (1, 2)

Mr Tudor ROBERTS, Department for Work and Pensions (DWP) (1)

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

M. Gérard FONTENEAU, Conseiller, Département social, Confédération européenne des Syndicats (1, 3)

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

#### **OBSERVERS / OBSERVATEURS**

#### **ANDORRA / ANDORRE**

*Apologised / Excusé*



**ARMENIA / ARMENIE**

Mr Aleksandr KOSTANYAN, Adviser to the Minister of Social Security, Ministry of Social Security (3)

Mr Hovhannes POGHOSYAN, Head of Foreign Relations Department, Ministry of Social Security (2)

**AZERBAIJAN / AZERBAÏDJAN**

Mr Azad TAGHIZADA, Head of the International Cooperation Department, Ministry of Labour and Social Protection of Population, House of Government (1, 3)

**GEORGIA / GEORGIE**

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

**LIECHTENSTEIN**

*Apologised / Excusé*

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

Mme Maria TKACH, Directrice Adjointe du Département de la Coopération internationale, Ministère du Travail et du Développement social (1, 2, 3)

**SAN MARINO / SAINT-MARIN**

*Apologised / Excusé*

**SWITZERLAND / SUISSE**

*Apologised / Excusé*

**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" /  
"L'EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE"**

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

**UKRAINE**

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



## APPENDIX III - CHART OF SIGNATURES AND RATIFICATIONS

Situation at 30 September 2003

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		
Austria	07/05/99	<b>29/10/69</b>	
Azerbaijan	18/10/01		
Belgium	03/05/96	<b>16/10/90</b>	23/06/03
Bosnia and Herzegovina			
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	*	<b>13/12/91</b>	<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	
Netherlands		<b>18/10/61</b>	<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	*	<b>18/10/61</b>	<b>24/11/89</b>
Ukraine	07/05/99		
United Kingdom	*	07/11/97	<b>11/07/62</b>
Number of States	45	<b>11 + 32 = 43</b>	<b>18 + 15 = 33</b>
			13

The **dates in bold** 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 IV****LIST OF CASES OF NON-COMPLIANCE**

- Austria**
- Article 3§1
  - Article 4§1
  - Article 10§1
  - Article 10§4
- Belgium**
- Article 1§4
  - Article 2§1
  - Article 2§4
  - Article 4§2
  - Article 4§3
  - Article 10§2
  - Article 10§3
  - Article 10§4
  - Article 15§2
- Czech Republic**
- Article 2§5
  - Article 4§3
  - Article 4§4
  - Article 4§5
  - Article 7§1
  - Article 7§3
  - Article 7§4
  - Article 7§5
  - Article 8§2
  - PA1
- Denmark**
- Article 10§4
  - Article 15§2
- Finland**
- Article 2§1
  - Article 2§4
  - Article 4§2
  - Article 4§3
  - Article 10§4
- Germany**
- Article 2§1
  - Article 4§3
- Greece**
- Article 1§4
  - Article 3§1
  - Article 4§1
  - Article 4§3
  - Article 4§4
  - Article 15§1

- Article 15§2
- PA1
  
- Hungary** – Article 6§4
  
- Iceland** – Article 4§3
  
- Malta**
  - Article 1§4
  - Article 2§1
  - Article 2§3
  - Article 2§5
  - Article 3§2
  - Article 4§3
  - Article 4§4
  - Article 10§1
  - Article 15§1
  
- Netherlands**
  - Article 2§1
  - Article 2§4
  - Article 4§1
  - Article 4§3
  - Article 10§4
  
- Norway**
  - Article 2§1
  - Article 4§3
  - Article 4§5
  - Article 10§4
  - Article 15§2
  
- Poland**
  - Article 1§4
  - Article 2§1
  - Article 3§2
  - Article 4§2
  - Article 4§4
  - Article 4§5
  - Article 7§10
  - Article 8§2
  - Article 9
  - Article 10§1
  - Article 11§1
  - Article 17
  
- Portugal**
  - Article 2§2
  - Article 3§2
  - Article 4§3
  - Article 4§4
  - Article 15§2

- Slovak Republic**
- Article 1§1
  - Article 2§1
  - Article 4§1
  - Article 4§4
  - Article 4§5
  - Article 6§4
  - Article 7§1
  - Article 7§2
  - Article 8§2
  - Article 10§4
  - Article 12§4
  - Article 13§1
  - Article 15§2
  - Article 16
  - Article 17
  - Article 18§2
- Spain**
- Article 2§1
  - Article 2§3
  - Article 3§1
  - Article 3§2
  - Article 4§1
  - Article 4§2
  - Article 4§4
  - Article 15§2
- Turkey**
- Article 1§4
  - Article 4§3
  - Article 4§5
  - Article 10§1
  - Article 10§3
  - Article 10§4
- United Kingdom**
- Article 2§4
  - Article 3§2
  - Article 4§1
  - Article 4§2
  - Article 4§4
  - Article 4§5
  - Article 10§4





**APPENDIX V****LIST OF DEFERRED CONCLUSIONS BECAUSE OF A QUESTION ASKED FOR THE FIRST TIME OR ADDITIONAL QUESTIONS**

**Austria**

- Article 1§4
- Article 2§4
- Article 4§3
- Article 9
- Article 10§2
- Article 10§3
- Article 15§1
- Article 15§2

**Belgium**

- Article 2§5
- Article 3§2
- Article 9
- Article 10§1
- Article 15§1

**Cyprus**

- Article 1§4
- Article 2§1
- Article 15§1
- Article 15§2

**Czech Republic**

- Article 2§1
- Article 3§1
- Article 3§2
- Article 4§2
- Article 8§4
- Article 11§1
- Article 11§2
- Article 11§3
- Article 14§1
- Article 14§2
- Article 15§2
- Article 17
- Article PA2
- Article PA3
- Article PA4

**Denmark**

- Article 1§4
- Article 2§2
- Article 2§3
- Article 4§1
- Article 4§2
- Article 4§3
- Article 10§3

- Article PA1
- Article PA3
  
- Finland** – Article 2§5
  
- Germany** – Article 1§4
- Article 2§4
- Article 3§1
- Article 4§1
- Article 15§1
- Article 15§2
  
- Greece** – Article 2§1
- Article 2§2
- Article 2§4
- Article 2§5
- Article 3§2
- Article 10§3
- Article PA2
- Article PA3
- Article PA4
  
- Hungary** – Article 1§2
- Article 1§3
- Article 1§4
- Article 2§1
- Article 2§4
- Article 3§1
- Article 3§2
- Article 3§3
- Article 5
- Article 6§1
- Article 6§2
- Article 6§3
- Article 9
- Article 11§1
- Article 11§2
- Article 11§3
- Article 13§1
- Article 13§2
- Article 13§3
- Article 13§4
- Article 14§1
- Article 14§2
- Article 16
- Article 17

- Iceland**
- Article 1§4
  - Article 2§1
  - Article 3§1
  - Article 4§1
  - Article 4§4
  - Article 15§1
  - Article 15§2
- Malta**
- Article 3§1
  - Article 3§3
  - Article 4§5
  - Article 9
  - Article 10§2
  - Article 10§3
  - Article 10§4
  - Article 15§2
- Netherlands**
- Article 3§2
  - Article 15§2
- Norway**
- Article 2§4
  - Article 3§2
  - Article 4§1
  - Article PA2
- Poland**
- Article 2§4
  - Article 3§1
  - Article 4§3
  - Article 8§4
  - Article 10§2
  - Article 15§1
  - Article 15§2
- Portugal**
- Article 1§4
  - Article 2§4
  - Article 10§2
  - Article 10§4
  - Article 15§1
- Slovak Republic**
- Article 1§2
  - Article 1§3
  - Article 1§4
  - Article 2§2
  - Article 4§2
  - Article 5
  - Article 6§2
  - Article 7§3
  - Article 7§4
  - Article 7§5
  - Article 7§6

- Article 7§7
- Article 7§10
- Article 8§1
- Article 8§3
- Article 10§1
- Article 10§2
- Article 10§3
- Article 11§1
- Article 11§2
- Article 11§3
- Article 12§1
- Article 12§2
- Article 12§3
- Article 14§1
- Article 14§2
- Article 15§1
- Article PA1
- Article PA2
- Article PA3
- Article PA4

**Spain**

- Article 1§4
- Article 2§4
- Article 2§5
- Article 4§3
- Article 9
- Article 10§4
- Article 15§1
- Article PA4

**Turkey**

- Article 9
- Article 10§2

**United Kingdom**

- Article 2§3
- Article 3§1

## APPENDIX VI

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

#### Warnings<sup>3</sup>

##### Article 4 paragraph 2

###### - Spain

(lack of legislation to ensure that workers receive an increased rate of pay or an equivalent rest period, in compensation for overtime)

##### Article 4 paragraph 4

###### - Slovak Republic

(two months period of notice in case of termination not sufficient in case of workers with a length of service of 15 years or more)

- Spain (insufficient period of notice of termination of employment in the case of fixed-term contracts of more than one year)

#### Recommendation(s)

-

#### Renewed Recommendation(s)

-

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<sup>3</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.