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GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER

16th Report (I)

*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*

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I. INTRODUCTION

1. This summary report is submitted by the Governmental Committee of the European Social Charter made up of delegates of each of the twenty-nine states bound by the Social Charter or the Revised Social Charter¹. Representatives of international organisations of employers and workers (presently the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the International Organisation of Employers (IOE)) attend in a consultative capacity meetings of the Committee.

2. The supervision of the application of the 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.

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 relating to the first national reports submitted by Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Iceland, Ireland, Luxembourg, Malta, the Netherlands, Norway, Poland, Spain, Turkey and the United Kingdom in application of the European Social Charter. Reports were due on 30 June 2001 at the latest. The Governmental Committee repeats that it attaches a great importance to the respect of the deadline by the States Parties.

5. Conclusions XVI-1 of the European Committee of Social Rights were adopted in June 2002.

6. The Governmental Committee held three meetings (14-16 May 2002, 9-13 September 2002 and 14-18 October 2002), which were chaired by Mr Edward GATT (Malta).

¹ List of the states : Austria, Belgium, Bulgaria, 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. 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 Revised European Social Charter (Albania, Armenia, Azerbaijan, Croatia, 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).

8. 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 para. 2 of the Charter.

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

- on 8 November 2001 :
 - Moldova ratified the Revised European Social Charter
- on 31 January 2002 :
 - Latvia ratified the European Social Charter
- on 30 May 2002 :
 - Portugal ratified the Revised European Social Charter
- on 21 June 2002 :
 - Finland ratified the Revised European Social Charter

10. The state of signatures and ratifications on 30 October 2002 is therefore as it appears in Appendix I to the present report.

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

11. The Committee examined the situations not in conformity with the Charter listed in Appendix II to the present report.

12. 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 III to the present report. It asked governments to fully reply to the questions in their next reports.

13. 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 Charter. In particular, it asked governments to take into consideration Recommendations adopted by the Committee of Ministers.

14. 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 1999-2000

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

The Committee of Ministers,²

Referring to the European Social Charter, in particular to the provisions of Part V 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, Iceland, Ireland, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Turkey and the United Kingdom (concerning period of reference 1999-2000);

² At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those States which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter". The states having ratified the Charter or the Revised Charter are Austria, Belgium, Bulgaria, 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-1 of the European Committee of Social Rights appointed under Article 25 of the Charter,

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

Draws the attention of the Governments concerned to the recommendations adopted for the 16th supervision cycle (part I);

Renews the following recommendations which have not yet been implemented: Ireland - Article 5s and 6§2 (negotiation license)³ and Ireland – Article 19§8⁴

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

15. In this Resolution, the Committee proposes that the Committee of Ministers adopts the following Recommendations:

- Greece, Article 1§2
- Ireland, Article 5

³ Recommendation No. RChS(2001)2 of 7 February 2001.

⁴ Recommendation No. RChS(99)2 of 4 March 1999 renewed on 7 February 2001 – Resolution ResChS(2001)5.

Recommendation on the application of the European Social Charter by Greece during the period 1999-2000 (sixteenth supervision cycle – part I)

(Adopted by the Committee of Ministers on

at the meeting of the Ministers' Deputies)

The Committee of Ministers,⁵

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

Whereas the European Social Charter, signed in Turin on 18 October 1961, came into force on 6 July 1984 with respect to Greece and whereas, in accordance with Article 20, Greece has accepted 67 of the provisions contained in the Charter;

Whereas the Government of Greece submitted in 2000 its 12th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined Conclusions XVI-1 of the European Committee of Social Rights appointed under Article 25 of the Charter, and the report of the Governmental Committee established under Article 27 of the Charter;

Having noted that the European Committee of Social Rights had concluded that Greece was not in conformity with Article 1§2 of the Charter for its restrictions in admitting women into the police force;

Following the proposal made by the Governmental Committee:

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

⁵ At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those States which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter." The states having ratified the Charter or the Revised Charter are Austria, Belgium, Bulgaria, 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.

Recommendation on the application of the European Social Charter by Ireland during the period 1999-2000 (sixteenth supervision cycle – part I)

(Adopted by the Committee of Ministers on

at the meeting of the Ministers' Deputies)

The Committee of Ministers,⁶

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

Whereas the European Social Charter, signed in Turin on 18 October 1961, came into force on 26 February 1965 with respect to Ireland and whereas, in accordance with Article 20, Ireland has accepted 63 of the provisions contained in the Charter;

Whereas the Government of Ireland submitted in 2001 its 20th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined Conclusions XVI-1 of the European Committee of Social Rights appointed under Article 25 of the Charter, and the report of the Governmental Committee established under Article 27 of the Charter;

Having noted that the European Committee of Social Rights had concluded that Ireland was not in conformity with Articles 5 and 6§2 of the Charter because certain closed shop practices are permitted in law and because protection of trade union members against dismissal does not apply to Trade Unions not holding a negotiation license;

Following the proposal made by the Governmental Committee:

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

⁶ At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those States which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter." The states having ratified the Charter or the Revised Charter are Austria, Belgium, Bulgaria, 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.

16. In addition, the Committee proposes that the Committee of Ministers renews the following Recommendation:

- Ireland – Articles 5 and 6§2 (negotiation license)
- Ireland – Article 19§8

EXAMINATION ARTICLE BY ARTICLE

A. Cases of non-compliance

Art. 1§1 – Policy of full employment

THE NETHERLANDS (NETHERLANDS ANTILLES AND ARUBA)

17. The Netherlands Antilles delegate explained the particular geographical, political-administrative and economic conditions of his country. He emphasised that the Netherlands Antilles is encountering a number of problems which make it difficult for the Government to conduct its business in a satisfactory way, and notably make it difficult to implement and strengthen social policies. However, as regards employment policy the report submitted by the Netherlands Antilles had not reflected the actual situation in a sufficiently accurate manner. In fact, all the islands except Saba have their own labour departments to which is allocated about 1% of the government budget. In Curaçao, the employment services are functioning well with a relatively high placement rate, in St Maarten the labour department is being reorganised and a new labour exchange is being set up which began making placements in 2002. In St Eustatius, the labour department regularly provides employment services, gives advice about work permits, etc. Even in Saba a labour exchange is now being set up. Moreover, the delegate said that the central government has started a job vacancy database on the internet and the Minister of Labour has agreed with the island governments to set up a Committee to oversee the implementation on each island of the ordinance on stimulating the employment of young persons. The ordinance provides for wage subsidies for persons under 30 years of age who have been registered as unemployed for at least 12 months.

18. The delegate hoped that the Committee would be understanding of the special circumstances in the Netherlands Antilles and that it would give ECSR the opportunity to assess the situation again in the light of the full and detailed information which would be included in the next report.

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

POLAND

20. The Polish delegate considered that ECSR's conclusion did not take into account all aspects of the situation, notably certain socio-economic and demographic developments in Poland. She found the conclusion too simplified based as it was primarily on statistics. She pointed to the economic recession in recent years, including the problems of the Labour Fund, and questioned the feasibility of devoting more resources to employment policy in such a situation. Nevertheless, the Government had a clear strategy to create jobs and a number of measures was being taken to stimulate employment. Moreover, as the economy had picked up somewhat it was likely that more funds would be allocated to employment policy in the near future. More detailed information in this respect would be provided in the next report.

21. The United Kingdom delegate observed that several European countries through their cooperation with the Polish Government on labour market matters could testify that the Government works very seriously to create employment and combat unemployment. A range of active labour market measures have been developed which are ready to be implemented once the economic situation allows it. She warned ECSR against taking too simplistic a view of national situations by looking only at expenditure on employment policy.

22. The President noted that while the Polish Government had indeed formulated an employment policy - on paper so to speak, it was obvious that the implementation of this policy in practice posed some problems. He proposed that the Committee signify its concern to the Government that employment policy is not being given the practical impetus it needs.

23. The United Kingdom delegate could not agree with this proposal; in her opinion the Polish Government was doing far more than just paperwork.

24. The Cypriot delegate welcomed the fact that ECSR had changed its approach as it might stimulate states to do more to combat unemployment. In her view the Committee could invite the Polish Government to strengthen its efforts to combat unemployment while recognising that measures are already being taken.

25. The ETUC representative considered that that the Committee should express its concern. ECSR's conclusion was well documented and did indeed look at a number of factors in addition to expenditure.

26. The Romanian delegate supported the view of the United Kingdom delegate considering it to be a very sober assessment of the situation. When examining the situation of transition countries it was necessary to take due account of economic realities and constraints under which these countries had to labour.

27. The Committee took note of the information provided by the Polish delegate and while hoping that the Government would be able to bring about the necessary improvements in the situation, it decided to await the next assessment of ECSR.

TURKEY

28. The Turkish delegate acknowledged that ECSR's assessment of the situation was basically correct, but he emphasised that the Government was doing its best while working under serious economic constraints. Economic development had been positive in 1999 and 2000, but a serious setback took place in 2001. Nevertheless, the Government was putting employment at the centre of its economic policy as shown by two recent initiatives: firstly, the adoption of Act No. 461/2001 on the Economic and Social Council which will involve all the interested groups in the planning of employment policy and, secondly, the establishment of a new and reformed employment agency providing services, especially for vulnerable target groups, in accordance with modern standards. The delegate expressed his hope that more positive information could be included in the next report.

29. The ETUC representative felt that this was a situation where the Committee should consider a warning. Although it was a first negative conclusion the situation was so extreme that a warning was warranted. He compared the situation to the one dealt with in the past under Article 11§3 for Turkey and if the Committee could not agree on a warning in this case it was difficult to think of any case where a warning could be adopted, not to speak of a proposal for a recommendation.

30. The Cypriot delegate agreed that the situation was serious, but a warning might be premature. In her view the Committee should express serious concern at the situation.

31. The United Kingdom would not vote in favour of a warning. More careful analysis of the data was required and she believed that such analysis might show that the situation was not quite as desperate as indicated by ECSR.

32. The Bulgarian delegate would also not support a warning. He referred to the situation in his own country where, at a certain point in time, it had not been possible to implement the necessary pro-active labour market measures due to a lack of economic development. He also observed that participation in active measures might lead to disappointment for individual jobseekers if they could not subsequently be placed in employment.

33. The IOE representative said that a warning was not the right approach. In a situation of no or negative economic growth it was clearly impossible to create jobs and in her opinion subsidised jobs were senseless and would not lead to lasting employment.

34. The Turkish delegate reiterated that ECSR's description of the situation was correct and there was no doubt that more efforts were required. The political will was there, but unfortunately the financial means had not so far been available. He expected, however, that more resources would be allocated to employment policy, particularly to the new employment agency, in the near future.

35. The Committee expressed its serious concern at the situation and requested the Turkish Government to take all measures at its disposal to bring the situation into conformity with Article 1§1 of the Charter. Meanwhile, it decided to await the next examination by ECSR.

Art. 1§2 – Prohibition of discrimination in employment and forced or compulsory labour

AUSTRIA

36. The Austrian delegate explained that the discrimination against foreign nationals in the country's legislation was a means of regulating access to the Austrian labour market by nationals of non-member states of the European Economic Area. In practice the provision was only applied in cases of collective redundancies. Nor were there any penalties against employers for failure to observe the rule. She said that the question could be examined in discussions with employer and employee representatives on the transposition of an European Union Directive in 2003.

37. The ETUC representative noted that the Directive in question did not concern migrant workers.

38. On a proposal of the ETUC, supported by the President and the delegates of Cyprus, Italy and Portugal, the Committee insisted that Austria bring the situation into conformity with the Charter.

BELGIUM

39. The Belgian delegate said that draft legislation repealing the provisions in question was currently under examination. However, the Government had decided to grant assistance, particularly tax benefits, to shipbuilders to re-establish a Belgian merchant fleet. The draft legislation was therefore held up pending a full review of the Merchant Shipping Code, which was currently the subject of consultations. The new Code would certainly repeal the provisions in question but no date could be given for its enactment.

40. The delegates of Cyprus and Romania, supported by the ETUC representative, said that the situation had long been found to be incompatible with the Charter and that there had been no positive developments.

41. The delegates of Estonia and the United Kingdom, supported by those of Ireland, the Netherlands and Germany, opposed the adoption of a recommendation since repeal legislation was under preparation.

42. The Portuguese delegate said that the situation did not pose a social problem since the provisions were not applied in practice. However, Belgium should proceed with their repeal.

43. The French delegate agreed and said he understood that repeal was being delayed by technical difficulties. He wished to offer Belgium encouragement.

44. The IOE representative thought that the Belgian statement should suffice, particularly as the reform of the Merchant Shipping Code was being carried out in consultation with the social partners.

45. The President noted that support for a recommendation was lacking and asked for a vote on a warning. The warning was adopted by 17 votes for, 8 against and 5 abstentions.

CYPRUS

46. On the first point, i.e. the duration of alternative service, the Cypriot delegate confirmed that the information contained in the Conclusions was correct i.e. :

- the duration of armed military service is 26 months
- the duration of non-armed military service is 34 months
- the duration of alternative civil service is 42 months.

47. The Minister of Defence is, however, empowered to suspend non-armed military service or alternative civil service of persons granted the status of conscientious objector on certain conditions, even to suppress any obligation, on religious grounds. She said that the next governmental report will contain all the necessary information on this issue.

48. On the second point, the Cypriot delegate informed the Committee that the draft law referred to in the Government Report has been approved, in principle, by the Council of Ministers in April 2002 and is now before the Legal Service for legal vetting. The Cypriot delegate informed the Committee that it is the intention of the Minister of Labour and Social Insurance to deposit this draft in Parliament before the end of this year 2002. The draft law abolishes Defence Regulations 79A and B and regulates the right to strike.

49. The Committee agreed to wait for the next assessment of the ECSR.

FINLAND

50. The Finnish delegate explained that the Seamen's Act does not contain any provision stating that foreign workers cannot be employed on board Finnish ships. Article 15§3 of this Act contains a prohibition of discrimination based on origin, religion, age, politics or trade union activities or other comparable reason. This prohibition applies both during an employment relationship and when recruiting workers. Discrimination of foreign workers based on their origin or their nationality is therefore prohibited. Neither do the collective agreements include any discriminatory provision.

51. The Cypriot delegate proposed that this information be contained in the next report to be submitted to the ECSR by Finland.

52. The Committee decided not to take any decision and to await for the next assessment of the situation by the ECSR.

GERMANY

Exclusion from the civil service

53. The German delegate said that at the time of reunification it had been decided that officials of the former German Democratic Republic (GDR) could be integrated into the German civil service, subject to certain exceptions. In particular, the Reunification Treaty (between the former two German states) had ruled that officials of the Ministry of State Security of the former GDR could in principle not be integrated. The Constitutional Court had found this system to be constitutional.

54. He described the system in some detail. In practice, decisions on whether those concerned were suitable for the posts for which they were applying and their past did not pose a barrier were reached on a case by case basis. As a result, the majority of those concerned had been integrated.

55. These provisions had more or less ceased to have effect since the great majority of individual cases had already been decided. The rules had applied to a specific period of Germany's history.

56. The ETUC representative criticised the failure to announce any intention to change the situation. The European Committee of Social Rights had decided that the situation was incompatible with the Charter, because of the failure to define precisely the functions concerned. In other words, persons who were found to be unsuitable to become civil servants because of the posts they had previously held could not apply for any post at all. The ban was not restricted to sensitive posts.

57. The delegates of the United Kingdom and Ireland, supported by those of Romania and Denmark, agreed that this had been a sensitive issue at the time when it had been necessary to rationalise the German civil service. They noted that a dissenting opinion showed that the European Committee of Social Rights' decision had not been taken unanimously.

58. The delegate of the Czech Republic said that in his country there was no general ban on persons holding civil service posts because of their past activities, simply a list of banned activities.

59. The Committee decided that this had been a problem of transition and that the system was now only applicable in isolated cases. It asked Germany to take account of the finding of the European Committee of Social Rights.

Prison work

60. The German delegate explained that when prisoners worked outside of prison there was no reason why they should not work under the same conditions as other employees. However, work carried out in prisons imposed costs on the latter and involved an element of resocialisation, which was why the pay rates were below labour market levels. Account should also be taken of prison living costs. The pay had in any case recently been increased from 5 to 9% of the average national wage. If circumstances allowed, a further increase might be possible.

61. In answer to a comment from the ETUC representative that 9% of what could be earned on the labour market was not a real level of pay, the German delegate agreed that this was really more a form of pocket money pending prisoners' reintegration into society.

62. The ETUC representative thought that whether or not prisoners agreed to work was an important criterion. The German delegate replied that 60% of prisoners found work and it was not possible to meet all the demands for jobs, which in practice meant that prisoners had consented to work.

63. The United Kingdom delegate said that the European Committee of Social Rights had not been unanimous in its non-conformity finding, as was shown by the dissenting opinion appended to the conclusion.

64. The IOE representative thought that the training received by prisoners also had a cost and that the same applied to work organised in prisons by private firms. She agreed with the author of the dissenting opinion.

65. The Bulgarian delegate thought that the situation in Germany was reasonable and that account had to be taken of the real cost of prison work when determining the rate of pay.

66. The Portuguese delegate thought that banning forced labour had been a great step forward for modern civilisation. The situation in Germany therefore worried her. Work without their consent would not contribute to prisoners' rehabilitation.

67. The Romanian delegate thought that prison work was more concerned with maintaining prisoners' links with the outside world than with training.

68. The Cypriot delegate thought that this was a sensitive matter. Conditions should not be too unlike those of the labour market.

69. On a proposal of the President, supported by numerous delegates, the Committee called on the German authorities to take all appropriate steps to increase the rate of pay.

GREECE

Prohibition of discrimination in employment

a. Quota on the admission of women to the police

70. The Greek delegate told the Committee that in June 2002 the Greek Council of State had ruled that the situation was in compliance with the European Union Directive. It had based its decision on the character and nature of the Greek police force, its duties, the specific nature of its activities and working conditions and the biological differences between women and men.

71. There were 4 123 women police officers out of a total of 44 000.

72. The Bulgarian delegate thought that women's reduced muscular capacity made them unsuitable for certain functions, for example moving persons injured during police action. He had himself observed the inability of a few emancipated young women to carry out their duties in emergencies. They had been reduced to impotence.

73. The Irish delegate thought this might be a cultural problem. He was convinced that, if not a majority of at least certain women could successfully undertake these duties, given the right training.

74. The delegates of Portugal, Sweden, the Netherlands and Belgium thought that such flagrant discrimination was unacceptable and should be abolished immediately. They noted that certain men lacked the necessary muscular capacity and also required training and that, besides, aptitude tests consisted not just of physical but also of intellectual exercises.

75. The Cypriot delegate agreed that there was no equality, but wondered whether the European Committee of Social Rights had had all the necessary information to reach a decision.

76. The Secretariat confirmed that this had been so. The Cypriot delegate then proposed that Greece not be asked to take action at this stage.

77. The ETUC representative said that the Council of State's decision had concerned the situation's conformity not with the Social Charter but with the European Union Directive. Nor had the Greek court referred the matter to the Luxembourg Court for a preliminary ruling, which might have led it to reach a different decision.

78. In answer to the President, the Greek delegate said that he had no other information to give at this stage.

79. The President noted that there was no intention of bringing the situation into conformity with the Charter and called for a vote on a draft recommendation. By 21 votes to 4, with 6 abstentions, the Committee proposed that the Committee of Ministers adopt a recommendation to Greece, asking it to bring the situation into conformity with the Charter.

b. Non-access of foreign nationals to the civil service

80. The Greek Delegate stated that matters relating to the appointment of civil servants are dealt with by Act 2683/99 respecting the Civil Servants' Code. Article 4 of the said Act allows for the appointment in the civil sector of foreigners, nationals of non-EU member states on the condition that specific legislation has been enacted. However, such legislation had not been enacted since most of the jobs in the public sector are linked with the concept of exercising public authority.

81. The delegates of France, Denmark and Belgium said that there was a difference between holding a civil service post and exercising public authority, particularly when a country had a very large public sector. Under the influence of the Luxembourg Court, bans on foreign nationals' access to the civil service were becoming the exception rather than the rule, at least with regard to nationals of the European Union and the European Economic Area.

82. In Norway, only very senior administrative posts were closed to foreigners, and naturalisation was a solution to this problem in appropriate cases.

83. The ETUC representative said that opening up civil service posts to foreigners was not a constraint but had a very positive aspect that was the very essence of European integration.

84. In reply to the Netherlands delegate, the Greek delegate said that his authorities had no intention of changing the situation in the immediate future.

85. After discussion, the Committee decided not to adopt a warning in this supervision cycle as it was the European Committee of Social Rights' first finding of non-conformity but it called on Greece to bring the situation into conformity with the Charter.

Prohibition of forced or compulsory labour

- a. Length of compulsory service - up to twenty five years - for career officers who have received periods of training

86. The Greek delegate said that the Greek Ministry of Defence had drafted amending legislation that would be presented to Parliament before the end of 2002. The bill's preamble referred explicitly to the Charter. According to circumstances, the additional length of service following training would become twice the period of training, as opposed to three or four times that period under the present system. In addition, any officer who wished to leave the army after 15 years' service could do so after giving two years' notice.

87. The Committee decided to await the European Committee of Social Rights' assessment of the forthcoming legislation.

- b. Criminal penalties that may be imposed on seafarers who cease to carry out their duties, even if there is no threat to the safety of the vessel or the health and lives of persons on board

88. The Greek delegate said that the provisions in question had been amended in February 2002 by Section 7 of Act 2987.

89. The Committee took note of this positive development and decided to await the European Committee of Social Rights' assessment of the situation.

- c. Length of replacement service for conscientious objectors

90. The Greek delegate said that in 1997 the additional period of service imposed on conscientious objectors had been 18 months in every case, whatever the length of military service of the category concerned. The additional period had since been reduced to 18, 16, 14 or 12 months, depending on whether the corresponding period of military service was 18, 12, 6 or 3 months.

91. The total length of service for conscientious objectors was therefore now:

- 36 months compared to military service of 18 months
- 28 months compared to military service of 12 months
- 20 months compared to military service of 6 months
- 15 months compared to military service of 3 months.

92. It was planned to reduce the period of military service still further in 2003, which would affect the total length of service of conscientious objectors.

93. The Cypriot delegation proposed that they await the European Committee of Social Rights' assessment of the changes.

94. The Netherlands delegate, supported by the ETUC representative, noted that in certain cases conscientious objectors' length of service was four times that of the corresponding military service. She asked whether there were plans to reduce this additional period.

95. The Greek delegate said there were not.

96. On a proposal of the President, the Committee recalled that the Committee of Ministers' Resolution relating to collective complaint no 8/2000 was still in force and called on Greece to continue its efforts to bring the situation into conformity with the Charter, particularly by reducing the additional period imposed on conscientious objectors.

IRELAND

97. The Irish delegate indicated that there is no conscription in Ireland and that military service is entirely on a voluntary basis. Therefore, when people decided to join the army, they knew about the conditions they were going to face. At one point, military pilots were offered better paid civilian jobs and decided to resign. Their resignation was refused because the State had trained them at its own expense and had to protect that investment. It therefore appeared to him that in certain circumstances, such as the one described, the length of compulsory service which may be required of army officers could be justified. He also indicated that at the end of 5 years, you could be allowed to leave the army but some could continue to serve until 50 or 60, the assumption being that this is a career choice.

98. The German delegate expressed the view that the decision of non-conformity of the ECSR was unrealistic, especially when seen in the light of the September 11 event.

99. The Romanian delegate underlined the fact that military service was on a voluntary basis and that persons who joined the army were fully aware of their conditions of work. She also said that a great number of resignations at the same time in the army could jeopardize national security. She therefore considered that the situation was justified.

100. The United Kingdom delegate proposed that Ireland provide statistical information in their next report to be submitted to the ECSR. How many people's resignation are refused; how much average time do they have to stay in the army.

101. The Cypriot delegate indicated that this was a question of principles, that the number of people concerned was not relevant and that Ireland did not indicate any wish to change the legislation on this point.

102. The Cypriot and the Portuguese delegates, supported by the ETUC, requested a vote on a warning as Ireland did not indicate any wish to amend the legislation on the point mentioned.

103. The Committee proceeded to vote on a warning, which was not adopted (13 votes for, 10 against and 6 abstentions).

THE NETHERLANDS (NETHERLANDS ANTILLES AND ARUBA)

Provisions against discrimination

104. The Netherlands Antilles delegate announced that the minimum provisions called for by the ECSR would be incorporated into national law and that the secretariat will be asked to comment on the drafts of these proposals.

105. The Committee agreed not to take a decision, but to await the ECSR's next assessment of the situation.

Measures to promote employment among women

106. The Netherlands Antilles delegate said that the situation of women on the labour market was improving because the economy was moving away from the industrial sector and becoming stronger in the service sector, which provided more quality jobs for women. He acknowledged, however, that efforts were currently concentrated on solving problems related to drug-trafficking, which mainly involved young men.

107. The Committee considered that there was cause for concern and strongly encouraged the Netherlands Antilles to take steps to promote employment among women in order to bring the situation into line with the Charter.

POLAND

108. The Polish delegate said that the information in the ECSR's possession was incomplete - for instance, there were plans to amend the legislation or the already amended legislation and open a number of professions, such as those of nursing auxiliary and sworn translator, to foreigners - and inaccurate - for instance, there was complete equality of treatment for inland navigation sailors. Moreover, no information had yet been asked for as to why foreigners were barred from certain other occupations. Comprehensive information would be included in the next report.

109. The Committee agreed not to take a decision, but to await the ECSR's next assessment of the situation.

PORTUGAL

110. The Portuguese delegate said that the study launched with a view to revising the criminal and disciplinary code applicable to the merchant navy had been completed. It had still to be submitted to Parliament. In the meantime, a draft legislative decree repealing the provisions that had been criticised had been submitted to the Cabinet for approval. The preamble to the decree expressly stated that the latter was designed to bring the situation into line with the European Social Charter.

111. At the suggestion of the ETUC representative, whose proposal was endorsed by the Cypriot delegate, the Committee welcomed the Portuguese Government's good intentions and decided to await the ECSR's next assessment of the situation.

TURKEY

Provisions against discrimination

112. The Turkish delegate confirmed that there was no legislation specifically concerned with discrimination in general. A law amending the Employment Act (No.1475/1971) had recently come into force (9 August 2002). The new law provided for protection against dismissal on grounds that were discriminatory or as a reprisal, placing the burden of proof on the employer in the event of alleged discrimination. It provided for a right of appeal and, if the court found that discrimination had occurred, for reinstatement of the employee and compensation ranging from six to twelve months' salary. The government was aware that the finding of non-conformity was broader and urged the authorities to combine all anti-discrimination provisions in a single law. This would require action by Parliament. Accordingly, a Committee of university experts had been appointed to study all the anti-discrimination provisions and their conformity, particularly in respect of the points raised by the ECSR, with international legal instruments.

113. The Committee agreed not to take a decision, but to await the ECSR's next assessment of the situation.

Occupations not open to foreigners

114. The Turkish delegate informed the Committee that a Bill on working permits had been submitted to the Prime Minister's office in January 2002. It was designed to regulate the work permits of foreign nationals and repeal law No. 2007/1932 in order to open the occupations covered by the law to foreigners. He had no information about the timetable for the introduction of this legislation.

115. The Secretariat pointed out that the list of occupations from which foreigners were barred was much longer than the list of occupations covered by law No.2007/1932 and that the finding of non-conformity covered all the occupations from which foreigners were barred.

116. The Committee urged the Turkish Government to bring the situation into line with the Charter as soon as possible.

Martial law

117. The Turkish delegate pointed out that this was a special law that was applied only in exceptional circumstances. The Ministry of Employment and Social Welfare had drawn the matter to the attention of the Ministry of Justice. The latter had replied that there were no objections as regards principle, but that arrangements would have to be made to bring the situation into line with the Charter.

118. The Committee agreed not to take a decision, but to await the ECSR's next assessment of the situation.

Anti-Terrorism Act

119. The Turkish delegate said that in order to bring this law into line with European Union requirements, a new law (No. 4771/2002) had come into force on 3 August 2002. It amended Article 159 of the Criminal Code and provided that opinions expressed in writing, orally or with images would not be punished unless they intentionally insulted bodies or institutions referred to in the first paragraph.

120. At the suggestion of the ETUC representative and the Cypriot delegate, the Committee informed the Turkish authorities that it attached great importance to this problem, which undermined fundamental rights, and that the issue was crucial to democracy. It invited them to take further steps to safeguard journalists' rights. It welcomed the progress in the situation, which was a step forward on the Turkish authorities' long road towards conformity with the Copenhagen criteria.

Sanctions against sailors

121. The Turkish delegate confirmed that the legislation that was at variance with the Charter was still in force and that its amendment was still on the agenda in connection with amendments either to the Code of Commerce or to the Maritime Code. He had no precise information about the timetable for such changes.

122. The Cypriot delegate pointed out that the situation had been at variance with the Charter since 1996 and that no tangible steps had been taken to remedy it.

123. Observing that there was no support for a recommendation, the President held a vote on whether to issue a warning. It was agreed, by 25 votes to 1, with 2 abstentions, to do so.

UNITED KINGDOM

Job-seekers' allowances

124. The United Kingdom delegate said that the information supplied to the ECSR was based on a misunderstanding of a request for information by the ECSR in their previous conclusions on this article. The information supplied concerned possible sanctions against JSA claimants who had been unemployed for some time and were refusing the opportunity to participate in active labour market programmes. Claimants of JSA could refuse to apply for a job that did not match their qualifications or experience for the first 13 weeks without the possibility of sanctions. After this period they could continue to restrict their occupational search if they could demonstrate that their aspirations remained realistic within the labour market.

125. The Cypriot delegate stressed that the situation raised a more general issue that was relevant to several countries. Basically, the question was to what extent the concept of suitable employment could be restricted.

126. The Committee agreed not to take a decision, but to await the ECSR's next assessment of the situation.

Sanctions against sailors

127. The United Kingdom delegate confirmed that an amendment to Section 59 was still on the agenda, but that priority had been given to more important legislative changes, following international developments affecting sailors' safety.

128. The ETUC representatives pointed out that the situation had been criticised for the last 30 years, and that five years previously the Committee of Ministers had addressed a recommendation on the subject to the United Kingdom.

129. The IOE representative said that obsolete laws never took priority on the parliamentary agenda and that delays were normal. The government's firm undertaking should, in her view, be sufficient for the Committee.

130. The United Kingdom delegate pointed out that the situation had not been at a standstill for the previous five years, and that all the employers' organisations and trade unions concerned had been consulted during that period.

131. At the suggestion of the Cypriot delegate, the Committee expressed concern about the slowness of the revision process and stressed that the United Kingdom Government must bring the situation into conformity with the Charter as quickly as possible. It decided not, at that stage, to renew Recommendation No.RChS(97)3, which was still in force.

Art. 1§3 – Free placement services

TURKEY

132. The Turkish delegate explained the legal basis (a 1987 circular of the Turkish Employment Agency) for the notification fee. He underlined that the very modest fee was not charged in all situations, for example there was no fee when a vacancy could be filled by a disabled person or an ex-prisoner. In addition, it was common practice that an employer was not charged for the first 10 vacancies notified. The delegate stated that the authorities had taken note of ECSR's conclusion and there was, he said, a political will to look into the possibility of abolishing the fee.

133. The Bulgarian delegate recognized that fee-charging is contrary to the Charter, but he would not rule out that a small fee might stimulate employers to behave responsibly for timely updating job notifications.

134. The Romanian and Cypriot delegates observed that under the Charter the basic employment services must be free of charge and if the fee was not really important in economic terms it should be so much easier to abolish it.

135. The IOE representative said that employers notifying vacancies were in effect doing society a service and they should therefore not be liable to pay a fee, which was in reality just another tax on employers.

136. The Committee took note of the information provided and urged the Government to abolish the fee on notification of vacancies.

Art. 5 – Right to organise

AUSTRIA

137. The Austrian delegate stated that while there had been no change to the legislation there had been some developments. The issues surrounding the election of candidates to works councils had been the subject of Government consultation with a view to adopting new legislation on the subject. However currently there was a case on this point before the Austrian Constitutional Court which had requested a preliminary ruling from the European Court of Justice. The Austrian delegate stated that the Government was awaiting the outcome of this case before taking any further steps and requested the Committee to wait until the next cycle before taking any further action.

138. The ETUC delegate stated that the situation was a serious one, and that there was an urgent need for amendments to the legislation as it will be some time before a final judgment is handed down. Further the issue before the Austrian Constitutional Court was not identical to the situation criticized by the ECSR.

139. Several delegates were in favour of awaiting the outcome of the Constitutional Court judgment before taking any further action.

140. The Committee decided not to propose that the recommendation be renewed but await the developments. However it emphasised that the situation was a serious one and that it required the Austrian Government to take action to remedy it. Further the Committee stated that it considers the Recommendation RecChs (99)¹ still to be valid.

DENMARK

1. Closed shop clauses

141. The Danish delegate informed the Committee that the Danish Government for political reasons found that protection of the negative right of association should be strengthened. An inter-ministerial committee had been set up in the spring of 2002 to examine the issue of closed shops and on the basis of the recommendations of this committee, the Government had now decided to table in the autumn of 2002 draft legislation to prohibit closed shop clauses.

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

2. The Danish International Shipping Register

143. The Danish delegate referred to her explanations given on previous occasions and recalled that the objective of the international register (DIS) was to prevent merchant ships from flagging out and to preserve employment on Danish conditions and terms. She pointed out that the Danish situation was not so special; 8 European states had established similar international registers. She further referred to the ongoing discussions in ILO on the impact on seafarers' living and working conditions of changes in the structure of the shipping industry. As regards the question of non-resident seafarers there had been different opinions in the Joint Maritime Commission, but it had not been deemed necessary to make any recommendations to Denmark on this issue. With respect to domestic developments the delegate recalled that in 1997 the shipowners and seafarers' unions had agreed that the latter should be present when collective agreements were negotiated with foreign trade unions on behalf of foreign seafarers on DIS ships. This arrangement has since been consolidated and further developed by including an appendix to the Danish collective agreements stipulating the minimum conditions under which foreign seafarers should be employed. The delegate noted, however, that one trade union had recently refused to sign the agreement with the shipowners in this respect.

144. The Cypriot delegate, in view of the agreements concluded between shipowners and the Danish trade union, wondered why the Government deemed it necessary to maintain the offending provision in legislation.

145. The Danish delegate replied that in the Government's opinion a change in the legislation on this point would certainly result in Danish ships flagging out and in Danish seafarers being replaced by foreigners at much worse terms and conditions.

146. The German, Icelandic, Irish, Norwegian and United Kingdom delegates considered that this was a case of a conflict between what they considered to be an abstract principle established by ECSR and a situation which in practice was satisfactory and had even improved during the reference period.

147. The French and Romanian delegates understood the economic arguments put forward by the Danish delegate, but emphasised that the rights of the Charter must be respected. The French delegate observed that inferior conditions on board ships were often the cause of disastrous accidents at sea.

148. The ETUC acknowledged that the Danish delegate had made a number of points which were relevant in social terms, however the core of the problem was that Denmark had found it necessary to introduce legislation to restrict trade union rights. As everything seemed to hinge on economic viability there was reason to fear that second registers would be followed by third or fourth registers of inferior quality whenever economic considerations dictated it.

149. The IOE representative congratulated Denmark on having found good practical solutions to very difficult problems. The shipping sector was important in Denmark and in her opinion employment conditions on board Danish ships were in any case far above ILO requirements.

150. The Committee requested the Danish Government to include all relevant information on the situation in the next report and decided to await the next assessment of ECSR.

ICELAND

151. The Icelandic delegate stated that efforts had been made by the Government to improve the situation, in respect of both closed shop and priority clauses. The conclusions of the ECSR had been brought to the attention of the social partners and efforts have been made to remove them. Progress had been made on closed shop clauses, unions were now forbidden to have these clauses in their constitutions. However priority clauses, although on the decline, were an important part of the Icelandic labour market system and therefore it would take time before the social partners could reach a consensus on their abolition. The outcome of the next round of collective bargaining should be awaited.

152. Several delegates (Denmark, Finland, ETUC, Ireland, Sweden United Kingdom) felt that Iceland had made progress, that efforts continued to be made and that the Government should be given more time.

153. The Committee noted the progress made by Iceland on these issues but stressed that the Government must encourage the abolition of priority clauses and decided to await the ECSR's next assessment of the situation.

IRELAND

154. As regards the closed shop issue the Irish delegate reiterated that the Irish Government's approach to industrial relations was voluntarist and precluded a high level of state intervention. Current economic prosperity is largely due to good industrial relations and the Government does not wish to undermine this through imposing restrictions on trade unions.

155. As regards the negotiating licence system the Irish delegate stated that the system had been introduced to prevent the fragmentation of the trade union movement and had contributed to the stability of industrial relations, which allowed the economy to grow.

156. The Committee took the issues separately:

1. Closed Shop

157. Several delegates pointed out that there had been no new developments on this issue and there was no evidence that the Government was making efforts to change the situation.

158. The Committee decided to propose that a recommendation be addressed to Ireland (16 votes for, 4 against and 9 abstentions) calling for the end of closed shop practices.

2. Negotiation licences

159. The Committee refers to its decision under Article 6§2 in this respect (renewal of the recommendation).

LUXEMBOURG

160. The Luxembourg delegate recalled that two years ago he had told the Committee that the problem concerning eligibility of foreigners as candidates for works council elections would be remedied shortly. Unfortunately problems had cropped up related to national representativity rules and a solution had been delayed. However, the Government was committed to introducing the necessary changes before the end of its term and consultations had been held in 2002 with the social partners to this end.

161. The ETUC representative asked when the next works council elections would take place and emphasised that the situation ought to be changed in due time before the elections.

162. The Luxembourg delegate explained that elections are held every five years with the next elections being in November 2003. Although the Government's intentions were clear he could not guarantee that the changes would be made by that date.

163. The Committee took note of the Government's intention to bring the situation into conformity with the Charter and decided to await the next assessment of ECSR.

MALTA

164. The Maltese delegate confirmed that the Government intended to change the situation and had submitted three draft bills to Parliament which would bring the situation into conformity with the Charter: the new Conditions of Employment Regulations Act, a new police force act and a new industrial relations act. The first of these bills had already reached the committee stage and would be enacted in the near future.

165. The United Kingdom delegate welcomed the legislative progress made.

166. The Dutch delegate asked whether a more specific time-frame for the enactment of the various bills could be indicated.

167. The Maltese delegate stated that if nothing unforeseen happened all three bills would be passed by next summer at the latest.

168. The Committee took note of the progress made and decided to await the next assessment of ECSR.

THE NETHERLANDS

169. The Dutch delegate informed the Committee that the closed shop clause in question was a dead letter, which had not been applied since the 1970s and the organisations concerned had indicated that the clause would be removed from the collective agreement, probably as from 1 February 2003.

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

THE NETHERLANDS (NETHERLANDS ANTILLES AND ARUBA)

171. The Netherlands Antilles delegate reported that a bill providing for the abolition of the prohibition applied to foreigners on becoming members of the socio-economic councils was due to be signed and published (thereby becoming effective) in the coming months.

172. The Committee took note of this information and decided to await the assessment made by the European Committee of Social Rights of these changes.

POLAND

173. The Polish delegate stated that the Government accepted ECSR's conclusion as regards civil servants and new legislation to remedy the situation was under preparation.

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

UNITED KINGDOM

175. The United Kingdom delegate stated that the Government recognised the important role of the trade unions and had taken a number of measures to restore trade union rights. The Government's objective was not only more employment and a more skilled workforce, but also high standards for workers and trade unions. The delegate expressed satisfaction that ECSR had noted the many improvements introduced by the 1999 Employment Relations Act (ERA). As regards the remaining criticism on certain specific points (Sections 15, 65, 174 and 226A ERA) he said that the Secretary of State for Trade and Industry had announced a review of ERA which would take into account the views of all relevant actors, including the comments of ECSR.

176. The Danish and Icelandic delegates noted that the United Kingdom Government had already made great progress, especially considering the starting point after many years of right-wing government. In their opinion more time should be allowed to improve the situation further.

177. The Dutch delegate was also impressed by the efforts made, but requested more information on the time-frame for the review of ERA.

178. The United Kingdom delegate explained that a consultation document would be issued in the next few months and any amendments deemed necessary would be introduced in the lifetime of the current parliament. He stressed that it was difficult to predict with any precision the outcome of the review.

179. The ETUC representative acknowledged that much had been done to remedy a number of problems, but nevertheless serious problems remained especially as regards the autonomy of trade unions to manage their own internal affairs. The announced consultation was a positive step, but he heard no commitment to change the situations concerned and he felt that the Committee should request the Government to speed up the process.

180. The Committee took note of the progress made, but urged the Government to bring the situation into full compliance with the Charter as soon as possible. It decided to await the next assessment of ECSR.

Art. 6§2 – Negotiation procedure

DENMARK

181. The Danish delegate referred to his remarks under Article 5.

182. The Committee referred to its decision under Article 5.

GERMANY

183. The German delegate stated that civil servants have a very different status from other employees; their rights and obligations are governed by public law, although trade union organizations are involved in drafting the regulations that lay down the terms and conditions of employment. In fact in 2000 a pilot project was launched to improve the participation of trade unions in the process and this will be developed. However there is no intention to alter the status of civil servants. On privatisation of the railway and telephone services individuals were given the choice, as to whether they wished to retain their status as civil servants or become employees employed under a regular contract of employment. There can be no question of requiring staff to renounce their right to remain civil servants.

184. The situation is transitory, as all new employees in these companies will have the status of employees and not civil servants. Already the number of civil servants in these companies has substantially decreased.

185. Several delegates emphasized the transitory nature of the situation and therefore felt that a warning would be inappropriate.

186. The ETUC representative highlighted that although trade unions were consulted there was no collective bargaining in the sense normally understood by the term.

187. The Committee decided not to take any action at this stage but to signal its concern about the situation.

IRELAND

Negotiation licence

188. The Irish delegate referred to his remarks under Article 5.

189. The Cypriot delegate reminded the Committee that the conditions imposed on a trade union for obtaining a negotiation license (amount of fee and number of member) were such that they constituted an obstacle to the freedom of trade unions to organise and consequently to negotiate. As there were no signs of progress and apparently no willingness to change, she considered that the Committee should vote on a recommendation.

190. The Belgian, Dutch, French and Portuguese supported the view of the Cypriot delegate.

191. The UK delegate asked whether the license fee merely covered administrative costs. If this was to be the case, the situation might be viewed differently by the ECSR.

192. The ETUC representative emphasised that trade union freedom was at stake and it was worrying that there was no intention of remedying the situation. He would favour a new recommendation, but in view of the Irish refusal to give effect to previous recommendation, consideration should perhaps be given to organising a hearing.

193. The Irish delegate reiterated that the licensing system was introduced to prevent the trade union movement from breaking up. The system has worked well and still does and it was supported by all relevant parties in Ireland, including the trade union movement. He considered that ECSR should be more tolerant of national and cultural differences where the labour relations systems are concerned.

194. The Committee proceeded to vote on a proposal for a renewal of the recommendation to Ireland, which was carried with 17 votes in favour, 3 against and 10 abstentions.

Protection against dismissal

195. The Irish delegate referred to his previous remarks, but he indicated that the specific issue of dismissal protection might be looked at in the context of an upcoming review of the Unfair Dismissals Act.

196. The Portuguese delegate recalled that a warning was adopted when the case was last considered and in her view this was a serious breach of the Charter. As there was no intention to change on the part of the Irish Government she proposed that a recommendation be voted upon.

197. The Cypriot and Dutch delegates supported the view expressed by the Portuguese delegate.

198. The ETUC representative observed that what was at stake here was not trade union freedom as such, but the protection of individual workers. In his opinion a recommendation was clearly justified.

199. The Committee proceeded to vote on a proposal for a recommendation to Ireland which was carried with 19 votes in favour, 1 against and 9 abstentions.

THE NETHERLANDS

200. The Dutch delegate noted that this was a negative conclusion for the first time and referred to the dissenting opinion. She underlined that that collective bargaining was entirely free with no hierarchical distinctions between various bargaining levels. This also means that agreements can be concluded at company level. However, if companies could not obtain an exemption from the application of sectoral agreements, their right to collective bargaining would in effect be restricted. The delegate considered that ECSR's conclusions was based on concerns expressed by the Dutch Trade Union Confederation (FNV) that the bargaining system might be undermined by employers reaching agreements with small and weak trade unions. The delegate pointed out that exemptions were under no circumstances granted unless the trade unions concerned were completely independent of the employer.

201. The ETUC representative said that even if the small unions were not strictly speaking dependent on the employer, their lack of power might nevertheless lead to an erosion of the standards agreed at the sectoral levels by the main trade unions. He asked the Government to provide more detailed information on the small unions concerned.

202. The IOE representative thinks that the situation in practice in the Netherlands clearly did not justify the concerns of FNV and ECSR.

203. The Committee urged the Government to provide more detailed information on this issue in the next report and decided to await the next assessment of ECSR.

POLAND

204. The Polish delegate stated that the exclusion from collective bargaining of members of the civil service is justified as their status as civil servants is exhaustively regulated by legislation. Allowing for collective bargaining in the different organs of the civil service would undermine the coherence of the system. The delegate emphasised, however, that all draft legislation in this respect is subject to consultation with the social partners which means that the Office of the Civil Service consults with NSZZ Solidarnosc, OPZZ and the Confederation of Mining Sector Trade Unions. In addition, the draft legislation is sent for information to a number of different trade unions organising the personnel of the Government administration. In view of the fact that this was a negative conclusion for the first time she considered that the Government should be given the opportunity to present more detailed explanations in the next report.

205. The ETUC representative said that he had been asked by NSZZ Solidarnosc to transmit its view that civil servants should be given the right to bargain collectively. He added that when looking at the categories of civil servants concerned it was clear that several of them did not exercise state authority and there was certainly no reason to restrict the right to collective bargaining for these categories.

206. The Danish and Portuguese delegates supported the view expressed by the ETUC representative.

207. The Committee urged the Government to bring the situation into conformity with the Charter and decided to await the next assessment of ECSR.

UNITED KINGDOM

208. The United Kingdom delegate was pleased that ECSR acknowledged the important measures, which had been taken to improve the situation. Legislation did not preclude employers from offering more favourable terms to workers relinquishing their union membership. The ECSR, and the European Court of Human Rights in the case of Wilson and Palmer case have found that the law was not sufficiently protective on this point. The delegate said that the Government was looking closely at the judgment as well as at the comments of ECSR and they would of course be taken into account in the up-coming review of the Employment Relations Act.

209. The ETUC representative said that the Wilson and Palmer case had shown the problems clearly, but it was regrettable that a situation which had already been identified as a problem, not only by ECSR but also by ILO, should await a judgment by the European Court of Human Rights before attracting the attention of the Government. ETUC considered that measures needed to be taken quickly to remedy the problem.

210. The Committee took note of the progress made, but urged the Government to bring the situation into full compliance with the Charter as soon as possible. It decided to await the next assessment of ECSR.

Art. 6§3 – Conciliation and arbitration

DENMARK

211. The Danish delegate described the basic features of the industrial relations system in Denmark and underlined that the Public Mediator is independent of the Government. The linkage rule was just a reflection of the inherent nature of the Danish labour market model and was not a restriction on the right to take collective action. However, it was always a problem if small groups were able to hold the rest of the labour market hostage by way of continuing strikes and the linkage rule was an instrument to avoid such situations.

212. The Icelandic delegate supported the Danish delegate and pointed out that the Nordic labour market systems had evolved over many years and with the full involvement of the social partners. On behalf of all the Nordic countries she proposed a meeting between the ECSR and a joint delegation from the Nordic countries.

213. The ETUC representative stated that a Danish affiliate organisation had expressed its dissatisfaction with the linkage rule. The linkage rule was not really a “Nordic” problem, but more particularly a Danish problem of conformity, which had to be dealt with. As far as a possible meeting with ECSR was concerned he noted that ETUC wished to be a participant.

214. The Danish delegate said that the dissatisfaction referred to by the ETUC representative was connected to a complaint submitted some years ago to ILO, but the Government had already initiated consultations with the organisation concerned.

215. The IOE delegate thought that a meeting with ECSR was a good idea. It was very important that ECSR was provided with an in-depth explanation of the Nordic system, which had been built up over many years.

216. The President asked the Nordic countries to put forward a formal request for a meeting with ECSR to allow the Secretariat to take the necessary organisational measures.

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

MALTA

218. The Maltese delegate referred to his remarks under Article 5.

219. The Committee referred to its decision under Article 5.

NORWAY

220. The Norwegian delegate presented the facts of the labour dispute in the oil sector which had led to compulsory arbitration being imposed in July 2000. She pointed out that the intervention had not been aimed at the strike as such, but the general lockout announced by the employers' side, which would have led to a total production stop with the most serious consequences for Norway, economic and otherwise. She indicated that this had been a situation where any Norwegian Government would have intervened.

221. She further referred to a recent decision by the European Court of Human Rights (ECHR) in a case concerning a similar conflict in the oil sector dating from 1994. ECHR had held the application (alleging violation of Article 11 of the European Convention on Human Rights) from the Federation of Offshore Workers' Trade Unions and others to be inadmissible as manifestly ill-founded after having examined in detail the consequences of the conflict. ECHR notably found that the intervention in 1994 fulfilled the conditions in Article 11 para. 2. Considering that Article 31 of the Charter is quite similar to Article 11 para. 2 of the Convention and that the interventions in 1994 and 2000 had many similarities, the Government felt justified in taking the view that the situation in July 2000 was so serious that it fell within the scope of Article 31.

222. The Executive Secretary said that the ECHR decision was an important legal development which had occurred after ECSR had reached its conclusion. Under those circumstances it would probably be most appropriate to await the next assessment by ECSR.

223. The ETUC representative observed that this was an extremely important issue to the trade union movement. As regards the ECHR decision he did not consider that ECHR and ECSR should necessarily have a uniform approach having in mind that the Charter expressly guaranteed the right to strike whereas Article 11 of the European Convention on Human Rights “merely” concerned freedom of association. He felt that the Committee should at least vote on a second warning to the Government. He noted in this respect that the decision to impose compulsory arbitration had in fact been taken by the Government by issuing a provisional ordinance and not by the Parliament.

224. The Norwegian delegate pointed out that the provisional ordinance was an instrument provided for by the Constitution for situations where the Parliament was not in session. ECSR had previously held that the nature of a provisional ordinance in itself did not pose any problems of conformity.

225. The Dutch, Cypriot, and Irish delegates as well as the IOE representative considered that there was no need for a warning or a recommendation and that the Committee should await the next assessment of ECSR.

226. The Portuguese delegate found the ECHR decision interesting, but strictly speaking it was a matter of legal assessment which did not concern the Committee. However, on the basis of the social and policy arguments presented by the Government it was clear that no further action from the Committee was called for.

227. The Danish delegate expressed concern at divergent interpretations of international instruments and she seriously doubted that the conditions of Article 31 had not been respected in the Norwegian case.

228. The Committee took note of the information provided and taking into account, *inter alia*, the recent decision by the European Court of Human Rights, it decided to await the next assessment by ECSR.

SPAIN

229. The Spanish delegate stated that her Government was unable to understand the conclusion of ECSR. Although compulsory arbitration was not ruled out under Spanish law, it could be applied only subject to the conditions set forth by Article 31 of the Charter. She pointed out that there had been no cases of compulsory arbitration during the reference period and it was therefore difficult to see why ECSR had reached a negative conclusion for the first time.

230. The Portuguese delegate considered that the situation should be looked at from a social point of view. There had been no cases of compulsory arbitration during the reference period and the procedure was clearly an exceptional one. In her view the Committee should not take any further measures in this case.

231. The Italian, Irish and United Kingdom delegates supported the view expressed by the Portuguese delegate.

232. The ETUC representative would not disagree in substance with the statement of the Portuguese, but the Committee should nevertheless bear in mind that the legal assessment of ECSR was that the situation was not in conformity with the Charter.

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

Art. 6§4 – The right to collective action

BELGIUM

234. The Belgian delegate stated that the practice of some lower courts had led to a number of unfortunate decisions relating to the right to strike. It was the Government's clear intention to respect the Charter as reflected in a Government circular adopted by the Council of Ministers in December 2001. However, the social partners were opposed to legislation and instead they had agreed in March 2002 to a protocol, which aimed to avoid strike situations being taken to court. The Government had noted with satisfaction that the number court procedures had declined since the adoption of the protocol.

235. The ETUC representative confirmed the statement of the Belgian delegate. ETUC had submitted its views on the protocol to ECSR. The protocol was indeed being applied, but problems remained, in particular in respect of employers with "loose" links to the national employers organisation. He stressed, however, that things were moving in the right direction.

236. The Portuguese delegate was satisfied to note that appropriate measures had been taken. Understanding between the social partners was preferable to legislation and court action, which tended to circumscribe the right to strike.

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

CYPRUS

238. The Cypriot delegate explained that under Cypriot law a decision by a general assembly of a trade union must be endorsed by the executive committee of the union. She also confirmed that a group of non-unionised workers could call a strike without any endorsement by a trade union. She assured the Committee that ECSR's conclusion would be brought to the attention of the Labour Advisory Board and detailed information on the situation would be provided in the next report.

239. The ETUC representative could not see the reason why such matters had to be regulated in legislation. The decision to go on strike should be taken by trade unions according to their own by-laws or statutes.

240. The German delegate recalled that under German law strikes also had to be endorsed by a trade union.

241. The Danish delegate emphasised that in her view the right to strike was a trade union right and she did not understand why ECSR saw a problem here.

242. The Committee took note of the information provided by the Cypriot delegate and the commitment to take the ECSR's conclusion into consideration. It decided to await the next assessment of ECSR.

CZECH REPUBLIC

243. The Czech delegate wished to thank the Secretariat for the meeting organised in Prague in July 2002 to explain in detail the conclusions to the Czech authorities. As regards ECSR's conclusion in respect of Article 6.4 he explained that the industrial relations system in the Czech republic was young, but it was nevertheless a system, which functioned quite well. This was also the conclusion of a new ILO study. The right to strike was expressly guaranteed under Czech law in the context of collective bargaining and over the last 11-12 years there had only been 4 cases of strikes not related to collective bargaining being taken to court. The decisions of the court, however, reflect that even where there is an absence of an express legal provision it does not mean that the right does not exist and a strike outside of collective bargaining may therefore under the circumstances also be protected. The delegate added that the trade unions were opposed to specific legislation on strikes outside collective bargaining. With respect to the right to call a strike the Act on Collective Bargaining expressly mentions trade unions as subjects, but in principle the Constitution applies to everyone and other groups or collectivities may therefore also be protected. However, so far there had been no case law on the issue. The third reason for ECSR's negative conclusion was the quota of votes required to call a strike (50%). Here the trade unions agreed with the criticism and the Government intended to change the rule. Finally, as to obligatory mediation the Government did not understand ECSR's conclusion. Under previous case law such an obligation had always been found compatible with Article 6.4. The delegate emphasised that the mediator could only put forward proposals, which did not bind the parties.

244. The ETUC representative noted that the mediation period was one month, which he considered long and he would urge the Government to look into the problem.

245. The Dutch delegate noted that apparently there has been a change in the case-law of the ECSR. The German and United Kingdom delegates agreed and recalled that the ECSR had always accepted cooling-off periods and they saw no problem.

246. The Portuguese delegate considered that one month was rather long.

247. The Committee noted the efforts of the Czech Republic to establish a well-functioning industrial relations system. It took note of the information provided by the Czech delegate and decided to await the next assessment of ECSR.

DENMARK

1. Peace obligation

248. The Danish delegate referred to the 1899 agreement, which laid the ground for the Danish model and under which collective agreements should be respected by both parties during the period of validity. Her Government was highly surprised by the conclusion and it could only be put down to insufficient knowledge of the Nordic labour market models. She noted in this respect that there had been dissenting opinions.

249. The German delegate considered it self-evident that peace had to be observed during the validity of the agreement.

250. The Icelandic delegate supported the Danish delegate and reiterated that the Nordic systems had in effect been created by the social partners themselves. She also noted that ILO had never identified any problems in this respect.

251. The Finnish and Norwegian delegates expressed similar views.

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

2. Civil servants

253. The Danish delegate said that her Government had noted ECSR's arguments and had taken different measures: firstly, new civil servants are only recruited for senior level posts and in what could be termed essential sectors, secondly, the Ministry of Finance has issued a circular pursuant to which civil servants cannot be required to perform work affected by a strike of contract employees and thirdly all civil servants had the option of changing their status to contract employee.

254. The German delegate referred to the situation in Germany and he did not consider that civil servants could reasonably be allowed to strike.

255. The French delegate pointed out that in France civil servants could go on strike without this creating any insurmountable problems.

256. The Maltese, Portuguese and Romanian delegates did not see why civil servants should not have the right to strike.

257. The Irish delegate noted that also in Ireland it was possible for civil servants to strike and he asked the Danish delegate how long it would take before there were no non-senior level civil servants left.

258. The Danish delegate replied that it was difficult to say with any degree of precision, but it would be a period of some years.

259. The United Kingdom delegate considered that the Danish Government was taking a pragmatic approach and clearly the situation was now much less serious than at the time when a recommendation had been adopted. She had noted in particular that the civil servants were free to change their status if they so wished.

260. The ETUC representative said that it was perfectly normal for civil servants to have the right to strike. In the Danish case the transition period could be very long and the number of workers concerned was substantial. In his view the Committee should call on the Government to speed up the process of bringing the situation into conformity.

261. The Bulgarian delegate said that the Committee should be tolerant and give the Danish Government more time. Over-reacting could lead to undermining an otherwise very well functioning system.

262. The Belgian, French and Maltese delegates supported the view expressed by the ETUC representative.

263. The Committee urged the Danish Government to bring the situation into full conformity with the Charter and decided to await the next assessment of ECSR.

3. *The linkage rule.*

264. The Danish delegate referred to her remarks under Article 6.3.

265. The Committee referred to its decision under Article 6.3.

FINLAND

266. The Finnish delegate confirmed that a decision by civil servants to go on strike must be approved by a trade union. The objective of this rule was to safeguard the functioning of the civil service. In view of the autonomy enjoyed by the social partners it was only logical that calling a strike was a trade union prerogative. However, she emphasised that forming a trade union is uncomplicated in Finland. As regards strike objectives she recalled that strikes in pursuance of non-contractual matters (ie. matters for which a collective agreement may be concluded) were not lawful, but in the Government's view certain outer limits to the strike right were necessary to ensure the functioning of the public service.

267. The Icelandic delegate supported the Finnish delegate. Given the special position of the trade unions in the Nordic systems it was only natural that the right to strike was primarily a union right.

268. The ETUC representative considered that if the right to strike of civil servants was restricted to situations where collective agreements were being concluded, then this was a serious matter and the Government should be asked to do something about it.

269. The Committee urged the Finnish Government to provide all necessary explanations to ECSR and it decided to await the next assessment on this basis.

GERMANY

1. The denial of the right to strike for civil servants employed in the privatised postal and railway service

270. The remarks of the German delegate on the status of workers in the privatised railway and postal services under Article 6 § 2 apply equally to this issue. The right to strike is incompatible with the status of civil servants in Germany largely as their wages are not set through collective bargaining.

271. The ETUC representative stated that the right to strike for persons employed in a private company was fundamental irrespective of their status. Those who chose to retain the status of civil servants on privatisation were those in the lower grades and essentially did so to retain pension rights. The fact they had been given a choice should not be over emphasised. Also the number of persons concerned, although decreasing is still substantial. The problem will eventually disappear but the transitory period will be of some duration.

272. The Romanian delegate supported the view of the ETUC representative.

273. The Netherlands' delegate stated that there had been no improvement in the situation and therefore a recommendation would be appropriate.

274. The UK delegate stated that the situation had changed since the warning was issued as the numbers concerned had diminished.

275. The IOE delegate emphasised that on privatization the individuals concerned had a choice whether to retain their status as civil servants.

276. The Committee decided not to propose that a recommendation be addressed to Germany on this issue (7 in favour, 10 against and 12 abstentions) but decided to propose that the warning to Germany on this issue be renewed (17 in favour, 2 against and 10 abstentions).

2. *Strikes not aimed at achieving a collective agreement and not called or endorsed by a trade union.*

277. The German delegate reiterated the information provided during the previous supervision cycle that there had been no change to the situation.

278. The ETUC representative referred to previous statements on this very serious case where again no intention to change had been indicated. He urged the Committee to renew the proposal for a recommendation in order to be in line with the working methods.

279. The Netherlands' delegate stated that nothing had changed and therefore there should be a vote on the renewal of the recommendation.

280. The Committee decided not to propose that the recommendation be renewed (4 in favour, 1 against and 23 abstentions).

3. *Peace obligation*

281. The German delegate referred to his earlier remarks and emphasised that collective agreements are concluded for a definite period of time during which the parties are bound by the agreement, including by the obligation not to take collective action whether or not this is expressly stated in the agreement. It should also be noted that the peace obligation only applies to matters covered by the collective agreement.

282. The ETUC representative noted that ECSR had adopted a new approach as regards the peace obligation and that this was a first negative conclusion. Although the new approach required some further analysis, it might be helpful from a trade union point of view as in certain situations it was not very clear whether the peace obligation applied or not. This was often a delicate question, which had been the subject of many court decisions in Germany. He acknowledged that collective agreements were a rule limited in time, but pointed out that certain framework agreements were of indefinite duration.

283. The German delegate said that even in the framework agreements there were time limits established for denouncing the agreement.

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

ICELAND

285. The Icelandic delegate stated that in the view of her Government it was not advisable to allow any group of workers to call a strike. However, it should be noted that it was easy to form a trade union, no complicated procedural rules applied. The delegate explained that following a 2000 amendment to the 1986 Civil Servants' Collective Agreement Act the situation of civil servants is now identical to that of workers in the private sector as far as the right to strike is concerned. This means that during the period of validity of a collective agreement the peace obligation prevails.

286. The ETUC representative noted that this breach of the Charter was longstanding and apparently the Government had no intention of changing the situation. He reminded the Committee of its working methods.

287. The Committee urged the Icelandic Government to bring the situation into conformity with the Charter and decided to await the next assessment of ECSR.

IRELAND

288. The Irish delegate stated that the reason why only authorized trade unions, their officials and members were granted immunity from civil liability in the event of a strike was largely as a result of the history of the trade union movement in Ireland and was a residue of former political conflict in Ireland. Trade unions were required to be licensed in order to ensure they were democratic and enjoyed a certain level of support. The rule that only authorised trade unions enjoyed immunity from civil liability in the event of a strike is to ensure democratic security and to some extent could be characterised as an issue of national security.

289. As regards the possibility for all workers to be dismissed for taking strike action this was to ensure a proper balance between employers and workers. In practice it was rare for an employer to dismiss all striking workers.

290. The Belgian delegate asked the Irish delegate whether Ireland intended to make any changes to the situations criticized.

291. The Irish delegate responded that this was unlikely in the immediate future.

292. The Portuguese delegate pointed out that this situation has been discussed many times and that there has been no change.

293. The UK delegate pointed out that a recommendation had been addressed to Ireland recently on this issue which was still live and that therefore there was no need to propose a further recommendation be addressed.

294. The ETUC representative stated in order to be consistent with the Committee's proposal under Article 5 the recommendation needed to be renewed. This was a longstanding situation and the Government had had ample opportunity to introduce changes.

295. The Committee decided not to propose that the recommendation be renewed but it emphasized the previous recommendation (RecChs (2001)2 was still valid and it called on the Irish authorities to take the necessary measures to bring the situation into conformity with the Charter.

MALTA

296. The Maltese delegate stated that in respect of the peace obligation, this had been accepted by the social partners for decades. He pointed out that this was a first conclusion of non-conformity on this ground and that there had been dissenting opinions by some members of the ECSR on this issue. He asked the Committee to wait for further developments before taking any action. As regards the finding of non conformity by the ECSR on the grounds that strikes in favour of trade union recognition are not protected in law, he had been informed by the Director of Employment and Industrial Relations that this was not the case. Strikes are legal in this situation, although there is no specific provision in the Industrial Relations Act that explicitly guarantees such strikes. The statutory definition of a trade dispute includes a dispute for the purposes of securing trade union recognition. This information will be contained in the next report.

297. The Committee took note of the information and explanations given by the Maltese delegate and decided to await for the next assessment of the situation by the ECSR.

THE NETHERLANDS

298. The Netherlands delegate stated that the right to strike is not specifically protected by domestic law but by international treaties, including Article 6§4 of the Charter, which has been held directly applicable by the Dutch courts. The right to strike can in principle be exercised freely and without restriction. This means that normally a strike which falls within the scope of Article 6§4 of the Charter must be tolerated by the employer and third parties, despite the harm it will intentionally cause them. However, it has been accepted as a general principle of law, that the exercise of rights should not cause an unlawful infringement of the rights and freedoms of others. This principle of law is also applicable to the exercise of the right to strike in Article 6§4 and has been laid down in Article 31 ESC. Owing to this, the courts have developed criteria for determining whether a strike is lawful in this respect. These criteria include the concept of proportionality, which is essential when balancing the respective rights and freedoms involved. The Dutch Government does not agree with the conclusions of the ECSR on this point and will transmit its comments in the next report. Further it is not possible to interfere in the decisions of the courts, as the government has to respect the independence and impartiality of the courts as required by Article 6§1 of the European Convention on Human Rights.

299. The ETUC representative stated that the Dutch Government should accept the interpretation of the ECSR and that the Dutch Courts should take this interpretation into account.

300. Several delegates expressed the view that while it was not possible to interfere with decisions of the courts, the government could take other measures to attempt to bring the situation into conformity such as by adopting legislation or ensuring that the courts were familiar with the conclusions of the ECSR.

301. The Committee took note of the Netherlands delegate's explanations and asked the Government to take appropriate measures to raise awareness of the ECSR conclusions in the courts.

NORWAY

1. Legislative intervention to terminate collective action

302. The Norwegian delegate referred to her remarks under Article 6 para. 3.

303. The Committee referred to its decision under Article 6 para. 3.

2. Peace obligation

304. The Norwegian delegate recalled that both the Labour Disputes Act and the Civil Service Disputes Act imposed a peace obligation during the tenure of collective agreements. However, it was important to realise that the peace obligation had a double or even triple foundation: firstly, it was laid down in labour disputes legislation, secondly it was expressly provided for in most collective agreement, and thirdly, the collective agreement being a binding contract between the parties, it also followed from general principles of contract law. Although the peace obligation could perhaps be said to be broad in scope this followed from the nature of the collective agreements which were intended to regulate employment relationships in a comprehensive manner. The peace obligation had for many years formed an essential part of the collective bargaining system in Norway and it was supported by all parties in the labour market.

305. The delegate further said that the Government had been surprised by ECSR's conclusion which took one element of the industrial relations system and assessed it out of its context. The Government was pleased, however, that a meeting had been scheduled between ECSR and the Nordic countries in March 2003. The meeting would provide an opportunity to explain in depth some important principles of collective labour law in these countries.

306. The Committee took note of the information provided and in view of the upcoming meeting between ECSR and the Nordic countries it decided to await the next assessment by the ECSR.

PORTUGAL

307. The Portuguese delegate stated that the decision to resort to a strike was restricted to a trade union except in firms where the majority of workers are not unionised. In this case the worker's assembly may call a strike. This issue has not been problematic in Portugal and there is no case law on the subject. However there is currently a review of all labour law taking place. This issue may be the subject of Government consultation.

308. The Committee took note of the information given by the Portuguese delegate and decided to await the outcome of the review.

UNITED KINGDOM

309. The United Kingdom delegate was pleased to note that ECSR acknowledged the progress made as regards protection of the right to strike. Although ECSR's conclusions were not always entirely clear, especially as regards the notion of "de facto employer", the Government had duly noted the remaining points of criticism (definition of a dispute, ballot rules, consumer actions and dismissal protection) and would reflect on them carefully in the process of reviewing the Employment Relations Act.

310. The ETUC representative said that the problems were serious and he hoped that the Government do much more than hitherto to remedy them. In his opinion a recommendation was justified, but if this was not feasible, the Committee should at least issue a warning.

311. The Dutch and German delegates considered that the Government should be given more time to pursue its efforts and to provide the necessary explanations to ECSR.

312. The French delegate found the conclusion to be quite clear and his view the Committee should express its concern at the situation.

313. The IOE delegate felt that the Committee should put more emphasis on the progress made and in view of the tremendous costs of collective action, especially to small and medium-sized enterprises, it was not inappropriate to maintain certain restrictions on the right to strike.

314. The Committee takes note of the progress made as regards protection of the right to strike, but urges the Government to continue its efforts to bring the situation into full compliance with the Charter.

Art. 12§3 – Development of the social security system

NORWAY

315. The Norwegian delegate stated that the National Insurance Act was revised in 1997. Under the former legislation a person could lose their right to unemployment benefit if they refused “suitable employment”. Under the current legislation a person can be refused benefit if they refuse an offer of employment “without reasonable grounds”. The purpose of the change in wording was not to restrict the right. The ECSR has interpreted the current wording as more restrictive than the old wording.

316. The Norwegian delegate also stated that an unemployment benefit scheme has a dual function; firstly to provide a guaranteed level of income and secondly to improve the operation of the labour market. A balance must be struck between the two functions. The system in Norway is generous and unemployment low, therefore there must be measures to encourage people to take up employment. No Government could admit that work experience in less skilled jobs is not better than being unemployed, research shows that even short-term unemployment rapidly decreases chances on the employment market. Article 12§3 includes many social security schemes, unemployment benefit being only one of them. Finally the Norwegian delegate stated that the next report would provide information on developments in Norway including the number of people who had been refused benefit on grounds of refusing employment without suitable grounds.

317. The ETUC delegate stated that the substance of the problem was important and the situation has been criticized in other fora.

318. The Icelandic representative underlined the importance of keeping people on the labour market. She asked the Norwegian delegate whether there was a minimum period during which an unemployed person could refuse any job and wait for a job commensurate with skills and experience.

319. The Norwegian delegate stated that there were guidelines on this issue, but there was no specific time limit laid down. He also stated that it was true the situation in Norway had been criticized by the ILO and by the Council of Europe’s Committee of Ministers acting under the European Code of Social Security. Norway took this criticism seriously.

320. The French delegate recalled that the object of an unemployment benefit system was to provide basic protection.

321. The Committee noted that the situation in Norway was serious and asked the Norwegian Government to take steps to bring the situation into conformity with the Charter.

Art. 12§4 – Equal treatment, family benefits and retention of accrued benefits

322. The Luxembourg delegate made a declaration in the name of the 15 countries (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Norway, Poland, Romania, Spain) whose situation is not in conformity with the Charter under Article 12 para. 4 because the payment of family benefits is subject to a residence condition. He indicated that Portugal, the Czech Republic and the Netherlands, whose situation is in compliance with Article 12 para. 4 on this point and Malta and the United Kingdom who have not accepted this provision supported this declaration.

323. He informed the Committee that during its meeting in July the Committee of Experts on Standard-Setting Instruments in the field of Social Security (CS-CO) established a working group in charge of taking a stand on the ECSR interpretation of Article 12§4.

324. He requested that the Governmental Committee not take any decision until the working group, which is an expert body in the field, submits its memorandum to the ECSR as well as to the Governmental Committee.

325. The ETUC expressed its concern about this deadlock situation, objected the way of excluding social partners from taking part in a discussion within the Governmental Committee on a case by case basis. Furthermore he was deeply concerned about the fact that the working group of the CS-CO meets without the social partners being present.

326. The Executive Secretary of the Social Charter took note of the proposal made not to consider the Article 12 para. 4 conclusions during this cycle. He recalled that it is of the competence of the Governmental Committee to examine conclusions of violation adopted by the ECSR. He expressed his surprise at the fact that the Governmental Committee seems to be surrendering some of its competence to a technical committee which, according to his understanding, will prepare legal arguments to contest the ECSR's interpretation of Article 12 para. 4 as far as exportability of family benefits is concerned. He added, with reference to the European Convention on Human Rights case-law, that the principle of equality of treatment is a human rights issue, not a technical issue, and that any attempt to weaken that principle would be contrary to the philosophy of the Council of Europe.

327. The Portuguese delegate indicated that it is important for all committees of the Council of Europe to take a common approach on identical issues and that it is the only reason why it is proposed not to consider the Article 12§4 issue.

328. The President said that it was too early to speak about a deadlock situation, that the only purpose of not considering Article 12 para. 4 during the present cycle was that more information was needed on the technical aspects of the question. He underlined the fact that exportability does involve technical aspects and that Article 12 para. 4 is not Community Regulation 1408/71, although he admitted that the situation in several Contracting Parties is in conformity with this provision.

329. The Committee decided not to examine the conclusions relating to Article 12 para. 4 of the Social Charter and of the Revised Social Charter as far as the exportability of family benefits is concerned.

AUSTRIA

330. With regard to the grounds for non-conformity concerning the conditions under which family benefits were awarded, the Committee referred to the decision it had adopted at its 101st meeting.

331. The Austrian delegate informed the Committee that the conditions for awarding emergency benefit, which the European Committee of Social Rights had considered to be too stringent, had been relaxed by a new law which had entered into force during the reference period.

332. The Committee welcomed this development.

333. With regard to the requirement for a migrant worker to have a job lasting at least three months in order to qualify for family allowances, the Austrian delegate confirmed the information appearing in the national report and said that there was nothing to indicate that the situation would change in the near future.

334. In reply to a question from the Chair, the Secretariat confirmed that there were no similar cases of non-conformity concerning other Contracting Parties and that this provision applied only to foreigners who were not nationals of a European Union member state or a state party to the Agreement on the European Economic Area.

335. The ETUC representative said that as this was a condition which did not apply to nationals, it constituted direct discrimination.

336. The Committee took note of the information provided by the Austrian delegate and asked the Government to bring the situation into conformity with the Charter.

BELGIUM

337. With regard to the grounds for non-conformity concerning the conditions under which family benefits were awarded, the Committee referred to the decision it had adopted at its 101st meeting.

338. The Belgian delegate informed the Committee that the 5-year residence condition required for entitlement to family benefits would be abolished in the next few months and that the Government also intended to abolish the condition whereby beneficiaries of the disability allowance were required to have been in receipt of the supplementary allowance for a child with disabilities under the age of 21.

339. She also confirmed that the maintenance of long-term rights accrued under Belgian social security applied solely in the case of bilateral agreements and that such agreements had not been concluded with Malta, the Czech Republic, Slovakia and Hungary.

340. The Committee welcomed the Government's intention to abolish the above conditions but asked it to bring the situation regarding the maintenance of long-term social security rights into conformity with the Charter.

CYPRUS

341. The Cypriot delegate confirmed the information appearing in the national report on the residence condition for entitlement to a social pension and said that the Government would be addressing this question.

342. She also confirmed that with regard to migrant workers not covered by Community regulations, the accumulation of insurance or employment periods applied solely to nationals of states having concluded a bilateral agreement with Cyprus. She explained that as a general rule and for technical reasons relating to the diversity of the various national schemes, such periods could be accumulated only on the base of ad hoc bilateral agreements or multilateral agreements comprising provisions of automatic application such as the European Convention on Social Security or Community Regulation 1408/71.

343. The French, Maltese and German delegates made similar observations.

344. The ETUC representative believed that it was necessary to separate the technical aspect of accumulation and the fundamental right to accumulation provided for in Article 12§4 of the Charter. He pointed out that where Contracting Parties could not conclude bilateral agreements, they could model their domestic provisions on the aforementioned Community Regulation 1408/71.

345. With regard to the residence condition required for entitlement to the social pension, the Committee decided to ask the Government to bring the situation into conformity with the Charter. As far as accumulation was concerned, it took note of the information provided and decided to await the ECSR's next assessment.

CZECH REPUBLIC

346. The Czech delegate said that long-term social rights could be freely exported whereas the exportation of short-term rights, where not provided for by a bilateral agreement, required administrative authorisation.

347. She confirmed the information given in the national report concerning accumulation of insurance or employment periods and informed the Committee that the Czech Republic had signed the European Convention on Social Security in June 2002 and was currently in the process of negotiating bilateral agreements with a number of Contracting Parties.

348. The Cypriot delegate pointed out that the European Committee of Social Rights had already accepted that the exportation of certain short-term rights could be subject to restrictions. She wondered whether the ECSR was reconsidering this position in the current supervision cycle.

349. The Committee took note of the information provided by the Czech delegate and decided to await the ECSR's next assessment.

DENMARK

350. With regard to the grounds for non-conformity concerning the conditions under which family benefits were awarded, the Committee referred to the decision it had adopted at its 101st meeting.

351. The Danish delegate confirmed the information given in the national report concerning the accumulation of insurance and employment periods.

352. The Committee referred to the discussion which had taken place during its consideration of the situation in Cyprus and decided to await the ECSR's next assessment.

FINLAND

353. With regard to the grounds for non-conformity concerning the conditions under which family benefits were awarded, the Committee referred to the decision it had adopted at its 101st meeting.

354. The Finnish delegate confirmed the information appearing in the national report concerning the accumulation of insurance and employment periods.

355. The Committee referred to the discussion which had taken place during its consideration of the situation in Cyprus and decided to await the ECSR's next assessment.

GERMANY

356. With regard to the grounds for non-conformity concerning the conditions under which family benefits were awarded, the Committee referred to the decision it had adopted at its 101st meeting.

357. The German delegate confirmed the information appearing in the national report concerning the accumulation of insurance and employment periods.

358. The Committee referred to the discussion which had taken place during its consideration of the situation in Cyprus and decided to await the ECSR's next assessment.

GREECE

359. With regard to the grounds for non-conformity concerning the conditions under which family benefits were awarded, the Committee referred to the decision it had adopted at its 101st meeting.

360. The Greek delegate informed the Committee that the non-exportability of accrued rights under Greek social security for migrant workers not covered by Community regulations concerned long-term benefits.

361. The Committee asked the Government to bring the situation into conformity with the Charter.

ICELAND

362. The Committee decided to proceed with its discussion despite the absence of the Icelandic delegate, given that the situation in Iceland was very similar to other situations already considered.

363. With regard to the grounds for non-conformity concerning the conditions under which family benefits were awarded, the Committee referred to the decision it had adopted at its 101st meeting.

364. With regard to the fact that nationals of Contracting Parties which were not covered by Community regulations and which had not concluded a bilateral agreement with Iceland were not entitled to retain the social security benefits accrued, in the absence of any details on the nature of these benefits (long-term or short-term), the Committee decided to await the ECSR's next assessment.

365. Concerning the impossibility for such nationals to accumulate insurance or employment periods, the Committee referred to the discussion which had taken place during its consideration of the situation in Cyprus and decided to await the ECSR's next assessment.

IRELAND

366. As regards the grounds for non-conformity relating to the requirements for the award of family benefits, the Committee referred to the decision it had adopted at its 101st meeting.

367. As regards the retention of social security benefits acquired by nationals of Contracting Parties not covered by Community legislation or by a bilateral agreement with Ireland, the Committee decided, as these were short-term benefits, to await the ECSR's next assessment.

368. As regards the aggregation of insurance or employment periods completed by these nationals, the Committee referred to the discussion held during its examination of the situation of Cyprus and decided to await the ECSR's next assessment.

THE NETHERLANDS

369. The Dutch delegate indicated that since the Government submitted its report, a lot of progress has been made and that the Netherlands had concluded bilateral agreements with many Contracting Parties to the 1961 Charter or the revised Charter and intended to conclude such agreements with all those countries.

370. The Committee welcomed the Government's efforts to conclude bilateral agreements and acknowledged the progress made. It decided to await the ECSR's next assessment.

NORWAY

371. As regards the grounds for non-conformity relating to the requirements for the award of family benefits, the Committee referred to the decision it had adopted at its 101st meeting.

372. The Norwegian delegate expressed his Government's appreciation of Mr MIKKOLA's dissenting opinion on the ECSR's position on the aggregation of periods of insurance or employment. The ECSR had not taken this position during the first forty years of the Charter and automatic aggregation was meaningful only in the context of the free movement of persons, which was the case in the European Union but not where the Social Charter was concerned. Norway recognised the ECSR's decision and was negotiating a number of bilateral agreements with Contracting Parties.

373. The delegates of the Czech Republic, Denmark, Estonia, Cyprus, Finland, Germany, Greece, Ireland, Italy, Latvia, Malta, Slovakia and Slovenia expressed agreement with the Norwegian delegate's statement.

374. The Committee referred to the discussion held during its examination of the situation of Cyprus and decided to await the ECSR's next assessment.

POLAND

375. The Polish delegate said that a bill providing for the automatic affiliation of foreigners working in the agricultural sector to the social security system was being drawn up and would be tabled in parliament before the end of 2002. She confirmed that nationals of Contracting Parties which had not concluded bilateral agreements with Poland did not benefit from the aggregation of periods of insurance or employment. She informed that the rules in the new social security system were laid down in such a way that the aggregation of periods was not necessary anymore (no requirement according to which there should be a certain period of insurance in order to obtain a social security benefit). The only remaining problem was periods of insurance completed under the previous social security system. The solution for such cases was to be found in the agreements to which Poland is already a party (bilateral

agreements) or will soon be a party (European Union Regulations). The question concerning the negotiations to be started with Romania, Moldova and Turkey will be examined by the Ministry of Labour and Social Policy before the end of 2002. Detailed information will be submitted in the next report.

376. The Committee welcomed the Government's efforts to provide social security coverage for foreigners working in the agricultural sector. As regards the aggregation of periods of insurance or employment, it referred to the discussion held during its examination of the situation of Cyprus and decided to await the ECSR's next assessment.

PORTUGAL

377. The Portuguese delegate said that on 16 March 2001 the government had adopted a decree granting foreigners residing in Portugal access to the national health service.

378. The Committee welcomed this development and decided to await the ECSR's next assessment.

TURKEY

379. The Turkish delegate said that the ECSR's conclusion was based on a material error. Section 24 of Law No. 1479 of 1971 on the Social Insurance of self-employed workers which excluded from its scope self-employed foreigners, including nationals of the Contracting Parties to the Charter, had been repealed. This motivated the conclusion of non-conformity of the ECSR.

380. Section 3-II/A of the Social Insurance Act No. 506 of 1964, which the ECSR had understood to have been repealed, although it was still in force, should have constituted the grounds for non-conformity. The Government was still working on a draft amendment providing for compulsory insurance for foreign workers for long-term risks.

381. In reply to the Cypriot delegate, the Turkish delegate admitted that some short-term benefits like maternity and work accidents are still not covered by the amendments introduced by the new legislation in Act No. 1479.

382. In reply to the ETUC representative, he said that the amendment, which concerned foreigners in general, did not specify whether it covered refugees and stateless persons.

383. The Committee asked the situation to be put into conformity with the Charter as soon as possible regarding social security coverage for foreign workers in order to bring them under compulsory insurance for long-term risks.

Art. 13§1 – Social and medical assistance for those in need

DENMARK

384. The Danish delegate explained that, in Denmark, people who refuse to take up job or to participate in activation measures are not entitled to social assistance. She also confirmed that social assistance is twofold: temporary (up to six months), or long-term (beyond 6 months). Anyone legally residing in Denmark is entitled to short-term social assistance, while long-term social assistance may be granted to non-nationals (including EU, EEA and Nordic citizens) only if they reside in Denmark since at least three years. The Danish delegate argued this approach to be in conformity with the 1953 Convention on social and medical assistance and to be justified by the high level of Danish social assistance, which could induce to social tourism.

385. The ETUC representative proposed to send a strong message to Denmark to repeal legislation concerning the length of residence requirement in respect of long-term social assistance.

386. The President and the Cyprus delegate pinpointed that the right to social assistance is a fundamental right and that Denmark did not indicate that any change in the legislation would occur. Together with the Romanian delegate, they proposed to vote on a warning.

387. The Committee adopted a warning (15 votes in favour, 4 against and 8 abstentions).

GERMANY

388. The German delegate stated that foreigners legally residing in Germany are treated on an equal footing with German nationals with respect to social assistance benefits. Allocation of benefits is subject to an examination both for German nationals and non-nationals. In this context, he agreed that Germans might fulfil the length of residence requirement more easily than the foreigners. In addition, there is a right of appeal.

389. The Secretariat clarified that, according to the report, the German legislation provides social assistance to foreigners whose country of origin has ratified the 1953 Convention on social and medical assistance; this implies excluding several Contracting Parties to the Charter.

390. The ETUC representative underlined that, notwithstanding the comprehensive legislation on social assistance, there has been no change as regards the situation of non-conformity to the Charter.

391. The President and the Cyprus delegate proposed to vote on a second warning.

392. The Committee adopted a second warning (20 in favour, 1 against, 6 abstentions).

GREECE

393. The Greek delegate recalled the developments Greece has proposed in the 2001-2003 Action Plan for Social Inclusion. The goal is to introduce new policies for target groups, such as poor households in the disadvantaged areas, long-term unemployed, single-parent families, socially excluded citizens, etc., and to strengthen existing policies.

394. The Greek delegate also added that reforms are currently underway to reorganise the welfare system and make it a more modern and decentralised system. When the reforms enter into force (the bill will be on the agenda of the Parliament at the end of September 2002), the right to social assistance will be guaranteed within the meaning of article 13 par. 1.

395. The ETUC representative considered that the reforms seem to concern the structure of the welfare system rather than the individual right to social assistance.

396. The Greek delegate answered that the government has already increased the number of protected groups for which common criteria exist as concerns the granting of social assistance. In addition, the reform of the welfare services and the transfer of competencies to the municipalities will introduce an individualized approach through which the totality of the population will be covered.

397. The Committee took note of the legislative changes taking place in Greece and decided to await the next assessment by the ECSR.

ICELAND

398. The Icelandic delegate acknowledged that Iceland's report was not sufficiently clear in this respect. Foreigners wishing to settle in Iceland had to obtain a residence permit before entering the country. Once they arrived in Iceland they had to register in a municipality. There was no deadline for completing this formality, but registration was compulsory if they were to make use of social services. The same registration requirement applied to Icelanders.

399. The Committee decided to await the assessment of this new information by the European Committee of Social Rights.

IRELAND

400. The Secretariat pointed out that the ECSR concluded that the situation is not in conformity with the Charter on two different grounds: a) there is the condition of ordinary residence governing medical assistance, and, b), there is limited legal aid for persons appealing against decisions of the board dealing with social assistance.

401. a) The Irish delegate pointed out that, in practice, there was no problem and that individuals were not refused the medical card on the grounds of non-completion of the residence period. Guidelines to this effect had been issued to the relevant authorities. The Irish delegate added that the ECSR approach was too legalistic and that account should be taken of the existence of a right of appeal.

402. The Cyprus delegate and the ETUC representative considered that, as the situation has not changed, a warning should be issued to Ireland.

403. In reply to the President's question, the Irish delegate explained that a person who works and has settled in Ireland is considered to be ordinarily resident, even if he is there since only a few months.

404. The Dutch delegate considered that no length of residence requirement seems to apply.

405. The Secretariat indicated that, according to the Irish report, foreigners shall be considered resident if they demonstrate the intention of settling in Ireland for a period of one year.

406. The Committee did not adopt a warning (6 in favour, 6 against and 15 abstention).

407. b) It is the first time the situation is considered not to be in conformity with the Charter by the ECSR. The Irish delegate explained that legal aid is provided in terms of a fixed sum per hearing, but there is not assistance to hire a lawyer at the expenses of the State.

408. The Portuguese delegate considered that for a right to be effective there must be the means to exercise it.

409. The Committee took note of situation as to legal aid and asked Ireland to bring the situation into conformity with the Charter.

LUXEMBOURG

410. The Luxembourg delegate stated that there were in Luxembourg two types of social assistance, one funded by central Government (revenu minimum garanti RMG) and the other funded by the local authorities. Eligibility for RMG is subject to a minimum age of 25 and five year's residence for non-EEA nationals. The delegate stated that the minimum age requirement was not absolute; exceptions were made for people who were sick, infirm or bringing up children. The reason for the age requirement was to encourage young persons to join the labour market and prevent them from becoming dependent on social assistance. A range of employment measures was available for young persons in order to assist them find employment. In any event a person under 25 years of age without means is entitled to emergency assistance from the local authorities. The difference between the RMG and assistance from the local authorities is that RMG provides a guaranteed benefit at a certain level while assistance provided by the local authorities may be in cash or in kind and is determined by the local authorities on a case-by-case basis.

411. The residence requirement only applies to the RMG, and has been gradually reduced from 15 to 5 years. It exists in order to avoid persons moving to Luxembourg in order to receive social assistance-‘social assistance migration’. It would be too costly for the Luxembourg Government to remove this requirement.

412. The Committee took note of the information provided by the delegate, it noted that the reason for the finding of non conformity was that there was no right to the second type of social assistance, which was the only type of assistance available to those under 25 years of age and those who had not fulfilled the residence requirement. The Committee recalled that this was the 4th finding of non-conformity. The Committee therefore urged the authorities to bring the situation into conformity with the Charter.

NORWAY

413. The Norwegian delegate recognised that the information contained in the last report was insufficient and indicated that the next report will be exhaustive. He clarified that as far as medical and social assistance are concerned, legally residing foreigners are treated on an equal footing with Norwegian nationals. No residence requirement is imposed to benefit from social assistance.

414. The ETUC representative underlined Norway's task of submitting complete reports and expressed his concern about the length of residence requirement for benefiting from social assistance.

415. The Committee decided to express to Norway its deep concern about the lack of appropriate information in the report and urged Norway to amend its legislation on the length of residence requirement in order to bring the situation into conformity with the Charter.

SPAIN

416. The Spanish delegate informed the Committee that each Autonomous Community has established its own system of social assistance, within which the minimum income benefit is provided among other benefits. The Communities established lengths of residence requirements because they feared social assistance-led migration of citizens from one Community to the other. This condition should disappear because the Autonomous Communities show a tendency towards harmonisation of their regulations.

417. She added that emergency assistance exists in all Autonomous Communities, while the 25 years threshold for benefiting from the minimum income benefit is nuanced by all the exceptions for younger needy people. In practice, the minimum income benefit is open to persons over 18 years of age.

418. The Spanish delegate informed the Committee that legislation on basic criteria for minimum income benefit would be adopted at national level.

419. The President and the Cyprus delegate agreed that there were improvements occurring in Spain, but the length of residence requirement for social assistance, though reduced, for the moment still exists. Therefore, they proposed a warning.

420. The Portuguese delegate did not agree with the warning about the age threshold and proposed instead a strong message asking Spain to harmonise the different regional rules about the residence requirements.

421. The United Kingdom, the Romanian, and the Estonian delegates and the OIE representative agreed with the Portugal delegate.

422. A vote held on a warning (1 in favour, 6 against, 20 abstentions) was not carried.

423. The Committee urges Spain to harmonise its legislation on residence requirement in order to bring it in conformity with the Charter.

TURKEY

424. The Turkish delegate recognised that, as today, there is no individual right to social assistance in Turkey. However, a legislative reform is currently being undertaken in order to restructure the social assistance system and make it more efficient (9th Five-Year Development Plan covering the period from 2001 to 2005). This reform will also materialise the individual right to social assistance.

425. The President considered that Turkey need time to carry out this reform. In reply to a question from the ETUC representative, the Turkish delegate said that it will probably take some years time and that all international case law will be taken into account. Equal treatment is a priority in the draft legislation.

426. The Committee adopted a warning to Turkey (21 in favour, 3 against and 5 abstentions).

UNITED KINGDOM

427. The United Kingdom delegate explained that the “habitual residence test” is meant to assess that the claimants to non-contributory social assistance have a sufficient link with the United Kingdom. The test applies to anybody asking for social assistance. He added that there is not a pre-settled period of residence required to satisfy the test, but that it varies according to the circumstances. He also confirmed that, following the European Community Court of Justice Swaddling judgment, British nationals and foreigners who left the United Kingdom and come back to settle are immediately considered as habitual residents. Until the test is passed, other forms of help are available for those in need. He added that the next report would make clear how the test is applied.

428. The President considered that there seems to have been a misunderstanding as to the implementation of the “habitual resident test”, but that the next report would clarify the situation.

429. The ETUC representative underlined that there is no indication the United Kingdom will abolish the test.

430. The Danish and the French delegate agreed that it is legitimate for the United Kingdom to verify habitual residence of social assistance recipients.

431. The Committee urged the United Kingdom to provide full information on the “habitual residence test” in the next report and to ensure that there is no discrimination in its application for non-nationals coming for the first time to United Kingdom.

Art. 13§2 – Non-discrimination in the exercise of social and political rights

MALTA

432. The Maltese delegate recognised that Malta has never provided the ECSR with the appropriate information. He added that the next report would do so by submitting the European Convention Act, a Maltese law that ensure that there is no discrimination in the enjoyment of political and social rights in Malta.

433. The Cyprus delegate and the ETUC representative made clear that the issue at stake is the fact that recipients of social assistance do not have their social and political rights diminished as a consequence.

434. The Maltese delegate confirmed there is not such discrimination in law and in practice.

435. The Committee urged Malta to provide full information in the next report and decided to await the next examination by the ECSR.

Art. 13§3 – Prevention, abolition or alleviation of need

GERMANY

436. The German delegate explained that, according to the federal law, foreigners legally residing in Germany are provided with the same social assistance benefits as German nationals.

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

TURKEY

438. The Turkish delegate recognised that Turkey has repeatedly failed to provide the appropriate information. He informed the Committee that, in the framework of the 9th Five-Year Development Plan covering the period from 2001 to 2005, efforts will be carried out to improve the access to social assistance for poor people, but that the whole reform process will take time. The Turkish delegate added that the next report would provide full information on this subject.

439. The President considered that Turkey was showing good intentions to change the situation.

440. On the proposal of the Cyprus, the Portuguese and the United Kingdom delegates, and the ETUC and OIE representatives the Committee decided to express to Turkey its concern about the repeated lack of information and to urge Turkey to provide information in its next report.

Art. 13§4 – Specific emergency assistance for non-residents**GERMANY**

441. The German delegate referred to his statements during the discussion of Article 13§1. He added that all foreigners were fully entitled to social and medical assistance in emergencies and that it was an offence under German criminal law not to assist a person in danger.

442. The Secretariat confirmed that according to the national report, this assistance was confined to foreigners who actually resided in Germany and said that this interpretation might be due to a translation error.

443. The Committee asked the Government to clarify the situation in its next report and decided to await the ECSR's next assessment.

ICELAND

444. The Icelandic delegate confirmed the information appearing in the national report and said that the Government would provide further information in the next report.

445. The Committee asked the Government to bring the situation into conformity with the Charter.

THE NETHERLANDS

446. The Netherlands delegate confirmed the information set out in the national report and explained that the only category of foreigners not covered by the provisions of the legislation on social assistance referred to in the report was tourists. The latter were nevertheless entitled to other forms of assistance provided by a number of public institutions and associations. Therefore, in spite of the fact that the Netherlands' Government has doubts as to the correctness of the ECSR's interpretation of this Article of the Charter, it was of the opinion that it meets the requirements of Article 13§4 as interpreted by the ECSR.

447. The Secretariat noted that the information on tourists was not included in the Netherlands report.

448. The Committee asked for this information to be included in the next national report and decided to await the ECSR's next assessment.

Art. 16 – Right of the family to social, legal and economic protection**AUSTRIA***Equal treatment with regard to family benefits*

449. The Committee referred to the position it had adopted with regard to Article 12§4.

Equal treatment with regard to housing subsidies

450. The Austrian delegate pointed out that the subsidies in question came under the exclusive competence of the provinces and that the federal legislature had no direct influence on the various provincial regulations. The ECSR's conclusion was, nonetheless, well known to the provinces and insofar as it was financially feasible, measures would be taken to improve the situation. For example, since June 2001 the province of Vienna had been granting subsidies to purchase a property to nationals and foreigners alike. In contrast, there was still a 5-year residence condition for a specific subsidy (*Wohnbeihilfe*), which is a subsidy to the costs of accommodation up to a certain level of income, as this was not considered to be a fundamental right (moreover, such subsidies were not granted to students or to people never having worked). The delegate added that details of recent developments and the various types of assistance would in fact be included in the next report.

451. On a proposal from the ETUC representative, the Committee welcomed with interest the positive developments in Austria but urged the authorities to continue along these lines in order to bring the situation in conformity with the Charter.

BELGIUM*Equal treatment with regard to guaranteed family benefits*

452. The Committee referred to the position it had adopted with regard to Article 12§4.

Equal treatment with regard to transport fare reductions

453. The Belgian delegate said that the competent authorities had been informed and that information on the follow-up action taken would appear in the next report.

454. The Committee agreed not to take a decision but to await the ECSR's next assessment of the situation.

GERMANY

455. The German delegate said that the Land of Baden-Württemberg had in December 2001 been ordered by the courts to pay the parental education allowance to Turks in situations where all the other qualifying conditions had been met. Turkish nationals had won their case in all 350 appeals lodged by them. Following the CJEC judgment in the Sürül case, Bavaria had also been obliged to pay the parental education allowance to Turkish, Moroccan and Tunisian nationals in the same way as to German nationals. The Social Tribunal had dismissed Bavaria's appeal on this matter. In line with this court decision, 3,926 allowances had been paid. The delegate said that the regulations in both Länder would be amended accordingly.

456. The ETUC representative pointed out that these positive developments had come about as a result of Community law and not the European Social Charter, which meant that the problem was still an outstanding one for nationals of other Contracting Parties to the Charter which were not members of the European Union or bound by an association agreement.

457. The German delegate confirmed that the Federal Government had drawn the Länder's attention to the need to bring the situation into line across the board. It was now a question of awaiting the text of the new regulations to find out exactly what had been included in them.

458. The Committee welcomed the efforts made by Germany to move towards conformity and decided to await the ECSR's next assessment of the situation.

THE NETHERLANDS (NETHERLANDS ANTILLES AND ARUBA)

459. The Netherlands Antilles delegated confirmed that there was no general family allowance scheme. He added that the ECSR's conclusion was currently under consideration with a view, ultimately, to replacing the partial family allowance schemes with a general one. However, in view of the country's significant budget deficit, the delegate said that no timetable could be given at this stage. On this topic too, the Secretariat will be asked to provide information on the minimum requirements for such a scheme.

460. The Committee agreed not to take a decision but to await the ECSR's next assessment of the situation.

POLAND

461. The Polish delegate said that the difference in treatment in respect of foreigners not having a residence permit was not true in practice because they were, by definition, not in a position to fulfil the resource conditions required to qualify for family allowances and that they were in an uncertain situation in the country as their work visa had expired. In contrast, foreigners who, after three years of residence, obtained a temporary residence permit were treated exactly the same as Poles in respect of social rights as they were deemed to be resolutely intent on residing in Poland and bringing up their family there. In any event, she pointed out that in her Government's opinion, as there is no policy of economic immigration and as the

benefits in question were not contributory, this problem could be resolved only by concluding bilateral or multilateral agreements in order to ensure reciprocity with Polish nationals. The Government was currently investigating the expediency of concluding agreements with Moldova, Romania and Turkey.

462. The French delegate, supported by the Cypriot delegate, commented that this was a case of direct discrimination against nationals living on Polish territory and that the fact that no bilateral or multilateral agreements had been concluded or that the benefits were non-contributory in nature could not run counter to the guarantee of equal treatment, even before the expiry of the three-years residence period.

463. The Committee urged the Polish Government to bring the situation into conformity with the Charter at the earliest opportunity.

TURKEY

Equal treatment of women in family law

464. The Turkish delegate said that with a view to bringing the situation into conformity with the Charter and to satisfying the Copenhagen political criteria, the Civil Code had been amended on 1 January 2002 and the provisions which were discriminatory against women had been replaced. It was now stipulated that spouses would jointly choose their home, that they would run their home jointly, that they would contribute to the costs of the marriage as best they could and that in the event of separation they would share the assets acquired during the marriage, etc.

465. The Committee welcomed the efforts made by Turkey in the field of protection of the family and decided to await the ECSR's next assessment of the situation.

Economic protection of the family

466. The Turkish delegate said that there had been no radical changes in this field. Backing up his statement with figures, he said that his Government was aware of the considerable housing needs and the extent of the financial measures to be taken to solve the housing crisis. The planned introduction of a general social welfare system covering the whole of the population had not materialised. The Government was also aware that the introduction of a general family benefits scheme would satisfy a pressing need but this was something which was still many years away. The delegate emphasised that such matters continued to be on the agenda.

467. The ETUC representative commented that as far as family housing was concerned, the gap continued to grow ever wider. Quite obviously, this problem was still not among the top priorities.

468. The Portuguese delegate, supported by the United Kingdom delegate and the IOE representative, wanted the Committee to send a strong message to encourage the Turkish authorities to improve the situation but not to issue a warning at this stage in view, in particular, of the unfavourable economic context in Turkey.

469. On a proposal from the Cypriot delegate, supported by the Maltese delegate, the Committee voted on a warning. The warning was adopted with 13 votes for, 5 against and 10 abstentions.

Art. 19§§1 and 10 – Assistance and information on migration

TURKEY

470. The Turkish delegate confirmed the information set out in the national report and said that a new provision of the Criminal Code should make it easier to combat misleading propaganda relating to immigration.

471. The ETUC considered that action against trafficking in labour was included among the measures required of Contracting Parties under Article 19§1.

472. The Committee was concerned that the Government was not taking all the necessary measures to combat misleading propaganda relating to immigration and emigration, and asked it to bring the situation into conformity with the Charter.

Art. 19§§4 and 10 – Equality regarding employment, right to organise and accomodation

GERMANY

473. The German delegate confirmed the information set out in the national report. He stated, that on the basis of their coalition agreement the newly elected German Federal Government will establish a Committee responsible for looking into the reorganisation of the armed forces. This Committee might propose abolishing compulsory national military service, in which case the question of a possible discrimination between foreigners and nationals with regard to guarantees for retaining their jobs would be solved. Furthermore, he states that the statute by virtue of which only nationals are entitled to maintain their employment during compulsory military service does not apply to independent workers and should therefore not be examined under Art. 19§10.

474. The Bulgarian delegate considered that as issues relating to purely military affairs do not belong to the subject matter of activities of the Council of Europe the case should be dismissed from the agenda.

475. The ETUC representative stressed that the Government had not shown a clear intention of bringing the situation into conformity with the Charter.

476. The Committee insisted that the Government bring the situation into conformity with the Charter.

LUXEMBOURG

477. The Luxembourg delegate referred to the discussions which had taken place with regard to Article 5 at the Committee's 101st meeting and repeated that it was Luxembourg's intention to bring the situation into conformity with the Charter by the end of 2003.

478. The Committee took note of the Government's intentions and decided to await the ECSR's next assessment.

TURKEY

479. With regard to the ground for non-conformity concerning migrant workers' becoming members of trade unions, the Turkish delegate confirmed the information appearing in the national report. As regards the second ground for non-conformity, namely the unequal treatment of foreigners in employment matters, he informed the Committee that the Government intended to bring the situation into conformity with the Charter.

480. The ETUC representative noted that these were merely declarations of intent and that to date no reform procedure had been commenced.

481. With regard to the first ground for non-conformity, the Committee decided, by 23 votes to one with three abstentions, to issue a warning to the Government.

482. With regard to the second ground, it asked the Government to bring the situation into conformity with the Charter

UNITED KINGDOM

483. The United Kingdom delegate referred to his statement during the discussion on Article 13§1 and informed the Committee that the Government would attempt to clarify the situation concerning the "Habitual Residence Test", in its next report.

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

Art. 19§§6 and 10 – Family reunion**AUSTRIA**

485. The Austrian delegate confirmed the information appearing in the national report, according to which the right to family reunion applied only to children under the age of 19 and not 21 as required under the Charter during the reference period. In addition, she said that it was not possible, at present, to say that Austria would ratify the Revised Charter, Article 19§6 of which comprised an obligation to facilitate family reunion for children only up to the legal age of majority, as specified in domestic legislation.

486. The Committee asked the Government to bring the situation into conformity with the Charter.

BELGIUM

487. The Belgian delegate confirmed the information appearing in the report, to the effect that the right to family reunion applied only to children under 18 years of age. She also indicated that, during this same reference period, all applications submitted by national of Contracting Parties to the Charter in respect of children aged between 18 and 21 in order to benefit from family reunion have been accepted.

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

GERMANY

489. The delegate confirmed the information appearing in the national report. Children between the ages of 18 and 21 did not have a legally recognised right to family reunion; the right to family reunion was not granted to children with only one parent residing in Germany, except where the period of residence was at least 8 years; the children not yet of age of a migrant worker could be deported. The delegate informed the Committee about new legislation in this field coming into force on 1 January 2003.

490. The ETUC representative considered that the situation in Germany was particularly serious as one of the grounds for non-conformity concerned the possibility of deporting children not yet of age.

491. The German delegate said that such an occurrence was extremely rare.

492. The Committee pointed out that two recommendations had been issued to Germany in respect of the first two grounds for non-conformity and asked the Government to bring the situation relating to the last ground into conformity with the Charter.

GREECE

493. The Greek delegate confirmed the information appearing in the national report, namely that there was no legally recognised right to family reunion for children aged between 18 and 21 and that there was a waiting period of two years before migrant workers could apply for family reunion.

494. She pointed out that the Ministry of the Interior was in the process of setting up a data processing system and that, accordingly, the Government would be in a position to provide the statistics requested by the ECSR in the next report. She also observed that the waiting period, which had previously been 5 years, had been reduced to two years and, further to the ECSR conclusion, would be further shortened.

495. The Committee asked the Government to bring the situation into conformity with the Charter but took note of its commitment to take the necessary provisions.

IRELAND

496. The Irish delegate confirmed the information appearing in the report, to the effect that children between the ages of 18 and 21 did not have a legally recognised right to family reunion. He pointed out that since Ireland had ratified the Revised Charter, which brought the age down from 21 to the legal age of majority in the country concerned, the question would not arise in the future.

497. With regard to the second ground for non-conformity, namely that family reunion was subject to the condition that family reunion did not lead the migrant worker to have increased recourse to public funds, the Irish Delegate acknowledged that, perhaps, the information supplied by the Government of Ireland in its 20th Report should have been more specific. The administrative procedures relating to family reunion for migrant workers require the head of the migrant family concerned to satisfy the Irish authorities that he/she has the means and the will to support his/her family.

498. The Committee expressed its regret that the Government had not brought the situation into conformity as regards the first ground but noted that this ground for non-conformity was now irrelevant further to the ratification of the revised Charter.

499. With regard to the second ground, the Committee asked the Government to clarify the situation and decided to await the ECSR's next assessment.

LUXEMBOURG

500. The Luxembourg delegate confirmed the information appearing in the national report and informed the Committee that the Government intended to await developments regarding the draft Community directive currently being drawn up before embarking upon legislative reforms.

501. The Committee decided to await the ECSR's next assessment and asked the Government to bring the situation into conformity with the Charter.

THE NETHERLANDS

502. The Netherlands delegate confirmed the information appearing in the report and said that the Government intended to sign and ratify the revised Charter.

503. The Secretariat confirmed that the statistics given in the report showed that the majority of applications for family reunion submitted during the reference period for children of migrant workers who were nationals of Contracting Parties and aged between 18 and 21 had been rejected.

504. The Dutch delegate stated that the Netherlands do allow family reunion of children of 18 years and over, but the relevant immigration provisions do not allow for unconditional immigration. Children of 18 years and over are only eligible for family reunion if their position in the country of origin would amount to a disproportional harshness, for instance if the children are dependent on their parents and cannot reasonably be expected to cope on their own. In practice, refusals are never based exclusively on the age criterion. Moreover, in all cases involving children of 18 years and over, due respect is given to the individual circumstances.

505. The Dutch delegate furthermore expressed the opinion that with its provisions for extended family reunion the Netherlands' Government does indeed facilitate as far as possible the reunion of the family of the migrant worker in the Netherlands.

506. The Committee asked the Government to clarify the situation in its next report and decided to await the ECSR's next assessment.

SPAIN

507. The Spanish delegate confirmed the information appearing in the national report, namely that children between the ages of 18 and 21 did not have a legally recognised right to family reunion, and that there were no figures to show that they were given this right in practice.

508. The Committee noted that Spain had not declared its intention to provide these figures nor had given any information on the ratification of the Revised Charter. Accordingly, it asked the Government to bring the situation into conformity with the Charter.

TURKEY

509. The Turkish delegate confirmed the information appearing in the national report concerning the first ground for non-conformity, namely that children between the ages of 18 and 21 did not have a legally recognised right to family reunion and that there were no figures to show that they were given this right in practice.

510. With regard to the ground for non-conformity concerning the state of health of applicants, he informed the Committee that a planned reform of the law was currently in preparation. He also said that Turkey intends to ratify the Revised Charter in the medium-term as indicated in the National Programme.

511. On the first ground, the Committee asked the Government to bring the situation into conformity with the Charter. On the second ground, it insisted that the Government bring the situation into conformity with the Charter as soon as possible.

UNITED KINGDOM

512. The United Kingdom delegate confirmed the information appearing in the national report, to the effect that children between the ages of 18 and 21 did not have a legally recognised right to family reunion and informed the Committee that a re-checking of the Immigration Department's records had revealed that within the reference period for the report 5 Bulgarian and 2 Polish families had successfully applied for re-union which involved children between the ages of 18 and 21. These would be reflected in the next report together with any new cases in the reference period.

513. With regard to the condition that family reunion did not lead the migrant worker to have increased resource to public funds, the United Kingdom delegate said that there was no set level of family income, and that decisions were taken on the circumstances of individual families. And where re-unification was granted the families could claim any appropriate benefits.

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

Art. 19§§7 and 10 – Equal treatment in respect of legal proceedings

LUXEMBOURG

515. The Luxembourg delegate confirmed the information appearing in the national report and informed the Committee that, during the reference period, there had been no demands for security to be lodged in judicial proceedings initiated by nationals of Contracting Parties which had not ratified the Hague Convention. It would therefore appear that the practice had fallen into disuse.

516. The Cypriot delegate took the view that this was a question of principle, even though the figures were very low.

517. The Committee asked the Government to bring the situation into conformity with the Charter.

Art. 19§§8 and 10 – Security against expulsion**FINLAND**

518. The Finnish delegate confirmed the information appearing in the national report. In particular she said that the deportation of foreigners who had sole custody of children not yet of age may entail deportation of the said children, but that deportation was decided upon on a case-by-case basis, with due regard for the degree of integration of the persons concerned.

519. The Secretariat explained that the ECSR's position was based on the fact that in the above case, children not yet of age did not have a legally recognised right to remain in the country if they so wished, or even if such were in their best interests.

520. The Committee decided to await the ECSR's next assessment.

GERMANY

521. The German delegate confirmed the information appearing in the national report. He said that the grounds for deportation which had been deemed by the ECSR not to be in conformity with the Charter were preventive measures against probable breaches of public order and were under no circumstances punishment. In any case there is a right of appeal.

522. The Secretariat clarified the ECSR's position: in accordance with Article 19§8 threats to public order were not a valid ground for deportation. Accordingly, preventive deportation, as described by the German delegate, was contrary to the Charter.

523. The Committee insisted that the Government bring the situation into conformity with the Charter.

GREECE

524. The Greek delegate informed the Committee that the government would take all the steps necessary to bring the situation into line with Article 19.8.

525. The Committee welcomed this information and decided to await the ECSR's next assessment.

IRELAND

526. The Irish delegate confirmed the information in the report on means of appeal against deportation decisions. He stressed that, since the previous supervision cycle, progress had been made in a number of areas, in that the judicial review procedure had been extended to several expulsion situations and would be extended to others still pending ongoing case law.

527. The ETUC representative and the Cypriot delegate were concerned that, despite two recommendations from the Committee of Ministers, the government had not announced its intention of introducing a system of appeal to an independent body on substantive grounds (judicial review concerned only procedural aspects).

528. The ETUC representative suggested including in the report to the Committee of Ministers a proposal to the effect that the government be asked to report on the action it intended to take on the recommendation.

529. The Committee decided, by 18 votes to 1 with 10 abstentions, to suggest that the Committee of Ministers reiterate its recommendation to the government to bring the situation into line with the Charter.

LUXEMBOURG

530. The Luxembourg delegate confirmed the information in the report and informed the Committee that the 1972 law on the admittance and residence of foreigners would not be amended in the immediate future, but might be modified in the light of the relevant provisions being drawn up at European Union level.

531. The German, Irish and United Kingdom delegates stressed that, pending the entry into force of new Community provisions, member states of the EU should not introduce reforms precipitously.

532. The Secretariat stressed the importance of the Luxembourg approach, which consisted in co-ordinating the Community instruments currently on the drawing board with the Social Charter, in so far as this would avoid inconsistencies between international legal instruments that were binding on a large number of Contracting Parties.

533. The Committee took note of the information provided by the Luxembourg delegate and decided to await the ECSR's next assessment.

THE NETHERLANDS

534. The Netherlands delegate confirmed the information in the report. While noting that the drafters of the 1961 Charter and the revised Charter never agreed to include in these treaties an independent (personal) right of residence for family members of migrant workers who have come to the Contracting Party for the purpose of family reunion, she requested that the ECSR provide a thorough motivation of its interpretation of these provisions of the Charter (Article 19§8 in combination with §6). She asked the ECSR to explain along which lines the ECSR reached its interpretation and where it found a basis for its opinion that Article 19§6 establishes an independent right of residence, while the drafters of the Charter never intended to include such a right. The conclusions of the ECSR do not provide any information on that matter.

535. The Netherlands' delegate further observed that immigrants are never expelled without due regard to the individual merits of each case. The Minister for Immigration and Integration, when considering expulsion, takes into account the relevant humanitarian circumstances, factors such as the duration of the immigrant's residence, his health, family relations, et cetera. This is also demanded by the European Convention of Human Rights. Thus the Minister is able -in all cases- to decide on deportation issues in full conformity with international law.

536. The Netherlands government fails to see why the scope of Article 19 paragraph 8 of the Charter should be so wide as to allow dependants of an immigrant - who no longer a migrant worker himself and is to be deported - independent rights of residence. Once immigrants cease to be workers, they generally cease to be the beneficiaries of such provisions that bestow certain rights on them in their capacity as migrant worker.

537. The Committee took note of the request of the Netherlands' Government and decided to await the response of the ECSR.

POLAND

538. The Polish delegate indicated that the expulsion on the grounds of lack of resources did not apply to the migrant worker. His/her stay permit was valid as long as he/she is working – and as he/she is working, he/she had the resources to cover the costs of his/her stay. It was only the loss of statute of “migrant worker” because of the loss of a job which would lead to the expiry of the validity of the visa and would motivate the decision of expulsion. This situation was considered by the ECSR as being in conformity with the Charter. Furthermore, the Polish delegate gave detailed information on the legislation concerning the giving of false evidence and the use of forged documents.

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

SPAIN

540. The Spanish delegate confirmed the information in the national report and informed the Committee that the law providing for the deportation of foreigners for administrative offences had not been amended since 2000. She explained why each of the measures contested by the ECSR had been adopted and said that one of them was only applied rarely – the first one. She asked how the ECSR interpreted the concept of public interest and whether its assessment was likely to vary, depending on whether the courts responsible for cases involving deportation decisions were administrative tribunals or part of the judiciary.

541. The Secretariat provided factual information about the conclusion and said that the ECSR intended to assess each case on its merits when it came to the concept of violations of the public interest. It stressed that the type of court that ruled on deportation decisions had no effect on the ECSR's assessment.

542. The IOE representative considered that the ECSR's interpretation of the concept of public order was too strict.

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

TURKEY

544. The Turkish delegate confirmed the information in the national report and informed the Committee that the government was seriously considering withdrawing from the Minister of the Interior the discretionary power that had led to a decision of non-conformity, in order to bring the situation into line with Charter. The relevant information would be included in the next report.

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

UNITED KINGDOM

546. The United Kingdom delegate confirmed the information in the national report and said that members of a migrant worker's family were not automatically deported. The UK delegate wondered if family members did not follow the deported migrant worker, the situation might be contrary to the right of family reunion provided for in Article 19.6 of the Charter.

547. The Committee decided to await the ECSR's next assessment.

B. Deferred cases for repeated lack of information

Art. 1§3 – Free placement services

BELGIUM

Art. 13§3 – Prevention, abolition or alleviation of need

ICELAND

MALTA

Art. 13§4 – Specific emergency assistance for non-residents

MALTA

548. The Committee takes notes of the commitment of the governments concerned (Belgium, Iceland and Malta) to submit the European Committee of Social Rights the information requested in their next report. It therefore decides not to take any decision at this stage.

APPENDIX I – CHART OF SIGNATURES AND RATIFICATIONS
Situation at 30 October 2002

MEMBERSTATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure
Albania	21/09/98		
Andorra	04/11/00		
Armenia	18/10/01		
Austria	07/05/99	29/10/69	
Azerbaijan	18/10/01		
Belgium	03/05/96	16/10/90	
Bosnia and Herzegovina			
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	08/03/99		
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	03/11/99	
Denmark	*	03/05/96	03/03/65
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98 X
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00		
Germany	*	18/10/61	27/01/65
Greece	03/05/96	06/06/84	18/06/98
Hungary	*	13/12/91	08/07/99
Iceland	04/11/98	15/01/76	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	*	29/05/97	31/01/02
Liechtenstein	09/10/91		
Lithuania	08/09/97	29/06/01	
Luxembourg	*	11/02/98	10/10/91
Malta	26/05/88	04/10/88	
Moldova	03/11/98	08/11/01	
Netherlands	18/10/61	22/04/80	
Norway	07/05/01	07/05/01	20/03/97
Poland	26/11/91	25/06/97	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/00		
San Marino	18/10/01		
Slovak Republic	18/11/99	22/06/98	
Slovenia	11/10/97	07/05/99	07/05/99
Spain	23/10/00	06/05/80	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland	06/05/76		
«the former Yugoslav Republic of Macedonia»	05/05/98		
Turkey	*	18/10/61	24/11/89
Ukraine	07/05/99		
United Kingdom	*	07/11/97	11/07/62
Number of States	44	11 + 32 = 43	17 + 14 = 31
			11

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 II**LIST OF CASES OF NON-COMPLIANCE**

- Austria**
- Article 1§2
 - Article 5
 - Article 12§4
 - Article 16
 - Article 19§6
- Belgium**
- Article 1§2
 - Article 6§4
 - Article 12§4
 - Article 16
 - Article 19§6
 - Article 19§10
- Cyprus**
- Article 1 § 2
 - Article 6 § 4
 - Article 12 § 4
- Czech Republic**
- Article 6 § 4
 - Article 12 § 4
- Denmark**
- Article 5
 - Article 6§2
 - Article 6§3
 - Article 6§4
 - Article 12§4
 - Article 13§1
- Finland**
- Article 1§2
 - Article 6§4
 - Article 12§4
 - Article 19§8
- Germany**
- Article 1§2
 - Article 6§2
 - Article 6§4
 - Article 12§4
 - Article 13§1
 - Article 13§3
 - Article 13§4

- Greece**
 - Article 16
 - Article 19§4
 - Article 13§6
 - Article 19§8
 - Article 19§10
 - Article 1 § 2
 - Article 12 § 4
 - Article 13 § 1
 - Article 19 § 6
 - Article 19 § 8
 - Article 19 § 10

- Iceland**
 - Article 5
 - Article 6§4
 - Article 12§4
 - Article 13§1
 - Article 13§4

- Ireland**
 - Article 1§2
 - Article 5
 - Article 6§2
 - Article 6§4
 - Article 12§4
 - Article 13§1
 - Article 19§6
 - Article 19§8
 - Article 19§10

- Luxembourg**
 - Article 5
 - Article 12§4
 - Article 13§1
 - Article 19§4
 - Article 19§6
 - Article 19§7
 - Article 19§8
 - Article 19§10

- Malta**
 - Article 5
 - Article 6 § 3
 - Article 6 § 4
 - Article 13 § 2

- Netherlands**
 - Article 1§1
 - Article 1§2
 - Article 5
 - Article 6§2
 - Article 6§4
 - Article 12§4

- Article 13§4
 - Article 16
 - Article 19§6
 - Article 19§8
 - Article 19§10
- Norway**
- Article 6§3
 - Article 6§4
 - Article 12§3
 - Article 12§4
 - Article 13§1
- Poland**
- Article 1§1
 - Article 1§2
 - Article 5
 - Article 6§2
 - Article 12§4
 - Article 16
 - Article 19§8
 - Article 19§10
- Portugal**
- Article 1 § 2
 - Article 6 § 4
 - Article 12 § 4
- Spain**
- Article 6 § 3
 - Article 12 § 4
 - Article 13 § 1
 - Article 19 § 6
 - Article 19 § 8
 - Article 19 § 10
- Turkey**
- Article 1§1
 - Article 1§2
 - Article 1§3
 - Article 12§4
 - Article 13§1
 - Article 13§3
 - Article 16
 - Article 19§1
 - Article 19§4
 - Article 19§6
 - Article 19§8
 - Article 19§10

- United Kingdom**
- Article 1 § 2
 - Article 5
 - Article 6 § 2
 - Article 6 § 4
 - Article 13 § 1
 - Article 19 § 4
 - Article 19 § 6
 - Article 19 § 8
 - Article 19 § 10

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

Austria	– Article 6§3 – Article 13§1
Belgium	– Article 1§1
Cyprus	– Article 19 § 6 – Article 19 § 8 – Article 19 § 9 – Article 19 § 10
Czech Republic	– Article 1 § 1 – Article 6 § 2 – Article 6 § 3 – Article 12 § 3 – Article 13 § 1 – Article 13 § 3 – Article 13 § 4 – Article 16
Denmark	– Article 1§2 – Article 13§3
Finland	– Article 1§1 – Article 19§3
Germany	– Article 1§1 – Article 6§3 – Article 12§3
Greece	– Article 1 §1 – Article 1 § 3 – Article 13 § 3 – Article 16
Iceland	– Article 1§2
Ireland	– Article 6§1
Luxembourg	– Article 1§2 – Article 13§4 – Article 19§2

- Malta**
- Article 1 § 1
 - Article 1 § 2
 - Article 6 § 1
 - Article 6 § 2
 - Article 16
- Netherlands**
- Article 1§3 (NEA)
 - Article 6§4 (NEA)
 - Article 12§1 (NE)
- Norway**
- Article 1§2
 - Article 5
 - Article 13§3
 - Article 19§3
 - Article 19§10
- Poland**
- Article 12§3
 - Article 13§3
 - Article 19§1
 - Article 19§6
- Portugal**
- Article 13 § 1
 - Article 13 § 4
 - Article 19 § 7
 - Article 19 § 10
- Spain**
- Article 1 § 1
 - Article 1 § 3
 - Article 6 § 4
 - Article 13 § 4
 - Article 16
- Turkey**
- Article 12§1
 - Article 12§3
- United Kingdom**
- Article 13 § 4
 - Article 16

APPENDIX IV

WARNINGS AND RECOMMENDATIONS

Warnings⁷

Article 1§2

- **Belgium** (penal sanctions for disciplinary offences by sailors even when the security of a ship or the live or health of the people on board are not at stake)
- **Ireland** (excessive length of the compulsory service which may be required of army officers)
- **Turkey** (section 1467 of the Code of Commerce authorises the captain of a ship to use force in order to bring sailors back on board to look after the ship and in order to maintain discipline)

Article 6§4

- **Germany** (collective actions)

Article 13§1

- **Denmark** (existence of a length of residence requirement for obtaining long-period social assistance benefits)
- **Germany** (nationals of certain Contracting Parties do not have the same entitlement to social assistance benefits as German nationals)
- **Turkey** (no individual right to social and medical assistance)

Article 16

- **Turkey** (inadequate economic protection)

Article 19§4

- **Turkey** (the right of foreign workers to equal treatment regarding membership of trade unions is not ensured)

⁷ 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.

Recommendations

Article 1§2

- **Greece** (quota of women in the police)

Article 5 and 6§2

- **Ireland** (closed shop)

Renewed Recommendations

Article 5 and 6§2

- **Ireland** (negotiation license)

Article 19§8 and article 19§10

- **Ireland** (security against expulsion)