European Committee of Social Rights – **Activity Report 2014**

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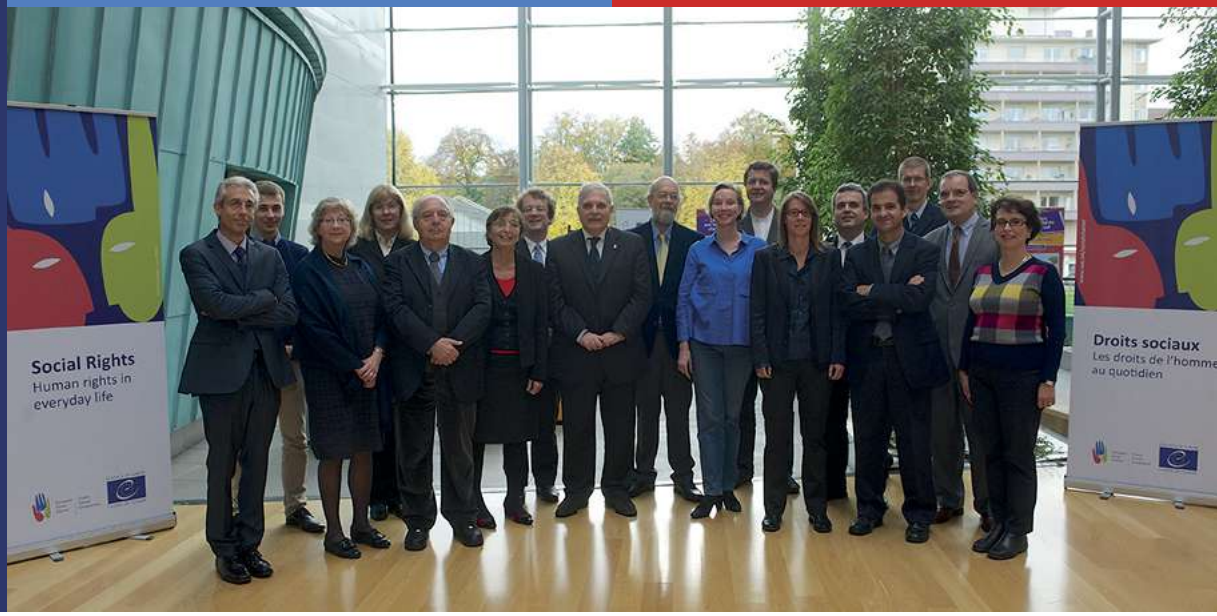

European Committee of Social Rights

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Activity Report 2014

European Committee of Social Rights

Council of Europe

The European Committee of Social Rights rules on the conformity of the situation in States with the European Social Charter. The Committee adopts "conclusions" in respect of national reports submitted annually by the States Parties, and it adopts "decisions" in respect of collective complaints lodged by organizations.

The Committee is composed of 15 independent, impartial members who are elected by the Committee of Ministers of the Council of Europe for a term of office of six years, renewable once.

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Introduction by Luis Jimena Quesada, President of the Committee

The effectiveness of the European Social Charter and the progressive nature of the Turin movement

This report covers another year in which the activities of the European Committee of Social Rights (with the ongoing support of the Department of the European Social Charter) took on a broader and more significant dimension in the promotion of human dignity. Placing the emphasis on the teamwork done, I should like to pay a special tribute to my very dear colleagues, Ellen Turletsky (who, as person responsible for running the website, made a huge contribution to the visibility of the Charter, and who worked for the Department both skilfully and loyally until she retired in August 2014), Rüçhan Işik, Alexandru Athanasiu and Jarna Petman (who made valuable contributions to the Committee's case law, with commitment and determination, until their terms of office came to an end in December 2014). A big thank you to all four for having shared with me, with all of us, this progress along the road opened up in Turin in 1961.

2014 began with the Committee's first session, held in Brussels (27-29 January), reflecting the positive wish of the Committee (and more broadly of the Council of Europe) to emphasise synergies with the European Union in order to continue to pursue the standards most beneficial to the upholding of social rights. And the same spirit prevailed in the exchange of views held by the Committee with the Court of Justice of the European Union in Luxembourg in late 2014 (1 December).

This kind of exchange, also held with other institutions, both European (from the Council of Europe or European Union, not forgetting the OSCE) and global (ILO, United Nations), as well as with institutions and stakeholders at national level, is one of the Committee's main activities, all the more important for the fact that the Charter is not the property of the Committee, or of any other (national or international) institution, but belongs primarily to all human beings who benefit from it.

The year 2014 again showed, through the reporting system, the fundamental nature of work-related rights and the vital need to protect those rights in times of crisis (because of the increased vulnerability of the persons affected), and even to do so with much greater intensity. Analysis of national situations in 2014 in this field also highlighted the interaction between the two supervision mechanisms, and consequently the "nonsense", or inconsistency, of non-acceptance of the collective complaints procedure. It is for precisely this reason that the adoption by the Committee of Ministers on 2 April 2014 of changes to the reporting system, with the main objective of simplifying that mechanism for States Parties which have accepted the collective complaints procedure, is to be welcomed.

The achievements of 2014 in terms of collective complaints strengthened the Charter's potential for protecting those beneficiaries at greatest disadvantage, including undocumented adults' rights to food, clothing and shelter. I should like to mention especially the decisions on the merits adopted in July 2014 on collective complaints Nos. 86/2012 and 90/2013. Is there a task more sophisticated, in legal terms (and more noble, in moral terms), which would raise higher human dignity's value? I do not think so. Pope Francis pointed this out in his speech in the Assembly Chamber on 25 November 2014, speaking of the "many poor people living in Europe. How many of them there are in our streets! They ask not only for the food they need for survival, which is the most elementary of rights, but also to be in a position to rediscover the value of their own life, which poverty tends to obscure, and to recover the dignity conferred by work". I am convinced of this: the material resources and legal instruments exist in Europe, so action must be taken and they must be used!

Indeed, the Charter offers the great privilege of recognising the right to protection against poverty and social exclusion (and associated rights), and the Committee has the important mission and great honour of ensuring that recognition is effectively guaranteed. However, that honour (in fact an obligation and responsibility) is shared with the other stakeholders who make the Charter operational, i.e. the organisations allowed to take action before the Committee, whose contribution is vital, and the public entities – at every level of government – who show goodwill in the monitoring of the binding commitments which stem from the Charter.

The final element of 2014 was the Turin Conference (17 and 18 October): the *Turin Process* became a sort of platform entailing action by all the stakeholders involved in upholding the Charter, enabling them to experience a feeling of belonging to an irreversible and progressive movement for the protection of social rights at European level (the "Turin movement"), the ultimate aim of which is to make Charter rights real and effective by raising awareness of the aspects already mentioned (synergies with the European Union, greater protection for persons in situations of vulnerability in the context of the economic crisis and general adoption of the collective complaints procedure).

It is in the same spirit that dangers and incidents along the *Turin road*, like those which occurred at the time of the last election and re-election of committee members by the Committee of Ministers, in November 2014, need to be prevented. The independence of the European Committee of Social Rights must never be put at risk. On the contrary, a positive signal from the Committee of Ministers to the "Turin

movement" would be a decision to fully implement the 1991 Turin Protocol, thus enabling the members of the European Committee of Social Rights to be elected by the Parliamentary Assembly of the Council of Europe.

Such positive signals would bring great progress in terms of driving forward the "Turin movement", by which I mean harmoniously focusing joint efforts to consolidate the European Social Charter as a veritable European pact for the social stability of the Council of Europe's three pillars: social democracy, the welfare state and social rights.

Luis Jimena Quesada

Strasbourg, 6 December 2014

2014 activities of the European Committee of Social Rights

1. Overview

The European Committee of Social Rights is set up pursuant to Article 25 of the 1961 Charter. Its function is to rule on the conformity of national law and practice in the States Parties in respect of the European Social Charter, the 1988 Additional Protocol and the initial 1961 European Social Charter. The Committee is composed of 15 independent members "of the highest integrity and of recognised competence in national and international social questions" and elected by the Committee of Ministers.[1]

The Committee conducts its supervision of state compliance within two distinct but inter-related procedures: the reporting procedure where it examines written reports submitted by States Parties with regular intervals and the collective complaints procedure which allows certain national and international organisations to lodge complaints against States Parties that have accepted to be bound by this procedure. In respect of state reports, the Committee adopts "conclusions" and in respect of collective complaints it adopts "decisions".

In 2014, the Committee held 7 sessions:

- Session 269: 27 - 29 January 2014
- Session 270: 18 - 21 March 2014
- Session 271: 12 - 16 May 2014
- Session 272: 30 June - 4 July 2014
- Session 273: 8 - 12 September 2014
- Session 274: 13 - 16 October 2014
- Session 275: 1 - 5 December 2014

The January session took place in Brussels which was the occasion to make public Conclusions 2013 and to have contacts with Brussels-based institutions such as the European Commission, the European Parliament, the European Economic and Social Council, the European Trade Union Confederation and various civil society organisations (see also Chapter 8).

The 274th session was held in Turin, the birthplace of the European Social Charter, in conjunction with the High-Level Conference on the Charter organised in the same city on 17-18 October 2014 (see Chapter 6).

1. The current composition of the Committee appears in Appendix 1.

The remaining sessions were held in Strasbourg.

During the 2014 sessions the Committee examined reports presented by 41 States Parties (two States, Albania and Croatia, did not submit a report in time) describing how they implement the Charter in law and in practice as regards the provisions belonging to the thematic group of provisions concerning labour rights: Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29 (see Chapter 4 for a detailed presentation).

As for the procedure on collective complaints, the Committee declared 3 complaints admissible and adopted decisions on the merits in 8 complaints concerning, *inter alia*, the rights of persons with disabilities, access to abortion, the right to organise and the right of irregular migrants to emergency assistance and shelter. In 2014, the Committee held its first meeting with the Government Agents appointed in the context of the collective complaints procedure (see Chapter 3).

The Committee formulated comments on texts submitted to it by the Committee of Ministers, in particular this concerned a recommendation by the Parliamentary Assembly (these comments are reproduced in Appendix 8).

In the framework of its sessions, the Committee held meetings with representatives of several Council of Europe bodies and with representatives of other international bodies, including exchanges of views with the Court of Justice of the European Union and the International Labour Organisation.

Delegations of the Committee held bilateral meetings with a number of countries in 2014 to conduct discussions with their authorities, in particular as regards:

- the Committee's findings in previous supervision cycles and the assessment in the current cycle of those countries' policies concerning their Charter undertakings;
- the non-accepted provisions of the Charter (the procedure laid down by Article 22 of the 1961 Charter, see also Chapter 5)
- the ratification of the Revised Charter and the collective complaints procedure for States that have not yet done so.

Training seminars on the Charter and the Committee's case law were organised in several countries with the participation of present or former Committee members and the Committee was represented at numerous international conferences and seminars on human rights-related issues. Lists of these various meetings appear in Appendices 10 and 11.

2. Election of members to the Committee

The composition of the Committee is governed by Article 25 of the Charter pursuant to which its 15 members are appointed by the Committee of Ministers for mandates of six years, renewable once.[2] Members shall be "independent experts of the highest

2. It is recalled that pursuant to Article 3 of the Turin Protocol members shall be elected by the Parliamentary Assembly. However, this provision is the only one which is still not being applied in practice (pending the formal entry into force of the Protocol).

integrity and of recognised competence in international social questions". Election takes place every second year with a third of the seats (five) being up for election.

At the 1212th meeting of the Ministers' Deputies on 19 November 2014, the Committee of Ministers held an election to fill the five seats falling vacant on 31 December 2012. Mr Petros Stangos (Greek) was elected for a second term and Mr François Vandamme (Belgian), Ms Krassimira Sredkova (Bulgarian), Ms Marit Frogner (Norwegian) and Mr Raul Canosa Usera (Spanish) were elected as new members for a first term of office. The term of office for these five members begins on 1 January 2015 and ends on 31 December 2020. In order to respect the requirement of independence and impartiality Mr Vandamme will only take up his duties in the Committee in May 2015 following his retirement from government office.

The Committee wishes to express its appreciation and gratitude to the four outgoing members, Mr Rüchan Isik (Turkish), Mr Alexandru Athanasiu (Romanian), Mr Luis Jimena Quesada (Spanish) and Ms Jarna Petman (Finnish) for their contribution to the Committee's work and for their tireless efforts to promote social rights. They all joined the Committee in 2009 and served for one term of office. Mr Jimena Quesada was President of the Committee from 2011 to 2014.

On 4 December 2014 a workshop in honour of the four outgoing members was organized in Strasbourg on the topic of the "Turin Process".

3. Collective complaints procedure

Some key figures

The collective complaints procedure was introduced by the 1995 Additional Protocol to the Charter providing for a system of collective complaints which came into force on 1 July 1998. So far 15 member States have accepted to be bound by the collective complaints procedure.

The aim pursued with the introduction of the system was to increase the effectiveness, speed and impact of the implementation of the Charter.

Over the period 1998-2014, the European Committee of Social Rights received 113 collective complaints. The Committee issued 198 decisions, among them 103 decisions on admissibility, 89 decisions on the merits, including 4 decisions both on admissibility and the merits, 4 decisions on immediate measures and 2 decisions to strike out a complaint.

In 2014, 10 new complaints were lodged.

In the course of its 7 sessions in 2014, the Committee adopted 8 decisions on the merits, 3 decisions on admissibility and 1 decision to strike out a complaint.

The 10 complaints registered in 2014 were registered against 6 countries: Finland (3), Ireland (2), Italy (2), Belgium (1), Czech Republic (1) and Greece (1). 4 complaints come from international NGOs, 3 from national trade unions and 3 complaints were filed by a national NGO.

The average duration of the admissibility stage was 6.6 months and the average duration of the merits stage was 14.9 months.

For more detailed statistics on the status of complaints by country by the end of 2014 and on the number of decisions handed down by the Committee during the period 1998-2014, see Appendix 5.

Decisions made public in 2014

In 2014, the 6 following decisions on the merits were made public, 4 of these had been adopted by the Committee in 2013:

On 5 February 2014, the decision on the merits in the case European Action of the Disabled (AEH) v. France, Complaint No. 81/2012 became public. The decision was adopted by the Committee on 11 September 2013. The decision became public following the adoption by the Committee of Ministers of the Resolution CM/ResChS(2014)2 on 5 February 2014.

AEH alleged that France fails to guarantee the right to education of children and adolescents with autism and the right to vocational training of young adults with autism, in breach of Articles 10 (right to vocational training) and 15 (right of persons with disabilities to vocational training, rehabilitation and social integration), read alone and/or in conjunction with Article E (non-discrimination) of the Charter because of the difference in treatment, in the education and vocational training fields, between persons with autism and persons with other disabilities.

In its decision on the merits, the Committee concluded:

- unanimously, that there is a violation of Article 15§1:
  - with regard to the right of children and adolescents with autism to be educated primarily in mainstream schools ;
  - with regard to the right of young persons with autism to vocational training;
  - because the work done in specialised institutions caring for children and adolescents with autism is not predominantly educational in nature.
- by 9 votes to 4, that there is a violation of Article E taken in conjunction with Article 15§1, because certain families have no other choice than to leave the national territory in order to educate their children with autism in a specialised school, which constitutes direct discrimination;
- by 8 votes to 5, that there is a violation of Article E taken in conjunction with Article 15§1, because the limited funds in the state's social budget for the education of children and adolescents with autism indirectly disadvantages these persons with disabilities.

A separate dissenting opinion was issued by Lauri Leppik and joined by Monika Schlachter.

On 10 March 2014, the decision on the merits in the case International Planned Parenthood Federation – European Network (IPPF- EN) v. Italy, Complaint No. 87/2012 became public. The decision was adopted by the Committee on 10 September 2013.

IPPF EN alleged that the high number of medical practitioners and other health personnel electing to be conscientious objectors renders paragraph 4 of Section 9 of Act No. 194 of 22 May 1978 on "Norms on the social protection of motherhood and the voluntary termination of pregnancy" ineffective in guaranteeing the legal right of women to have access to procedures for the termination of pregnancy and that this amounts to a breach of the right to health guaranteed by Article 11 of the Charter. The complainant organisation also alleged that the right to health of women wishing to terminate their pregnancy is not secured without discrimination and that this constitutes a violation of Article E of the Charter read in conjunction with Article 11.

In its decision on the merits, the Committee concluded:

- by 13 votes to 1 that there is a violation of Article 11§1 of the Charter;
- by 13 votes to 1 that there is a violation of Article E read in conjunction with Article 11 of the Charter.

A separate dissenting opinion and a separate concurring opinion were respectively issued by Luis Jimena Quesada and Petros Stangos.

On 2 April 2014, the decision on the admissibility and the merits in the case *Union syndicale des magistrats administratifs* (USMA) v. France, Complaint No. 84/2012 became public. The decision was adopted by the Committee on 2 December 2013. The decision became public following the adoption by the Committee of Ministers of the Resolution CM/ResChS(2014)4 on 2 April 2014.

The complainant organisation alleged that the system of flat rate remuneration per statutory category in respect of days accumulated in the leave savings accounts of staff of the state civil service and judges serving in the ordinary courts and in particular the compensation rate for unused days accumulated in the leave savings account of administrative court judges are in breach of Article 4§2 (right to an increased rate of remuneration for overtime work) of the Charter.

In its decision on admissibility and the merits, the Committee:

- unanimously, declared the complaint admissible;
- and, unanimously, concluded that there is no violation of Article 4§2 of the Charter.

On 17 May 2014, the decision on admissibility and the merits in the case European Confederation of Police (EUROCOP) v. Ireland, Complaint No. 83/2012 became public. The decision was adopted by the Committee on 2 December 2013.

EUROCOP alleged that in Ireland, police representative associations do not enjoy full trade union rights in violation of Article 5 (right to organise), Article 6 (right to bargain collectively) and Article 21 (right to information and consultation) of the Charter.

In its decision on admissibility and the merits, the Committee:

- unanimously declared the complaint admissible as far as it concerns Article 5
- and 6 of the Charter and declared the remainder of the complaint inadmissible;

and concluded:

- by 10 votes to 1, that there is no violation of Article 5 of the Charter on grounds of the prohibition against the police from establishing trade unions;
- unanimously, that there is a violation of Article 5 of the Charter on grounds of
- the prohibition against police representative associations from joining national employees' organisations;
- unanimously, that there is a violation of Article 6§2 of the Charter on grounds
- of restricted access of police representative associations into pay agreement discussions;
- by 6 votes to 5, that there is a violation of Article 6§4 of the Charter on grounds of the prohibition against the right to strike of members of the police.

Separate dissenting opinions were issued by Luis Jimena Quesada and by Monika Schlachter (the latter being joined by Birgitta Nyström and Marcin Wujczyk).

On 10 November 2014, the decision on the merits in the case Conference of European Churches (CEC) v. The Netherlands, Complaint No. 90/2013 became public. The decision was adopted by the Committee on 1 July 2014.

The complainant organisation alleged that in the Netherlands, the relevant legislation and practice concerning irregular adult migrants are in violation of Article 13§4 (right to social and medical emergency assistance) and Article 31§2 (right to housing) of the Charter.

In its decision on the merits, the Committee concluded:

- unanimously, that there is a violation of Article 13§4 of the Charter; and
- unanimously, that there is a violation of Article 31§2 of the Charter.

On 10 November 2014, the decision on the merits in the case European Federation of National Organisations Working with the Homeless (FEANTSA) v. The Netherlands, Complaint No. 86/2012 became public. The decision was adopted by the Committee on 2 July 2014.

The complainant organisation alleged that in the Netherlands, the relevant legislation and practice concerning the housing of the homeless are in violation of Article 13 (right to social and medical assistance), Article 16 (right of the family to social, legal and economic protection), Article 17 (right of children and young persons to social, legal and economic protection), Article 19 (right of migrant workers and their families to protection and assistance), Article 30 (right to protection against poverty and social exclusion) and Article 31 (right to housing) of the European Social Charter. It invoked the said Articles either separately or taken together with Article E of the Charter.

In its decision on the merits, the Committee concluded unanimously:

- that there is a violation of Article 31§2 of the Charter;
- that there is a violation of Article 13§§1 and 4 of the Charter;
- that there is a violation of Article 19§4(c) of the Charter; and
- that there is a violation of Article 30 of the Charter.

A separate partly dissenting opinion was issued by Luis Jimena Quesada.

Further decisions adopted in 2014

Furthermore, the following decisions adopted by the European Committee of Social Rights' will become public in 2015 :

- the decision on the merits in Finnish Society of Social Rights v. Finland, Complaint No. 88/2012 was adopted at the 273rd Committee's session. The decision became public on 11 February 2015;

In its decision on the merits, the Committee concluded unanimously:

- that there is a violation of Article 12§1 of the Charter;
- that there is no violation of Article 12§3 of the Charter;
- that there is a violation of Article 13§1 of the Charter.

- the decision on the merits in Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No. 89/2013 was adopted at the 273rd Committee's session (at the time of writing, the decision on the merits of the case had not yet been made public) ;

- the decision on the merits in Association for the Protection of All Children (APPROACH) Ltd v. France Complaint No. 92/2013 was adopted at the 273rd Committee's session (at the time of writing, the decision on the merits of the case had not yet been made public);

- the decision on the merits in Association for the Protection of All Children (APPROACH) Ltd v. Ireland, Complaint No. 93/2013 was adopted at the 275th Committee's session(at the time of writing, the decision on the merits of the case had not yet been made public);

- the decision on the merits in Association for the Protection of All Children (APPROACH) Ltd v. Italy, Complaint No. 94/2013 was adopted at the 275th Committee's session(at the time of writing, the decision on the merits of the case had not yet been made public);

- the decision on the merits in Association for the Protection of All Children (APPROACH) Ltd v. Slovenia, Complaint No. 95/2013 was adopted at the 275th session (at the time of writing, the decision on the merits of the case had not yet been made public).

Follow-up to decisions of the European Committee of Social Rights by the Committee of Ministers

In the event of violation of the Charter, the State concerned is asked to notify the Committee of Ministers of the Council of Europe of the measures taken or planned to bring the situation into conformity.

The Committee of Ministers may adopt a resolution, by a majority of those voting. The resolution takes account of the respondent State's declared intention to take appropriate measures to bring the situation into conformity.

If the State in question does not indicate its intention to bring the situation into conformity, the Committee of Ministers may also adopt a recommendation to the

State. In view of the importance of this act, a two-thirds majority of those voting is required here. In the case of both resolutions and recommendations, only States Parties to the Charter may take part in the vote.

The Committee of Ministers' decision is based on social and economic policy considerations. The Committee of Ministers cannot reverse the legal assessment made by the European Committee of Social Rights.

As regards the practical organisation of the follow-up, the Committee of Ministers in February 2012 instructed its Group of Rapporteurs on social and health issues (GR-SOC) to consider the decisions of the European Committee of Social Rights in the context of the system of collective complaints with a view to preparing draft Resolutions or Recommendation.

In 2014, the Committee of Ministers adopted 10 resolutions:

CM/ResChS(2014)12E / 8 October 2014

Resolution - European Confederation of Police (EUROCOP) v. Ireland, Complaint No. 83/2012 (Adopted by the Committee of Ministers on 8 October 2014 at the 1209th meeting of the Ministers' Deputies)

CM/ResChS(2014)11E / 2 July 2014

Resolution - Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012 (adopted by the Committee of Ministers on 2 July 2014 at the 1204th meeting of the Ministers' Deputies)

CM/ResChS(2014)7E / 2 July 2014

Resolution - Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012 (adopted by the Committee of Ministers on 2 July 2014 at the 1204th meeting of the Ministers' Deputies)

CM/ResChS(2014)9E / 2 July 2014

Resolution - Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012 (adopted by the Committee of Ministers on 2 July 2014 at the 1204th meeting of the Ministers' Deputies)

CM/ResChS(2014)10E / 2 July 2014

Resolution - Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI) v. Greece, Complaint No. 79/2012 (adopted by the Committee of Ministers on 2 July 2014 at the 1204th meeting of the Ministers' Deputies)

CM/ResChS(2014)8E / 2 July 2014

Resolution - Panhellenic Federation of Public Service Pensioners (POPS) v. Greece, Complaint No. 77/2012 (adopted by the Committee of Ministers on 2 July 2014 at the 1204th meeting of the Ministers' Deputies)

CM/ResChS(2014)6E / 30 April 2014

Resolution - International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, Complaint No. 87/2012 (adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies)

CM/ResChS(2014)5E / 2 April 2014

Resolution - *Union syndicale des magistrats administratifs (USMA)* v. France - Complaint No. 84/2012 (adopted by the Committee of Ministers on 2 April 2014 at the 1196th meeting of the Ministers' Deputies)

CM/ResChS(2014)1E / 5 February 2014

Resolution - Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012 (adopted by the Committee of Ministers on 5 February 2014 at the 1190th meeting of the Ministers' Deputies)

CM/ResChS(2014)2E / 5 February 2014

Resolution - *Action européenne des handicapés* (AEH) v. France, Complaint No. 81/2012 (adopted by the Committee of Ministers on 5 February 2014 at the 1190th meeting of the Ministers' Deputies)

Examples of the impact of the European Committee of Social Rights' decisions

Insofar as they refer to binding legal provisions, the decisions of the Committee must be respected by the States concerned; however, they are not *enforceable* in the domestic legal system. They are *declaratory*; in other words, they set out the law. On this basis, States are required to take measures to give them effect under domestic law.

Again in 2014, the collective complaints procedure had a significant impact on the law and practice of the States Parties. The Committee noted *inter alia* the following examples of measures taken by States:

Sweden: In response to the Committee's finding regarding the failure to ensure a treatment of foreign posted workers lawfully within the territory not less favourable than that of Swedish workers, as regards right to collective bargaining and action, as regards remuneration and working conditions, as regards the enjoyment of the benefits of collective agreements, the Swedish Government indicated that it had taken several initiatives, and had assigned a Committee with the task of evaluating the situation on the Swedish labour market following the changes to the Foreign Posting of Employees Act after the Laval judgment (C-341/05, CJEU) and, as the report of the Committee to a large extent concerned EU law, the Government would further raise relevant aspects of the conclusions and decisions of the Committee in an EU context.

On 26 March 2014 a delegation of the Committee held a meeting with the Swedish Committee on Posting of Workers in the Swedish Parliament, *Riksdagen,* charged with considering necessary changes to safeguard the Swedish labour market model in an international context. The delegation was invited to present the main points of its decision in Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden while addressing relations between the Charter and EU law and the question of how to comply with both at the same time.

The synergies between the law of the European Union and the European Social Charter were a major theme of the high-level conference on social rights held in Turin on 17 and 18 October 2014 as well as of the Committee's meeting with the Court of Justice of the European Union held in Luxembourg on 1 December 2014.

Italy: In response to the Committee's finding that women seeking access to abortion services in Italy can face substantial difficulties in obtaining access to such services; these difficulties appear to be the result of an ineffective implementation of Section 9§4 of Act No. 194/1978 which governs the conscientious objection of medical practitioners and other health personnel in relation to the termination of pregnancy, the Italian Government indicated that, in June 2013, the Ministry of Health established a "Technical table" calling Regional Assessors, appointed to supervise Health Management in the Regional Governing Bodies, to gather data in order to assess the impact of conscientious objectors at local level. The results of this monitoring activity will shed light on the details of the phenomenon.

Greece: In response to the Committee's finding considering that, despite the particular context in Greece created by the economic crisis, the cumulative effect of the restrictions adopted by the Greek Government, which appear to have the effect of depriving a segment of the population of their right to enjoy effective access to social protection and social security, the Government recalled that the Greek State recognises the necessity of guaranteeing a certain level of social protection as a fundamental element of the national system of social security. It further mentioned a number of measures taken in order to reform the social security system, as well as support measures for vulnerable groups of the population, striving to alleviate their burden or even exempt them from the austerity measures adopted.

Austerity measures in times of crisis, impact on social rights, participation by citizens and the European Social Charter's contribution to overcoming the crisis were also among the main subjects discussed at the high-level conference on social rights held in Turin on 17 and 18 October 2014 as well as at the meeting with the Court of Justice of the European Union held in Luxembourg on 1 December 2014.

Informal meeting between the Committee's Bureau and the Government Agents

Rule 25 of the Committee's Rules provides in particular that "the State shall be represented before the Committee by the agents they appoint". The first informal meeting between the Bureau of the Committee and Government Agents was held on 13 March 2014, within which various procedural and technical issues were examined relating to the collective complaints procedure: With regard to the recent evolutions in the processing of collective complaints the following provisions from the Committee's Rules were in particular underlined:

- Rule 29§2: enabling the Committee to request the respondent Government to make submissions simultaneously on the admissibility and merits. This allows for proceedings to be expedited (e.g. LO/TCO v. Sweden, Complaint No. 85/2012);

- Rule 29§4: enabling the Committee to declare a complaint either manifestly admissible or inadmissible in cases where it considers the conditions of admissibility to be either manifestly fulfilled or unfulfilled;
- Rule 32: entitling the States having accepted the collective complaints procedure to make third party interventions (e.g. intervention made by Finland in FEANTSA v. France, Complaint No. 39/2006). These were considered useful and the States were encouraged to make more frequent use of the Rule;
- Rule 32 A: enabling the Committee to invite any organisation, institution or person to make observations on a complaint.
- Rule 36: enabling the Committee to indicate to the parties immediate measures in cases where a risk of "serious irreparable injury" has been demonstrated and in order to ensure the effective respect for the rights set out in the Charter. The provision on immediate measures is furthermore applied taking due note of the jurisdictional nature of the collective complaints procedure, which is why any request for immediate measures must be supported by legal argumentation.

This meeting was an opportunity to engage a fruitful and constructive discussion and to highlight the important role of the Government Agents in the collective complaints procedure.

4. Reporting procedure

In 2014, the European Committee of Social Rights examined reports submitted by States Parties on the articles of the Charter relating to labour rights: the right to just conditions of work (Article 2), the right to a fair remuneration (Article 4), the right to organise (Article 5), the right to bargain collectively (Article 6), the right to information and consultation (Article 21), the right to take part in the determination and improvement of working conditions (Article 22), the right to dignity at work (Article 26), the right of workers' representatives to protection in the undertaking (Article 28) and the right to information and consultation in collective redundancy procedures (Article 29). The reports covered the reference period 2009-2012.

At its session in December 2014, the Committee adopted some 724 conclusions in respect of the 41 states, including some 252 findings of violations of the Charter. Two States Parties (Albania and Croatia) did not submit their reports and conclusions have therefore not been adopted in respect of these two States.

There were 337 conclusions of conformity, whereas the number of "deferrals" (cases where the Committee was unable to assess the situation due to lack of information) amounted to 135 cases. The Committee received comments from some national trade unions and employers' organisations (Spain, Finland, Sweden, Greece and Georgia).

While the Committee found violations of the Charter in all of the countries examined, the number of violations was exceptionally high in countries such as Georgia (where the situation in respect of all provisions examined except one was found not to be in conformity with the Charter), Azerbaijan (with 13 conclusions of non-conformity out of 16) and Armenia (12 out of 17).

What follows is an overview of Conclusions 2014 concentrating on certain typical violations identified by the Committee as well as positive developments relating to the articles examined, illustrated with some concrete examples.

The right to just conditions of work

Under Article 2 of the Charter the states undertake to provide for reasonable daily and weekly working hours, for public holidays with pay, and for a minimum of four weeks annual holiday with pay. They undertake to eliminate risks in inherently dangerous or unhealthy occupations, to ensure a weekly rest period and to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

As concerns reasonable daily and weekly working hours (Article 2§1), the Committee found that the weekly working hours of certain categories of workers (e.g. workers in health services, surveillance of machines, guardianship of goods) may exceed 60 hours in Spain, Finland, Hungary, Lithuania, Slovakia and Turkey. Besides this, seamen are allowed to work up to 72 hours a week in Iceland, Ireland, Estonia and Italy. In Norway daily working hours can be authorised to go up to 16 hours. Daily working hours of up to 16 hours and weekly working hours of more than 60 hours are excessive and therefore not in conformity with the Charter.

In certain states, more flexibility was introduced in the management of working time, allowing for longer working weeks in some periods to be offset by shorter working weeks in others. Flexibility arrangements as such are not contrary to the Charter. However, their impact on the overall observance of the rights guaranteed by Article 2§1 still remains to be assessed (in Greece, Portugal, the Netherlands), in the light of the criteria established by the Committee In particular, it will have to be assessed whether under flexible working time regimes the maximum limits to daily and weekly working time are maintained, whether or not the employer may unilaterally impose flexibility measures and whether the reference periods for calculating the average working time are excessive (e.g. longer than 12 months).

The right to public holidays with pay, guaranteed by Article 2§2, is generally respected by the States parties, with the notable exception of the United Kingdom, where there is no specific entitlement to leave on public holidays. Different approaches apply on the other hand in different countries as regards the forms and levels of compensation awarded for work performed on public holidays. In this respect, the Committee considered that compensation corresponding to the regular wage increased by 50%-75% was not adequate (the Netherlands, Portugal, Slovak Republic, and Greece).

As regards the right to paid annual holidays (Article 2§3), some positive developments were registered in particular in Denmark and the United Kingdom. However, the Committee found certain situations of non-conformity on different grounds (Bosnia and Herzegovina, Hungary, Republic of Moldova, the Netherlands and Belgium).

The Committee noted the efforts made by many states to eliminate risks in inherently dangerous or unhealthy occupation (Article 2§4), for example in Finland where the Committee decided to close its examination of the follow-up of the collective complaint Tehy ry and STTK ry v. Finland, Complaint No. 10/2000 (decision on the

merits of 17 October 2001). The Committee considered however that Bosnia and Herzegovina and Italy had no adequate prevention policy. Even where such a policy existed, the Committee concluded in certain cases that not all workers exposed to residual risks were entitled to adequate compensatory measures, such as reduced working hours or additional paid leave (Greece, Austria, the Netherlands, Portugal, Russian Federation), or that the state had failed to prove that this entitlement was the case (Ireland, Italy, Luxembourg, Spain, United Kingdom).

Most of the non-conformity findings under Article 2§5 relate to the excessive postponement of the weekly rest day, namely the lack of adequate safeguards to ensure that workers may not work for more than twelve consecutive days without a rest period (Armenia, Belgium, Czech Republic, Finland, Georgia, Ireland, the Netherlands, Slovak Republic, United Kingdom).

The workers' right to be provided, when starting employment, with written information covering the essential aspects of the employment relationship or contract (Article 2§6) appears to be in general well respected in the States Parties.

The lack of free compulsory medical examination for all night workers remained the principal ground of non-conformity with Article 2§7 in a few states (Bosnia and Herzegovina, Georgia, Republic of Moldova, Ukraine).

The right to a fair remuneration

Article 4 guarantees the right to a fair remuneration, i.e. that will give workers and their families a decent standard of living, as well as an increased remuneration for overtime work. The right to a fair remuneration also encompasses equal pay for the work of equal value without discrimination on the ground of gender as well as a reasonable period of notice of termination of employment. Moreover, under Article 4, States Parties undertake to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

Relatively few States in Europe have ratified Article 4§1 of the Charter on the right to remuneration such as will give workers and their families a decent standard of living. It is the Committee's case law that, in order to ensure a decent standard of living, the lowest net wages paid must be above a minimum threshold, set at 50% of the net average wage. There is a presumed conformity when the net lowest wages paid are above 60% of the net average wage, whereas if these wages are between 50% and 60% of the net average wage, it is for the State Party to show that they ensure a decent standard of living. The Committee found that, whilst some States in Europe meet the minimum threshold in the private sector (Denmark; Norway and Sweden), in the industries covered by collective agreement (Austria; Iceland and Italy) or for specific types of workers (immigrant workers in Andorra; experienced workers in Ireland), most fail.

Reasons are either a statutory minimum wage (Andorra; Azerbaijan; Belgium; Greece; Lithuania; Luxembourg; the Netherlands; Portugal; the Slovak Republic; Romania; Spain and the United Kingdom), or lowest wages paid (Austria and Germany), which are too low in comparison with the average wage. This is *a fortiori* the case

where subsidised employment or reduced rates of the statutory minimum wage exist (Belgium, Greece; Ireland; the Netherlands and the United Kingdom). As for the public sector, the Committee found that the minimum threshold is mostly met for tenured civil servants, whereas problems remain concerning contractual staff (Greece and Spain).

Recently adopted austerity measures have impacted the assessment (Greece) or would have to be examined in the next cycle. Some positive changes during the reference period were deemed insufficient to remove this ground or further grounds of violation (Italy, Romania and the Slovak Republic). The Committee found the follow-up given to its Decision No. 66/2011 to be inadequate (Greece).

The Committee's conclusions were occasionally confirmed by findings of the UN Committee on Economic, Social and Cultural Rights (ECSCR) (Spain and the Slovak Republic) and the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) (Greece, Lithuania and the Netherlands).

While the situation as regards an increased remuneration for overtime work (Article 4§2) is in conformity in the majority of states, the Committee has observed that a number of states fail to guarantee the right to increased time off in lieu of overtime (Finland, Belgium, Slovak Republic, Turkey, Poland, Czech Republic, the Russian Federation).

In the particular case of the Netherlands, the Committee observed that because of the legislative developments that have abrogated the notion of overtime, workers may be asked to work extended hours without any of these counting as overtime and therefore not being remunerated at an increased rate, a situation which the Committee considered to be contrary to the Charter.

As regards equal pay for work of equal value (Article 4§3) the unadjusted pay gap (the overall gender pay differential in all occupations) has been around 15% on average in the EU in 2012, with some very high figures, e.g. in Estonia (30%) and among the non-EU states in Armenia (35% in 2010).

Under Article 4§3 the right of women and men to equal pay for work of equal value must be expressly provided for in the legislation, which is not the case in Georgia.

In relation to the enforcement of equal pay principle, the Committee has examined whether the domestic law provides for appropriate and effective remedies in the event of alleged wage discrimination. It also examined whether in equal pay litigation cases the pay comparisons across companies are possible. For example, the Committee has considered that the situation in the Netherlands complies with Article 4§3, because in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source.

According to the Committee, the reasonable period of a notice of termination set out in Article 4§4 of the Charter should be determined mainly in accordance with the length of service. While it is accepted that a period of notice be replaced by severance pay, such pay should be equivalent to the wages that would have been paid during the period of notice. The protection of Article 4§4 of the Charter applies during probationary periods and covers all workers, regardless of their type of employment, and regardless of the ground for the termination of employment.

Regarding the reasonable period of notice in the private sector, the Committee found some cases of conformity (Greece and Lithuania), but also laws requiring no period of notice for some (Georgia, Lithuania, Malta, Slovenia, Turkey and Romania) or even most (Armenia; Azerbaijan and Bulgaria) grounds of termination. Occasionally, immediate dismissal was limited to serious misconduct (Andorra, France, Lithuania, the Republic of Moldova, the Netherlands and Sweden), in line with the Committee's case law.

Most States in Europe, however, provide for periods of notice that are insufficient, depending on types of workers (Greece), industry (Iceland and Italy), or grounds of termination. As to the coverage of all workers, the Committee found that periods of notice and/or severance pay are inadequate in fixed-term (Poland and the Russian Federation) or temporary (Estonia and Norway) employment. For the vast majority of States in Europe, periods of notice do not cover probationary periods, or in such cases are of inadequate length. Regarding the reasonable period of notice in the public sector, the Committee found instances where the law requires no period of notice for termination for tenured civil servants (Republic of Moldova in some cases) or requires a period of notice which is of inadequate length (Georgia, Ireland, Norway and Republic of Moldova in other cases).

The Committee further considered that the protection afforded by the period of notice and/or severance pay should not be left at the disposal of the parties to the employment relationship (as occurs in Portugal for tenured civil servants, in Spain and Russian Federation in some cases). It found the follow-up given to its Decision No. 65/2011 to be inadequate (Greece). Some positive developments during the reference period were deemed insufficient to remove this ground or other grounds of violation (Czech Republic, Greece, Ireland, Italy, Lithuania, Republic of Moldova, Norway, Portugal, the Slovak Republic, Spain and Slovenia).

Article 4§5 of the Charter is intended to ensure that workers and their dependants are not deprived of their means of subsistence. For most States in Europe, the unassignable and/or unattachable portion of the wage was found by the Committee to be too low in that respect. This was *a fortiori* the case where that portion of the wage is reduced even further for certain grounds of deduction, such as for the recovery of maintenance payments (Azerbaijan, Estonia, Iceland, Poland and Ukraine). Andorra; Belgium; the Czech Republic and Germany were, however, in conformity.

Article 4§5 of the Charter implies that the determination of deductions from wages should not be left at the disposal of the parties to the employment relationship. This was found to be the case where any derogation from the unassignable and/or unattachable portion of the wage is prohibited (Austria and Estonia). However, possibilities to forfeit, assign or attach the wage are often too extended, and could deprive workers paid the lowest wages and their dependents of their means of subsistence (Azerbaijan, Cyprus, Ireland, Norway, Portugal, the Slovak Republic and the United Kingdom). Some positive changes during the reference period were deemed to be insufficient to remove this ground or further grounds of violation (Estonia, Italy, Republic of Moldova, Norway, Portugal and Slovenia).

The Committee's conclusions were sometimes corroborated by similar observations of the UN Committee on Economic, Social and Cultural Rights (ECSCR) (Spain, Russian

Federation and Ukraine) and the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) (Slovak Republic and Turkey).

The right to organise

Article 5 guarantees workers' and employers' freedom to organise.

Concerning the forming of trade unions and employers' organisations, the Committee found the minimum membership requirements to be too high and therefore to undermine the freedom to organise (Armenia, Latvia, Serbia and Georgia). In this respect, since the last cycle Lithuania has amended its legislation by lowering the minimum threshold and consequently brought the situation into conformity with Article 5 of the Charter.

As to the freedom to join or not to join a trade union, the Committee found non-conformity due to the lack of adequate and proportionate compensation in domestic law in view of the discrimination suffered by a trade union member (Armenia, Azerbaijan, Bulgaria, Georgia, Republic of Moldova and Ukraine).

As regards representativeness, the Committee found the situation in most countries to be in conformity. It however found that in some countries the criteria used to determine representativeness were not adequate (Georgia, Portugal and Ukraine). In respect of Belgium, the Committee noted positive developments bringing the situation into conformity through the adoption of the Act of 30 December 2009, according to which the victims of discrimination based on union membership can now claim compensation proportional to the real damage and discrimination on the ground of trade union membership is prohibited at all stages of the employment relationship.

The Committee found on several occasions that police personnel do not enjoy the right to join trade unions or restrictions on the right to be excessive (Armenia, Azerbaijan, Ireland and Malta). On the personal scope issue, the Committee notes a positive development in respect of Romania, who through the adoption of a new legislation in 2011, the Law on social dialogue, removed the requirement of Romanian citizenship for representation within the Economic and Social Council and therefore brought the situation into conformity with Article 5 of the Charter.

The right to bargain collectively

The exercise of the right to bargain collectively and the right to collective action represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter.

Under Article 6§2 of the Charter, the States Parties undertake to promote machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee found that the situation is not in conformity with Article 6§2 of the Charter in 9 countries on the ground that machinery for voluntary negotiations is not adequately promoted. These countries are: Azerbaijan, Bulgaria, Estonia, Georgia, Hungary, Latvia, Lithuania, Republic of Moldova, and Slovak Republic.

In respect of Spain, the Committee concluded that the situation is not in conformity with Article 6§2 of the 1961 Charter as legislation which affects the right to bargain collectively and allows employers unilaterally not to apply conditions agreed in collective agreements was enacted without the consultation of trade unions and employers' organisations.

Under Article 6§3 of the Charter, the States Parties undertake to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes. The Committee found that Armenia, Azerbaijan, Bulgaria and Georgia were in breach of their obligations under this Article due to the absence of conciliation or arbitration procedures in the public service. Moreover, in respect of other countries like Malta and Portugal, the Committee concluded that the situation is not in conformity because compulsory recourse to arbitration is permitted in circumstances which go beyond the conditions set out in Article G of the Charter.

With respect to the right to strike, under Article 6§4 the States Parties undertake to guarantee the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike.

The situation is not in conformity with the Charter in Bulgaria, Denmark and Ukraine where civil servants are denied the right to strike. Specific breaches of Article 6§4 of the Charter are still encountered in Ireland, where there is an absolute prohibition of the right to strike of police officers (see Decision on the merits of Collective Complaint No. 83/2012 European Confederation of Police (EUROCOP) v. Ireland), and in Sweden where the statutory framework on posted workers constitutes a restriction on the free enjoyment of the right of trade unions to engage in collective action (see Decision on the merits of Collective Complaint No. 85/2012 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden).

The Committee considered that the restrictions on the right to strike of employees working in various sectors such as the energy supply services, telecommunication, nuclear facilities, transport, are not justified in 7 countries: Armenia, Azerbaijan, Bulgaria, Italy, Republic of Moldova, Slovak Republic and Ukraine.

As regards the entitlement to call a strike, France was found to be in breach of the Charter as only representative trade unions have the right to call strikes in the public sector. In other situations, the Committee concluded that the requirements for calling a strike are excessive. This concerned Armenia, Czech Republic, Germany, Hungary and Portugal.

The Committee considered that the requirement to notify the duration of strikes to the employer or his representatives prior to strike action is excessive in Bulgaria, Italy and the United Kingdom. The Committee concluded that the situations in Armenia, Ireland and the United Kingdom are not in conformity with the Charter as workers are not protected in the event of calling a strike.

In the case of Germany, the Committee changed its earlier position as regards the prohibition of strikes not aimed at achieving a collective agreement. It considered that that the specific German approach of leaving conflicts of rights to be determined by courts while requiring that collective action must be directed towards resolving conflicts of interest is thus in principle in conformity with the provisions

of Article 6§4 of the 1961 Charter, as long as excessive constraints are not imposed upon the right of workers and employees to engage in collective action in respect of conflicts of interest. The Committee reserved its position in case specific situations might indicate conflicts of interest other than those aiming at concluding collective agreements which cannot be solved by a competent court.

In respect of Norway, the Committee concluded that the intervention of the Government to terminate the collective action and impose compulsory recourse to arbitration in the oil sector conflict in 2012 was not in conformity with Article 6§4 of the Charter. The Committee found similar situations of non-conformity in the case of Iceland where the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter and Spain as the legislation authorises the Government to impose compulsory arbitration to end a strike in cases which go beyond the conditions permitted by Article 31 of the 1961 Charter.

The Committee reconsidered its position as regards the powers granted to the Public Conciliator in Denmark (the "linkage rule"). The Committee concluded that the situation is in conformity with Article 6§4 of the 1961 Charter in view of the specific features of the Danish trade unions system where trade unions are organised according to professions and considering that the activities of the Public Conciliator are subject to judicial scrutiny.

The right to information and consultation

Article 21 protects the right of workers to be regularly informed concerning the economic and financial position of the undertaking, and to be consulted in good time on propositions which could substantially affect their interests, particularly the employment situation in the undertaking. Recognising the importance of harmonisation with EU norms where these guarantee comparable protection, the Committee has adopted the thresholds laid down in Directive 2002/14/EC, which represent an acceptable practical limit to the application of Article 21 to undertakings of a certain size. All categories of worker must be included in the calculation for the purpose of these thresholds. In the case of France, certain schemes which subsidised contracts for new employees up to 24 months, such as the CUI-CAE and the CUI-CIE, were found to also deny these same workers an effective right to information and consultation because they are not counted for the purposes of the threshold.

The right also requires an effective enforcement mechanism, such as a labour inspectorate, and remedies to ensure the right to information and consultation. For example in Spain during the reference period 4303 inspections were carried out by the Labour Inspectorate and 1434 injunctions were used against employers. However, Spanish Trade Unions submitted comments which complained of recent measures which have restricted trade union access to information, and the Committee has requested further information in order to examine these issues fully in the next cycle.

Some countries failed to provide sufficient information concerning both the scope of national law and its practical application. Where States repeatedly fail to provide up to date reports the Committee cannot find conformity as it does not have access to all the necessary information. This was the case with regard to Italy and Norway,

which have now been found to be in breach of Article 21 as they failed to establish that the right was adequately protected.

The right to take part in the determination and improvement of working conditions

Under Article 22 States Parties must adopt or encourage measures to enable workers to contribute to the determination and improvement of working conditions, the protection of health and safety in the undertaking, the organisation of social activities in the undertaking, and to the supervision of these matters. All of these matters are equally vital to the maintenance of a healthy and productive working environment which respects the human rights of the employees.

A large number of states failed to provide information on social activities and working conditions as well as health and safety. There was also often a lack of information concerning the legal remedies available when the measures put in place to ensure the abovementioned rights are violated.

The committee therefore deferred its conclusions pending receipt of further details in respect of 7 countries, namely Bosnia and Herzegovina, Estonia, Finland, Hungary, Ireland, the Russian Federation and Serbia. The situation in Estonia had previously been considered to be not in conformity due to a lack of legal remedies; however, pending further information the Committee has decided to reserve its position on this issue.

Owing to certain grave or repeated failures to provide information concerning all subsections of Article 22 in the reports, the Committee made 6 findings of non-conformity on the basis that it had not been established that some or all of the obligations concerned were fulfilled. The countries concerned are Armenia, Azerbaijan, Bulgaria, Italy, Norway and Turkey.

The Czech Republic, Slovakia and Portugal answered the questions posed by the Committee in the previous control cycle, and following their response, the previously deferred conclusion has become positive. Cyprus accepted Article 22b on 5 October 2011 and this was the first report on its situation, which was found to be in conformity.

The right to dignity at work

Under Article 26§1 and 26§2 of the Charter, States are required to protect workers respectively from sexual and moral harassment, by taking appropriate preventive and remedial measures. In particular, employers must be liable for harassment involving their employees or occurring on premises under their responsibility, even when third persons are involved. Victims of harassment must be able to seek reparation before an independent body and, under civil law, a shift in the burden of proof should apply. Effective judicial remedies must furthermore allow for adequate reparation for pecuniary and non-pecuniary damage and, where appropriate, reinstatement of the victims in their post, including when they resigned because of the harassment.

On the basis of these criteria, the Committee considered that, in several countries, employees did not enjoy adequate protection from sexual harassment (Azerbaijan, Georgia, Turkey, and Ukraine) or from moral harassment (Azerbaijan, Finland, Georgia,

Lithuania, Republic of Moldova, Netherlands, Turkey and Ukraine). In most cases, however, this finding was based on the lack of relevant information in response to the questions previously raised.

The right or workers' representatives to protection in the undertaking

Article 28 guarantees the right of workers' representatives to protection in the undertaking and to certain facilities.

The protection granted to workers' representatives shall be extended for a reasonable period after the effective end of period of their office. However, the Committee found numerous situations of non-conformity where the protection afforded to workers' representatives did not extend to a period after the mandate (Armenia, Austria, Azerbaijan, Lithuania, Norway and Romania).

The facilities granted to workers' representatives may include for example access to all premises, authorisation to distribute information sheets or financial contributions. In this respect, the Committee found that most of the countries were in conformity with the Charter. It is only in three cases that the Committee found situations of non-conformity as it considered the facilities granted to workers' representatives to be inadequate (Armenia, Republic of Moldova and Ukraine).

The right to information and consultation in collective redundancy procedures

Under Article 29 the States Parties undertake to establish an information and consultation procedure which should precede the process of collective redundancies. The obligation to inform and consult is not just an obligation to inform unilaterally, but implies that a process (of consultation) be set in motion, meaning that there is sufficient dialogue between the employer and the worker's representatives on ways of avoiding redundancies or limiting their number and mitigating their effects through support measures.

The Committee found that the situation in the majority of States Parties was in conformity with this requirement, an exception being Georgia, where the legislation only covers the obligation of the employer to notify about collective redundancies, but does not guarantee the rights of workers and their representatives to be consulted in good time before the redundancies take place.

5. Procedure on non-accepted provisions

Article A of the Charter (Article 20 of the 1961 Charter) provides the possibility of ratifying the treaty without accepting all of its substantive provisions. This Article also provides that States Parties may at any moment, following the ratification of the treaty, notify the Secretary General of its acceptance of any additional articles or paragraphs. This principle of progressive acceptance is stated in Article 22 of the 1961 Charter:

The Contracting Parties shall send to the Secretary General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II

of the Charter which they did not accept at the time of their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

For many of the early years of the Charter's existence this procedure was carried out as a classical reporting exercise, where States would submit written reports describing law and practice as regards the provisions concerned. The Committee of Ministers initiated such "exercises" on 8 occasions between 1981 and 2002.

In December 2002, the Committee of Ministers decided that "States having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and it "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the States concerned" (Decision of the Committee of Ministers of 11 December 2002). Following this decision, it was agreed that the European Committee of Social Rights examines - in a meeting or by written procedure - the actual legal situation and the situation in practice in the countries concerned from the point of view of the degree of conformity of the situation with non-accepted provisions. This review would be done for the first time five years after the ratification of the revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that States tend to forget that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon.

In 2014, the procedure on non-accepted provisions concerned eleven States Parties, six of which were invited to submit a written report (Andorra, Belgium, Hungary, Italy, Romania and Slovenia) and five of which were invited to hold a meeting (Armenia, Azerbaijan, Russian Federation, Serbia and the Slovak Republic). At the request of the Slovak authorities, the Committee decided to carry out a written procedure instead of a meeting.

The authorities of Armenia and the Russian Federation asked for the meeting on non-accepted provisions to be put back to the beginning of 2015.

The reports on Hungary, Romania, Serbia, Slovenia and the Slovak Republic will be adopted by the Committee in 2015.

Finally, in 2014, the Committee also adopted the report on the provisions of the Charter not accepted by Sweden, which were due for examination in 2013.

Andorra

Andorra ratified the European Social Charter on 12 November 2004, accepting 79 of its 98 paragraphs. It has not accepted the Additional Protocol providing for a system for Collective Complaints.

The following provisions were not accepted:

Article 6§§1-4, 16, 18§§1-3, 19§2, 19§4, 19§6, 19§8, 19§10, 21, 22, 24, 25, 27§§1-3, 28, 29 and 31§3.

In a letter of 24 September 2013, the Committee invited the Andorran Government to provide it with written information on the progress made towards acceptance of

further provisions and any reasons for delays in accepting these provisions by the end of March 2014. A reminder letter was sent in September 2014.

So far, the requested written contribution has not been submitted.

Armenia

Armenia ratified the European Social Charter on 21 January 2004, accepting 67 of its 98 paragraphs. It has not signed the Additional Protocol providing for a system for Collective Complaints.

Article The following provisions were not accepted:

2§7, 3§§2-4, 4§1, 9, 10§§1-5, 11§§1-3, 12§2, 12§4, 13§§3-4, 14§1, 15§1, 16, 21, 23, 25, 26§§1-2, 29, 30 and 31§§1-3.

Following an initial meeting on non-accepted provisions held in Yerevan in 2009, the Committee invited the Armenian Government to hold a further meeting in 2014 on progress made towards acceptance of further provisions and any reasons for delays in accepting these provisions.

The Armenian authorities asked for the meeting on non-accepted provisions to be put back until the beginning of 2015 because of reforms planned in 2014, relating in particular to amendments to the Labour Code to ensure that its provisions complied with treaties binding Armenia.

The Committee is awaiting confirmation of the new meeting dates.

Azerbaijan

Azerbaijan ratified the European Social Charter on 2 September 2004, accepting 47 of its 98 paragraphs. It has not signed the Additional Protocol providing for a system for Collective Complaints.

The following provisions were not accepted:

Article 2§§1-7, 3§§1-4, 10§§1-5, 12§§1-4, 13§§1-4, 15§§1-3, 17§§1-2, 18§§1-4, 19§§1-12, 23, 25, 30 and 31§§1-3.

After an initial meeting in 2009, the Committee invited the Azerbaijani authorities to hold a second meeting under the procedure on non-accepted provisions. On the basis of the information collected at this meeting, held in Baku on 25 June 2014, the Committee concluded in its report that acceptance of Article 19 of the Charter on the right of migrant workers and their families to protection and assistance seemed possible. The Committee invited the Government of Azerbaijan to consider accepting this article.

The next examination of the provisions not accepted by Azerbaijan will take place in 2019.

The Committee's report is available at the following address: http://www.coe.int/socialcharter.

Belgium

Belgium ratified the European Social Charter on 2 March 2004, accepting 87 of its 98 paragraphs. It accepted the Additional Protocol providing for a system of collective

complaints on 23 June 2003 but it has not yet made a declaration enabling national NGOs to submit collective complaints.

The following provisions were not accepted:

Article 19§12, 23, 24, 26§2, 27§§1-3, 28 and 31 §§ 1-3.

After an initial meeting in 2009, the Committee decided to apply the written procedure in 2014 and invited the Belgian authorities to provide written information on the progress made towards acceptance of further provisions and any reasons for delays in accepting these provisions.

On the basis of the written information submitted by the Belgian Government on 25 April 2014, the Committee concluded that there were no obstacles in law or in practice to the acceptance of Article 26§2, 27§§1-2, 28 and 31. The Committee invited the Belgian Government to consider the acceptance of these provisions which it had identified as posing no problem with regard to their acceptance.

The next examination of the provisions not accepted by Belgium will take place in 2019.

The Committee's report is available at the following address: http://www.coe.int/socialcharter.

Hungary

Hungary ratified the European Social Charter on 20 April 2009, accepting 60 of its 98 paragraphs. It ratified the Amending Protocol to the Charter on 4 February 2004 but has not yet ratified the Additional Protocol providing for a system of collective complaints.

The following provisions were not accepted:

Article 4§§1-5, 7§§2-10, 12§§2-4, 18§§1-4, 19§§1-12, 23, 24, 25, 26§§1-2, 27§§1-3, 28, 29, 30 and 31§§1-3.

In a letter of 24 September 2013, the Committee invited the Hungarian Government to provide written information on the progress made towards acceptance of further provisions and any reasons for delays in accepting these provisions by the end of March 2014. At the request of the Hungarian authorities, the Committee agreed to extend the deadline for the submission of this information to 30 September 2014.

The information was received on 14 February 2015.

Italy

Italy ratified the European Social Charter on 5 July 1999, accepting 97 of its 98 paragraphs. It accepted the Additional Protocol providing for a system of collective complaints on 3 November 1997 but it has not yet made a declaration enabling national NGOs to submit collective complaints.

The only provision it has not accepted is Article 25 of the Charter.

As in 2004 and in 2009, the Committee decided to invite the Italian authorities to submit written information on the progress made towards acceptance of Article 25 and any reasons for the delay in accepting this provision.

In a letter of 7 May 2014, the Italian authorities informed the Committee that the Government's position with regard to the possibility of accepting Article 25 had not changed since 2009.

The Committee noted in its report that, although Italy had not ratified ILO Convention No. 173, it had transposed Directive 80/987/EEC into domestic law, setting up a system to protect employees in the event of the insolvency of their employer. Consequently, the Committee reiterated the views it had expressed in its first and second reports and again encouraged the Italian authorities to accept Article 25 of the Charter.

The next examination of the provision not accepted by Italy will take place in 2019.

The Committee's report is available at the following address: http://www.coe.int/socialcharter.

Romania

Romania ratified the European Social Charter on 7 May 1999, accepting 65 of its 98 paragraphs. It has not yet ratified the Additional Protocol providing for a system of collective complaints.

The following provisions were not accepted:

Article 2§3, 3§4, 10§§1-5, 13§4, 14§§1-2, 15§3, 18§§1-2, 19§§1-6, 19§§9-12, 22, 23, 26§§1-2, 27§1, 27§3, 30 and 31§§1-3.

After an initial meeting in 2004 and a second in 2009, the Committee decided to apply the written procedure in 2014 and invited the Romanian authorities to provide written information on the progress made towards acceptance of further provisions and any reasons for delays in accepting these provisions.

In 2015, the Committee will adopt its report on the provisions not accepted by Romania.

The next examination of the provisions not accepted by Romania will take place in 2019.

Russian Federation

The Russian Federation ratified the European Social Charter on 16 October 2009, accepting 67 of its 98 paragraphs. It has not yet accepted the Additional Protocol providing for a system of collective complaints.

The following provisions were not accepted:

Article 2§2, 4§1,12§§2-4, 13§§1-4, 15§3, 18§§1-3, 19§§1-4, 19§§6-8, 19§§10-12, 23, 25, 26§§1-2, 30, and 31§§1-3.

The Committee invited the Government of the Russian Federation to hold a first meeting under the procedure on non-accepted provisions to examine the progress made towards accepting further provisions and any reasons for delays in accepting these provisions in 2014.

In November 2014 the Russian authorities asked for the meeting on non-accepted provisions to be put back to February 2015 because of a reorganisation of the time-table of the commission responsible for organising the hearing on the Social Charter.

The Committee is waiting for confirmation of the new meeting dates.

Serbia

Serbia ratified the European Social Charter on 14 September 2009, accepting 88 of its 98 paragraphs. It has not yet ratified the Additional Protocol providing for a system of collective complaints.

The following provisions were not accepted:

Article 2§4, 10§5, 19§§11-12, 27§§1-3 and 31§§1-3.

The Committee invited the Serbian Government to hold a first meeting under the procedure on non-accepted provisions to examine the progress made towards accepting further provisions and any reasons for delays in accepting these provisions in 2014. The meeting was held in Belgrade on 4 November 2014.

The Committee will adopt its report on the provisions not accepted by Serbia in 2015.

The next examination of the provisions not accepted by Serbia will take place in 2019.

Slovak Republic

The Slovak Republic ratified the European Social Charter on 23 April 2009, accepting 86 of its 98 paragraphs. It signed the Additional Protocol providing for a system of collective complaints on 18 November 1999 but it has not yet ratified it.

The following provisions were not accepted:

Article 13§4, 18§3, 19§§2-3, 19§8, 19§10, 19§12, 27§3 and 31§§1-3.

In a letter of 24 September 2013, the Committee invited the Government of the Slovak Republic to hold a first meeting under the procedure on non-accepted provisions to examine the progress made towards accepting further provisions and any reasons for delays in accepting these provisions in 2014. In November 2013, the Slovak authorities indicated that they would prefer to prepare written information on the non-accepted provisions. Following this request the Committee decided to apply the written procedure. Consequently, in a letter of 15 May 2014, the Slovak Government was invited to provide a report on the non-accepted provisions by 30 September 2014.

The Committee will adopt its report on the provisions not accepted by the Slovak Republic in 2015.

The next examination of the provisions not accepted by the Slovak Republic will take place in 2019.

Slovenia

Slovenia ratified the European Social Charter on 7 May 1999, accepting 95 of its 98 paragraphs. It ratified the Additional Protocol providing for a system of collective complaints on 7 May 1999 but it has not yet made a declaration enabling national NGOs to submit collective complaints.

The following provisions were not accepted:

Article 13§1, 13§4 and 18§2.

In a letter of 24 September 2013, the Committee invited the Slovenian Government to provide written information on the progress made towards accepting further provisions and any reasons for delays in accepting these provisions by the end of March 2014. It was sent a reminder letter in September 2014.

The written contribution was received on 13 January 2015.

Sweden

Slovenia ratified the Charter on 29 May 1998, accepting 83 of its 98 paragraphs.

The following provisions were not accepted:

Article 2§§1-2, 2§4, 2§7, 3§4, 4§2, 4§ 5, 7§§5-6, 8§2, 8§§4-5, 12§4, 24 and 28.

After an initial meeting on the non-accepted provisions in Stockholm in 2003 and a second meeting in Strasbourg in 2008, the Swedish authorities indicated that they would prefer to prepare a written contribution in 2013.

In a letter of 21 March 2014, the Swedish authorities informed the Committee that there had been no change in the Government's position on the provisions concerned and that the arguments on which this position was based had not changed since 2008.

In its report the Committee encouraged the Swedish authorities to consider accepting the provisions which had been identified and confirmed in 2008 as posing no problem if accepted, namely Articles 2§7, 3§4 and 8§4.

The next examination of the provisions not accepted by Sweden will take place in 2018.

The Committee's report is available at the following address: http://www.coe.int/socialcharter.

6. Turin Conference

On 17-18 October 2014, Committee members participated in the High-Level Conference on the European Social Charter, organised in Turin by the Council of Europe (Department of the European Social Charter), in co-operation with the Italian authorities, in the framework of the Italian Chairmanship of the European Union.

The programme, list of participants and other documents related to the Conference can be found on the following Council of Europe website: http://www.coe.int/en/web/portal/high-level-conference-esc-2014.

The Conference gathered approximately 350 people, including delegations from 37 European states, including such political representatives as Ministers and Secretaries of State from fifteen countries. The Council of Europe and the European Union were represented at the Conference by several top level representatives.

Colm O'Cinneide, General Rapporteur of the Committee, and Giuseppe Palmisano, member of the Committee, took part in Panels.

The decision to organise a High-level Conference on the Charter stemmed from the recognition that the Charter is facing a number of major challenges, which impact on the effectiveness of its implementation and require political decisions to be taken

by the States Parties, the Council of Europe's political bodies and, to some extent, the European Union.

The objective of the Conference was therefore to put the Charter at the centre of the European political scene, allowing it to fully express its potential alongside the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union, in the name of the principles of the indivisibility and interdependence of fundamental rights.

The Conference was the outcome of a long series of Council of Europe activities regarding social rights, more specifically the political declaration adopted by the Committee of Ministers on the occasion of the Charter's 50th anniversary in 2011, the resolutions and recommendations on the monitoring of commitments concerning social rights adopted by the Parliamentary Assembly in 2011, as well as the decisions adopted by the Committee in 2012-2013 through the collective complaints procedure concerning Greece and Sweden, and the working document on the relationship between EU law and the Charter adopted by the Committee in 2014.

At the Conference participants agreed to compare their points of view with respect to three determinant challenges. The first challenge refers to the upholding of the rights guaranteed by the Charter following the far-reaching social and economic changes which have occurred since 2008, sometimes having a dramatic impact on the satisfaction of individuals' everyday needs and respect for their connected fundamental rights. In this context, the Charter has been recognised as a living, integrated system of guarantees, whose implementation at national level has the potential to reduce economic and social tensions, promote political consensus, and, where appropriate, draw on this to facilitate the adoption of the necessary reforms.

The second challenge discussed at the Conference relates to the improvement of the supervisory mechanism for the application of the Charter on the basis of collective complaints. In this respect, the Conference enabled participants to make clear that if the collective complaints procedure was accepted by more states, this could help to reduce the number of pending cases before the European Court of Human Rights. Broader acceptance of the procedure would also have the advantage of reducing the workload of the national administrative departments involved in the Charter's reporting procedure, by focusing on specific issues.

The third challenge relates to the changing relationship between EU law and the Charter. In this connection, consensus was gathered around the idea that it has to be ensured that the fundamental rights enshrined in the Charter are fully respected by decisions of the States Parties resulting directly or indirectly from changes in European Union law. To that effect, the idea was shared among participants of reinforcing co-operation between the Committee and competent EU bodies. The proposal that the European Union and the Council of Europe elaborate a common document identifying the legal and technical obstacles to the accession of the EU to the Charter was also discussed during the Conference.

As highlighted by the Secretary General of the Council of Europe, Thorbjørn Jagland, in his speech, the Conference represented the first step in the 'Turin Process' for the Charter. In view of this, Michele Nicoletti, Vice-President of the Parliamentary Assembly,

was entrusted with the task of preparing the General Report of the Conference. This document, published in the beginning of 2015, constitutes a driving force for the abovementioned process.

In this regard, at the closing Session of the Conference, the Deputy Secretary General of the Council of Europe, Gabriella Battaini-Dragoni, expressed her commitment to monitor the implementation of the 'Turin Process', while constantly bearing in mind that the reinforcement of the Charter is one of the priorities identified by the Secretary General in his strategic vision for the Council of Europe over the next five years.

To this end, she stated that everything will be done to ensure that the Charter always occupies a place within the Council of Europe convention system consistent with the fundamental nature of the rights it safeguards.

7. Joint Informal Meeting of the European Committee of Social Rights and the Governmental Committee of the European Social Charter and the European Code of Social Security

In 2014, European Committee of Social Rights and the Governmental Committee of the European Social Charter and the European Code of Social Security (GC) held a joint meeting on 14 October 2014 in Turin at the margin of the High-Level Conference on the European Social Charter.

The meeting focused on two items of interpretation made by the European Committee of Social Rights: Article 12 (the right to social security) and the scope of the European Social Charter in terms of persons protected.

Both Committees considered this exchange of views very informative and fruitful, and there was agreement that ways should be found to continue this dialogue.

8. Relations with the European Union

a) European Commission

On 15 July 2014, the Committee issued a working document on "The relationship between European Union law and the European Social Charter".

The working document constitutes a follow-up to the meeting between representatives of the Committee and the European Commission's Directorate General for Justice at the latter's headquarters in Brussels on 14 March 2013, on the subject of the relationship between European Union law and the Charter, particularly in the context of the implementation of the Charter of Fundamental Rights of the European Union[3].

3. Participants: European Committee of Social Rights: Petros Stangos, Vice-President, Mr Régis Brillat, Executive Secretary, accompanied by Ambassador Torbjørn Frøysnes, Special Representative of the Secretary General of the Council of Europe, Head of the Council of Europe Liaison Office with the European Union, Brussels; DG Justice – Directorate C Fundamental Rights and Union Citizenship: Paul Nemitz, Director, accompanied by Charalambos Fragkoulis, Dimitrios Dimitriou, Michael

As agreed in a meeting between representatives of the Committee and of the European Commission's Directorate General for Employment, Social Affairs and Inclusion at the latter's headquarters in Brussels on 29 January 2014 in Brussels[4], the working document was forwarded to the European Commission on 23 July 2014.

The need for clarification about the relations between the two European standard setting systems on social rights, namely European Union law, including primary law, secondary law and, as a source of supplementary law, the case law of the Court of Justice of the European Union on the one hand and, on the other, the Charter, was referred to for the first time at the aforementioned meetings. At the meetings emphasis was placed on the divergences between the two systems, which were noted by the Committee in the process of monitoring the application of the Charter on the basis of collective complaints in the period 2010-2013[5].

In this context, the Committee noted that these divergences, relating to the national law of some States Parties to the Charter that are also members of the European Union which falls within the scope of the Charter, constituted a violation of these states' obligations under the Charter. At the same time, other divergences between the two systems, linked to the application of the Charter in national law, have been brought to light for a number of years now in the conclusions adopted by the Committee in the course of its supervision work based on national reports.

As explained in its introduction, the aim of the working document is therefore to clarify the relations between the two European standard-setting systems for the protection of social rights (by the Council of Europe and the European Union), whether divergent or convergent, as highlighted by the case law of the Committee. On this basis, the working document is designed to contribute to improved co-ordination of the two systems, both in the interests of states and citizens and in the interests of the two European organisations concerned.

Morass and Vincent Depaigne.

4. Participants: Directorate General of Employment, Social Affairs and Inclusion Georg Fischer, DG EMPL, Director for Analysis, Evaluation and External Relations, Armindo Silva, DG EMPL, Director for Employment and Social Legislation, Social Dialogue, Sjoerd Feenstra, DG EMPL, Legal Adviser, Employment and Social Legislation, Social Dialogue, Thomas Bender, DG EMPL, Head of Unit, External Relations, Neighbourhood, Policy, Enlargement, IPA, Rudi Delarue, DG EMPL, deputy Head of Unit, External Relations, Neighbourhood, Policy, Enlargement, IPA, Natasa Kokic, DG EMPL, Policy Officer, External Relations, Neighbourhood, Policy, Enlargement, IPA, CoE desk, Evelyne Pichot, DG EMPL, Policy Co-ordinator, External Relations, Neighbourhood, Policy, Enlargement, IPA, ILO desk, Vincent Depaigne, DG JUST, Fundamental Rights and Rights of the Child Unit, Anja Lubenau, European External Action Service, Policy Officer, Council of Europe Relations, Multilateral relations.
5. *Confédération Générale du Travail* (CGT) v. France, Complaint No. 55/2009, Decision on the merits of 23 June 2010; Confédération Française de l'Encadrement «CFE-CGC» v. France, Complaint No. 56/2009, Decision on the merits of 23 June 2010; Federation of Employed Pensioners of Greece (IKA –ETAM) v. Greece, Complaint No. 76/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Public Service Pensioners v. Greece, Complaint No. 77/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI.) v. Greece, Complaint No. 79/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, Decision on the merits of 7 December 2012; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and on the merits of 3 July 2013.

In light of this, the working document provides general information on the Charter and the tasks assigned to the Committee by virtue of the Charter and its additional protocols, as well as on the various levels of commitment of European Union member states with regard to the provisions of the Charter. It presents the Charter provisions and identifies the corresponding sources of European Union primary and secondary law (identified on the basis of the Committee's case law) and the relevant case law of the European Union Court of Justice, and describes the existing links between them.

The links between the provisions of the Charter, secondary European Union law and the case law of the Court of Justice as reflected in the Committee's case law are also described in the working document. The bases for these links are illustrated with an indication of the convergence or divergence in the levels of protection provided by the two systems. Bearing in mind the foregoing, the working document contains considerations and proposals relating to the establishment of more coherent and harmonious relations between the two standard-setting systems with a view to the possible future accession of the EU to the Charter.

In the working document, the Committee considers that conditions for renewed co-operation can only be established and implemented by means of high-level political decisions by competent European Union and Council of Europe bodies. In view of this, the working document served as a basis for discussion at the High-Level Conference on the European Social Charter, held in Turin (Italy) on 17 and 18 October 2014 (see page 32)[6].

b) Court of Justice of the European Union

On 1st December 2014 the Committee held an exchange of views with the Court of Justice of the European Union at the premises of the latter in Luxembourg. The exchange of views followed on to previous meetings with the Court of Justice of the European Union held in 2004 in Luxembourg and in 2010 in Strasbourg.

Court of Justice of the European Union was represented by its Vice-President Koen Lenaerts, Chamber President Aindrias Ó Caoimh, Judge Egils Levits, Advocate General Paolo Mengozzi, Judge Sacha Prechal and Judge François Biltgen. The Committee was represented by its Bureau consisting of the President, Luis Jimena Quesada, the Vice-Presidents Monika Schlachter and Petros Stangos as well as the General Rapporteur, Colm O'Cinneide.

The exchange of views was divided into two thematic round tables: the first on the relationship between European Union law and the Charter with introductions by Koen Lenaerts and Petros Stangos and the second on the economic crisis and social rights with introductions by Paolo Mengozzi and Luis Jimena Quesada.

At the close of the exchange of views there was agreement among the participants that the discussion had been stimulating and mutually beneficial and that it deserved to be resumed at the first given opportunity.

6. Further information on the abovementioned Conference and the related 'Turin Process' can be found on the following Council of Europe website: http://www.coe.int/en/web/portal/high-level-conference-esc-2014

9. Relations with the United Nations

The European Committee of Social Rights has long-standing and close relations with the relevant bodies of the United Nations (UN), in particular the International Labour Organisation (ILO) and the Office of the High Commissioner for Human Rights (OHCHR).

In July 2014, the Committee held an exchange of views with the Deputy Director of the ILO Department of Labour Standards, Karen Curtis, on the topic of freedom of association and collective bargaining. In October 2014, the Director of the ILO Department of Labour Standards, Cleopatra Doumbia-Henry, were among the speakers on the theme of austerity and social rights at the High-Level Conference on the European Social Charter in Turin.

Also in October 2014, the President of the Committee, Luis Jimena Quesada, intervened in the international workshop on "Enhancing Co-operation between United Nations and Regional Mechanisms for the Promotion and Protection of Human Rights" organised by OHCHR in Geneva.

The Committee has close contacts with the UN Committee on Economic, Social and Cultural Rights. Efforts are on-going to strengthen co-operation between the two committees, including through informal contacts between their presidents. Member of the UN Committee, Olivier De Schutter, intervened as a speaker at the High-Level Conference in Turin.

The Committee systematically refers to United Nations instruments relevant to social rights, in particular the UN Covenant on Economic, Social and Cultural Rights and the general comments of the UN Committee on Economic, Social and Cultural Rights. For a recent example, see Conference of European Churches v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014. The Committee's conclusions on health, social security and social protection adopted in respect of all the 43 States Parties in 2014 also contain numerous references to the work of different UN bodies.

The Department of the European Social Charter contributes regularly to the coordination meetings between the secretariats of the Council of Europe and the Office of the High Commissioner for Human Rights.

The Department also has close contacts with the United Nations High Commissioner for Refugees (UNHCR) through its Representation to the European institutions in Strasbourg. In April 2014 the Department intervened at the conference "*Stateless but not Rightless: Improving the Protection of Stateless Persons in Europe"* jointly organised in Strasbourg by the UNHCR and the European Network on Statelessness presenting the Committee's case law on the rights of stateless persons under the Charter. In September 2014, the Department was represented at the "*First Global Forum on Statelessness"* organised by the UNHCR in the Hague.

Finally, the Committee was represented at a technical meeting organised by the World Health Organisation (WHO) in April 2014 in Geneva on "*Strengthening Health & Human Rights Standards for Prevention of Unsafe Abortion*". On this occasion information was provided on the Committee's recent decision pertaining to access to

abortion (International Planned Parenthood Federation European Network (IPPF EN) v. Italy, Complaint No. 87/2012, decision on the merits of 10 September 2013).

10. Academic Network on the Charter (ANESC)

The co-operation of the Academic Network of the European Social Charter (hereafter referred to as "Network")[7] was strengthened in the course of 2014.

It particularly concerned the organisation and conduct of the High-level Conference on the European Social Charter held by the Council of Europe in Turin (Italy) on 17 and 18 October 2014 (Department of the European Social Charter) in co-operation with the Italian authorities.

The Network contributed to the Conference in the form of statements by its representatives and the adoption of a series of specific documents[8].

In this context, the Network shared the idea that the Turin Conference, and the 'Turin Process which it had initiated, offered the opportunity to ensure that the Charter became, as intended, a true 'Social Constitution' for Europe.

The Network was of the opinion that there was no need to revise any of the texts in force to achieve this objective. It does, however, require that the Committee of Ministers of the Council of Europe take concrete steps to improve the visibility and effectiveness of the Charter. It also requires better harmonisation between the EU legislation and the requirements of the Charter.

The proposals set out in the documents adopted by the Network at the Turin Conference have been submitted to the European governments and institutions concerned.

7. ANESC is an association governed by Articles 21 to 79-III of the local Civil Code, which is still in force in the départements of the Upper Rhine, the Lower Rhine and Moselle, by the Law of 1 June 1924, and by its statutes, and is registered on the list of associations of the Strasbourg District Court. Its seat is based at the "Maison des associations", 1-a Place des Orphelins, 67000 Strasbourg. According to its statute, the main objective of ANESC is to promote the European Social Charter and social rights in Europe, and to this end it takes all sorts of initiatives to publicise the European Social Charter and other instruments for the protection of social rights in Europe. It also aims to improve their implementation and their protection at the level of the Council of Europe and its member states (see Article 2). For more detailed information on ANESC, please consult: http://racseanesc.org/
8. Specific information on the Conference and ANESC's contribution is available on: http://www.coe.int/fr/web/portal/high-level-conference-esc-2014

Appendices

Appendix 1. List of the members of the European Committee of Social Rights as of 20 January 2015

LIST OF MEMBERS[9]

(in order of precedence[10])

	Term of office
Mr Giuseppe PALMISANO, President (Italian)	31/12/2016
Ms Monika SCHLACHTER, Vice-President (German)	31/12/2018
Mr Petros STANGOS, Vice-President (Greek)	31/12/2020
Mr Lauri LEPPIK, General Rapporteur (Estonian)	31/12/2016
Mr Colm O'CINNEIDE, (Irish)	31/12/2016
Ms Birgitta NYSTRÖM (Swedish)	31/12/2018
Mrs Elena MACHULSKAYA (Russian)	31/12/2016
Ms Karin LUKAS (Austrian)	31/12/2016
Ms Eliane CHEMLA (French)	31/12/2018
Mr József HAJDÚ (Hungarian)	31/12/2018
Mr Marcin WUJCZYK (Polish)	31/12/2018
Ms Krassimira SREDKOVA (Bulgarian)	31/12/2020
Mr Raul CANOSA USERA (Spanish)	31/12/2020
Ms Marit FROGNER (Norwegian)	31/12/2020

9. Mr François VANDAMME (Belgian) will only take up his duties in May 2015 following his retirement from his government functions.
10. In accordance with Rule 7 of the Committee's Rules.

Appendix 2

Signatures and ratifications of the 1961 Charter, its Protocols and the European Social Charter (Revised) – at 1st January 2015

Member states	European Social Charter 1961 ETS 035		Additional Protocol 1988 ETS 128		Amending Protocol 1991 ETS 142		Collective Complaints Protocol 1995 ETS 158		Revised European Social Charter 1996 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Albania	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	21/9/98	14/11/02
Andorra	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	4/11/00	12/11/04
Armenia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	18/10/01	21/1/04
Austria	22/7/63	29/10/69	4/12/90	—	7/5/92	13/07/95	(2)	—	7/5/99	20/5/11
Azerbaïjan	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	18/10/01	2/9/04
Belgium	18/10/61	16/10/90	20/5/92	23/6/03	22/10/91	21/9/00	14/5/96	23/6/03	3/5/96	2/3/04
Bosnia and Herzegovina	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	11/5/04	7/10/08
Bulgaria	(2)	(2)	(3)	(3)	(2)	(2)	(4)	(4)	21/9/98	7/6/00
Croatia	8/3/99	26/2/03	8/3/99	26/2/03	8/3/99	26/2/03	8/3/99	26/2/03	6/11/09	—
Cyprus	22/5/67	7/3/68	5/5/88	(3)	21/10/91	1/6/93	9/11/95	6/8/96	3/5/96	27/9/00
Czech Republic	27/5/92*	3/11/99	27/5/92*	17/11/99	27/5/92*	17/11/99	26/2/02	4/4/12	4/11/00	—
Denmark	18/10/61	3/3/65	27/8/96	27/8/96	—	***	9/11/95	—	3/5/96	—
Estonia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	4/5/98	11/9/00
Finland	9/2/90	29/4/91	9/2/90	29/4/91	16/3/92	18/8/94	9/11/95	17/7/98	3/5/96	21/6/02
France	18/10/61	9/3/73	22/6/89	(3)	21/10/91	24/5/95	9/11/95	7/5/99	3/5/96	7/5/99
Georgia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	30/6/00	22/8/05
Germany	18/10/61	27/1/65	5/5/88	—	—	***	(1)		29/6/07	
Greece	18/10/61	6/6/84	5/5/88	18/6/98	29/11/91	12/9/96	18/6/98	18/6/98	3/5/96	—

Member states	European Social Charter 1961 ETS 035		Additional Protocol 1988 ETS 128		Amending Protocol 1991 ETS 142		Collective Complaints Protocol 1995 ETS 158		Revised European Social Charter 1996 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Hungary	13/12/91	8/7/99	7/10/04	1/6/05	13/12/91	4/2/04	7/10/04	—	7/10/04	20/4/09
Iceland	15/1/76	15/1/76	5/5/88	—	12/12/01	21/2/02	(1)		4/11/98	
Ireland	18/10/61	7/10/64	(3)	(3)	14/5/97	14/5/97	4/11/00	4/11/00	4/11/00	4/11/00
Italy	18/10/61	22/10/65	5/5/88	26/5/94	21/10/91	27/1/95	9/11/95	3/11/97	3/5/96	5/7/99
Latvia	29/5/97	31/1/02	29/5/97	—	29/5/97	9/12/03	(1)		29/5/07	26/03/13
Liechtenstein	9/10/91	—	—	—	—	—	—	—	—	—
Lithuania	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	8/9/97	29/6/01
Luxembourg	18/10/61	10/10/91	5/5/88	—	21/10/91	***	(1)	—	11/2/98	—
Malta	26/5/88	4/10/88	(3)	(3)	21/10/91	16/2/94	(2)	—	27/7/05	27/7/05
Republic of Moldova	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	3/11/98	8/11/01
Monaco	(1)		(1)		(1)		(1)		5/10/04	—
Montenegro	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	22/3/05**	3/3/10
Netherlands	18/10/61	22/4/80	14/6/90	5/8/92	21/10/91	1/6/93	23/1/04	3/5/06	23/1/04	3/5/06
Norway	18/10/61	26/10/62	10/12/93	10/12/93	21/10/91	21/10/91	20/3/97	20/3/97	7/5/01	7/5/01
Poland	26/11/91	25/6/97	(1)	—	18/4/97	25/6/97	(1)	—	25/10/05	—
Portugal	1/6/82	30/9/91	(3)	(3)	24/2/92	8/3/93	9/11/95	20/3/98	3/5/96	30/5/02
Romania	4/10/94	(2)	(3)	(3)	(2)	(2)	(2)	—	14/5/97	7/5/99
Russian Federation	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	14/9/00	16/10/09
San Marino	(1)	—	(1)	—	(1)	—	(1)	—	18/10/01	—
Serbia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	22/3/05**	14/9/09
Slovak Republic	27/5/92*	22/6/98	27/5/92*	22/6/98	27/5/92*	22/6/98	18/11/99	—	18/11/99	23/4/09
Slovenia	11/10/97	(2)	11/10/97	(3)	11/10/97	(2)	11/10/97	(4)	11/10/97	7/5/99

Member states	European Social Charter 1961 ETS 035		Additional Protocol 1988 ETS 128		Amending Protocol 1991 ETS 142		Collective Complaints Protocol 1995 ETS 158		Revised European Social Charter 1996 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Spain	27/4/78	6/5/80	5/5/88	24/1/00	21/10/91	24/1/00	(1)	—	23/10/00	—
Sweden	18/10/61	17/12/62	5/5/88	5/5/89	21/10/91	18/3/92	9/11/95	29/5/98	3/5/96	29/5/98
Switzerland	6/5/76	—	—	—	—	—	—	—	—	—
"The former Yugoslav Rep. of Macedonia"	5/5/98	31/3/05	5/5/98	—	5/5/98	31/3/05	(2)	—	27/5/09	6/1/12
Turkey	18/10/61	24/11/89	5/5/98	(3)	6/10/04	10/6/09	(2)	—	6/10/04	27/6/07
Ukraine	2/5/96	(2)	(3)	(3)	(2)	(2)	(2)	—	7/5/99	21/12/06
United Kingdom	18/10/61	11/7/62	(1)	—	21/10/91	***	(1)	—	7/11/97	—

* Date of signature by the Czech and Slovak Federal Republic.

** Date of signature by the State Union of Serbia and Montenegro.

*** State whose ratification is necessary for the entry into force of the protocol.

Appendix 3

Acceptance of provisions of the Revised European Social Charter (1996)

■ accepted □ not accepted

Articles 1-4	Article 1				Article 2							Article 3				Article 4				
Para.	1	2	3	4	1	2	3	4	5	6	7	1	2	3	4	1	2	3	4	5
Albania	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Andorra	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Armenia	■	■	■	■	■	■	■	■	■	■	□	■	□	□	□	□	■	■	■	■
Austria	■	■	■	■	□	■	■	■	■	■	■	■	■	■	■	■	■	■	□	■
Azerbaijan	■	■	■	■	□	□	□	□	□	□	□	□	□	□	□	■	■	■	■	■
Belgium	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Bosnia and Herzegovina	■	■	■	■	■	■	■	■	■	■	■	□	□	□	□	□	□	■	□	□
Bulgaria	■	■	■	■	□	■	■	■	■	■	■	■	■	■	■	□	■	■	■	■
Cyprus	■	■	■	■	■	■	■	□	■	■	■	■	■	■	□	□	□	□	□	■
Estonia	■	■	■	■	■	■	■	□	■	■	■	■	■	■	□	□	■	■	■	■
Finland	■	■	■	■	■	■	■	■	■	■	■	■	□	□	■	□	■	■	□	■
France	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Georgia	■	■	■	■	■	■	□	□	■	□	■	□	□	□	□	□	■	■	■	□
Hungary	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□	□	□	□
Ireland	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Italy	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Latvia	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	■	■	■	■
Lithuania	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Malta	■	■	■	■	■	■	■	□	■	■	□	■	■	■	■	■	■	■	■	■
Republic of Moldova	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□	□	■	■	■
Montenegro	■	■	■	■	■	■	□	□	□	■	□	■	■	■	■	□	■	■	□	■
Netherlands[11]	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Norway	■	■	■	■	■	■	■	■	■	■	□	□	■	■	□	■	■	■	■	■
Portugal	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Romania	■	■	■	■	■	■	□	■	■	■	■	■	■	■	□	■	■	■	■	■
Russian Federation	■	■	■	■	■	□	■	■	■	■	■	■	■	■	■	□	■	■	■	■
Serbia	■	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■	■	■	■	■
Slovakia	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Slovenia	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Sweden	■	■	■	■	□	□	■	□	■	■	□	■	■	■	□	■	□	■	■	□
Turkey	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■	□	■	■	■	■
"The former Yugoslav Republic of Macedonia"	■	■	■	■	■	■	■	■	■	■	■	□	■	□	■	□	■	■	□	■
Ukraine	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■	□	■	■	■	■

11. Ratification by the Kingdom in Europe. Aruba, Curaçao, Sint Maarten and the Caribbean Part of the Kingdom in Europe (special municipalities of Bonaire, Sint Eustatius and Saba) remain bound by Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the Additional Protocol.

Articles 5-9	Art.	Article 6				Article 7										Article 8					Art.
Para.	5	1	2	3	4	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	9
Albania																					
Andorra																					
Armenia																					
Austria																					
Azerbaijan																					
Belgium																					
Bosnia and Herzegovina																					
Bulgaria																					
Cyprus																					
Estonia																					
Finland																					
France																					
Georgia																					
Hungary																					
Ireland																					
Italy																					
Latvia																					
Lithuania																					
Malta																					
Republic of Moldova																					
Montenegro																					
Netherlands[12]																					
Norway																					
Portugal																					
Romania																					
Russian Federation																					
Serbia					[13]																
Slovakia																					
Slovenia																					
Sweden																					
Turkey																					
"The former Yugoslav Republic of Macedonia"																					
Ukraine																					

12. Ratification by the Kingdom in Europe. Aruba, Curaçao, Sint Maarten and the Caribbean Part of the Kingdom in Europe (special municipalities of Bonaire, Sint Eustatius and Saba) remain bound by Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the Additional Protocol.
13. With the exception of professional military personnel of the Serbian Army

Articles 10-15	Article 10					Art. 11			Article 12				Article 13				Art. 14		Art. 15		
Para.	1	2	3	4	5	1	2	3	1	2	3	4	1	2	3	4	1	2	1	2	3
Albania																					
Andorra																					
Armenia																					
Austria																					
Azerbaijan																					
Belgium																					
Bosnia and Herzegovina																					
Bulgaria																					
Cyprus																					
Estonia																					
Finland																					
France																					
Georgia																					
Hungary																					
Ireland																					
Italy																					
Latvia																					
Lithuania																					
Malta					[14]							[15]									
Republic of Moldova																					
Montenegro																					
Netherlands[16]																					
Norway																					
Portugal																					
Romania																					
Russian Federation																					
Serbia																					
Slovakia																					
Slovenia																					
Sweden																					
Turkey																					
"The former Yugoslav Republic of Macedonia"																					
Ukraine																					

14. Sub-paragraphs a. and d. accepted.
15. Sub-paragraph a. accepted.
16. Ratification by the Kingdom in Europe. Aruba, Curaçao, Sint Maarten and the Caribbean Part of the Kingdom in Europe (special municipalities of Bonaire, Sint Eustatius and Saba) remain bound by Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the Additional Protocol.

Articles 16-19	Art.	Art. 17		Article 18				Article 19											
Para.	16	1	2	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12
Albania																			
Andorra																			
Armenia																			
Austria																			
Azerbaijan																			
Belgium																			
Bosnia and Herzegovina																			
Bulgaria																			
Cyprus																			
Estonia																			
Finland																			
France																			
Georgia																			
Hungary																			
Ireland																			
Italy																			
Latvia																			
Lithuania																			
Malta																			
Republic of Moldova																			
Montenegro																			
Netherlands[17]																			
Norway																			
Portugal																			
Romania																			
Russian Federation																			
Serbia		[18]																	
Slovakia											[19]								
Slovenia																			
Sweden																			
Turkey																			
"The former Yugoslav Republic of Macedonia"																			
Ukraine																			

17. Ratification by the Kingdom in Europe. Aruba, Curaçao, Sint Maarten and the Caribbean Part of the Kingdom in Europe (special municipalities of Bonaire, Sint Eustatius and Saba) remain bound by Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the Additional Protocol.
18. Sub-paragraphs 1b and 1c accepted.
19. Sub-paragraphs a. and b. accepted.

Articles 20-31	Art.	Art.	Art.	Art.	Art.	Art.	Art. 26		Art. 27			Art	Art	Art	Art. 31		
Para.	20	21	22	23	24	25	1	2	1	2	3	28	29	30	1	2	3
Albania	■	■	■		■	■	■	■				■	■				
Andorra	■			■			■	■						■	■	■	
Armenia	■		■		■				■	■	■	■					
Austria	■					■	■		■	■		■					
Azerbaijan	■	■	■		■		■	■	■	■	■	■	■				
Belgium	■	■	■			■	■						■	■			
Bosnia and Herzegovina	■	■	■	■								■					
Bulgaria	■	■	■		■	■	■	■		■	■	■	■				
Cyprus	■		■[20]		■	■				■	■	■	■				
Estonia	■	■	■		■	■			■	■	■	■	■	■			
Finland	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
France	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Georgia	■						■	■	■	■	■		■				
Hungary	■	■	■														
Ireland	■		■	■	■	■	■	■	■[21]	■	■	■	■	■			
Italy	■	■	■	■	■		■	■	■	■	■	■	■	■	■	■	■
Latvia	■	■	■		■		■	■	■	■	■	■	■	■	■		
Lithuania	■	■	■		■	■	■	■	■	■	■	■	■		■		
Malta	■			■	■	■	■	■		■	■	■	■				
Republic of Moldova	■	■			■		■	■		■		■	■				
Montenegro	■			■	■		■		■[22]	■	■	■	■				
Netherlands[23]	■	■	■	■	■	■	■		■	■	■	■	■	■	■	■	■
Norway	■	■	■	■	■	■			■[24]	■		■		■	■	■	■
Portugal	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Romania	■	■			■	■				■		■	■				
Russian Federation	■	■	■		■				■	■	■	■	■				
Serbia	■	■	■	■	■	■	■	■				■	■	■			
Slovakia	■	■	■	■	■	■	■	■	■	■		■	■	■			
Slovenia	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Sweden	■	■	■	■		■	■	■	■	■	■		■	■	■	■	■
Turkey	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
"The former Yugoslav Republic of Macedonia"	■	■			■		■	■			■	■	■				
Ukraine	■	■	■	■	■		■	■	■	■	■	■	■	■	■	■	

20. Sub-paragraph b. accepted.
21. Sub-paragraphs a. and b. accepted.
22. Sub-paragraph a. accepted.
23. Ratification by the Kingdom in Europe. Aruba, Curaçao, Sint Maarten and the Caribbean Part of the Kingdom in Europe (special municipalities of Bonaire, Sint Eustatius and Saba) remain bound by Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the Additional Protocol.
24. Sub-paragraph c. accepted.

Acceptance of provisions of the European Social Charter (1961) and of the Additional Protocol (1988)

☐ accepted ☐ not accepted

Articles 1-7	Article 1				Article 2					Article 3			Article 4					Art.	Article 6				Article 7									
Para.	1	2	3	4	1	2	3	4	5	1	2	3	1	2	3	4	5	5	1	2	3	4	1	2	3	4	5	6	7	8	9	10
Croatia	■	■	■	■	■	■	■	■	■	□	□	□	□	□	□	□	□	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Czech Republic	■	■	■	□	■	■	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Denmark	■	■	■	■	□	■	■	□	■	■	■	■	■	■	■	□	□	■	■	■	■	■	□	□	□	□	□	□	□	□	□	□
Germany	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■	■
Greece	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□	□	□	□	■	■	■	■	■	■	■	■	■	■
Iceland	■	■	■	■	■	□	■	□	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□	□	□	□	□	□	□	□	□
Luxembourg	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	■	■	■	■	■	□	■	■	■	■	■	■	■	■	■	■
Poland	■	■	■	■	■	□	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■	□	□	■	□	■	□	■	■	■	■	■
Spain	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
United Kingdom	■	■	■	■	□	■	■	■	■	■	■	■	■	■	□	■	■	■	■	■	■	■	□	■	■	□	■	■	□	□	■	■

Articles 8-18	Article 8				Art.	Article 10				Article 11			Article 12				Article 13				Art. 14		Art. 15		Art.	Art.	Article 18			
Para.	1	2	3	4	9	1	2	3	4	1	2	3	1	2	3	4	1	2	3	4	1	2	1	2	16	17	1	2	3	4
Croatia																														
Czech Republic				[25]																										
Denmark																														
Germany																														
Greece																														
Iceland																														
Luxembourg																														
Poland				[26]																										
Spain				[27]																										
United Kingdom																														

Articles 19	Article 19									
Para.	1	2	3	4	5	6	7	8	9	10
Croatia										
Czech Republic										
Denmark										
Germany										
Greece										
Iceland										
Luxembourg										
Poland										
Spain										
United Kingdom										

Protocole additionnel	Protocole additionnel			
Para.	Art. 1	Art. 2	Art. 3	Art. 4

25. Czech Republic denounced paragraph 4 on 25 March 2008.
26. Poland denounced paragraph 4 on 27 January 2011.
27. Spain denounced sub-paragraph b with effect from 5 June 1991.

Appendix 4

Number of accepted provisions by year since 1962

Year of ratification	CHARTER 1961			REVISED CHARTER 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
1962	1. United Kingdom	60	60				60
	2. Norway	60	120				120
	3. Sweden	66	186				186
1963			186				186
1964	4. Ireland	63	249				249
1965	5. Germany	67	316				316
	6. Denmark	49	365				365
	7. Italy	76	441				441
1966			441				441
1967			441				441
1968	8. Cyprus	43	484				484
1969	9. Austria	62	546				546
1970			546				546
1971			546				546
1972			546				546
1973			546				546
1974	10. France	72	618				618
1975			618				618
1976	11. Iceland	41	659				659

Year of ratification	CHARTER 1961			REVISED CHARTER 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
1977			659				659
1978			659				659
1979			659				659
1980	12. Netherlands	75	734				734
	13. Spain	76	810				810
1981			810				810
1982			810				810
1983			810				810
1984	14. Greece	71	881				881
1985			881				881
1986			881				881
1987			881				881
1988	15. Malta	55	936				936
1989	16. Turkey	46	982				982
1990	17. Belgium	72	1054				1054
1991	18. Finland	66	1120				1120
	19. Portugal	72	1192				1192
	20. Luxembourg	69	1261				1261
1992			1261				1261
1993			1261				1261
1994			1261				1261
1995			1261				1261
1996			1261				1261

Year of ratification	CHARTER 1961			REVISED CHARTER 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
1997	21. Poland	58	1319				1319
1998		-66	1253	1. Sweden	83	83	1336
	22. Slovak Rep.	64	1317			83	1400
1999		-72	1245	2. France	98	181	1426
		-76	1169	3. Italy	97	278	1567
	23. Hungary	44					
	24. Czech Rep.	56	1345	4. Romania	65	343	1688
		-76	1269	5. Slovenia	95	438	1707
2000			1269	6. Bulgaria	61	499	1768
			1269	7. Estonia	79	578	1847
		-43	1226	8. Cyprus	63	641	1867
		-63	1163	9. Ireland	93	734	1897
2001		-60	1103	10. Norway	81	815	1918
			1103	11. Lithuania	86	901	2004
			1103	12. Republic of Moldova	63	964	2067
2002		-72	1031	13. Portugal	98	1062	2093
		- 66	965	14. Finland	89	1151	2116
	25. Latvia	25	990			1151	2141
			990	15. Albania	64	1215	2205
2003	26. Croatia	43	1033				2248
2004			1033	16. Armenia	67	1282	2315
		-72	961	*17.* Belgium	87	1369	2330
				18. Azerbaijan	47	1416	2377

Year of ratification	CHARTER 1961			REVISED CHARTER 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
			961	19. Andorra	75	1491	2452
2005	27. The Former Yugoslav Republic of Macedonia	41	1002			1491	2493
		-55	947	20. Malta	72	1563	2510
				21. Georgia	63	1626	2573
2006		-75	872	22 Netherlands	97	1723	2595
				23 Ukraine	74	1797	2669
2007		-46	826	24 Turkey	91	1888	2714
		-44	782	25.Hungary	60	1948	2730
				Bulgaria	1	1949	2731
2008				26. Bosnia and Herzegovina	51	2000	2782
2009		-64	718	27. Slovak Rep.	86	2086	2804
				28. Serbia	88	2174	2892
				29. Russian Fed.	67	2241	2958
2010				30. Montenegro	66	2307	3025
2011		-62	656	31. Austria	76	2383	3039
				Cyprus	9	2392	3048
2012		-41	615	32. The Former Yugoslav Republic of Macedonia	63	2455	3070
				Estonia	8	2463	3078
2013		-25	590	33. Latvia	90	2553	3143

(*) By order of ratification, States Parties to the Revised Charter (on a grey background with the former States Parties to the ESC in italics), and States Parties to the 1961 Charter (on a white background).

Appendix 5. List of collective complaints registered in 2014 and state of procedure on 31 December 2014

Pending complaints and status information

As of 31st of December 2014, the following 18 complaints are on the agenda of the sessions of the Committee:

***Unione Italiana del Lavoro U.I.L. Scuola – Sicilia* v. Italy**
Complaint No. 113/2014

The complaint registered on 14 November 2014, relates to Articles 12 (the right to social security), 25 (the right of workers to the protection of their claims in the event of the insolvency of their employer) in combination with clause non-discrimination contained in section E of the Revised European Social Charter. The complainant trade union alleges that the Italian regulations on social protection - particularly the Interministerial Decree No. 83473 of 1 August 2014 - by excluding, in Sicily, the employees of the training sector from the system of the redundancy fund, *La Cassa Integrazione Guadagni in deroga* (paying cash salary supplements), violates the aforementioned provisions of the Charter.

European Organisation of Military Associations (EUROMIL) v. Ireland
Complaint No.112/2014

The complaint registered on 4 November 2014, relates to Articles 5 (the right to organise) and 6 (the right to bargain collectively) of the Revised European Social Charter. The complainant organisation, EUROMIL, alleges that Defence Forces representative associations in Ireland do not have full trade unions rights including the right to join an unbrella organisation, in breach of the above mentioned provisions.

Greek General Confederation of Labour (GSEE) v. Greece
Complaint No. 111/2014

The complaint registered on 26 September 2014, concerns Article 1 (the right to work), Article 2 (the right to just conditions of work), Article 4 (the right to a fair remuneration) and Article 7 (the right of children and young persons to protection) of the 1961 Charter, as well as Article 3 of the 1988 Additional Protocol (the right to take part in the determination and improvement of the working conditions and working environment). The complainant trade union, G.S.E.E., alleges that some of the new legislation enacted as part of the austerity measures adopted in Greece during the economic and financial crisis affects workers' rights in a manner that is contrary to the Charter.

International Federation for Human Rights (FIDH) v. Ireland
Complaint No. 110/2014

The complaint registered on 18 July 2014, relates to Articles 11 (the right to protection of health), 16 (right of the family to social, legal and economic protection), 17 (right of children and young persons to social, legal and economic protection) and 30 (right to protection against poverty and social exclusion) of the Revised European Social Charter,

read alone or in conjunction with the non-discrimination clause set forth in Article E of the Revised European Social Charter. The complainant organisation, FIDH, alleges that Irish law, policy and practices on social housing do not comply with European housing, social protection and anti-discrimination standards, in breach of the above mentioned provisions.

Mental Disability Advocacy Center (MDAC) v. Belgium
Complaint No. 109/2014

The complaint registered on 30 April 2014, relates to Articles 15 (right of persons with disabilities to independence, social integration and participation in the life of the community) and 17 (right of children and young persons to social, legal and economic protection) of the Revised European Social Charter. The complaint alleges that Belgium has failed to provide education and training for children with intellectual and mental disabilities who are denied access to mainstream education and to the supports necessary to ensure such inclusion, in violation of the above mentioned provisions.

Finnish Society of Social Rights v. Finland
Complaint No. 108/2014

The complaint, registered on 29 April 2014, relates to Article 12 (right to social security) of the Revised European Social Charter. The complainant organisation alleges that, in seeking continuously to erase unemployment pension, Finland is not maintaining a system of social security at a satisfactory level or endeavoring to raise the system to a higher level, but worsening it sharply, in breach of the above mentioned provision.

Finnish Society of Social Rights v. Finland
Complaint No. 107/2014

The complaint registered on 29 April 2014, relates to Article 24 (right to protection in cases of termination of employment) of the Revised European Social Charter. The complainant organisation alleges that Finland is allowing dismissals and redundancy of employees, just to increase profit, without economic necessity or for subcontracting or secondary contracts, in breach of the above mentioned provision.

Finnish Society of Social Rights v. Finland
Complaint No. 106/2014

The complaint registered on 29 April 2014, relates to Article 24 (right to protection in cases of termination of employment) of the Revised European Social Charter. The complainant organisation alleges that, in case of unlawful dismissal, the Finnish legislation does not provide any possibility to reinstatement and requires the dismissal indemnity to be capped, in breach of the above mentioned provision.

***Associazione sindacale "La Voce dei Giusti"* v. Italy**
Complaint No. 105/2014

The complaint registered on 22 April 2014, relates to Article 10 (right to vocational training) of the Revised European Social Charter, read alone or in conjunction with the non-discrimination clause set forth in Article E. The complainant organisation

alleges that teaching staff in a certain category is prevented from undertaking or continuing specialised studies in view of the increasing burden of workload imposed on it, in violation of the above mentioned provisions.

European Roma and Travellers Forum (ERTF) v. Czech Republic
Complaint No. 104/2014

The complaint, registered on 3 March 2014, relates to Article 11 (the right to protection of health) and 16 (right of the family to social, legal and economic protection), alone or in conjunction with the non-discrimination principle stated in the Preamble of the 1961 Charter. The complainant organisation, the ERTF, alleged that, in the Czech Republic, Roma are disproportionately subjected to residential segregation, substandard housing conditions, forced evictions and other systemic violations of the right to adequate housing and the right to health.

The Committee declared the complaint admissible on 30 June 2014.

***Bedriftsforbundet* v. Norway**
Complaint No. 103/2013

The complaint, registered on 9 September 2013, relates to Article 5 (the right to organise) of the Social Charter. The complainant organization of employers, the *Bedriftsforbundet*, alleged that the practice at Norwegian ports, requiring that employees have membership of the dock worker union in order to be allowed to take up work, constitutes a breach of the above mentioned provision.

The Committee declared the complaint admissible on 14 May 2014.

***Associazione Nazionale Giudici di Pace* v. Italy**
Complaint No. 102/2013

The complaint, registered on 2 August 2013, relates to Article 12 (right to social security) of the Social Charter. The complainant organisation, the *Associazione Nazionale Giudici di Pace* (the National Association of Justices of the Peace), alleges that Italian law does not provide any social security and welfare protection for this category of honorary Judges, in violation of the Charter provision relied on.

The Committee declared the complaint admissible on 2 December 2014.

European Council of Police Trade Unions (CESP) v. France
Complaint No. 101/2013

The complaint was registered on 10 June 2013. It relates to concerns Articles 5 (the right to organise) and 6 (the right to bargain collectively) of the Social Charter. The complainant organisation alleges that the French Government, in deliberately subjecting the so-called "military" personnel of the National Gendarmerie, i.e. officers, NCOs and volunteers of the National Gendarmerie, to military regulations has violated the above mentioned provisions of the Charter.

The Committee declared the complaint admissible on 21 October 2013.

European Roma Rights Centre (ERRC) v. Ireland
Complaint No. 100/2013

The complaint was registered on 16 April 2013. The complaint concerns Article 16 (right of the family to social, legal and economic protection), Article 17 (right of children and young persons to social, legal and economic protection) and Article 30 (right to protection against poverty and social exclusion) of the Social Charter, read alone or in conjunction with the non-discrimination clause set forth in Article E. The complaint alleges that the Government of Ireland has not ensured the satisfactory application of the above-mentioned Charter provisions, particularly with respect to housing conditions and evictions of Travellers and, as regards child Travellers, also with respect to social, legal and economic protection.

The Committee declared the complaint admissible on 21 October 2013.

Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden
Complaint No. 99/2013

The complaint was registered on 7 mars 2013. The complainant Organisation claims that Sweden does not comply with its obligations under Article 11 (the right to protection of health) and Article E (non- discrimination) of the Social Charter, by failing to enact a comprehensive and clear legal and policy framework governing the practice of conscientious objection by healthcare providers in Sweden, by allowing conscientious objectors to be treated in a discriminatory way, and by failing to enact comprehensive and clear policy and guidelines to prevent serious incidents or deficiencies when abortion is recommended.

The Committee declared the complaint admissible on 10 September 2013.

Association for the Protection of All Children (APPROACH) Ltd v. Belgium
Complaint No. 98/2013

The complaint was registered on 4 February 2013. The complainant organisation alleges that the lack of explicit prohibition of corporal punishment in the family, in all forms of alternative care and in schools, both state and private, throughout all communities in Belgium violates Article 17 (the right of mothers and children to social and economic protection) of the Social Charter. The complaint invokes also Article 7§10 (Right of children and young persons to protection – special protection against physical and morals dangers) of the Charter.

The Committee declared the complaint admissible on 2 July 2013 and adopted a decision on immediate measures on 2 December 2013.

Association for the Protection of All Children (APPROACH) Ltd v. Czech Republic
Complaint No. 96/2013

The complaint was registered on 4 February 2013. The complainant organisation alleges that the lack of explicit prohibition of corporal punishment in the family, in all forms of alternative care and in schools violates Article 17 (the right of mothers and children to social and economic protection) of the Social Charter. In addition

APPROACH claims that the Czech Republic has not acted with due diligence to eliminate such violent punishment of children in practice.

The Committee declared the complaint admissible on 2 July 2013.

***Confederazione Generale Italiana del Lavoro* (CGIL) c. Italy**
Complaint No. 91/2013

The complaint was registered on 17 January 2013. The complainant trade union, *Confederazione Generale italiana del Lavoro* (CGIL), alleges that the formulation of Article 9 of Law No. 194 of 1978, which governs the conscientious objection of medical practitioners in relation to the termination of pregnancy, is in violation of Article 11 (the right to health) of the Social Charter, read alone or in conjunction with the non-discrimination clause in Article E, in that it does not does not protect the right guaranteed to women with respect to the access to termination of pregnancy procedures. It alleges also a violation of Article 1 (the right to work), 2 (the right to just conditions of work), 3 (the right to safe and healthy working conditions), 26 (the right of dignity at work) of the Charter, the latter articles read alone or in conjunction with the non-discrimination clause in Article E, in that it not does not protect the rights of the workers involved in the above-mentioned procedures. Moreover, the complainant organisation asks the Committee to recognize, with respect to the subject-matter of the complaint, the relevance of Articles 21 (the right to information and consultation) and 22 (the right to take part in the determination and improvement of the working conditions and working environment) of the Charter.

Collective Complaints – Statistics by State – 31st December 2014

	Registered complaints	Decisions on admissibility	Admissible	Not admissible	Decisions on immediate measures	Decisions on admissibility and the merits	Decisions on the merits	Violation	Non violation	Strike out
Belgium	8	7	7	0	1		6	5	1	0
Bulgaria	6	6	6	0	0		5	5	0	1
Croatia	2	2	2	0	0		2	2	0	0
Chypre	1	1	1	0	0		-	-	-	1
Czech Republic	2	2	2	0	0		-	-	-	0
Finland	8	5	5	0	0		5	4	1	0
France	31	29 (31*)	27 (29*)	2	0	4	27 (29*)	21	8	0
Greece	16	15	14	1	0		14	14	0	0
Ireland	8	5 (6*)	5 (6*)	0	1		3 (4*)	4	1	0
Italy	10	7	7	0	0		5	2	3	0
The Netherlands	3	3	3	0	2		1	1	0	0
Norway	2	2	2	0	0		1	1	0	0
Portugal	11	11	10	1	0		10	4	6	0
Slovenia	2	2	2	0	0		1	1	0	0
Sweden	3	2 (3*)	2 (3*)	0	0		1 (2 *)	2	0	0
Total	113	99 (103*)	94 (98*)	4	4		85 (89*)	65	22	2

* Taking account of the decisions relating both to the admissibility and the merits

Duration of procedure 1998-2014	Admissibility	Merits	Total
Average length (months) 1998-2014	4,6	11,6	16,0

Number of decisions handed down by the European Committee of Social Rights 1998 –2014

Years	Registered complaints	pending complaints on 1st January	Decisions on admissibility	Decisions on the merits	Decisions on admissibility and the merits	Decisions on immediate measures	Decisions to strike out	Total Decisions
1998	1	0	0	0	0	0	0	0
1999	5	1	2	1	0	0	0	3
2000	4	4	7	5	0	0	0	12
2001	1	3	2	3	0	0	0	5
2002	2	1	2	1	0	0	0	3
2003	10	2	8	2	0	0	0	10
2004	5	10	6	10	0	0	0	16
2005	4	5	5	4	0	0	0	9
2006	7	3	5	4	0	0	0	9
2007	7	5	7	5	0	0	0	12
2008	8	7	8	5	0	0	1	14
2009	5	9	7	7	0	0	0	14
2010	4	7	3	6	0	0	0	9
2011	12	5	11	4	0	0	0	15
2012	13	13	9	15	0	0	0	24
2013	15	11	14 (18*)	5 (9*)	4	4	0	27 (31*)
2014	10	17	3	8	0	0	1	12
Total	113	18	99 (103*)	85 (89*)	4	4	2	194 (198*)

* Taking account of the decisions relating both to the admissibility and the merits

Appendix 6

Summary of the Committee's Conclusions for 2014

1. European Social Charter Revised – Conclusions 2014

Article	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BELGIQUM	BOSNIEA- HERZEGOVINA	BULGARIA	CYPRUS	ESTONIA	FINLAND	FRANCE	GEORGIA	HUNGARY	IRELAND	ITALY	LITHUANIA	MALTA	REPUBLIC OF MOLDOVA	MONTENEGRO	NETHERLANDS	NORWAY	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REPUBLIC	SLOVENIA	SWEDEN	"THE FORMER YUGOS-LAV REPUBLIC OF MACEDONIA"	TURKEY	UKRAINE
Article 2.1	+	-			+	+		0	-	-	-	-	-	-	-	-	-	+	+	-	-	+	+	+	+	-	-		-	-	+
Article 2.2	+	+	+		+	0	+	+	+	+	0	-	0	+	0	+	-	0	0	-	0	-	0		0	-	0		+	+	+
Article 2.3	+	+	+		-	-	+	0	+	+	+		-	+	+	+	+	-		-	+	+		0	+	+	+	+	+		
Article 2.4	+	0	-		+	-	+			0	+		+	-	-	+		0		-	+	-	+	-		+	+		+	+	+
Article 2.5	+	-	+		-	0	+	+	+	-	-	-	+	-	+	+	0	+		-	+	+	+	+	+	-	+	+	+	+	0
Article 2.6	+	-	+		+	0	+	+	+	+	+		+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	-	+
Article 2.7	-		+		+	-	+	+	+	+	+	-	+	+	+	+		-		+		+	+	0	+	+	+		+	+	-
Article 4.1	-		-	-	-						0			-	0	-	0			-	0	-	-		0	-	0	+			
Article 4.2	+	-	+	+	-		+		-	-	-	0		-	+	-	-		0	-	+	-	+	-	+	-	+		0	-	+
Article 4.3	0	0	0	-	+	0	-		-	-	+	-		+	0	0	0	0	0	+	-	0	0	0	0	+	0	+	0	0	0
Article 4.4	-	-		-	0		-		-		-	-		-	-	-	-	-		-	-	-	-	-	-	-	-	0		-	-
Article 4.5	+	-	0	-	0		-	-	-	-	0			-	-	-	0	-	0	0	-	-	-	-	0	-	0		0	-	-
Article 5	+	-	+	-	+	0	-	+	-	+	0	-	0	-	+	+	-	-	0	+	+	-	-	0	-	+	+	+	+		-

Article	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BELGIQUM	BOSNIEA- HERZEGOVINA	BULGARIA	CYPRUS	ESTONIA	FINLAND	FRANCE	GEORGIA	HUNGARY	IRELAND	ITALY	LITHUANIA	MALTA	REPUBLIC OF MOLDOVA	MONTENEGRO	NETHERLANDS	NORWAY	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REPUBLIC	SLOVENIA	SWEDEN	"THE FORMER YUGOS-LAV REPUBLIC OF MACEDONIA"	TURKEY	UKRAINE
Article 6.1		-	+	-	+	0	-	+	+	+	+	-	+	+	+	+	+	+	0	+	+	-	+	0	0	+	+	+	-	+
Article 6.2		0	+	-	+	0	-	+	-	+	+	-	-	+	+	-	+	+	0	+	+	-	+	0	0	+	+	-	0	+
Article 6.3		-	+	-	+	0	-	+	+	+	+	-	+	+	0	+	-	0	0	+	+	+	-	0	0	+	+	+	+	+
Article 6.4		-		-	-	0	-	+	0	0	-	-	-	-	-	+	0	-	0	+	-	-	-	0	-	+	+	-	-	-
Article 21				+	+	0	+	-	+	+	-		0		-	+				+	-	+	+	+	0	+	+	+	+	+	+
Article 22		-		-	+	0	-	+	0	0	+	-	0	0	-	+				+	-	+	+	+	0	+	+	+	-	+	+
Article 26.1	+		+	-	+		+		+	+	+	-		0	+	0	+	0	+	+	+	+	+	0	0	+	+	-	0	-
Article 26.2	+			-			+		+	-	+	-		+	+	-	0	-		-		+		0	+	+	+	-	-	-
Article 28		-		-		0	-	+	+	-	+			+	+	-	0	-	0	+		-	-	0	0	+	+		0	-
Article 29				0	+		+	0	+	+	+	-		+	+	+	+	0	+	+		+	+	0	+	+	+	-	0	0

+ Conformity	- Non conformity	0 Deferral	□ Non accepted provision

2. 1961 European Social Charter - Conclusions XX-3 (2014)

Article	CZECH REPUBLIC	DENMARK	GERMANY	GREECE	ICELAND	LATVIA	LUXEMBOURG	POLAND	SPAIN	UNITED KINGDOM
Article 2.1	-		0	0	-		+	-	-	
Article 2.2	+	0	0	-			+		+	-
Article 2.3	+	+	+	+	+		+	+	+	+
Article 2.4	+		0	-			-	+	-	-
Article 2.5	-	+	0	-	+		+	+	+	-
Article 2.6										
Article 2.7										
Article 4.1		+	-	-	0		-		-	-
Article 4.2	-	0	+	0	+		0	-	-	-
Article 4.3	0	0	-	0	-		0	0	+	
Article 4.4	-			-	-			-	-	-
Article 4.5	+		+	0	-		-	-	0	-
Article 5	0	-	+		-	-	-	-	+	-
Article 6.1	+	+	+		+	+	+	+	+	+
Article 6.2	0	-	+		+	-	+	+	-	-
Article 6.3	+	+	+		+	+	+	+	+	+
Article 6.4	-	-	-		-	+			-	-
Article 2 of the 1988 Additional Protocol	+	+		+					+	
Article 3 of the 1988 Additional Protocol	+	+		+					+	

+ Conformity	- Non conformity	0 Deferral	□ Non accepted provision

3. Overview of the Conclusions by year

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
Examined situations	724	568	608	950	569	572	425	839	915	685
Conformity	337	277	277	459	271	281	185	363	461	305
	46.55%	48.77%	45.56%	48.31%	47.63%	49.13%	43.52%	43.27%	50.38%	43.79%
Non-conformity	252	181	156	256	184	164	126	230	244	126
	34.81%	31.86%	25.66%	26.95%	32.34%	28.67%	29.64%	27.41%	26.66%	18.39%
Deferral	135	110	175	235	114	127	114	246	210	254
	18.65%	19.37%	28.78%	24.74%	20.03%	22.20%	26.82%	29.32%	22.95%	37.08%

Appendix 7.

Selection of conclusions of non-conformity 2014 for the attention of the Parliamentary Assembly

Preliminary remarks

One of the main conclusions of the meeting held in Strasbourg on 6 October 2011 under the auspices of the Committee on Social Affairs, Health and Sustainable Development on "non- discrimination and equal opportunities in the enjoyment of social rights", in the context of the 50th anniversary of the European Social Charter, was that the cooperation between the European Committee of Social Rights and the relevant committees of the Parliamentary Assembly should be strengthened.

In this respect, it was suggested that one of the means of reinforcing the cooperation could consist in having the European Committee of Social Rights "directly transmit to the Parliamentary Assembly the decisions and conclusions of non-conformity whose effective follow-up and implementation required governments and national parliaments to take appropriate measures". In this way, taking into account their two-fold mandate, European and national, the members of the Assembly would be able to contribute decisively to the implementation of the conclusions of non- conformity adopted by the Committee.

From this point of view, the outcome of the meeting of 6 October 2011 was that a selection of conclusions of non-conformity by the Committee where normative action at national level is necessary would be submitted. Moreover, one of the main conclusions of the exchange of views between the PACE Sub-Committee on the European Social Charter and the Committee held in Paris October 18, 2013 (on the occasion of the parliamentary seminar "Improving the conditions of young workers") was to strengthen the follow up to the decisions and conclusions of non-conformity adopted by the Committee, at national level, through other measures that are part of the essential functions of Parliamentarians (that is to say, budgetary functions as well as functions of political control). Thus, the selection below distinguishes, country by country, based on the possibilities of follow up through either normative action or other parliamentary measures.

The present contribution has been drawn up in the spirit of Resolution 1824 (2011) on "The role of parliaments in the consolidation and development of social rights in Europe" (adopted by the Assembly on 23 June 2011) as well as of the Declaration of the Committee of Ministers on the 50th Anniversary of the European Social Charter (adopted by the Committee of Ministers on 12 October 2011 during the 1123rd meeting of the Ministers' Deputies). In this respect the members of the Parliamentary Assembly have, due to the two-fold nature of their mandate, European and national, a privileged position and a major responsibility in furthering acceptance of the collective complaints procedure and ratification of the Revised European Social Charter in their respective countries.

The European Committee of Social Rights is delighted to be part of this form of cooperation and it wishes to thank the Parliamentary Assembly for developing its vital role in highlighting the importance for States of accepting the collective complaints

procedure as well as the Revised Charter thereby strengthening the social aspects of democracy and the guarantee of social rights at national level. In this perspective, the Committee also welcomes the efforts of the Parliamentary Assembly to boost the Turin Process started at the High Level Conference on the European Social Charter held on 17-18 October 2014.

Herewith follows a selection of conclusions of non-conformity 2012 in respect of which measures (either normative or legislative, or of a budgetary character or political control) are necessary in order to render effective the application of the Charter at national level.

European Social Charter

ANDORRA

Normative action:

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

- the amount of severance pay awarded on termination of the employment contract is insufficient for workers with less than ten years of service;
- the legislation does not provide for notice in the case of termination of employment during probationary periods.

[The Committee confirms in the present case that the notice periods, taken in combination with the compensation paid in lieu thereof, are in conformity with Article 4§4 of the Charter in the cases of dismissal on unstated grounds, dismissal on objective grounds, unlawful dismissal and early termination of fixed-term, piecework or specific services contracts. They are not, however, in conformity in the cases of termination of the employment contract provided for by Article 89 of the Code of Labour Relations when workers have less than ten years of service.

The Committee also notes that the lack of any provision for notice or severance pay in the event of dismissal or contract termination during a probationary period is not in conformity with Article 4§4 of the Charter (General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§ 26 and 28)].

Other parliamentary measures:

Article 4§1: The Committee concludes that the situation in Andorra is not in conformity with Article 4§1 of the Charter on the ground that the minimum interprofessional wage does not ensure a decent standard of living.

Armenia

Normative action:

Article 2§1: The Committee concludes that the situation in Armenia is not in conformity with Article 2§1 of the Charter on the ground that the daily working time of some categories of workers can be extended to 24 hours.

[The Committee further notes that Article 139(4) of the Labour Code, as amended, provides that the daily working time of specific categories of workers may amount to 24 hours a day, provided that the weekly working hours do not exceed 48 hours.

The Committee takes note of the Decision No 1223-N of the Government of 11 August 2005, which approves the list of occupations, containing 36 different professions, for whom 24-hours long working day is permitted.

The Committee considers that the situation which it has previously considered not to be in conformity with the Charter has not changed. The Committee recalls that the daily working time should in no circumstances (except for extraordinary situations) exceed 16 hours, even if, in compensation, it entails a limitation to the weekly working time. Therefore, the situation is not in conformity with the Charter].

Article 4§2: The Committee concludes that the situation in Armenia is not in conformity with Article 4§2 of the Charter on the ground that the legislation does not guarantee an increased time off in lieu of remuneration for overtime.

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

- in most cases, no notice period and/or severance pay in lieu thereof is applicable to dismissal or termination of an employment contract;
- with regard to the particular situations in which provision has been made for notice and/or severance pay in lieu thereof, the period and/or amount is not reasonable as regards:
- dismissal following the liquidation of the company or the change in circumstances, beyond five years of service;
- dismissal on the ground of the employee's unsuitability for the job, long-term incapacity for work or having reached retirement age;
- termination of employment contracts following a substantial change in working conditions or when the employee is called up for military service;
- termination of seasonal or temporary work contracts.

Article 4§5: The Committee concludes that the situation in Armenia is not in conformity with Article 4§5 of the Charter on the grounds that:

- withdrawing wages entirely for reasons connected with the quality and quantity of production deprives workers and their dependants of any means of subsistence;
- after all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves and their dependants.

[The Committee points out that the goal of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It notes that, in the present case, the complete withdrawal of wages in the circumstances provided for by Articles 190 and 191 of the Code deprives workers and their dependants of any means of subsistence. The limitation provided for by Article 214 of the Code allows situations to persist in which workers receive only 50% of the minimum wage, an amount which does not enable them to provide for themselves and their dependants].

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

- (...) the minimum membership requirements set for forming trade unions and employers' organisations are too high;
- the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor's Office, civilians employed by the police and security service, self-employed workers, those working in liberal professions and the informal sector workers;
- police officers are prohibited from joining trade unions.

Article 6§1: The Committee concludes that the situation in Armenia is not in conformity with Article 6§1 of the Charter on the ground that minimum membership requirements excessively limit the possibility of trade unions to participate effectively in consultations.

[The Committee recalls that it is open to States Parties to require trade unions to meet representativeness criteria subject to certain general conditions. With respect to Article 6§1, such a requirement must not excessively limit the possibility of trade unions to participate effectively in consultation. In order to be in conformity with Article 6§1, representativity criteria should be prescribed by law, should be objective and reasonable, and subject to judicial review, which offers appropriate protection against arbitrary refusals (Conclusions 2006, Albania). The Committee refers to its conclusion under Article 5 where it finds that the situation is not in conformity with the Charter, on the ground that minimum membership requirements set for forming trade unions and employers' organisations are too high. Consequently, the Committee concludes that the situation is not in conformity with the Charter, on the ground that minimum membership requirements excessively limit the possibility of trade unions to participate effectively in consultations. The Committee also wishes the next report to indicate whether non-representative organisations have the right to participate in collective bargaining].

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

- the required majority of workers to call a strike is too high; (…).

[The Committee notes that pursuant to Article 74(1) of the Labour Code in order to declare a strike, a vote by two-thirds of an organisation's (enterprise's) employees is required by secret ballot. If a strike is declared by a subdivision of an organisation, a vote by two-thirds of the employees of that subdivision is required. However, if such a strike hampers the activities of other subdivisions, the strike should be approved by two-thirds of the employees of the subdivision, which may not be less than half of the total number of employees of the organisation. Further to the amendment of this Article on 24 June 2010, "in case of absence of a trade union in the organization, the responsibility for declaring a strike by the decision of the staff meeting (conference) is transferred to the relevant branch or regional trade union".

The Committee notes that in 2011 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) considered that the requirement of a decision by more than half of all the workers involved in order to declare a strike is excessive. It recalled in this respect, that if a member State deems it appropriate to

establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level. The ILO Committee therefore requested the Government to take the necessary measures in order to amend section 74 of the Labour Code, so as to lower the required majority and to ensure that account is taken only of the votes cast (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Armenia (Ratification: 2006)). The Committee considers that the situation is not in conformity with the Charter, on the ground that the required majority to call a strike is too high].

Other parliamentary measures:

Article 2§5: The Committee concludes that the situation in Armenia is not in conformity with Article 2§5 of the Charter on the ground that it has not been established that the right to a weekly rest period may not be forfeited or replaced by financial compensation and that adequate safeguards exist to ensure that workers may not work for more than twelve consecutive days without a rest period.

[The Committee previously considered that it was not established that the right to weekly rest period was guaranteed. In particular, the Committee asked for confirmation that weekly rest periods may not be replaced by financial compensation, that employees may not forfeit their rest, and that, in case of postponement of the weekly rest period for justified reasons, no worker may be made to work more than twelve days in succession before being granted a two-day rest period. The Committee notes that the report does not provide any information in this respect. It accordingly reiterates its questions and, in the meantime, maintains its finding of non-conformity in this respect].

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

- it has not been established whether there is adequate protection against discrimination for employees who are trade union members or participate in trade union activities;
- it has not been established that trade union representatives have access to workplaces to carry out their responsibilities; (…).

Article 6§3: The Committee concludes that the situation in Armenia is not in conformity with Article 6§3 of the Charter on the ground that it has not been established that mediation/conciliation procedures exist in the public sector.

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

- (…) it has not been established that the restrictions on the right to strike in the energy supply services comply with the conditions established by Article G;
- it has not been established that striking workers are protected from dismissal after the strike.

Article 22: The Committee concludes that the situation in Armenia is not in conformity with Article 22 of the Charter on the grounds that it has not been established that:

- the right of workers to take part in the determination and improvement of working conditions and the working environment is effective;
- the right of workers to take part in the determination and improvement of the protection of health and safety is effective;
- workers' representatives have legal remedies when their right to take part in the determination and improvement of working conditions and the working environment is not respected;
- sanctions exist for employers who fail to fulfill their obligations under this Article.

Article 28: The Committee concludes that the situation in Armenia is not in conformity with Article 28 of the Charter on the grounds that:

- the protection granted to workers' representatives is not extended for a reasonable period after the end of period of their mandate;
- it has not been established that workers' representatives are granted adequate protection against prejudicial acts other than dismissal;
- it has not been established that facilities granted to workers' representatives are adequate.

Austria

Normative action:

Article 2§4: The Committee concludes that the situation in Austria is not in conformity with Article 2§4 of the Charter on the ground that public-sector employees at federal level, performing dangerous or unhealthy work, are not entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

[The Committee furthermore notes that, while public sector employees of the Länder and municipalities, performing hazardous work or work entailing a health risk, might be entitled to additional days of leave, this does not apply to public sector employees at federal level, who are compensated by a salary supplement. The Committee recalls that under no circumstances can financial compensation be considered an appropriate response under Article 2§4. Accordingly, it holds that the situation is not in conformity with the Charter in this respect].

Article 28: The Committee concludes that the situation in Austria is not in conformity with Article 28 of the Charter on the ground that the period during which the protection is granted to a workers' representative beyond his/her mandate is not reasonable.

[The Committee recalls that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59). To this end, the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of Interpretation on Article 28). The Committee has for example found the situation to be in conformity with the requirements of Article 28 in countries such as Estonia (Conclusions 2010) and Slovenia (Conclusions 2010) where the protection is extended for

one year after the end of mandate of workers' representatives or in Bulgaria (Conclusions 2010) where the protection granted to workers' representatives is extended for six months after the end of their mandate. The Committee notes that the special protection applies from the time of acceptance of being elected a works council member to three months after the expiry of works council membership. The Committee considers that the protection afforded for three months beyond the mandate to a workers' representative cannot be regarded reasonable. The Committee therefore concludes that the situation is not in conformity on the ground that the period during which the protection is afforded to a workers' representative beyond his/her mandate is not reasonable].

Other parliamentary measures:

Article 4§1: The Committee concludes that the situation in Austria is not in conformity with Article 4§1 of the Charter, on the ground that it has not been established that the lowest wage paid is sufficient to ensure a decent standard of living.

[The Committee points out that, to ensure a decent standard of living under Article 4§1 of the Charter, remuneration must be above the minimum threshold set at 50% of the average net wage. This is the case when the minimum net wage is more than 60% of the average net wage. When the minimum net wage is between 50% and 60% of the average net wage, it is for the State Party to demonstrate that this wage is sufficient to guarantee a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee establishes in the present case that the remuneration of tenured civil servants and contractual staff in the civil service is 70.59% and that of blue collar workers is 68,78% of the average net wage. It notes that these values are in conformity with Article 4§1 of the Charter.

The Committee notes, however, from Statistik Austria figures that the average net wage of blue collar workers in farming, forestry and fisheries; education and teaching; accommodation and catering; and financial services and insurance is far below the minimum threshold set at 50% of the average net wage. According to the reply to the request for additional information, this situation can mainly be attributed to the seasonal and part-time character of employment in those sectors of the economy, and to figures omitting other revenue such as tips or social or tax transfer payments. The Committee notes from the reply that, even if adjusted to full time, the blue collar workers' remuneration in those sectors is generally lower than in other sectors and the coverage by collective agreements is generally low in those sectors. The Committee also notes from the reply that, even if adjusted to full time, the average wage paid in those sectors is generally lower than that in other sectors, and the coverage by collective agreements is generally low in those sectors. Moreover, the reply does not establish any correlation between seasonal activities in various sectors and/or any social or tax transfer payments, to establish that wages paid to blue collar workers in those sectors of the private industry are sufficient to ensure a decent standard of living].

Azerbaijan

Normative action:

Article 4§3: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§3 of the Charter on the following grounds that:

- there is no shift in the burden of proof in discrimination cases; (…).

[The Committee recalls that under Article 4§3 of the Charter domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court. Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases.

Anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay (Conclusions XVI-2, Malta).

The Committee further recalls that when the dismissal is the consequence of a worker's complaint concerning equal wages, the employee should be able to file a claim for unfair dismissal. In this case, the employer must reintegrate him in the same or a similar post. If reinstatement is not possible, the employer has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts should have the competence to fix the amount of this compensation, not the legislator (Conclusions XIX-3, Germany).

In this regard, the Committee refers to its conclusions on Article 20 (Conclusions 2012) where it noted that victims of gender discrimination are entitled to compensation which is not subject to a limit. The Committee also considered (Conclusion 2012) that the situation was not in conformity with Article 20, as during judicial proceedings in discrimination cases there was no shift in the burden of proof. The Committee reiterates its finding of non-conformity on this ground].

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

- The notice period is not reasonable in the following cases:
- dismissal on the ground of liquidation of the undertaking or reduction in the number of staff and termination of employment on account of a change in the terms and conditions of employment, beyond seven years of service;
- termination of employment on account of being called up for military service or long-term illness or disability, beyond five years of service;
- termination of employment on grounds stipulated in the employment contract, beyond three years of service;
- dismissal during the probationary period;
- There is no notice period provided for in the following cases:
- dismissal for professional incompetence or lack of qualifications;
- termination of employment in the event of a change of ownership of the undertaking or the reinstatement of a former worker following a judicial decision or after military service;
- termination of employment on account of withdrawal of the worker's driving licence or ban on performing certain duties or activities;
- termination of employment in the event of disability recorded in a judicial decision.

[*Necessity to amend the Labour Code on these points*].

Article 4§5: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§5 of the Charter on the grounds that:

- following all authorised deductions, the wages of workers with the lowest earnings do not enable them to provide for themselves or their dependants;
- guarantees in place to prevent workers from waiving their right to limitation of deduction from wages are insufficient.

[The Committee notes that, apart from the limits of 20% or 50% of wages provided for in Article 176, paragraph 1 of the Code, 50% of wages constitutes an absolute limit applicable in the event of simultaneous deductions (Article 176, paragraph 2 of the Code). According to the report, while these limits do not apply to the wages of workers sentenced to prison or corrective labour, nor to deductions ordered to cover maintenance payments or in compensation of reparation of bodily harm, the death of a breadwinner or damage caused by criminal acts (Article 176, paragraph 3 of the Code), section 65, paragraph 3 of the Enforcement Measures Act nonetheless limits the portion of wages than can be attached to recover such maintenance or compensation payments to 70% of total earnings. The Committee also notes from the report that Article 175, paragraph 2(i) of the Code now authorises the deduction of trade union membership fees.

The Committee recalls that the purpose of Article 4§5 of the Charter is to guarantee that workers benefiting from the protection afforded by this provision are not deprived of means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers that, in the instant case, the limits on deductions from wages applicable in the event of enforcement of judicial decisions or of simultaneous deductions (Article 176, paragraphs 1 and 2 of the Code) still allow situations in which workers receive only 50% of the monthly minimum wage, an amount that does not permit them to provide for themselves or their dependants. The same applies to the 70% of total earnings that may be attached for the recovery of certain maintenance or compensation debts (section 65, paragraph 3 of the Enforcement Measures Act).

The Committee also recalls that, pursuant to Article 4§5 of the Charter, workers may not waive their right to limitation of deductions from wages, nor may determination of wage deductions be left merely to the discretion of the parties to the employment contract (Conclusions 2005, Norway). While negotiations on the subject are not prohibited in themselves, they must be subject to rules established by statutory provisions, case law, regulations or collective agreements (Conclusions XIV-2 (1998), United Kingdom). The Committee notes that in the instant case, Article 175, paragraph 1 of the Code permits workers to consent to specific deductions by written agreement, and Article 175, paragraph 6 of the Code permits workers to assign portions of their wages to third parties, without provision against the deprivation of means of subsistence being made by statutory provisions, case law, regulations or collective agreements. It accordingly considers that these provisions of the Code are not in conformity with Article 4§5 of the Charter].

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

- the restrictions on the right to strike for employees working in essential services do not comply with the conditions established by Article G of the Charter;
- the restrictions on the right to strike for public officials do not comply with the conditions established by Article G of the Charter.

[Concerning restrictions related to essential services, the Committee notes that according to Article 281 of the Labour Code, strikes are prohibited in the following sectors: hospitals, energy providers, water supply services, telephone service providers, air traffic control and firefighting facilities. In this respect, in its previous conclusion the Committee asked for information on the extent of the restrictions on the right to strike in these sectors, and whether there is a total ban on all strikes in the sectors listed above.

The Committee notes from the answer provided in the report that there is indeed a total ban on all strikes in these sectors justified by the need to protect people's health and safety.

Under Article 6§4 the right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

The Committee recalls also that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, is not deemed proportionate to the specific requirements of each sector, but providing for the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.

The Committee considers that even if the restriction to the right to strike is prescribed by law (in this case the Labour Code) and serves a legitimate purpose, namely public health and safety, it considers that a total ban on the right to strike in the above mentioned sectors is not proportionate to the aim pursued by the law and therefore necessary in a democratic society. It holds however that the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4. On this basis the Committee concludes that the situation is not in conformity].

[Regarding restrictions related to public officials, the Committee notes that according to Article 270(8) of the Labour Code, employees of legislative authorities, relevant executive authorities, courts and law enforcement authorities may not go on strike. It also notes that pursuant to Article 20(1)(7)of the Law on Public Service, a public servant is prohibited from taking part in strikes. The Committee recalls that under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc. The Committee considers that a total ban on the right to strike for public officials goes beyond the restrictions permitted by Article G of the Charter. The Committee therefore concludes that the situation is not in conformity with Article 6§4 of the Charter.

In view of the precedent paragraphs, the Committee concludes that the situation is not in conformity on the ground that the restrictions to the right to strike for employees working in essential services and public officials go beyond those permitted by Article G of the Charter].

Article 26§1: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 26§1 of the Charter on the ground that no shift in the burden of proof applies in sexual harassment cases under the Labour Code.

[According to the report, under the Labour Code it is up to the plaintiff, not to the employer, to bear the burden of proof in sexual harassment cases. The Committee has already noted, under Article 20 and Article 4§3 that no shift in the burden of proof applies in gender discrimination cases.

The Committee recalls that, in order to allow effective protection of victims, civil law procedures require a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges. Insofar this does not apply to sexual harassment cases in Azerbaijan, the Committee considers that the situation is not in conformity with Article 26§1 of the Charter].

Other parliamentary measures:

Article 4§1: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§1 of the Charter on the ground that the monthly minimum wage does not ensure a decent standard of living.

[The Committee previously concluded (Conclusions 2010) that the situation in Azerbaijan was not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage was manifestly unfair.

The report states that, under Order of the President of the Republic No. 1866 of 1 December 2011 on the increase in the monthly minimum wage (MMW), the MMW was set at 93.50 Azerbaijani manat (AZN) from 1 December 2011 onwards. In 2012, the MMW of AZN 93.50 (€94.66) amounted to 27.50% of the gross monthly average wage of AZN 398.20 (€403.14). The "Azerbaijan 2020: Look into the Future" strategy, approved by the Decree of the President of the Republic of 29 December 2012, includes measures to gradually adjust the MMW to the minimum subsistence level defined by the law and to 60% of the average wage needed to ensure a decent standard of living within the meaning of Article 4§1 of the Charter.

The Committee notes from the previous report that in 2008, the MMW was exempt from income tax, but subject to social contributions of 3% and trade union dues of 2%. Monthly incomes of up to AZN 2 000 were subject to income tax at a rate of 14%. Based on this information, the Committee establishes that in 2012, the MMW net of social contributions and trade union dues was AZN 88.83 (€89.93) and the average wage net of social contributions, trade union dues and tax deductions was AZN 322.54 (€326.54).

According to State Statistical Committee figures for 2012 (State Statistical Committee of the Republic of Azerbaijan, Statistical Yearbook: Labour Market, Baku: SSCRA 2013), the gross average income in the private sector (Table 4.2) was AZN 398.40 (€403.34). Among the low pay sectors were agriculture, forestry and fishing (AZN 201.10); water, cleaning and waste processing services (AZN 274.80); estate agencies (AZN 225.60); education (AZN 287.30); health care and social services (AZN 175.10) and art, cinema and entertainment (AZN 211.30). The gross average monthly wage of civil servants in 2012 (Table 5.9) was AZN 446.70 (€452.24). Among the low pay regions were Absheron (AZN 307.70); Ganja-Gazakh (AZN 322.90); Shaki-Zagathala (AZN 318.10); Lankharan (AZN 323.40); Guba-Khachmaz (AZN 337.10); Kalbajar-Lachin (AZN 336.20) and Daghlig-Shirvan (AZN 320.90). The ILO Decent Work Country Profile (International Labour Office, Decent Work Country Profile Azerbaijan, Geneva: ILO 2012, pp. 13-15) confirms that there are major

disparities in remuneration depending on sector of activity, region and gender. It also confirms that, despite the significant increase in the MMW in recent years, it is still lower than the minimum subsistence level defined by the law and 60% of the average wage.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage lies between 50% and 60% of the net average wage, it is for the State Party to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee notes that in the instant case, the MMW net of social contributions and trade union dues is lower than the minimum threshold, and hence does not amount to a decent remuneration within the meaning of Article 4§1 of the Charter].

Article 4§3: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§3 of the Charter on the following grounds that:

- (…) the unadjusted gender pay gap is manifestly too high.

[The Committee notes from the report that in 2009 the average wages of women amounted to 58,6% of that of men and 46,2% of that of men in 2012. The Committee notes the downward trend in wage equality and considers that the unadjusted pay gap is manifestly too high and therefore, finds that the situation is not in conformity with the Charter.

The Committee recalls that under Article 4§3, States must promote positive measures to narrow the pay gap, including:

- *measures to improve the quality and coverage of wage statistics;*
- *steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.*
- *The Committee asks what measures are taken to narrow the gap].*

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

- it has not been established that, in practice, the free exercise of the right to form trade unions is ensured in multinational companies;
- it has not been established that there is an adequate and proportionate compensation to the harm suffered by a worker discriminated against for having joined a trade union;
- the social and economic interests of the police are not protected by professional organisations or trade unions.

Article 6§1: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§1 of the Charter on the ground that it has not been established that the promotion of joint consultation between workers and employers on most matters of mutual interest covered by Article 6§1 is ensured.

Article 6§2: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§2 of the Charter on the ground that there is no adequate

promotion of voluntary negotiations between employers or employers' organisations and workers' organisations.

Article 6§3: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§3 of the Charter on the ground that it has not been established that conciliation and arbitration facilities exist for the public sector.

Article 22: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 22 of the Charter on the grounds that it has not been established that:

- workers and/or their representatives have an effective right to participate in the decision-making process within undertakings with regard to working conditions, work organisation or the working environment;
- legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

Article 26§2: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that in Azerbaijan employees are given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work.

Article 28: The Committee concludes that the situation in Azerbaijan is not in conformity with Article 28 of the Charter on the ground that it has not been established that the protection granted to workers' representatives is extended for a reasonable period after the end of period of their mandate.

Belgium

Normative action:

Article 2§3: The Committee concludes that the situation in Belgium is not in conformity with Article 2§3 of the Charter on the ground that workers who suffer from illness or injury while on holiday are not entitled to take the days lost at another time.

[In its previous conclusion (Conclusions 2010), the Committee concluded that the situation was not in conformity with the Charter because workers who suffered from illness or injury during their holiday were not entitled to take the days lost at another time. It notes that there has been no change in the relevant legislation in this regard. It notes from the report that if a worker falls ill while on holiday, it is still not possible to postpone the leave to a later date or to claim incapacity benefit (except for the period over and above that originally granted as annual leave). The same principle applies by analogy to employees. The report indicates that this issue was on the agenda of the Conseil national du travail meeting held on 13 September 2013 and that discussions were under way. The Committee asks to be informed about the follow-up to these consultations and in the meantime reiterates its finding of non-conformity].

Article 2§5: The Committee concludes that the situation in Belgium is not in conformity with Article 2§5 of the Charter on the ground that weekly rest day may be postponed over a period exceeding twelve successive working days.

[In reply to the finding of non-conformity in the previous conclusion (Conclusions 2010), the authorities state that many companies making use of the new working arrangements (the "extended flexibility" scheme, under Article 2, paragraph 1, of the Law of 17 March 1987) employ their workers on the basis of a five-day working week. Consequently, even if they are required to work on Sunday under the rules of a new scheme, in most cases, employees will be granted another rest day during the week.

The Committee recalls that wherever necessary because of the nature of the activity performed or specific economic conditions, weekly rest periods may be taken on another day of the week instead of Sunday. They may also be carried over to the following week provided that workers are not required to work more than twelve consecutive days before being entitled to two days of rest.

In this respect, according to the report, there are sectoral collective agreements, which allow exceptionally for there to be a relatively long gap between work undertaken on a Sunday and the relevant time off in lieu. In an addendum to the report, the authorities insist on the marginal nature of such exceptions; they fail however to specify what are the collective agreements concerned by such exceptions, whether these agreements relate both to five-day weeks and to six-day weeks, how long these exceptional gaps may be and under what circumstances it is authorised, if at all, for employees to work for more than twelve days before being entitled to a day off. In addition, the report fails to explain what guarantees, limits and controls apply whenever a person is required to work more than twelve days before being granted a two-days rest. In the light thereof, the Committee asks the next report to provide the information requested and reiterates in the meantime its finding of non-conformity with Article 2§5 on the ground that weekly rest day may be postponed over a period exceeding twelve successive working days].

Article 4§2: The Committee concludes that the situation in Belgium is not in conformity with Article 4§2 of the Charter on the ground that the compensatory time off for overtime hours in the public sector is not sufficient.

[In its previous conclusion (Conclusions 2010) the Committee found that the situation was not in conformity with the Charter as the time off granted to compensate overtime was not sufficiently long in the public sector.

The Committee notes from the report that no modifications were carried out during the reference period. The Committee observes, therefore, that the Law of 14 December 2000 on certain aspects of the organisation of working time in the public sector, which provides for compensatory time off in lieu for overtime hours equivalent to the length equivalent to the overtime worked, has not been modified. The Committee thus reiterates its previous finding of non-conformity].

Article 6§4: The Committee concludes that the situation in Belgium is not in conformity with Article 6§4 of the Charter on the ground that the restrictions on the right to strike do not comply with the conditions established by Article G of the Charter given that they are neither prescribed by law nor proportionate to the aims set out in Article G of the Charter.

[With regard to restrictions on the right to strike, since its last conclusion the Committee issued its decision on the merits of Collective Complaint No. 59/2009, European Trade Union Confederation (ETUC), Centrale générale des syndicats libéraux de Belgique (CGSLB),

Confédération des syndicats chrétiens de Belgique (CSC) and Fédération générale du travail de Belgique (FGTB) against Belgium on 13 September 2011.

The Committee first found that the right to collective action was sufficiently recognised in Belgian law.

The Committee then examined the so-called "unilateral application procedure" whereby employers may ask the courts to order the end of picketing activity. It held that in practice this procedure constituted a restriction on the exercise of the right to strike, since the prohibition of picketing did not apply only to cases where the picketing activities were undertaken in such a way as to infringe the rights of non-strikers, for example through the use of intimidation or violence.

Finally, the Committee found that the exclusion of the trade unions from the emergency relief procedure could lead to a situation where the intervention of the courts ran the risk of producing unfair or arbitrary results and that, consequently, such restrictions to the right to strike could not be considered to be prescribed by law. The Committee also felt that in its practical operation the so-called "unilateral application procedure" went beyond what was necessary to protect the right of co-workers and/or of undertakings by reason of the potential lack of procedural fairness.

The Committee therefore concluded that the restrictions on the right to strike constituted a violation of Article 6§4 of the Charter because they do not comply with the conditions established by Article G of the Charter given that they are neither prescribed by law nor proportionate to the aims set out in Article G of the Charter.

The report states that, since this decision, the Minister of Employment, on 10 May 2012, forwarded the Committee's decision and the Committee of Ministers' resolution to the National Labour Council so that workers and management could study it at the same time as the assessment of the "gentleman's agreement" with regard to strikes, already requested by the Minister in 2008. In 2002, workers' organisations drew up a gentleman's agreement in consultation with employers' organisations in which the workers' organisations called on their members not to have recourse to violence during industrial disputes and to observe the periods of notification of strikes, while the employers' organisations called on their members to avoid legal proceedings in the context of industrial disputes. The Minister of Justice also asked the Board of Prosecutors General, to ensure that the Committee's decision and the Committee of Ministers' resolution were disseminated among members of the judiciary.

However, the Committee received a letter dated 21 November 2013, sent by the trade unions which had lodged the complaint, claiming that the Minister of Justice had not yet informed the judicial authorities of the Committee's decision. The Committee therefore invites the Belgian authorities, namely the Minister of Justice, to draw the judicial authorities' attention to this decision as quickly as possible.

The Committee asks that the next report provide detailed information on the restrictions to the right to strike based on judicial decisions so that it can verify that the situation has been brought into conformity with the Charter. Pending this information, the Committee concludes that the situation is not in conformity with the Charter on the ground that the restrictions on the right to strike do not comply with the conditions established by Article G of the Charter given that they are neither prescribed by law nor proportionate to the aims set out in Article G of the Charter].

Other parliamentary measures:

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

- it has not been established that the average minimum wages suffice to ensure a decent standard of living;
- the average minimum wages of young workers do not suffice to ensure a decent standard of living.

[According to EUROSTAT data for 2012, the average annual wage of single workers without children (table "earn_nt_net") (100% of an average worker) was €45 886.00 gross and €26 287.51 net; the annual minimum wage (table "earn_mw_cur-1") was €17 669.04 (monthly base amount €1 472.42) gross.

The Committee notes from the previous report that housing allowances can be awarded and that certain collective agreements provide for support or training measures for workers at risk in the labour market.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage is between 50 and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). It observes that in the instant case the minimum average wages laid down in Collective Agreement No.43 are lower than 60% of the net average wage, and the report provides no information showing that these wages are sufficient to ensures a decent standard of living in accordance with Article 4§1 of the Charter. It therefore considers that the situation in Belgium is not in conformity with Article 4§1 of the Charter in this respect.

The Committee also reiterates that the payment of a lower minimum wage to younger workers is not in breach of Article 4§1 of the Charter if it both furthers a legitimate aim and is proportionate to achieve that aim (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §60). It notes that in the present case the average minimum wages laid down in Collective Agreement No. 50 are lower than 50% of the average wage. It therefore considers that the average minimum wages paid to young workers under the age of 21 do not constitute a decent remuneration within the meaning of Article 4§1 of the Charter].

Bosnia and herzegovina

Normative action:

Article 2§3: The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§3 of the Charter on the ground that, during the reference period, the minimum period of paid annual leave was less than four weeks or 20 working days.

[The Federation of Bosnia and Herzegovina (FBiH) Labour Law, the Law on Employees in the Civil Service and the Law on Employees in the FBiH Public Administrative Bodies all

provide for a paid annual leave of at least 18 working days, which is less than the period of 20 working days set by Article 2§3 of the Charter. According to the report, these texts are being revised with a view to bringing the situation in conformity with the Charter. In the meantime, however, the Committee finds that the situation was not in conformity with the Charter during the reference period. The Committee notes that a minimum period of leave of 18 days is also provided by the Law on Police Officers, it asks whether amendments are also under way in this respect].

[In Republika Srprska (RS), the minimum period of paid annual leave is 18 days (Article 57 of the Labour Code). According to the report, a new law is being drafted to provide for a minimum annual leave of four weeks. In the meantime, the Committee finds that the situation was not in conformity with the Charter during the reference period.

The Committee asks the next report to indicate:

- *whether the law guarantees that employees cannot waive their right to annual leave or replace it by financial compensation;*
- *whether the law provides for at least two weeks uninterrupted annual holidays to be taken during the year the holidays were due;*
- *under what circumstances and within what deadlines annual holidays can be postponed;*
- *whether workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time].*

[In Brčko District (BD), the minimum period of paid annual leave is 18 days (Article 32 of the Labour Code, Article 113 of the Law on Police Officers). On this point, the Committee finds that the situation is not in conformity with the Charter. A minimum annual leave of 20 days is provided for civil servants and employees under the Law on Civil Service in the BD Public Administration Bodies. This Law also provides that the annual leave can be divided in two parts and that the period of temporary incapacity is not included in the annual leave.

The Committee asks the next report to indicate:

- *whether the law guarantees that employees cannot waive their right to annual leave or replace it by financial compensation;*
- *whether the law provides for at least two weeks uninterrupted annual holidays to be taken during the year the holidays were due;*
- *under what circumstances and within what deadlines annual holidays can be postponed;*
- *whether workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time].*

Article 2§7: The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§7 of the Charter on the ground that, during the reference period, a free compulsory medical examination was not provided by law to all workers about to take up night work.

[In FBiH, Article 34 of the Labour Law defines night work as the work performed in the period between 22.00 hours and 6.00 hours in the morning of the following day (between 22.00 hours and 5.00 hours in the morning in the agricultural sector).The Committee asks who is considered to be a night worker.

The report indicates that neither the Labour Law or the Law on Safety and Health at Work require a medical examination prior to starting a night job or periodic examinations of employees in night jobs. However, a reform of the Labour Law in this respect is envisaged, aimed at introducing the employer's obligation to provide periodic medical examinations for employees in night jobs at least once every two years. The Committee finds that the situation was not in conformity with Article 2§7 of the Charter during the reference period. It takes note of the information provided on the envisaged reform and asks the next report to provide information on the new legislation and how it complies with the Article 2§7 requirements concerning medical examinations and possibilities of transfer to daytime work.

As regards consultation with workers' representatives, the Committee notes that, before ordering night work, the employer is obliged to consult the Employees' Council or the Trade Union, if a Council has not been established. Any decision on the introduction of night work taken without consultation with the Employees' Council is null and void according to Article 25 of the Law on Employees' Council].

[In RS, Article 50 of the Labour Law defines night work as the work performed in the period between 22.00 hours and 6.00 hours in the morning of the following day. Night work of employees aged under 18 is prohibited, except in certain exceptional circumstances (major break downs, force majeur, protection of interests of the RS) and it is in these cases considered to be the work performed between 20.00 hours and 6.00 hours in the morning (between 19.00 hours and 7.00 hours in the morning of the following day in industry). The Committee asks who is considered to be a night worker.

Article 15(1) of the Law on Safety and Health at Work provides that an employer is obliged to "provide required medical examinations of employees in accordance with this Law on the basis of a risk assessment and evaluation by occupational health services". The Committee asks that the next report clarify whether this means that medical examinations are only provided upon the employee's request and the agreement of the occupational health services. It notes the information provided on medical examination of police officers, but asks whether other categories of night workers are entitled to free medical assessments before starting night work and regularly thereafter and under what circumstances they can be transferred to daytime work.

The Committee also asks whether the law provides for continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work].

[In BD, Article 27 of the Labour Law defines night work as the work performed in the period between 22.00 hours and 6.00 hours in the morning of the following day. The Committee asks who is considered to be a night worker.

The Law on Safety and Health at Work adopted in 2013 (outside the reference period) provides for the employer's obligation to make a risk assessment for each job and, on the basis of such risk assessment, a doctor prescribes preliminary and periodical medical examinations of workers. The Committee asks whether night work is systematically considered to require preliminary and periodical medical examinations or whether this is left to a case by case assessment. The Committee also asks whether the law provide for continuous consultation with workers' representatives on the introduction of night

work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work].

Other parliamentary measures:

Article 2§4: The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§4 of the Charter on the ground that there is no adequate prevention policy, covering the whole country, for the risks in inherently dangerous or unhealthy occupations.

Bulgaria

Normative action:

Article 4§3: The Committee concludes that the situation in Bulgaria is not in conformity with Article 4§3 of the Charter on the ground that there is a predetermined upper limit on compensation for employees who are dismissed as a result of gender discrimination which may preclude damages from making good the loss suffered and from being sufficiently deterrent.

[*The Committee takes note of the cases of discrimination which have been brought to the attention of the Commission on Protection Against Discrimination with regard to the right to work. It requests that the next report provide examples of domestic case law that specifically deals with gender discrimination in pay.*

The Committee refers to its conclusion under Article 20 (Conclusions 2012) where it concluded that the situation in Bulgaria was not in conformity with Article 20 of the Charter on the ground that there is a predetermined upper limit on compensation for employees who are dismissed as a result of gender discrimination which may preclude damages from making good the loss suffered and from being sufficiently deterrent.

Having found no new information in the report on this matter, the Committee repeats this finding of non-conformity.

The Committee recalls that under Article 4§3 of the Charter domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court. Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases. The Committee asks whether in gender discrimination cases there is a shift in the burden of proof].

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

- The period of notice is not reasonable in the following cases:
- dismissal with the application of the legal period of notice, beyond three years of service;
- dismissal in some cases of redundancy, beyond five years of service;
- dismissal on grounds of long-term illness or incapacity for health reasons, beyond seven years of service;
- retirement, between seven and ten years of service;
- dismissal in respect of additional jobs, beyond six months of service;

- No notice period is provided for in the following cases:
- termination of employment for enforcement of a prison sentence; disqualification from the category or academic diploma required by the employment contract; being struck off the list of a professional association; existing incompatibilities of functions identified under Article 107(a), paragraph 1 of the Labour Code; proven conflict of interest within the meaning of the Conflict of Interest Act;
- under specific circumstances, termination in the probationary period.

[The Committee points out that in accepting Article 4§4 of the Charter States Parties undertook to recognise the right of all workers to a reasonable period of notice upon termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being primarily determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee considers that, in the present case, the compensation paid for a period of unemployment under Article 225, paragraph 1 of the Code as the result of unfair dismissal, which is limited to six months' wages, is in conformity with Article 4§4 of the Charter. It also considers that the period of notice, combined with any severance pay provided for, is reasonable within the meaning of Article 4§4 of the Charter in some circumstances, but inadequate in the following cases of dismissal:

- *Application of the 30 days' legal period of notice, beyond three years of service;*
- *Certain economic reasons (set out in Article 328, paragraph 1, Nos. 1 to 4, 7 and 8 of the Code), beyond five years of service;*
- *Long-term illnesses or incapacity for health reasons (set out in Articles 325, paragraph 1, No. 9 and 327, paragraph 1, No. 1 of the Code), beyond seven years of service;*
- *Retirement, between seven and ten years of service].*

[The Committee recalls that protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the ground for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection includes probationary periods (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The Committee considers in the present case that the possible ruling out of a period of notice and/or compensation during the probationary period (Article 71, paragraph 1 of the Code) is not in conformity with Article 4§4 of the Charter. It also considers that the protection afforded by Article 4§4 of the Charter extends to additional jobs and that 15 days' notice is not reasonable beyond six months of service (Conclusions XVI-2 (2003), Poland). It therefore repeats its previous conclusion of non-conformity on this point.

The Committee also considers that, in view of the fact that the cumulative duration of fixed term contracts is limited to three years, the period of notice applicable to fixed-term employment (Article 326, paragraph 2 of the Code) is reasonable within the meaning of Article 4§4 of the Charter. It nevertheless asks for information concerning the frequency with which contracts are renewed in practice on the grounds given under Article 68,

paragraph 4 of the Code. It also asks for information on the periods of notice and/or compensation applicable to grounds for termination of employment other than dismissal (when an electoral mandate ends or is rescinded; an employment contract is declared null and void; invalidity or decease of the employer who is a natural person, etc.); to seamen governed by the Merchant Navy Code of 14 July 1970 (No. 55/1970); and to the termination of the duties of civil servants and staff governed by the Civil Servants Act of 16 June 1999 (No. 67/1999).

The Committee considers that although a judicial or administrative disqualification from exercising a profession or duties; refusal to accept the post allocated on return from sick leave; a disciplinary offence; and failing to inform of incompatibilities of functions (grounds given under Article 330, paragraph 2, Nos. 1 and 5 to 7 of the Code) may be considered to be serious offences – the only exception justifying dismissal without notice or compensation (Conclusions 2010, Albania) – this does not apply to the other grounds for immediate dismissal. The ruling out of notice periods and/or severance pay in lieu in thereof under these circumstances is not in conformity with Article 4§4 of the Charter].

Article 4§5: The Committee concludes that the situation in Bulgaria is not in conformity with Article 4§5 of the Charter on the ground that, after all authorised deductions, the wages of workers with the lowest pay do not enable them to provide for themselves or their dependants.

[The Committee recalls that the purpose of Article 4§5 of the Charter is to ensure that workers who enjoy the protection afforded by this provision are not deprived of their basic means of subsistence (Conclusions XVIII-2 (2007), Poland). It notes that in the present situation, the unattachable income is a matter of public policy and applies to all. It nevertheless considers that the limits of one fifth, one quarter and one third of wages provided for in Articles 272, paragraph 2, No. 5 of the Code and Article 446, paragraphs 1 and 2 of the CCP, leave situations existing where workers receive only 80% or even 75% of the national minimum wage after social security contributions and tax deductions, an amount that is not sufficient to enable them to provide for themselves and their dependants and is therefore not in conformity with article 4§5 of the Charter. The same is true of the unlimited deduction of maintenance claims permitted under Article 446, paragraph 3 of the CCP. The Committee points out that compliance with maintenance obligations towards family members must not be achieved at the expense of the protection afforded by Article 4§5 of the Charter.

The Committee further notes that under Article 4§5 of the Charter, workers may not waive their right to limitation of wage deductions, and that the determination of deductions from wages may not be left simply to the wishes of parties to an employment contract (Conclusions 2005, Norway). It therefore asks that the next report indicate to what extent the law permits workers to consent to their wages being forfeited, assigned or pledged for the benefit of their employer or third parties.

The Committee further notes that under Article 4§5 of the Charter, the circumstances in which deductions may be made from wages must be clearly defined. It therefore asks that the next report elaborate on the grounds for wage deductions permitted by law (such as trade union dues; execution of court orders; criminal fines; reimbursement of leave in the event of early termination of employment (Article 224, paragraph 1 of the Code); emergency situations (Article 218, paragraph 1 of the Code); failure to achieve

targets, reductions in output and/or quality attributable to the employee (Article 266, paragraph 2, Article 267, paragraph 2 and Article 268, paragraph 2 of the Code)). It also wishes to know what portion of wages is exempt from attachment in cases where multiple deductions are to be made on competing grounds and in particular where wages are subject to multiple deductions under the CCP and the CFP. It also wishes to know whether the statutory guarantees apply to civil servants and staff governed by the Civil Service Act of 16 June 1999 (No. 67/1999) and to seafarers governed by the Merchant Shipping Code of 14 July 1970 (No. 55/1970)].

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

- legislation does not provide for adequate compensation proportionate to the harm suffered by the victims of discriminatory dismissal based on involvement in trade union activities;
- foreign workers' right to form or to participate in the formation of trade unions is subject to prior authorisation.

[In its previous conclusion (Conclusions 2010), the Committee found that the situation was not in conformity with Article 5 of the Charter as the legislation does not provide for adequate compensation proportionate to the harm suffered by the victims of discriminatory dismissal based on involvement in trade union activities. The Committee considered that the situation is not in conformity with the Charter as the Labour Code (Article 225), which provides for damages of up to a maximum of 6 months wages in the event of discriminatory dismissal because of trade union activities, does not provide for adequate compensation, which would be proportionate to the damage suffered by the victim. The Representative of Bulgaria to the Governmental Committee stated that the Ministry of Labour had proposed that the legislation be amended in order to remove the six months wage ceiling as regards the compensation, but due to the opposition of the other ministries, the amendment was dropped (see the Report of the Governmental Committee concerning Conclusions (2010) p.61). In this regard, the Governmental Committee issued a warning urging the Government to take all adequate measures to bring the situation into conformity with the Charter.

The Committee recalls that in the particular case of termination of employment on the ground of trade union activities, it considered – in accordance with its ruling under Article 24 of the Charter, which prohibits termination of employment without valid reason (Conclusions 2003, p. 76-82) – that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement. Since this is not the case in the Bulgarian law, the Committee considered that the situation was not in conformity with Article 5 of the Charter (Conclusions 2004 Bulgaria). The Committee notes from the report that there has been no change to the situation and therefore it maintains its conclusion of non-conformity on this point].

[The Committee previously noted that whilst it is possible for foreign workers to form a trade union or participate in the formation of a trade union as a founding member, they are however required to be granted authorisation beforehand (Order No. 1 of 15 August 2002). Since the Committee considers that employees who are nationals of other parties to the Charter must have the same rights to organise as nationals (see mutatis mutandis

Conclusions XIII-3 Turkey, Article 19§4(b), p. 415) and in view of the said restrictions that are placed on foreign workers' right to form trade unions, the Committee concluded that the situation is not in conformity with Article 5 in this respect.

The representative of Bulgaria to the Governmental Committee stated that the right to organise is governed by the Labour Act and not by Ordinance No. 1 of 15 August 2002, which only regulates professional activities and requires prior authorisation for foreigners. The Bulgarian representative added that no restrictions for foreigners concerning the setting up of trade unions or participation in their activities are provided by the Labour Code. The Committee notes that there have been no changes to the situation. The argument provided by the Bulgarian representative does not appear sufficient to take another view as long as the prior authorisation for foreigners is still required by the law, which restricts their right to organise. Therefore, the Committee maintains its conclusion of non-conformity on this point].

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

[As regards conciliation and arbitration in the public sector, the Committee previously held that the situation in Bulgaria was not in conformity with Article 6§3 of the Charter on the ground that there was no conciliation or arbitration procedure in the public service. The report indicates that such procedures (of conciliation and arbitration) are provided in the draft Law amending and supplementing the Civil Servants Act which was drafted at the end of 2012. At the end of 2013 the draft was again submitted for consideration by the Council for Administrative Reform, but no decision has been taken yet. Since the situation has not changed during the reference period, the Committee maintains its finding of non-conformity. It asks the Government to provide an up-to-date report on the envisaged reform].

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

- civilian personnel of the Ministry of Defense and any establishments responsible to the Ministry are denied the right to strike;
- the restriction on the right to strike in the railway sector pursuant to Section 51 of the Railway Transport Act does not comply with the conditions established by Article G;
- civil servants are only permitted to engage in symbolic action and are prohibited from strike (Section 47 of the Civil Service Act);
- the requirement to notify the duration of strikes to the employer or his representatives prior to strike action does not comply with the conditions established by Article G of the Charter.

[The Committee previously found that the situation was not in conformity with Article 6§4 on the ground that there was a general ban on the right to strike of all personnel employed by the Ministry of Defence or any establishment responsible to such Ministry (Section 274.2 of Act No. 112 of 1995). The report indicates that there has been no change to the situation. Therefore, the Committee reiterates its finding of non-conformity.

Follow up to Complaint No. 32/2005 – European Trade Union Confederation (ETUC), Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour

"Podkrepa" (CL "Podkrepa") v. Bulgaria. In Complaint No. 32/2005 – European Trade Union Confederation (ETUC), Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") v. Bulgaria, the Committee found a violation on the grounds that:

- *the general ban of the right to strike in the electricity, healthcare and communications sectors (Section 16 (4) of the Collective Labour Disputes Settlement Act) constitutes a violation of Article 6§4 of the Revised Charter;*
- *the restriction to the right to strike in the railway sector pursuant to Section 51 of the Railway Transport Act goes beyond those permitted by Article G and therefore constitutes a violation of Article 6§4 of the Revised Charter;*
- *allowing civil servants to only engage in symbolic action which the law qualifies as a strike and prohibiting them from collectively withdrawing their labour (Section 47 of the Civil Service Act) constitutes a violation of Article 6§4 of the Revised Charter.*

As regards the first ground, the Committee noted in its previous conclusion (Conclusions 2010) that the prohibition of strikes in the electricity, healthcare and communications sector was repealed and therefore strikes are now permitted. However there is an obligation to provide a minimum service. If the parties cannot agree on the minimum service to be provided either of them may request the National Institute for Conciliation and Arbitration to appoint an arbitrator or arbitration committee.

As regards the second and third grounds of non-conformity, the report indicates that in 2010 an interagency expert working group was created to prepare proposals for legislative amendments to the Civil Service Act and Section 51 of the Railway Transport Act. The discussions on the amendment of the Railway Transport Act were postponed, and only a bill was drafted amending the Civil Service Act. The report mentions that the draft was submitted for consideration to the Council for Administrative Reform at the end of 2013. The Committee takes note of these developments. However, it notes that the situation had still not been brought into conformity and therefore it maintains its conclusion of non-conformity on these grounds.

With regard to the procedural requirements, the Committee recalls that pursuant to Section 11(3) of the Settlement of Collective Labour Disputes Act (SCLDA), the employees or their representatives are required to notify the employer or his representatives in writing of the duration of a strike and of the body directing it at least seven days before the beginning of the strike. The Committee asked how the requirement for employees or their representatives to indicate the proposed duration of a strike is applied in practice and in particular how precise the information must be and what the consequences are of extending a strike beyond the time indicated. Also, the Committee has previously asked whether it is possible to give notice that a strike will be of unlimited duration. The Government has stated that should a strike exceed the duration originally notified it may be considered as unlawful. The report indicates that the notification of the duration of strike and of the body to oversee it, represents an explicit legal requirement for the legality of the strike. It cannot be stated that the strike will be of unlimited duration.

The Committee notes from Observation (CEACR) – adopted 2010, published 100th ILC session (2011), that the ILO-CEACR requested that the Government amend the provision requiring the obligation to notify the duration of a strike in advance. The Committee recalls that the requirement to notify the duration of the strike to the employer prior

to strike action is contrary to the article 6§4 of the Charter, even for essential public services (Conclusions (2006), Italy). It concludes that the situation is not in conformity with Article 6§4 of the Charter as the requirement to notify the duration of strikes to the employer or his representatives prior to strike action goes beyond the limits foreseen by Article G of the Charter].

Article 28: The Committee concludes that the situation in Bulgaria is not in conformity with Article 28 of the Charter on the ground that legislation does not provide for adequate protection in the event of an unlawful dismissal based on trade union membership or activities.

[In its previous conclusion (Conclusions 2010) the Committee considered that the situation was not in conformity with Article 28 as the Labour Code (Article 225), which provides for damages up to a maximum of 6 months wages in the event of discriminatory dismissal based on trade union activities, does not provide for adequate compensation which would be proportionate to the damage suffered by the victim. The Committee observes that the situation has not changed and therefore it maintains its conclusion of non-conformity on this point].

Other parliamentary measures:

Articles 6§1: The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§1 of the Charter on the ground that it has not been established that joint consultative bodies exist in the public service.

Article 6§2: The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§2 of the Charter on the ground that machinery for voluntary negotiations is not sufficiently promoted.

Article 22: The Committee concludes that the situation in Bulgaria is not in conformity with Article 22 of the Charter on the ground that it has not been established that the right of workers to take part in the determination and improvement of the working conditions, work organisation and working environment is ensured.

Cyprus

Normative action:

Article 4§5: The Committee concludes that the situation in Cyprus is not in conformity with Article 4§5 of the Charter on the ground that the guarantees in place to prevent workers from waiving their right to limitation of deduction from wages are insufficient.

[The Committee also points out that under Article 4§5 of the Charter, workers my not waive their right to limits to deductions from wages, and that the determination of such deductions may not be left simply to the disposal of parties to an employment contract (Conclusions 2005, Norway).

It observes that in the present case, under the Protection of Wages Act, workers may precisely consent to other deductions (section 10, paragraph 1(e)), to deductions for damage caused to the employer intentionally or through gross negligence (section 10, paragraphs 2 and 3) and to payment of wages to third parties (section 5), without provision against the deprivation of means of subsistence being made. It therefore considers

that the situation is not in conformity with Article 4§5 of the Charter in this respect. It asks that the next report provide information on wage assignment permitted by law and on how compatibility with the subsistence needs of workers and their dependants is determined (section 11). It also requests information on any limits applied in practice to the payment of wages through benefits in kind, the process of obtaining workers' consent (section 4, paragraph 2), and/or the consequences of prohibiting inducements to make use of shops or services operated by the employer in practice (section 7)].

Article 6§4: The Committee concludes that the situation in Cyprus is not in conformity with Article 6§4 of the Charter on the ground that the Trade Union Laws of 1955-1996 require that a decision to call a strike must be endorsed by the executive committee of a trade union.

[The Committee recalls that it previously found the situation not to be in conformity with Article 6§4 of the Charter on the ground that the Trade Union Laws of 1955-1996 require that a decision to call a strike must be endorsed by the executive committee of a trade union. The report indicates that a draft amending this legislation (to remedy the problem) was submitted before the House of Parliament in October 2009. However, the Committee notes that the legislation has not yet been amended, since the new Government in 2013 withdrew all pending draft legislation before the House of Representatives, in order to re-examine their purpose and functionality. Therefore, the Committee concludes that the situation is still not in conformity with the Charter].

Estonia

Normative action:

Article 2§1: The Committee concludes that the situation in Estonia is not in conformity with Article 2§1 of the Charter on the ground that the maximum allowed working hours for crew members on short sea shipping vessels is 72 hours per seven day period.

[The Committee notes from the report that the maximum allowed working hours for crew members on short sea shipment vessels remains 72 hours per seven day period. According to the report, since 2010 the Ministry of Social Affairs has been negotiating with social partners to amend the legislation so that the weekly maximum working time of crew members shall be replaced with weekly minimum rest time regulation.

The Committee observes that the situation which it had previously found not to be in conformity with the Charter has remained the same during the reference period. Therefore, it reiterates its previous finding of non-conformity].

Article 4§2: The Committee concludes that the situation in Estonia is not in conformity with Article 4§2 of the Charter on the ground that time off granted in lieu of increased remuneration for overtime is not sufficient.

[The Committee notes that paragraphs 6 and 7 of Article 44 of the Employment Contract Act provide that an employer shall compensate for overtime work by time off equal to the overtime, unless it has been agreed that overtime is compensated for in money. Upon compensation for overtime work in money, an employer shall pay the employee 1.5 times the usual wage.

The Committee recalls that the aim of Article 4§2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the form of an increased rate of remuneration. However,the Committee recognises reward in the form of time off, provided that the aim of the provision is met. In particular this means that where remuneration for overtime is entirely given in the form of time off, Article 4§2 requires that this time be longer than the additional hours worked (Conclusions XIV-2, Belgium). The principle of this provision is that work performed outside normal working hours entails an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage (Conclusions XIV-2, Statement of Interpretation of Article 4§2). Therefore, the Committee considers that granting time off in lieu of increased remuneration for overtime pay which is of equal length to the overtime worked is not in conformity with the Charter].

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

- general notice periods are insufficient beyond three years of service;
- the wages due up to the end of the temporary contract may be withdrawn in the event of early termination on other than on economic grounds.

[The Committee notes that the payment of compensation equivalent to one month's wages is limited to dismissal on economic grounds, supplemented by the Estonian Unemployment Insurance Fund to the tune of, according to the report, one month's wages for length of service between five and ten years; two months' wages for length of service between ten and 20 years; and three months' wages beyond this (section 100, paragraphs 1 and 2 of the Employment Contracts Act (ECA) of 17 December 2008, in force since 1 July 2009). Compensation for unfair dismissal equates to three months' wages and may be reviewed by the courts (section 109, paragraph 1 of the ECA).

The Committee notes that the period of notice is reduced to 15 days during the probationary period (section 96 of the ECA). Early termination of temporary contracts on economic grounds (the grounds stated in section 89, paragraphs 1 and 2 of the ECA with the exception of insolvency, liquidation or force majeure) gives entitlement to payment of the wages due up to the expiry of the contract (section 100, paragraph 3 of the ECA). Dismissal on grounds pertaining to the employee (the grounds stated in section 88(1) ECA) is authorised without notice or compensation where it cannot reasonably be expected to run the contract to completion or to the end of the statutory notice period (section 97, paragraph 3 of the ECA).

The Committee points out that when accepting Article 4§4 of the Charter, States Parties undertake to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), with the reasonable nature being assessed primarily in respect of years of service. While it can be accepted that the notice period may be replaced by the payment of compensation, the latter must be at least equivalent to the wages that would have been paid during the corresponding notice period. The protection afforded by the notice period and/or the compensation which may replace it must be offered to all workers, regardless of the permanent or fixed-term nature of the contract (Conclusions XIII-4 (1996), Belgium), or of the grounds for the termination of employment (Conclusions XIV-2 (1998), Spain).

The Committee notes that since 1 July 2009, notice periods take account of the number of years of service, and section 99 of the ECA provides for a reasonable length of time in which to seek other employment. It considers, however, that the general notice periods are insufficient for workers with more than three years of service for the purposes of Article 4§4 of the Charter. (…) With regard to early termination of temporary contracts on other than on economic grounds (in particular insolvency, liquidation or force majeure), the withdrawal of wages due up to the expiry of the contract is not in conformity with Article 4§4 of the Charter].

Article 4§5: The Committee concludes that the situation in Estonia is not in conformity with Article 4§5 of the Charter on the ground that, after maintenance payments for children and other authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

[The Committee confirms that the law lays down precise conditions and limits within which deductions from wages are authorised. It points out, however, that the aim of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers that in the present case, the protected amount of the wage established by Article 132, paragraph 1 of the Enforcement Code allows situations to persist in which workers receive only 50% of the minimum wage, an amount which does not enable them to provide for themselves and their dependants. It would point out that compliance with maintenance obligations must not be achieved at the expense of the protection afforded by Article 4§5 of the Charter.

The Committee also points out that under Article 4§5 of the Charter, the way in which deductions from wages are determined should not be left to the discretion of the parties to the employment contract and that, while such negotiations are not prohibited as such, they must be subject to legal rules established by legislation, case law, regulations or collective agreements (Conclusions XIV-2 (1998), United Kingdom). It notes that in the instant case, while section 78, paragraph 1 of the ECA allows employees to waive their right to limited deductions from wages, under section 78, paragraph 4 of the ECA, their consent is subject to the limits set by Article 132 of the Code to the non-attachable amount of the wage].

Other parliamentary measures:

Article 4§3: The Committee concludes that the situation in Estonia is not in conformity with Article 4§3 of the Charter on the ground that the unadjusted pay gap is manifestly too high.

[The Committee further notes from Eurostat that the unadjusted pay gap stood at 30% in 2012 and 27.3% in 2011. The Committee notes that this indicator is substantially higher than the EU 27 average (16,2% in 2011) and is the highest in all EU countries. Therefore, the Committee considers that despite the measures taken to narrow the gap, the unadjusted pay gap remains manifestly high and therefore, the situation is not in conformity with the Charter].

Article 5: The Committee concludes that the situation in Estonia is not in conformity with Article 5 of the Charter on the grounds that it has not been established that:

- the right to form trade unions is guaranteed in practice;
- the right to join a trade union is guaranteed in practice.

[The Committee noted in its previous conclusion (Conclusions 2010) from the International Trade Union Confederation (ITUC) (Survey of violations of trade union rights) that in 2009 "the Confederation of Estonian Trade Unions (EAKL) reported that anti-union behaviour was rife in the private sector. In some enterprises, workers were advised against forming trade unions, threatened with dismissal or a reduction in wages, or promised benefits if they did not join unions." In this regard, the Committee asked in its previous conclusion how the implementation of the legislation providing for the prohibition of discrimination based on trade union membership was ensured, for instance by providing examples of domestic case law in this field. In reply, the report states there have been no registered violations in relation to the application of the freedom of association in 2009-2012. From the Human Rights Centre (Annual Human Rights Report 2013) the Committee notes that, outside the reference period, 4 appeals have been lodged before the labour dispute committee in the case of discrimination because of trade union membership. The Committee considers, however, that the report fails to demonstrate the existence of adequate protection against discrimination for workers who wish to form a trade union. The Committee therefore concludes that the situation is not in conformity on the ground that it has not been established that the right to form trade unions is guaranteed in practice.

The reasons which led the Committee to conclude a nonconformity in respect of the right to form a trade union are also valid for the right to join or not to join a trade union (see Survey of violations of trade union rights, ITUC). The Committee therefore concludes that the situation is not in conformity on the ground that it has not been established that the right to join a trade union is guaranteed in practice].

Article 6§2: The Committee concludes that the situation in Estonia is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient.

[In its two previous conclusions (Conclusions 2006 and 2010) the Committee noted that the entire legislative framework regarding industrial relations was under review and that amendments to the Collective Agreements Act were expected to occur. In this regard, the report indicates that, in the period 2009-2012, the Ministry of Social Affairs commissioned a number of studies. As a result, the report states that the draft Act provides clear principles for voluntary and bona fide collective bargaining and introduces clear representativeness criteria for extending collective agreements. Given that the law is not adopted yet, the Committee requests that the next report provide necessary information on any developments.

According to the Estonian Labour Force Survey (2009) made by the Statistical Office 33% of employees are covered by collective agreements.

The Committee recalls that if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary (Conclusions I (1969), Statement of Interpretation on Article 6§2). The Committee asked in its previous conclusion (Conclusions 2010) to be informed on any developments in this respect. In the absence of an answer and given the limited coverage of collective bargaining, the Committee asks, once again, what measures are taken to promote collective bargaining. In the meantime, the Committee

concludes that the situation is not in conformity on the ground that the promotion of collective bargaining is not sufficient].

Finland

Normative action:

Article 2§1: The Committee concludes that the situation in Finland is not in conformity with Article 2§1 of the Charter, on the ground that the daily rest period can be reduced to 7 hours for some categories of workers.

[In its previous conclusion (Conclusions 2007) the Committee noted that the Working Hours Act allowed the rest period to be reduced to 9 hours in shift work, 7 hours for a temporary period under flexible working hours arrangements, and even 5 hours (Section 29§2) in certain exceptional cases for a maximum of 3 days. Therefore the Committee concluded that the situation was not in conformity with Article 2§1 of the Charter.

The Committee notes from the information provided by the Finnish representative to the Government Committee (Report to the Committee of Ministers concerning Conclusions 2007, §30) that even though there were no statistics on how often this happens in practice, it only happened in a very limited number of cases.

The Committee notes that the report does not provide any information on this issue. It notes from Section 29 of the Working Hours Act (605/1996) (as amended by several acts, including No. 991/2010) that in the course of 24 hours following the beginning of a work shift, employees must be given an uninterrupted rest period of at least 11 hours and at least 9 hours in the case of work referred to in Section 7 (such as police, customs, post, telecommunication and radio services, in hospitals, health centres, 24-hour day-care centres, welfare and other such institutions and in prisons).

An employer and an employee representative can agree on a temporarily shorter daily rest period with the relevant employee's consent, if the practical organisation of work so requires. Daily rest periods can also be shortened when working hours are flexible and employees decide on the time their work begins and ends. The daily rest period must, however, be at least seven hours.

The Committee observes that the situation which it previously found not to be in conformity with the Charter has not changed. It considers that the circumstances in which the daily rest period can be reduced to 7 hours (and thus the daily working time increased to 17 hours) go beyond what can be considered as extraordinary situations and are therefore, not in conformity with the Charter].

Article 2§5: The Committee concludes that the situation in Finland is not in conformity with Article 2§5 of the Charter, on the grounds that workers may work for more than twelve consecutive days without a rest period and might, in certain cases, give up their right to compensatory time off in exchange for an indemnisation.

[Further derogations are set by Section 32 of the Working Hours Act, allowing for a period of work exceeding twelve consecutive days when it is temporarily necessary to maintain the flow of regular work. In response to the Committee's request for clarifications in this respect, the previous report clarified that if the work referred to is regularly needed during weekends, it is not covered by this derogation and the weekly rest period must then be

given at another time during the working week. On the other hand, when work is required as "temporarily necessary" during the weekly rest period in accordance with Section 32, the employees concerned are entitled to a reduction in their regular working time, but can also be compensated by a remuneration in cash instead of time off.

The Committee also takes note of the information provided concerning certain categories of workers who are not covered by the Working Hours Act, such as household workers, seamen and persons serving on board of a Finnish vessel plying in foreign trade or in domestic traffic, as well as Defence forces personnel.

The Committee recalls that the weekly rest period may be deferred to the following week, as long as no worker works more than twelve consecutive days before being granted a two-day rest period. Furthermore, the right to weekly rest periods may not be replaced by compensation and workers may not be permitted to give them up. In the light of the information above, it considers that the situation is not in conformity with the Charter].

Article 4§2: The Committee concludes that the situation in Finland is not in conformity with Article 4§2 of the Charter, on the ground that the legislation does not guarantee the right to an increased time off in lieu of remuneration for overtime.

[The Committee recalls that, under Article 4§2 of the Charter, a compensatory rest can be taken instead of the remuneration for overtime, which must also be of increased duration. In this regard, the Committee notes that according to Section 23 of the Working time Act, wages for additional work or overtime can be partly or completely converted into corresponding free time during regular working hours by agreement. The Committee considers that the rest period corresponding to the overtime hours, does not guarantee the workers' right to an increased time off for overtime hours. Therefore, the situation is not in conformity with the Charter].

Article 4§3: The Committee concludes that the situation in Finland is not in conformity with Article 4§3 of the Charter, on the ground that the law does not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim.

[The Committee refers to its Conclusions 2003, where it observed that there is no provision under Finnish law for declaring a dismissal null by reprisal and/or reinstating a victim of such a dismissal. Therefore, the Committee considered that Finnish law did not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim.

The Committee further found in its Conclusion on Article 24 (Conclusions 2012) that the situation in Finland was not in conformity with Article 24 of the Charter, on the ground that the legislation does not provide for the possibility of reinstatement in case of unlawful dismissal.

The Committee recalls that in the event of retaliatory dismissal, the remedy should in principle be reinstatement in the same job or a job with similar duties. Only when reinstatement is not possible or the employee has no desire to be reinstated, should damages be paid instead.

In the absence of any further information regarding this issue, the Committee considers that the situation is not in conformity with the Charter, on the ground that the law does

not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim].

Article 4§5: The Committee concludes that the situation in Finland is not in conformity with Article 4§5 of the Charter on the ground that the attachable amount of wages leaves workers who are paid the lowest wages and their dependants insufficient means for subsistence.

[The Committee confirms that the legislation lays down precise conditions and limits within which deductions from wages are authorised. It recalls however that the aim of Article 4§5 of the Charter, which is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers in the present case that the attachable amount defined by the Enforcement Code is too high in comparison to the lowest wages paid in sectors that are not covered by collective agreement and leaves workers who are paid those wages and their dependants insufficient means for subsistence].

Article 26§2: The Committee concludes that the situation in Finland is not in conformity with Article 26§2 of the Charter, on the ground that employers cannot be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them is the victim or the perpetrator.

[As regards the liability of the employer in respect of persons who are not their employees, the Committee notes that the Occupational Safety and Health Act only applies to work carried out under the terms of an employment contract and to work carried out in an employment relationship in the public sector or in a comparable service relationship subject to public law. Accordingly, the employer is not liable for inappropriate treatment of an independent worker in the employer's premises, even if the perpetrator is an employee of the employer.

The Committee recalls in this respect that it must be possible for employers to be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibilities, when a person not employed by them (independent contractors, self-employed workers, visitors, clients, etc.) is the victim or the perpetrator. In the light thereof, it holds that the situation is not in conformity with the Charter].

Other parliamentary measures:

Article 28: The Committee concludes that the situation in Finland is not in conformity with Article 28 of the Charter on the ground that it has not been established that workers' representatives are granted adequate protection.

[In its previous conclusion (Conclusions 2007), the Committee asked: who has the burden of proof in the event of a court procedure regarding a dismissal; are unlawfully dismissed workers' representatives entitled to seek reinstatement and receive compensation; and what are the rules regarding the protection of health and safety delegates. The Committee also requested information on the protection of employee representatives against prejudicial acts other than dismissal.

Given the absence of answers to all these questions or response to the information request, the Committee reiterates them. In the meantime, it concludes that the situation is not in

conformity, on the ground that it has not been established that workers' representatives are granted adequate protection.

The Committee recalls that the rights recognised in the Charter must take a practical and effective, rather than a purely theoretical form (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59). To this end, the protection afforded to workers' representatives shall be extended for a reasonable period after the end of their mandate (Conclusions 2010, Statement of Interpretation on Article 28). The Committee has for example found the situation to be in conformity with the requirements of Article 28 in countries such as Estonia (Conclusions 2010) and Slovenia (Conclusions 2010), where the protection is extended for one year after the end of mandate of workers' representatives, or in Bulgaria (Conclusions 2010) where the protection granted to workers' representatives is extended for six months after the end of their mandate. The Committee asks also to be informed on how long the protection for workers' representatives lasts after the end of their functions].

France

Normative action:

Article 2§1: The Committee concludes that the situation in France is not in conformity with Article 2§1 of the Charter on the ground that on-call periods during which no effective work is undertaken are assimilated to rest periods.

[In its previous conclusion as well as in it decisions on the merits of the Complaint No. 55/2009 (§§64-65), the Committee held that regarding on-call periods during which no effective work is undertaken as period of rest, violated Article 2§1 of the Charter.

(…)The Committee considers that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee notes that the situation which was previously found not to be in conformity with the Charter has not changed. Furthermore, the Committee considers that the follow up given to the finding of the violation in the Complaint No. 55/2009 has not brought the situation into conformity. Therefore, the Committee reiterates its finding of non-conformity].

Article 2§5: The Committee concludes that the situation in France is not in conformity with Article 2§5 of the Charter on the ground that on-call periods, occurring on Sunday, are wrongly regarded as rest periods.

[Follow-up to the collective complaints Confédération générale du travail (CGT) v. France (Complaint No. 22/2003, decision on the merits of 7 December 2004) and Confédération générale du travail (CGT) v. France (Complaint No. 55/2009, decision on the merits of 23 June 2010).

In its decisions on these complaints, the Committee concluded that there had been a violation of Articles 2§1 and 2§5, on the grounds that on-call periods had been equated to rest periods and because of the impact that this could have on weekly rest periods. The Committee notes that there has been no change in the legislation which it considered to be in breach of the Charter (Articles L 3121-5 and L 3121-6 of the Labour Code, laying

down the rules on on-call periods). It therefore reiterates its finding of non-conformity in this respect].

Article 4§4: The Committee concludes that the situation in France is not in conformity with Article 4§4 of the Charter, on the ground that the statutory notice periods are not reasonable for employees with seven to ten years of service.

[The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined primarily in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee considers in the present case that the notice periods, to which there has been no change since the last reference period, should be combined with the severance pay prescribed by the law. It therefore concludes that, in those cases where they are applicable, the notice periods provided for by Article L 1234-1 of the Code are reasonable within the meaning of Article 4§4 of the Charter in some circumstances, but are not reasonable for employees with seven to ten years of service].

Article 6§4: The Committee concludes that the situation in France is not in conformity with Article 6§4 of the Charter on the ground that only representative trade unions have the right to call strikes in the public sector.

[The Committee previously considered that limiting the right to call a strike in the public sector to the most representative trade unions constitutes a restriction on the right to strike which is not in conformity with Article 6§4 of the Charter (see Conclusions XV-1 (2001), 2002, 2004, 2006 and 2010).

The report states that since the revision of the legislation on labour, although there has been no change in the scope of the rule, the term "most representative trade unions" has been replaced with "representative trade unions". Article L. 2512-2 of the Labour Code provides that notice of a strike shall be given by a "representative trade union at national level, within the occupational category concerned or the relevant undertaking, agency or department." It is stipulated that notice may also be given by a trade-union branch established by a representative trade union. Representativeness is to be assessed in the light of non-cumulative criteria laid down in Article L. 2121-1 of the Code, namely a union's membership, independence, membership fees, experience and age, to which the administrative courts have added its activities and its level of support, with particular consideration being paid to this last criterion.

(…)The Committee recalls that both in the public and private sectors limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 (cf. Conclusions XV-1 (2000), France)].

Article 21: The Committee concludes that the situation in France is not in conformity with Article 21 of the Charter on the ground that some employees are excluded from the calculation of staff numbers which is carried out to determine the minimum thresholds beyond which staff representative bodies must be set up to ensure the information and consultation of workers.

[In reply to the Committee's question about the calculation of minimum thresholds, the report states that a series of Labour Code provisions are applied to determine whether a company exceeds the thresholds of 11 or 50 employees. Under Article L. 1111-2 of the Code, all current employment contracts are taken into account. Accordingly, all full-time employees on permanent contracts are included in full when calculating staff numbers. The weighting accorded to employees on fixed-term contracts depends on the length of time they are present while the calculation for part-time employees is based on their working hours. The Committee notes that under Article L. 1111-3 of the Code, apprentices and employees on "jobstart"-type contracts (such as contrats initiative-emploi and contrats d'accompagnement dans l'emploi) or on "professional status" contracts are excluded from these calculations.

The report regards this exclusion of workers on state-subsidised contracts from the calculation of a company's staff numbers as an incentive for companies to take on young people and people who find it difficult to enter the labour market for social or professional reasons. In this connection, it is stated that this exclusion makes it possible to ensure that the recruitment of workers on state-subsidised contracts does not subject employers to additional administrative and financial constraints by making them overstep staffing thresholds, particularly the thresholds of 11 and 50 employees beyond which they must set up staff representative bodies. The report also states that, while Article L. 1111-3 of the Code does exclude workers on state-subsidised contracts from the calculation of company staff numbers, such employees may still vote and stand in elections to staff representative bodies, provided that they fulfil the conditions to vote and stand set out in the Labour Code, and, like all other employees, they do have a right to information and consultation once the aforementioned thresholds have been reached.

The minimum framework which the Committee has adopted for Article 21 of the Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002. In this context, the Committee points out that all categories of worker (all employees holding an employment contract with the company regardless of their status, length of service or place of work) must be included in the calculation of the number of employees enjoying the right to information and consultation (judgments of the Court of Justice of the European Union, Confédération générale du travail and Others, Case No. C-385/05 of 18 January 2007, and Association de médiation sociale, Case No. C-176/12 of 15 January 2014). It considers therefore that the exclusion, provided for in Article L. 1111-3 of the Code, of workers on state-subsidised contracts from the calculation of companies' staff numbers – a calculation which is necessary to determine the minimum thresholds beyond which staff representative bodies ensuring the information and consultation of workers must be set up – is not in conformity with the Charter].

Other parliamentary measures:

Article 4§2: The Committee concludes that the situation in France is not in conformity with Article 4§2 of the Charter on the grounds that:

- the flat rate compensation for overtime work performed by the ordinary members of the supervision and enforcement corps of the police does not guarantee an increased rate of remuneration.
- the increase in the command bonus for senior managers can only compensate a very small number of overtime hours and compensatory time off provided

to senior police officers working overtime when performing certain duties are equivalent in length to the overtime worked.

[Follow up to the to the decisions of 1 December 2010 and 23 October 2012 on the merits of Complaints No. 57/2009, European Council of Police Trade Unions (CESP) v. France and No. 68/2011 European Council of Police Trade Unions (CESP) v. France

In its decision on the merits of 1 December 2010 of the Complaint No. 57/2009 European Council of Police Trade Unions (CESP) v. France, the Committee found that France violated Article 4§2 of the Charter on the ground that the flat rate compensation for overtime work payable to ordinary members of "the supervision and enforcement corps" since 1 January 2008 made the financial compensation for their overtime work payable at a flat rate, thus preventing those concerned from benefiting from a higher than normal remuneration rate.

The Committee observed that by failing to take account of the actual remuneration linked to each individual grade and step, the payment continued to be flat rate in nature, which meant that those concerned did not enjoy the higher rate of remuneration required by Article 4§2 of the Charter. Therefore, the flat rate nature of the remuneration for overtime worked by police officers of the "corps of ordinary police officers" since 1 January 2008 constituted a violation of Article 4§2 of the Charter.

The Committee notes from comments received from the European Council of Police Trade Unions (CESP) that the situation has allegedly not been brought into conformity, as the way of calculating the overtime remuneration is still regulated by Decree No 2008-199. The conditions for granting remuneration to the police members concerned are therefore still not in conformity with Article 4§2 of the Charter.

The CESP refers to the Memorandum (Note de service) of the Minister of the Interior to the Director General of the National Police in which the former instructs the latter to remunerate overtime hours according to the regulations in force.

The Committee notes that the report does not provide any information regarding the measures taken to bring the situation into conformity. Therefore, it considers that the violation has not been remedied and reiterates its finding of non-conformity.

The Committee also refers to its decision on the merits of 23 October 2012 of the Complaint No. 68/2011 European Council of Police Trade Unions (CESP) v. France, in which it held (§87) that the increase in the command bonus following the withdrawal, in April 2008, of the overtime payments which the senior police officers received before the current regulations were introduced – regulations which could, in principle, have compensated for this withdrawal – and which was introduced by Decree No. 2000-194 of 3 March 2000, as amended by Decree No. 2008-340 of 15 April 2008, the general regulations governing employment in the National Police force of 6 June 2006, as amended by ministerial order NOR IOCC0804409A of 15 April 2008, and Instruction NOR INTC0800092C of 17 April 2008 is not in conformity with Article 4§2 of the Charter.

Moreover, some duties cannot give rise to compensatory time off because they are taken into account as part of the payment system connected with the command bonus. As the arrangements for compensatory time off provide in other cases that senior police officers working overtime when performing certain duties may only claim equal or equivalent

rest periods calculated on an hour for hour basis, they are not in conformity with Article 4§2 of the Charter.

The Committee notes that the report does not provide any information on the follow-up to this complaint. The CESP suggests in its comments that to remedy the violation, the Decree of 6 June 2006 and the Decree No 2008/340 should be modified and the police officers should be dotted with a true executive status to bring their situation into conformity with the Charter.

In the absence of any measures to remedy the violation, the Committee reiterates its finding of non-conformity].

Georgia

Normative action:

Article 4§3: The Committee concludes that the situation in Georgia is not in conformity with Article 4§3 of the Charter on the ground that there is no explicit statutory guarantee of equal pay for work of equal value.

[In its conclusion on Article 20 (Conclusions 2012) the Committee noted that the provisions on gender equality in employment (the Labour Code) were supplemented by the adoption of the Gender Equality Act in 2010. The latter, inter alia, provides for equal treatment of men and women in the evaluation of work (Section 4, paragraph 2(i)), thereby strengthening the right of women and men to equal pay for work of equal value. However, the Committee notes that the Gender Equality Act does not contain an express guarantee of the right of men and women to equal pay for work of equal value.

The Committee recalls that Article 4§3 guarantees the right to equal pay without discrimination on the ground of gender. The principle of equal pay applies to the same work and also to different types of work of the same value.

The Committee takes note of the report of the Georgian Trade Union Confederation (GTUC) regarding compliance of the Labour Code with the European Social Charter that Article 2§3 of the Labour Code provides that discrimination is prohibited in labour relations, including on the ground of gender. However, according to the GTUC there is no explicit prohibition of unequal pay for the work of equal value.

The right of men and women to "equal pay for work of equal value" must be expressly provided for in legislation (Conclusions XV-2 (2001), Slovak Republic). The Committee observes that in the legislation there is no express statutory guarantee of the right of men and women to equal pay for work of equal value. Therefore, it considers that the situation is not in conformity with the Charter].

Article 29: The Committee concludes that the situation in Georgia is not in conformity with Article 29 of the Charter, on the ground that the legislation does not effectively guarantee the right of workers to be consulted in collective redundancy procedures.

[Moreover, with a view to fostering dialogue, all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, the planned social measures, the criteria for being made redundant and information on the order of the redundancies.

Even though the Charter does not require that the agreement be reached following such consultations, the Committee considers that the failure of the employer to carry out his/her information and consultation obligations amounts to the violation of Article 29.

The Committee notes from the report the Georgian Trade Union Confederation (GTUC) regarding compliance of the Labour Code with the European Social Charter that Article 381 does not provide a solid legal framework for social dialogue and trade unions involvement in collective redundancy procedures or an obligation of employers to provide support measures to mitigate the social consequences of redundancies.

The Committee considers that even though Section 11 of the Trade Union Act stipulates the obligation of the employer to notify about collective redundancies, it does not guarantee the right of workers and their representatives to be consulted in good time before the redundancies take place. Therefore, the situation is not in conformity with Article 29].

Other parliamentary measures:

Article 2§1: The Committee concludes that the situation in Georgia is not in conformity with Article 2§1 of the Charter on the ground that there is no independent appropriate authority that supervises that daily and weekly working time limits are respected in practice.

[In its previous conclusion, the Committee asked for information on the supervision of working time regulations by the Labour Inspection, including the number of breaches identified and penalties imposed. The Committee notes from the report that no statistics are available regarding the issue of working time. The Committee also notes from the information provided by the Georgian representative to the Governmental Committee (Report to the Committee of Ministers T-SG (2012)2, §27) that the Tripartite Social Partnership Commission has a mandate to monitor working time.

The Committee recalls that under Article 2§1 of the Charter an independent appropriate authority must supervise the observance of daily and weekly limits in order to ensure that the limits are respected in practice. The Committee notes that no such supervision takes place and therefore, it considers that the situation is not in conformity with the Charter].

Article 2§2: The Committee concludes that the situation in Georgia is not in conformity with Article 2§2 of the Charter, on the ground that it has not been established that work performed on a public holiday is adequately compensated.

[The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday.

The Committee asked in its previous conclusion what rate of pay is applied for public holidays worked, whether the base salary is maintained in addition to the increased pay rate, and whether there is a compensatory day off in addition to any payment. It notes that the report does not reply to these questions, as it does not provide sufficient indications of the size of the compensation, in terms of salary and compensatory rest, granted

in case of work performed on public holidays. It accordingly reiterates its questions and, in the meantime, it finds that it].

Article 2§5: The Committee concludes that the situation in Georgia is not in conformity with Article 2§5 of the Charter, on the ground that it has not been established that the right to a weekly rest period is sufficiently guaranteed.

[According to the Georgian Labour Code, any day of the week can be defined as weekly rest period by the employment contract between the employer and the employee. Public civil servants are entitled to weekly rest on Saturday and Sunday under the Law on Public Service. These days are also considered days off in educational institutions, both in private and public institutions.

The Committee notes that the report does not reply to the question raised in its previous conclusion (Conclusions 2010), concerning the circumstances under which the postponement of the weekly rest period is provided. The Committee points out that to be in conformity with the Charter it must not be possible for the worker to renounce his/her weekly rest, not even in exchange for remuneration. The rest period can, however, be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two-day rest period. In the light of this, the Committee asks the next report to clarify under what conditions a worker can work on a day defined as a weekly rest day and whether, under what conditions, and how long the day off can be postponed. In particular, if the weekly day off is postponed, the Committee needs to know how many days in a row the worker might work before being entitled to a full day of rest.

In the meantime, in the absence of information on these issues, the Committee finds that it has not been established that the right to a weekly rest period is sufficiently guaranteed].

Article 2§7: The Committee concludes that the situation in Georgia is not in conformity with Article 2§7 of the Charter, on the ground that it has not been established that night workers are effectively subject to compulsory regular medical examination.

Article 4§4: The Committee concludes that the situation in Georgia is not in conformity with Article 4§4 of the Charter, on the grounds that:

- the severance pay provided for during the reference period in the event of contract termination is not reasonable beyond three years of service;
- no provision is made during the reference period for notice during probationary periods or in the event of termination of employment owing to a breach of the employment contract, the death of the employer or the winding up of the company;
- the severance pay applicable in the civil service when an agency has been wound up or its staff has been cut is not reasonable beyond five years of service.

[The Committee notes that the amendments to the Code with regard to the rules on notice, which the Parliament adopted on 12 June 2013, were not in force during the reference period. It considers that, in the private sector, the amount of severance pay provided for in the event of contract termination by Article 38, paragraph 3 of the Code, which was in force during the reference period, is not reasonable for employees with more than three years of service. Furthermore, the lack of any notice and/or severance

pay during probationary periods or in the event of termination of employment owing to a breach of the employment contract, to the death of the employer or to the winding up of the company (Article 37(c), (h) and (i) and Article 38, paragraph 4 of the Code) is not in conformity with Article 4§4 of the Charter. In the civil service, the amount of severance pay provided for by section 109, paragraph 1 of the Civil Service Act in the event that an agency is wound up or its staff numbers are reduced, is not reasonable when the civil servant worked more than five years of service.

The Committee asks for information in the next report on the notice periods and/or amount of severance pay applicable to the other grounds for termination of employment provided for by sections 93 to 107 of the Civil Service Act. It also asks for information on the applicability of the relevant provisions to the support staff and independent service providers covered by sections 7 and 8 of the Civil Service Act.

The Committee requests that all information be up-to-date of the amendments to the Code adopted on 12 June 2013].

Article 5: The Committee concludes that the situation in Georgia is not in conformity with Article 5 of the Charter, on the grounds that:

- it has not been established that the requirement as to minimum number of members presents no obstacle to the founding of organisations;
- it has not been established that the legal framework allowing restrictions on the right to organise that may be included in employment contracts is not detrimental to the right to organise;
- the protection against discrimination based on trade union membership in the context of recruitment and dismissal is insufficient;
- it has not been established that trade unions are entitled to perform and indeed perform their activities without interferences from authorities and/or employers*;*
- it has not been established that the conditions possibly established with respect to representativeness of trade unions are not detrimental to the right to organise;
- it has not been established to which extent the right to organise applies to staff of law enforcement bodies and the prosecutor's offices.

Article 6§1: The Committee concludes that the situation in Georgia is not in conformity with Article 6§1 of the Charter on the grounds that:

- joint consultation does not take place on several levels;
- joint consultation does not cover all matters of mutual interest of workers and employers;
- joint consultation does not take place in the public sector, including the civil service.

Article 6§2: The Committee concludes that the situation in Georgia is not in conformity with Article 6§2 of the Charter on the grounds that:

- voluntary negotiations between employers or employers' organisations and workers' organisations are not promoted in practice;

- it has not been established that an employer may not unilaterally disregard a collective agreement;
- it has not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions.

Article 6§3: The Committee concludes that the situation in Georgia is not in conformity with Article 6§3 of the Charter on the ground that there is no effective conciliation, mediation or arbitration service.

Article 6§4: The Committee concludes that the situation in Georgia is not in conformity with Article 6§4 of the Charter, on the ground that it has not been established that the right to collective action of workers and employers, including the right to strike, is adequately recognised.

Article 26§1: The Committee concludes that the situation in Georgia is not in conformity with Article 26§1 of the Charter, on the ground that there are no preventive and reparatory means to effectively protect employees against sexual harassment.

Article 26§2: The Committee concludes that the situation in Georgia is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees, during the reference period, were given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work.

Hungary

Normative action:

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

- the working hours of employees on on-call and standy-by duty may be up to 24 hours a day;
- the weekly working hours of employees on stand-by duty may be up to 72 hours.

[In its previous conclusion (Conclusions XVIII-2) the Committee found that the situation was not in conformity with the Charter, on the ground that a working week of 72 hours was allowed by law for employees on stand-by duty.

The Committee now understands that both in case of on-call (all of which counts as working time) as well as stand-by, the maximum duration of a working day may be up to 24 hours. The maximum duration of a working week may be 72 hours in case of stand-by jobs. The Committee considers that the duration of a working day of 24 hours or of a working week of 72 hours is excessive and therefore, not in conformity with the Charter.

The Committee recalls that in its decision on the merits of 23 June 2010 Confédération générale du travail (CGT) v. France (§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest

period. The Committee holds that the equivalisation of an on-call period to a rest period in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee understands that the time spent on on-call duty is counted as working time in its entirity. It asks whether this understanding is correct and also asks whether inactive periods of stand-by duty are considered as a rest period in their entirety or in part].

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

- in the civil service, the right to call a strike is restricted to trade unions which are parties to the agreement concluded with the Government;
- the criteria used to define civil servant officials who are denied the right to strike go beyond the scope of Article G of the Charter;
- civil service trade unions may only call strikes with the approval of a majority of the staff concerned.

[Concerning public sector workers, in its previous conclusion (Conclusions XVIII-1 (2006)), the Committee concluded that the situation was not in conformity with the Charter on the ground that in the civil service, a strike could only be called by a trade union that is party to the agreement concluded between the Government and the trade unions concerned in 1994. Given that the right to strike for public sector workers is still restricted and can only be exercised in accordance with the special regulations contained in an agreement signed between the government and public sector trade unions in 1994, the Committee reiterates its conclusion of non-conformity].

[In the civil service, the Committee notes that the judiciary, the armed forces, the police, the national security services and since 1 January 2012 the official staff of the National Tax and Customs Office do not have the right to strike.

The Committee recalls that the right to strike of certain categories of public officials may be restricted. However, the Committee also recalls that under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc. Concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it.

In view of its case law, the Committee in its previous conclusion (Conclusions XVIII-1 (2006)), concluded that the criteria used to define civil servant officials who are denied the right to strike went beyond the scope of Article G and asked to be informed on the functions carried out by those excluded from the right to strike, for example whether the exclusion was limited to heads of departments and senior civil servants. In view of the absence of an answer, the Committee asks the next report to provide for each category of public officials mentioned above the justifications to the ban related to their right to strike. In the meantime, it reiterates its conclusion of non-conformity].

[As to the procedural requirements, the Committee notes from its previous conclusion (Conclusions XVIII-1 (2006)) that pursuant to the agreement concluded in 1994 between the Government and civil servants' trade unions, strikes must be approved by a majority of the civil servants concerned. In its Conclusions, the Committee considered that this

threshold was so high as to unduly restrict the right of employees organised in such trade unions to take collective action and concluded to a non-conformity in this respect. Given the absence of any information on this issue the Committee repeats its conclusion of non-conformity. The Committee asks the Government to clarify if the "majority of the civil servants concerned" refers to (i) the majority of the members of the trade union having called a strike or (ii) the majority of all employees concerned (including the employees who are not trade union members)].

Other parliamentary measures:

Article 2§3: The Committee concludes that the situation in Hungary is not in conformity with Article 2§3 of the Charter on the ground that it has not been established that the workers' right to take at least two weeks uninterrupted holidays during the year the holidays were due is sufficiently guaranteed.

[The Committee recalls that under Article 2§3 of the Charter, an employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. In the light thereof, it asks the next report to clarify whether Section 134(3)(a) of the Labour Code allows the annual leave to be entirely postponed to the following year or whether in all cases the employee remains entitled, by virtue of Section 134(4), to take at least fourteen subsequent calendar days during the year in which the leave was due. It furthermore asks for examples of case law concerning the intepretation of the notion of "economic interest of particular importance". It considers in the meantime that the situation is not in conformity with Article 2§3 of the Charter, on the ground that it has not been].

Article 6§2: The Committee concludes that the situation in Hungary is not in conformity with Article 6§2 of the Charter on the ground that no promoting measures have been taken in order to facilitate and encourage the conclusion of collective agreements, even though the coverage of workers by collective agreements is manifestly low.

[According to Section 276(2) of the newly adopted Labour Code, trade unions shall be entitled to conclude collective agreements if the number of their members reaches 10 per cent:

- *(i) of all workers employed by the employers; or*
- *(ii) of the number of workers covered by the collective agreement concluded by the employers' interest group; and two or more trade unions may join to reach the required percentage.*

The Committee notes that it is now the sector-level dialogue committee Act (APB Act) that governs the extension of collective agreements at sectoral level. Upon the joint request of the two negotiating groups in an APB, the minister may extend the provisions of a collective agreement concluded in the APB after seeking an opinion of the National Economic and Social Council (NGTT) and of the minister in charge of the given sector. If the collective agreement was not signed in the APB, it may be extended, upon the joint request of the signatories by applying the relevant provisions of the above mentioned Act. During the reference period, the extension of collective agreements was effective in four sectors, namely electric power, banking, construction and catering and tourism.

The Committee notes that in 2012, 8.3% of the workforce was covered by extended collective agreements.

The Committee notes that approximately 33.6% of the workforce was covered by collective agreements in 2012. The Committee asks the Government to indicate what measures it has taken or planned to take to facilitate and encourage the conclusion of collective agreements. In the meantime, the Committee concludes that the situation is not in conformity on the ground that no promoting measures have been taken even though the coverage of workers by collective agreements is manifestly low].

Ireland

Normative action:

Article 2§1: The Committee concludes that the situation in Ireland is not in conformity with Article 2§1 of the Charter on the ground that the working hours in the merchant shipping sector are allowed to go up to 72 hours per week.

[In its previous conclusion the Committee took note of S.I. No. 532/2003 – European Communities (Merchant Shipping) (Organisation of Working Time) Regulations 2003 and found that the situation in Ireland was not in conformity with Article 2§1 of the Charter, on the ground that working hours in the merchant shipping sector were allowed to go up to 72 hours per week.

The Committee notes that there have been no changes to the situation which it has previously found not to be in conformity with the Charter on this ground. It therefore reiterates its previous finding of non-conformity].

Article 4§4: The Committee concludes that the situation in Ireland is not in conformity with Article 4§4 of the Charter on the ground that the periods of notice applicable to employees and civil servants are inadequate.

[The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined mainly with regard to the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee notes that the situation remains unchanged and reiterates its finding of non-conformity with Article 4§4 of the Charter on the grounds that the periods laid down in the Minimum Notice and Terms of Employment Act are inadequate.

(…)The Committee points out that protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent employment contract (Conclusions XIII-4 (1996), Belgium) and regardless of the grounds for the termination of their employment (Conclusions XIV-2 (1998), Spain).

The Committee previously noted (Conclusions XI-2 (1991) and XIV-2 (1998)) that civil servants coming under the Civil Service Regulation Act o 19 December 1956 (No. 46/1956) were not covered by the Minimum Notice and Terms of Employment Act. It notes that sections 24 and 25 of the Law No. 18/2005 of 9 July 2005 now extends the scope of the

Minimum Notice and Terms of Employment Act to all civil servants. It points out, however, that periods laid down in the Minimum Notice and Terms of Employment Act are inadequate, and therefore extends its conclusion of non-conformity to Article 4§4 of the Charter to all civil servants].

Article 4§5: The Committee concludes that the situation in Ireland is not in conformity with Article 4§5 of the Charter on the grounds that:

- the safeguards preventing workers from waiving their right to limits to wage deductions are inadequate;
- after authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

[The Committee notes from these reports that the Payment of Wages Act of 23 July 1991 (No. 25/1991) applies to all categories of workers, including employees in the private sector, civil servants and the staff of a local authority, a harbour authority or a health board.

It points out that under Article 4§5 of the Charter, workers may not waive their right to the limits to wage deductions and the determination of deductions from wages may not be left at the disposal of the parties to an employment contract (Conclusions XVI-2 (2004) and 2007). While negotiations to this effect are not prohibited per se, they must be subject to rules established by statutory provisions, case law, regulations or collective agreements (Conclusions XIV-2 (1998), United Kingdom). The Committee notes that in the present case, section 5, paragraph 1(b) and (c) of the Payment of Wages Act authorises deductions under the conditions set out in the employment contract and after the worker has given his prior written consent. It considers that the safeguards preventing workers from waiving their right to limits to wage deductions are insufficient within the meaning of Article 4§5 of the Charter and reiterates its previous finding of non-conformity on this issue].

[*The Committee also reiterates that the purpose of Article 4§5 of the Charter is to ensure that workers, who are beneficiaries of the protection afforded by this provision, are not deprived of their basic means of subsistence (Conclusions XVIII-2 (2007), Poland). It observes in the present case that the Payment of Wages Act does not place an absolute limit on the total amount of deductions from wages. Admittedly, the deductions made to cover any acts of the worker and goods or services necessary to the employment provided by the employer are subject to some provisions under section 5, paragraph 2(i) to (vii) of the Payment of Wages Act, among which the "fair and reasonable amount having regard to all the circumstances (including the amount of the wages)". However, although the "fair and reasonable" amount could, in theory, limit deductions from wages in a way which could preserve workers' means of subsistence, it has not been established that this principle is applied in the practice of conciliation commissioners or the case law of the Court of Appeal in matters of employment. It has also not been established that other grounds for deductions authorised under section 5 of the Payment of Wages Act, taken separately or in conjunction, are subject to the concept of "fair and reasonable". Situations in which the portion of wages remaining after deductions may not be adequate to ensure the subsistence of workers and their dependants may consequently still exist. The Committee therefore considers that the "fair and reasonable" amount does not afford workers and their dependants sufficient protection from being deprived of their means of subsistence within the meaning of Article 4§5 of the Charter. It reiterates its previous conclusion of non-conformity on this point].*

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

- certain closed shop practices are authorised by law;
- the national legislation does not protect all workers against dismissal on grounds of membership of a trade union or involvement in trade union activities;
- police representative associations are prohibited from joining national employees' organisations.

[The Committee recalls that any form of legally compulsory trade unionism is incompatible with Article 5 (Conclusions III (1973), Statement of Interpretation on Article 5). The freedom guaranteed by Article 5 is the result of a choice and such decisions must not be taken under the influence of constraints that rule out the exercise of this freedom (Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 15 May 2003, §29). To secure this freedom, domestic law must clearly prohibit all pre-entry or post-entry closed shop clauses and all union security clauses (automatic deductions from the wages of all workers, whether union members or not, to finance the trade union acting within the company). Consequently, clauses in collective agreements or legally authorised arrangements whereby jobs are reserved in practice for members of a specific trade union are in breach of the freedom guaranteed by Article 5 (Conclusions XIX-3 (2010), Iceland).

The report does not provide any information on this point. As the situation has not improved during the reference period, the Committee maintains its conclusion of non-conformity.

(…)The fact that only members of a trade union with a negotiation licence are protected by the Unfair Dismissals Act 1977, as amended, is contrary to Article 5 of the Charter. The Committee therefore considered that the situation was not in conformity with the Charter from the Addendum to the Conclusions XV-1 concerning the reference period 1997-1998 onwards.

(…)The Committee examined the concrete situation of the right to organise of police personnel in Ireland in the Collective Complaint No. 83/2012 – European Confederation of Police (EUROCOP) v. Ireland, where the Committee held that:

- *there is no violation of Article 5 of the Charter on the ground of the prohibition to establish trade unions by the police, as the Committee considers that the police representative associations enjoy the basic trade union rights within the meaning of Article 5 of the Charter.*
- *there is a violation of Article 5 of the Charter on the ground of the prohibition to join national employees' organisations by police representative associations. The Committee noted that pursuant to the wording of section 18§3 of the Garda Síochána Act, the Gardaí may not be or become members of any outside association with the objective of controlling or influencing their pay, pensions or conditions of service. This leads to the conclusion that the right of Gardaí members to affiliate with national employees' organisations has firstly and foremostly been restricted for the purpose of disallowing them to negotiate on pay, pensions and service conditions represented by national organisations.*

The Committee considered that, evaluated against the framework of trade union rights applicable to the Gardaí, the contested restriction is not proportionate as it exploits in an undue manner the difference between police associations and trade unions established under national legislation. The restriction has the factual effect of depriving the

representative associations of the most effective means of negotiating the conditions of employment on behalf of their members.

In the context of the follow-up to the decision rendered by the Committee in the Collective Complaint No. 83/2012, the Committee asks the Government to provide information as regards any developments and measures taken by the Government in order to remedy the violation].

Article 6§2: The Committee concludes that the situation in Ireland is not in conformity with Article 6§2 of the Charter, on the ground that the legislation and practice fail to ensure the sufficient access of police representative associations into pay agreement discussions.

[As regards the police, the Committee analysed the right to bargain collectively of the members of the police in the Collective Complaint No. 83/2012, where the Committee held that there was a violation of Article 6§2 of the Charter, on the ground that the legislation and practice fail to ensure sufficient access of police representative associations into pay agreement discussions. The Committee requests that the next report provide information on the measures taken by the Government for the implementation of the Committee's decision].

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

- only authorised trade unions, which are trade unions holding a negotiation licence, their officials and members are granted immunity from civil liability in the event of a strike;
- under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in a strike;
- the absolute prohibition of the right to strike of police forces goes beyond the conditions established by Article G of the Charter.

[In its previous conclusion (Conclusions 2006), the Committee noted that there have been no changes to the situation which the Committee previously found not to be in conformity with Article 6§4 of the Charter (Conclusions 2004).

The Government indicates in both the report and the previous report that there have been no changes to the situation. Therefore the Committee maintains its conclusion of non-conformity on the grounds that: (i) only authorised trade unions, which are trade unions holding a negotiation licence, their officials and members are granted immunity from civil liability in the event of a strike, and (ii) under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in a strike.

(…)The Committee analysed the situation in Ireland regarding the right to strike of the police forces in the Collective Complaint No. 83/2012 European Confederation of Police (EuroCOP) v. Ireland in which the Committee held that the prohibition of the right to strike of members of the police force amounts to a violation of Article 6§4 of the Charter (decision on the admissibility and the merits adopted on 2 December 2013).

The Committee asks that the next report provide information on any developments and measures taken by Ireland in the context of the follow-up/the implementation of the Committee's decision].

Other parliamentary measures:

Article 2§4: The Committee concludes that the situation in Ireland is not in conformity with Article 2§4 of the Charter, on the ground that it has not been established that workers exposed to occupational health risks, despite the existing risk elimination policy, are entitled to appropriate compensation measures.

[In its previous conclusion (Conclusion 2007), the Committee asked for information on specific measures taken to reduce exposure to risks in occupations or involving work processes where it has not been possible to eliminate all residual risks, in particular in those occupations typically considered as dangerous and unhealthy.

The Committee takes note of the information referred to in the report, concerning the measures taken to minimise the risks to health and safety at work (see above). It notes however that, in the absence of specific rules that create an obligation to compensate workers dealing with residual risks, for example by reduced working hours or additional holidays, it is not established that the situation is in conformity with Article 2§4 of the Charter].

Article 2§5: The Committee concludes that the situation in Ireland is not in conformity with Article 2§5 of the Charter, on the ground that there are inadequate safeguards to prevent that workers may work for more than twelve consecutive days without a rest period.

[The Committee recalls that workers should not be allowed to give up their right to weekly rest periods or have it replaced by compensation. It asks the next report to confirm that this is the case under Irish law.

As regards postponement of weekly rest periods, the Committee deferred its previous conclusion (Conclusion 2007) pending receipt of information on the envisaged amendment of the Code of Practice on Compensatory Rest. This amendment was expected to bring the situation into conformity with the Charter, by ensuring that weekly rest periods might no longer be postponed beyond 12 consecutive days. The Committee notes, however, from the report that no such amendment has been adopted. As a result of the exceptions allowed for by the Code of Practice to the rules on weekly rest periods, an employee may thus be permitted in Ireland to work 14 consecutive 8 hour days, as long as 3 consecutive periods of 24 hours off are granted as compensatory rest immediately after the 14 consecutive working days. The Committee reiterates that 12 consecutive days of work is the maximum before being granted at least two full rest days and that an arrangement as described above may only be acceptable in exceptional cases and subject to strict safeguards. The Committee previously asked what the exact circumstances are under which the weekly rest period may be postponed beyond 12 consecutive days and whether there are any specific safeguards in addition to approval of the collective agreement by the Labour Court (for example, prior authorisation from the Labour Inspection). The report fails to reply to these questions and to prove that postponement of weekly rest beyond 12 consecutive days is exceptional and subject to strict safeguards. Therefore, the Committee finds that the situation is not in conformity with Article 2§5 of the Charter].

Article 4§1: The Committee concludes that the situation in Ireland is not in conformity with Article 4§1 of the Charter on the ground that the reduced national minimum wage applicable to adult workers on their first employment or following a course of studies is not sufficient to ensure a decent standard of living.

[The Committee also points out that, although it may be acceptable to pay a lower minimum wage to younger workers, the reduction must be shown to further a legitimate aim and be proportionate to achieve that aim (General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §60). It notes in the present case that the reduced rates of the net NMW applicable to adult workers on their first employment and to those following a course of study are below the minimum threshold. It therefore considers that the reduced NMW does not constitute a decent remuneration within the meaning of Article 4§1 of the Charter. It asks that the next report indicate the net amounts of the NMW and the average earnings and that, where necessary, it provides detailed and up to date information concerning direct taxation, social security contributions, the cost of living, and financial transfers or social security benefits linked to pay.

The Committee takes note of the changes made to the wage-setting mechanism after the reference period as set out in the report. It asks that the next report provide information on the action taken in response to the Supreme Court decision of 9 May 2013. It also asks for information concerning the impact of the memorandums of understanding drawn up with the International Monetary Fund, the European Central Bank and the European Commission with regard to pay. It also asks for information on the practical application of exemptions from the obligation to pay the NMW provided for in section 41 of the National Minimum Wage Act. In the meantime it reserves its position on this issue].

Article 4§2: The Committee concludes that the situation in Ireland is not in conformity with Article 4§2 of the Charter, on the ground that it has not been established that the right to an increased remuneration for overtime work is guaranteed to all workers.

[The Committee recalls the principle of Article 4§2 of the 1961 Charter, which is that work performed outside normal working hours requires an increased effort on the part of the worker. Not only must the worker therefore receive payment for overtime, but the rate of such payment must also be higher than the normal wage rate (Conclusions I, Statement of Interpretation of Article 4§2, p. 28). Where remuneration for overtime is entirely given in the form of time off, Article 4§2 requires this time to be longer than the additional hours worked (Complaint No. 57/2009, European Council of Police Trade Unions (CESP) v. France, decision on the merits of 1 December 2010, §31).

In its previous conclusions the Committee asked the Government to provide more detailed information on remuneration for overtime as agreed in collective agreements, to illustrate that the right to increased remuneration for overtime work is guaranteed to workers. The report does not provide this information. Therefore, the Committee considers that it has not been established that the right to an increased remuneration for overtime work is guaranteed to all workers].

Italy

Normative action:

Article 2§1: The Committee concludes that the situation in Italy is not in conformity with Article 2§1 of the Charter on the ground that the weekly working hours of workers on sea-going vessels may be up to 72 hours.

[In its previous conclusions (2007 and 2010) the Committee found that the situation was not in conformity with the Charter as Legislative Decree No 66/2003 permitted weekly working time of up to 72 hours in the fishing industry.

The Committee notes that there have been no amendments to the legislation during the reference period. However, the report states that the Italian legislation contains the norms which are in conformity with the requirements of the Charter. More precisely, according to the report, the reference made to the collective agreement in Article 18 of Legislative Decree No 66/2003 should always be interpreted as respecting the health and safety of workers. Prescriptive and binding legislation on health and safety of workers requires that the collective agreement which regulates working time, take into account the limits, even after the exclusion by the legislator of workers on sea-going vessels from the general application of certain Articles of the legislative degree No 66/2003.

The Committee observes that despite the considerations given to the protection of workers' health and safety as indicated in the report, the situation which it has previously considered not to be in conformity with the Charter has not changed. It reiterates its previous finding of non-conformity on the ground that the weekly working hours of workers on sea-going vessels may be up to 72 hours].

Article 4§4: The Committee concludes that the situation in Italy is not in conformity with Article 4§4 of the Charter on the grounds that notice periods are not reasonable:

- in the food-processing and mechanical industries;
- in the textile industry for employees in the 7th and 8th categories with more than 15 years of service and those in the 2nd, 3rd and 4th categories with more than three years of service.

[The notice periods set out in the national collective agreement of 20 January 2008 for the mechanical industry remain in force.

The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined primarily in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee notes in the present case that there has been a tendency in recent collective agreements for notice periods to be lengthened. It notes, however, that these periods are still inadequate with regard to Article 4§4 of the Charter in the food-processing and mechanical industries. They are also inadequate in the textile industry for employees in the 7th and 8th categories with more than 15 years of service and for employees in the 2nd, 3rd or 4th categories with more than three years of service].

Article 4§5: The Committee concludes that the situation in Italy is not in conformity with Article 4§5 of the Charter on the ground that, after all authorised deductions, the wages of workers with the lowest pay do not enable them to provide for themselves or their dependants.

[The Committee points out that the purpose of Article 4§5 of the Charter is to ensure that workers who enjoy the protection afforded by this provision are not deprived of their basic means of subsistence (Conclusions XVIII-2 (2007), Poland). It notes that in the present case, the limits on deductions provided for by Article 545 of the Code still allow situations in which some employees receive only 70% or even 50% of the lowest wages – an amount that does not allow them to provide for themselves or their dependants. Hence it concludes that the situation in Italy remains not in conformity with Article 4§5 of the Charter].

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

- it has not been established that the Government's power to issue injunctions or orders restricting strikes in essential public services falls within the limits of Article G of the Charter;
- the requirement to notify employers of the duration of strikes affecting essential public services prior to strike action is excessive.

[The Committee concluded previously (Conclusions 2010) that the situation in Italy was not in conformity with Article 6§4 of the Charter because it had not been established that the power of the Government to issue injunctions or orders restricting strikes in essential public services fell within the limits of Article G of the Charter.

The report does not provide any new information on the subject. The Committee therefore renews its previous finding of non-conformity because it has not been established that the power of the Government to issue injunctions or orders restricting strikes in essential public services falls within the limits of Article G of the Charter.

(…) With regard to procedural requirements, the Committee concluded previously (Conclusions 2010) that the situation in Italy was not in conformity with Article 6§4 of the Charter because the requirement to notify employers of the duration of strikes affecting essential public services prior to strike action was excessive. As there has been no change in the situation, the Committee renews its finding of non-conformity in this respect].

Other parliamentary measures:

Article 2§4: The Committee concludes that the situation in Italy is not in conformity with Article 2§4 of the Charter on the following grounds:

- there is no adequate prevention policy regarding the risks in inherently dangerous and unhealthy occupations, and
- it has not been established that the right to just conditions of work with regard to the risks present in inherently dangerous or unhealthy occupations is guaranteed.

[The Committee refers to its conclusion concerning Article 3§1 of the Charter (Conclusions 2013) for a description of dangerous activities and the preventive measures taken in their respect. It notes, in particular, the entry into force, in 2008, of the Consolidated Act on Health and Safety at Work (the "Single Act", Legislative Decree No. 81/2008) listing the occupations at risk and providing for general protection measures. It nonetheless notes that the report mentions no further developments in respect of the situation of non-conformity described at the time of its examination of Article 3, paragraph 1, when

it concluded that there is no satisfactory occupational health and safety policy and that there is no adequate system for organising occupational risk prevention (Conclusions 2013, previously cited).

In the light of the above, the Committee notes that a number of measures remain to be introduced and implemented so as to offset the deficiencies noted and ensure effective prevention of the risks linked to dangerous or arduous occupations. It consequently considers that it has not been established that the risks inherent in dangerous or unhealthy occupations have been sufficiently eliminated or reduced].

[The Committee noted previously (Conclusions 2007) that workers exposed to ionising radiation were entitled to 15 days' additional leave, and it requested detailed information on the compensatory measures for other categories of workers exposed to risks which had not yet been eliminated or sufficiently reduced in spite of the application of preventive measures or in the absence of their application. In reply, the report reiterates the information concerning the compensatory measures for doctors and health technicians in the radiology sector and for employees in the asbestos industry, but provides no additional information on any compensatory measures (reduction of daily, weekly or annual working hours) coming under Article 2§4 of the Charter. The Committee already pointed out in its previous conclusion (Conclusions 2010) that monetary compensation cannot be considered a relevant and appropriate response to the requirements of Article 2§4. The Committee consequently maintains its finding of non-conformity with Article 2§4].

Article 21: The Committee concludes that the situation in Italy is not in conformity with Article 21 of the Charter on the grounds that it has not been established that:

- the rules on information and consultation of workers cover all categories of employees;
- there are appropriate remedies for employees themselves or their representatives.

[In its previous conclusion (Conclusions 2010), the Committee asked whether all categories of employees were taken into account when calculating the number of employees entitled to benefit from the right to information and consultation. The Committee notes from its previous conclusion (Conclusions 2010) that the rules and procedures for appointing and electing trade union representatives applicable to employees on permanent contracts also apply to those on fixed-term contracts, so long as the contract is for more than nine months. The report does not provide any more information about the categories of employees taken into account when calculating the number of employees entitled to benefit from the right to information and consultation. Consequently, the Committee reiterates its finding of non-conformity on the ground that it has not been established that the rules on information and consultation of workers cover all categories of employees.

(…) The Committee noted previously (Conclusions 2003) that in the event of infringements of the RSUs' (Rappresentanza Sindacale Unitaria) right to information and consultation, labour courts could order employers to carry out their obligations and declare any decision taken in violation of these obligations void. Employers who don't execute labour court orders are liable to criminal prosecution.

The Committee asked whether these remedies were available both to union representatives and to employees themselves, and to other bodies or individuals representing non-unionised employees. As the report fails to answer this question, the Committee concludes

that the situation is not in conformity on the ground that it has not been established that there are appropriate remedies for employees themselves or their representatives].

Article 22: The Committee concludes that the situation in Italy is not in conformity with Article 22 of the Charter on the grounds that it has not been established that:

- workers and/or their representatives have an effective right to take part in the decision-making process in undertakings with regard to working conditions, work organisation and the working environment;
- legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

[In its previous conclusions (Conclusions 2007 and 2010) the Committee noted that pursuant to the national framework agreement of 20 December 1993 between the employers' organisation and the main national trade unions, under the auspices of the government, the right of workers to take part in the determination and improvement of working conditions and the working environment in undertakings was vested in a representative structure called Rappresentanza Sindacale Unitaria (RSU), which could be established in any undertaking with more than fifteen employees, including those managed by public authorities. Employee participation in Italy mainly takes the form of consultation and joint decision making and management within enterprises. In the light of this information, the Committee concluded that it had not been established that a majority of employees had an effective right to participate in the decision making process in their undertaking on matters relating to Article 22 of the Charter.

As the current report fails to provide any more information on the system for the participation of employees in the determination and improvement of working conditions and the working environment, the Committee repeats its finding of non-conformity on the ground that it has not been established that workers and/or their representatives have an effective right to participate in the decision-making process within undertakings with regard to working conditions, work organisation or the working environment.

(…) In its previous conclusion (Conclusions 2010), the Committee asked whether workers' representatives were entitled to appeal to the relevant courts in respect of alleged breaches of their right to take part in the determination and improvement of working conditions and what penalties employers were liable to if they failed to fulfil their obligations in this respect. The only information provided in the current report relates to the right to information and consultation covered by Article 21, not to the right of employees to take part in the determination and improvement of working conditions and the working environment. The Committee therefore concludes that the situation is not in conformity with the Charter because it has not been established that legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment].

Lithuania

Normative action:

Article 2§1: The Committee concludes that the situation in Lithuania is not in conformity with Article 2§1 of the Charter on the ground that for some categories of workers a working day of up to 24 hours can be allowed.

[In its previous conclusion (Conclusions 2010) the Committee found that the situation was not in conformity with the Charter, on the ground that for some categories of workers (healthcare, child care institutions, specialised communications services, etc.) a working day of up to 24 hours could be allowed.

The Committee notes from the information provided by the Lithuanian representative to the Governmental Committee (Report concerning Conclusions 2010, §32) that the 24 hours long working day was exceptional and subject to strict approval by the Government.

The Committee finds no new information in the report. Therefore, it considers that the situation which it has previously found not to be conformity with the Charter has not changed. It considers that the categories of persons, as well as the situations in which the working day can reach 24 hours, are beyond what can be considered as exceptional circumstances and are therefore not in conformity with the Charter. It reiterates its previous finding of non-conformity.]

Article 4§4: The Committee concludes that the situation in Lithuania is not in conformity with Article 4§4 of the Charter on the ground that no notice is given in case of termination of employment based on a judicial decision which prevents the performance of work; the withdrawal of administrative licences required for the performance of work; the request from bodies or officials authorised by the law; and the unfitness for work certified by authorised bodies.

[The Committee considers that the behaviour described under Article 235, paragraphs 1 and 2 of the Code meets the criteria of a gross breach of duties and that dismissal without notice or compensation on disciplinary grounds (Article 136, paragraph 3, Nos. 1 and 2 of the Code) is in conformity with Article 4§4 of the Charter. It considers, however, that some grounds of termination of employment do not meet the criteria of a gross breach of duties, such as: the entry into force of a judicial decision which prevents the performance of work; the withdrawal of administrative licences required for the performance of work; the request from bodies or officials authorised by the law; and the unfitness for work certified by authorised bodies (Article 136, paragraph 1, Nos. 1 to 4 of the Code). Excluding notice or compensation under these circumstances are not in conformity with Article 4§4 of the Charter. In view of the severance pay provided for in Article 140, paragraph 1 of the Code, in the event of the winding up of an employer company, the lack of any provision for notice in such circumstances (Article 136, paragraph 1, No. 6 of the Code) is in conformity with Article 4§4 of the Charter for employees with up to two years of service.]

Article 28: The Committee concludes that the situation in Lithuania is not in conformity with Article 28 of the Charter on the ground that the protection afforded to workers' representatives does not extend to a period after the mandate.

The Committee considered the situation in Lithuania with regard to Article 28 in its previous conclusion (Conclusion 2010). The Committee asked to be informed on how long the protection for workers' representatives lasts after the cessation of their functions.

[The report emphasises that under Article 134(1) of the Labour Code, representatives may not be dismissed from work during the period for which they have been elected, without the prior consent of the representative body in which they perform their duties.

Article 134(5) states that this consent is effective until the expiry of the term of notice, which the Committee notes lasts for two or four months under Article 130(1).

The Committee recalls that the rights recognised in the Charter must take a practical and effective, rather than purely theoretical form (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59). To this end, the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of Interpretation on Article 28). The Committee has for example found the situation to be in conformity with the requirements of Article 28 in countries such as Estonia (Conclusions 2010) and Slovenia (Conclusions 2010), where the protection is extended for one year after the end of mandate of workers' representatives or in Bulgaria (Conclusions 2010), where the protection granted to workers' representatives is extended for six months after the end of their mandate. The Committee notes that in Lithuania no further protection, above the level of protection given to all employees, is afforded to workers' representatives after the period of their mandate. The Committee therefore finds that the situation is not in conformity with the Charter.]

Other parliamentary measures:

Article 4§1: The Committee concludes that the situation in Lithuania is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage applied to private sector workers does not ensure a decent standard of living.

[According to EUROSTAT data for 2012, the annual average wage for single workers without children (table "earn_nt_net") (100% of an average worker) was €7 268.88 (LTL 25 098.00) gross and €5 634.71 (LTL 19 455.54) net; the annual MMW (table "earn_mw_cur") was €2 780.40 (LTL 9 600.00) gross; and the gross MMW (table "earn_mw_avgr") was 40.8% of the gross average income.

According to the ILO Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (CEACR) (Minimum Wage Fixing Convention No. 131 (1970): Direct Request adopted in 2012, published at the 102nd ILC session (2013)), the MMW amounts to 38% of the average wage, has lost much of its purchasing power, and rates among the lowest minimum wages in the EU.

The report also states that the remuneration of politicians, lawyers, judges, notaries, state officials and members of the armed forces is calculated using the basic amount of the official wage, which differs from the MMW and was set at LTL 430 (€128.48) in 2012. Minimum pay in the public sector is systematically higher than the basic amount in practice.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee notes that in the present case, the MMW is applicable at a single rate to private sector workers. In view of all the information cited above, it notes that the MMW is also below the minimum

threshold of 50% of the net average wage, and therefore considers that this wage is not in conformity with Article 4§1 of the Charter. It asks for information in the next report on the social contributions and tax deductions applied to the gross MMW.]

Article 4§2: The Committee concludes that the situation in Lithuania is not in conformity with Article 4§2 of the Charter on the ground that it has not been established that the exception to the right to increased remuneration applies only to senior officials and management executives.

Article 4§5: The Committee concludes that the situation in Lithuania is not in conformity with Article 4§5 of the Charter on the ground that after all authorised deductions, the wages of workers with the lowest pay do not allow for them to provide for themselves or their dependants.

[It previously concluded (Conclusions 2007 and 2010) that the situation in Lithuania was not in conformity with Article 4§5 of the Charter on the ground that after authorised deductions, the wages of workers with the lowest pay did not ensure that they could provide for themselves and their dependants. It asked for information on the available guarantees preventing workers from waiving their right to limits to deduction from wages.

The Committee points out that under Article 4§5 of the Charter, workers may not waive their right to limits to deduction from wages and the determination of wage deductions may not be left simply at the disposal of the parties to the employment contract (Conclusions 2005, Norway). It notes from the report that employees may limit wage deductions by means of an agreement with their employers. It derives from this that the determination of deductions is left at the disposal of the parties to the employment contract, unless the limits provided for by Article 224, paragraph 2, Article 225, paragraphs 1 to 3 and Article 226 of the Labour Code were declared to be of public policy, binding or unavailable by statute, case law or collective agreements. Accordingly, it repeats its request for details on the safeguards provided by state, case law or collective agreements to protect against the potential waiving of the wage protection afforded by the Code. It brings to the Government's attention that, unless this information is provided in the next report, it will not have the information it requires to establish that the situation is in conformity in this respect.

The Committee reiterates that the purpose of Article 4§5 of the Charter is to ensure that workers who enjoy protection afforded by this provision are not deprived of their basic means of subsistence (Conclusions XVIII-2 (2007), Poland). It notes from the report that there was no change in the level of the limits provided for by Article 224, paragraph 2, Article 225, paragraphs 1 to 3 and Article 226 of the Code during the reference period. Hence, it reiterates its previous findings of non-conformity. It requests that the next report state whether the limits provided for by the Code are gross or net of social contributions and tax deductions.]

Article 6§2: The Committee concludes that the situation in Lithuania is not in conformity with Article 6§2 of the Charter on the ground that it has not been established that the machinery for voluntary negotiations has been efficiently promoted.

[The Committee notes from the European Industrial Relations Observatory (EIRO) that approximately 20% of workers are covered by collective agreements. The Committee takes note of this low figure. In the meantime, the Committee considers that the situation

is not in conformity with the Charter on the ground that it has not been established that the machinery for voluntary negotiations has been efficiently promoted.]

Article 26§2: The Committee concludes that the situation in Lithuania is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work.

[In its previous conclusion (Conclusions 2010) the Committee noted that victims of discrimination (on the grounds of age, sexual orientation, social status, disability, race or ethnic origin, religion, convictions or beliefs) are entitled to claim pecuniary and non-pecuniary damage from guilty persons in compliance with the procedure established by law. It asked for information on the kinds and amount of compensation awarded. It also asked whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to moral harassment is guaranteed.

The report does not contain the information requested concerning the amounts effectively awarded as compensation in cases of moral harassment. The Committee accordingly does not find it established that in Lithuania employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work.]

The former Yugoslav Republic of Macedonia

Normative action:

Article 2§1: The Committee concludes that the situation in The former Yugoslav Republic of Macedonia is not in conformity with Article 2§1 of the Charter on the ground that the hours spent in preparedness for work of medical staff are regarded as a period of rest.

[In its previous conclusion the Committee also asked what rules applied to on-call work. It notes from the report that Article 218 of the Law on Health Protection provides that 'preparedness' is a form of work when the medical officer does not have to be present at the health institution but has to be available at phone in readiness to perform work if called. The hours of preparedness are not considered as working hours when no effective work is undertaken.

The Committee recalls that in its decision on the merits of 23 June 2010 Confédération générale du travail (CGT) v. France (§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of inactive part of on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee therefore considers that the situation is not in conformity with the Charter as the hours spent in preparedness for work of medical staff are regarded as a period of rest.]

Other parliamentary measures:

Article 6§1: The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 6§1 of the Charter on the ground that it has not been established that joint consultation takes place in the public sector, including the civil service.

[As regards the existence and operation of specific consultative bodies in the public sector, following a request by the Committee in its previous conclusion, the report merely refers to the 'Council for Safety and Health at Work' and its expert / consultative functions. The Committee reiterates that joint consultation should also take place in the public sector including the civil service (Conclusions III (1973), Denmark, Germany, Norway, Sweden and Centrale générale des services publics, CGSP v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41). It recalls that within the meaning of Article 6§1, joint consultation is consultation between employees and employers or the organisations that represent them (Conclusions I (1969), Statement of Interpretation on Article 6§1). Joint consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.) (Conclusions I (1969), Statement of Interpretation on Article 6§1 and Conclusions V (1977), Ireland). From the ITUC Survey of violation of trade unions rights, the Committee notes that "the criteria for the representative participation of social partners in bipartite and tripartite social dialogue were finally implemented, and the trade unions began signing collective agreements in the public sector. However, both bipartite and tripartite social dialogue remains weak, with insufficient participation of the social partners in policy development processes" and that "the EC Progress Report notes that there is no effective social dialogue in the public sector and that collective agreements are not respected". The Committee concludes that as regards joint consultation in the public sector it has not been established that the situation is in conformity with Article 6§1 of the Charter.]

Malta

Normative action:

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

The notice periods generally applied are not reasonable in the following cases:

- less than six months of service;
- between six months and two years of service;
- between three and four years of service;

The notice period of one week applicable to probationary periods is not reasonable;

No notice period is provided for in the event of dismissal in economic, technological or organisational circumstances requiring changes in the workforce.

[It previously concluded (Conclusions 2010) that the situation in Malta was not in conformity with Article 4§4 of the Charter on the grounds that one week's notice was insufficient for less than six months of service, two weeks' notice was insufficient above

six months of service, and four weeks' notice was insufficient between three to four years of service. It asked whether all workers were entitled to take leave to seek employment during notice periods.

The Committee notes that Law No. 16/2012 of 2 October 2012 has not changed the general notice periods provided for under section 36, paragraph 5 of the Employment and Industrial Relations Act of 2 December 2002 (No. 22/2002) (EIRA) and reiterates its previous conclusion of non-conformité on the notice periods generally applied. It asks that the next report state whether the laws or regulations provide, in addition to the possibility of taking annual leave during periods of notice, the possibility of taking special leave to seek employment. It also asks for information on the application in practice of the possibility of granting longer notice periods than those generally applied, provided for by section 36, paragraph 5(f) of the EIRA in the case of employees occupying technical, administrative, executive or management posts.

The Committee points out that the right of workers to reasonable notice periods also applies during probationary periods (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28), and considers that the period of notice of one week applicable to these periods, whose duration is restricted to six or sometimes 12 months for employees occupying technical, administrative, executive or management posts (section 36, paragraphs 1 and 2 of the EIRA), is not reasonable within the meaning of Article 4§4 of the Charter.

The Committee also points out that serious misconduct is the only circumstance justifying instant dismissal (Conclusions 2010, Armenia) and therefore considers that authorising dismissal without notice or severance pay in economic, technological or organisational circumstances requiring changes in the workforce (section 36, paragraph 14 of the EIRA), is not in conformity with Article 4§4 of the Charter.]

Article 6§3: The Committee concludes that the situation in Malta is not in conformity with Article 6§3 of the Charter on the grounds that:

- it has not been established that decisions of the court of inquiry are binding on the parties only with their joint consent;
- compulsory recourse to arbitration is permitted in circumstances which do not comply with the conditions set out in Article G of the Charter.

[The Committee sought further information on the nature, composition and competencies of the court of inquiry and what decisions it may take when dealing with collective disputes and whether these decisions are binding on the parties to the dispute without their joint consent. In its previous conclusion (Conclusions 2010) the Committee reiterated its questions and concluded that the situation in Malta is not in conformity with the Charter as it has not been established that decisions of the court of inquiry are binding on the parties only with their joint approval.

In reply to the Committee's question, the report indicates that no court of inquiry has been appointed from the date when EIRA was first enacted in 2002. Also the report mentions that as the EIRA is up for review, it will be considered whether this provision will be maintained in view of the non-utilisation of the court. The representative of Malta to the Governmental Committee stated that to date all trade disputes referred to the

Minister have been referred to the Industrial Tribunal and no court of inquiry has ever been appointed. The Maltese representative added that the remit of a court of inquiry as established by Article 69(4)(a) of the EIRA is to inquire into and establish the causes and circumstances of the dispute (Governmental Committee Report concerning Conclusions 2010, p.78). The Committee understands that in practice the court of inquiry is not used.

However, according to the legislation in force the Minister has the power to appoint a court of inquiry to establish the causes and circumstances of the dispute (Article 69(4) (a) EIRA). Due to the lack of information, the Committee cannot establish whether the joint consent of the parties is required in this case. Therefore, the Committee maintains its conclusion of non-conformity on the ground that it has not been established that decisions of the court of inquiry are binding on the parties only with their joint consent.]

The Committee notes that according to Article 74(1) and (3) of EIRA, where disputes have been referred to conciliation to promote an amicable settlement of a trade dispute and conciliation has not resulted in a settlement, one of the parties may notify the Minister and the Minister shall refer the dispute to the Industrial Tribunal for settlement. The Committee recalls that any form of compulsory recourse to arbitration is a violation of this provision, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both. Such a restriction is only allowed within the limits prescribed by Article G (Conclusions (2006), Portugal). The Committee also notes that the ILO-CEACR requested in this respect that the Government take the necessary measures to amend Article 74(1) and (3) of the EIRA (Observation (CEACR) – adopted 2011, published 101st ILC session (2012) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Malta (Ratification: 1965)). The Committee concludes that the situation is not in conformity with Article 6§3 of the Charter on this point, as compulsory recourse to arbitration is permitted in circumstances which go beyond the limits set out in Article G of the Charter.]

Other parliamentary measures:

Article 2§1: The Committee concludes that the situation in Malta is not in conformity with Article 2§1 of the Charter on the ground that it has not been established that the legislation guarantees the right to reasonable weekly working hours.

[In its previous conclusion (Conclusions 2010) the Committee noted that the Organisation of Working Time Regulations provides that all workers shall have a minimum daily rest period of 11 hours, and the average working time for each seven-day period, including overtime, shall not exceed 48 hours. The Committee asked whether there were circumstances under which Maltese law would permit working hours, including overtime, of 60 hours or more in any individual week.

The Committee notes that neither the report nor the reply to the supplementary question of the Committee provide this information. Therefore, it holds that it has not been established that the legislation guarantees the right to reasonable weekly working hours.

The Committee recalls that in its decision on the merits of 23 June 2010 **Confédération générale du travail (CGT) v. France** *(§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of*

effective work, determined **a posteriori** *for a period of time that the employee* **a priori** *did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.*

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.]

Article 2§2: The Committee concludes that the situation in Malta is not in conformity with Article 2§2 of the Charter on the ground that it has not been established that work performed on a public holiday is adequately compensated.

[The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday. Insofar as the report does not contain any indication of the level of remuneration or other forms of compensation for work performed on a public holiday, despite the Committee's repeated requests, the Committee finds that it has not been established that the situation is in conformity with Article 2§2 of the Charter.]

Article 4§2: The Committee concludes that the situation in Malta is not in conformity with Article 4§2 of the Charter on the ground that it has not been established that the right to an increased time off in lieu of overtime remuneration is guaranteed.

[In its previous conclusion the Committee asked whether it was possible for an employer and employee to replace remuneration for overtime with compensatory leave and if so, whether the leave would be of an increased duration. The Committee notes that neither the report nor the reply to the supplementary question of the Committee provide this information. Therefore, the Committee considers that it has not been established that the right to an increased time off in lieu of overtime remuneration is guaranteed.]

Article 5: The Committee concludes that the situation in Malta is not in conformity with Article 5 of the Charter on the ground that it has not been established that there are adequate remedies against refusals to register police trade unions.

[The report indicates that "there is a Government commitment to grant union representation rights to all Police officers". Also, the Maltese representative to the Governmental Committee stated that by way of concrete action, towards the end of September 2011 a motion calling for the first reading of a Bill to amend the Police Act in the sense that Police personnel will be allowed to form part of a union, albeit with restricted rights, was presented in Parliament. From Eironline (Malta: Industrial Relations Profile), the Committee notes that in November 2011 the Home Affairs Minister proposed amendments to the EIRA, so that the Malta Police Association could be recognised as a trade union. The same source indicates that the General Workers' Union complained that this was a unilateral decision and it meant that policemen were not free to join their preferred union. The Committee requests that the next report provide updated and detailed information on

the abovementioned reform and its implementation in practice. It asks if police personnel, irrespective of their rank and function, may form and join a trade union. Also, the Committee would like to know if personnel from other branches of the security services (such as the civil protection, detention officers, prison warders or the armed forces) can form or join trade unions and therefore enjoy the benefits of union representation.

Meanwhile, noting that the situation has not changed during the reference period, it maintains its conclusion of non-conformity on this point.]

Republic of Moldova

Action normative:

Article 2§3: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 2§3 of the Charter on the ground that, in certain circumstances, the law allows all annual leave to be carried over to the following year, without guaranteeing the workers' right to take at least two weeks' uninterrupted holiday during the year the holidays are due.

[The right to paid holiday is enshrined in Articles 43§2 of the Constitution and in Articles 112 and 122 of the Labour Code. In particular, under Article 112 of the Labour Code, this right may not be transferred, waived or restricted. The minimum duration of paid holiday is 28 calendar days (excluding non-working public holidays), except in case of exceptional circumstances established by law for some sectors of the economy. The Committee notes in this connection that there are specific laws which provide for longer annual holiday entitlements for some categories of worker (civil servants, customs officers, military personnel, and members of parliament) and that collective agreements or contracts may not establish minimum holiday entitlements which are lower than those established by law.

The report states that holiday may be awarded in its entirety or, at the employee's request, divided into two parts, one of which must last at least 14 calendar days. Employers must take the necessary measures for employees to be able to use their annual holiday entitlement during the reference year. However, it is possible to carry over holiday, especially if the employee has been ill, as the duration of sick leave is not included in the duration of annual leave.

Exceptionally, when awarding annual leave may undermine the proper functioning of a company, leave may be carried over to the following year subject to the written agreement of the worker concerned and the employees' representatives. In such cases, workers combine their unused leave entitlement from the previous year and their entitlement for the current year within a single year. The law prohibits workers from carrying over annual leave two years in a row.

The Committee points out that the Charter allows annual leave to be carried over to the following year under particular and justified circumstances, provided that the worker has at least two uninterrupted weeks of holiday during the current year. In other words, only the share of the annual leave entitlement exceeding these two weeks may be carried over to the following year. Consequently, as Moldovan law allows annual leave to be carried over entirely to the following year, the situation is not in conformity with Article 2§3 of the Charter.]

Article 2§7: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 2§7 of the Charter on the ground that

the legislation makes no provision for a medical check-up before being assigned to night work.

[The Committee states that, although Article 103§5 prohibits the assignment to night work of persons with a medical certificate stating that there are medical reasons why they cannot perform such work, the law does not provide for a medical check-up before such assignments. Medical examinations are only provided for for employees who have done at least 120 hours of night work over a six-month period. If such examinations show that there are medical reasons why the person concerned should not perform night work, then he or she must be transferred, with his or her consent, to another post.

The Committee points out that Article 2§7 of the Charter requires regular medical examinations, including a check-up prior to assignment to night work. In the light of the information provided, the Committee concludes therefore that the situation is not in conformity with the Charter in this respect, as workers are not given a check-up before being assigned to night work.]

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

As a general rule, no notice period and/or severance pay in lieu thereof is applicable to dismissal in the private sector, or termination of duties in the public sector;

With regard to the particular situations in which provision has been made for notice or severance pay in lieu thereof, the period or amount is not reasonable as regards:

- dismissal on the ground of the employee's unsuitability, beyond three years of service;
- termination of duties in the public sector as a result of liquidation, refusal to accept a geographical transfer or staff reductions, beyond three years of service;
- termination of duties in the public sector on other grounds, beyond three months of service.

[The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice.

The Committee considers that in case of dismissal in the private sector, as a result of liquidation, suspension of activities or staff reductions, the notice period of two months provided for by Article 184, paragraph 1(a) of the Code, combined with the severance pay provided for by Article 186, paragraph 1 of the Code, are reasonable within the meaning of Article 4§4 of the Charter. The one-month notice period provided for by Article 184, paragraph 1(b) of the Code and the severance pay provided for by Article 186, paragraph 2(f) the Code are, however, not reasonable beyond three years of service. The ruling out of notice periods and/or severance pay in lieu thereof in all other cases of dismissal provided for by Article 86, paragraph 1 of the Code is not in conformity with Article 4§4 of the Charter.

The Committee also considers that in case of termination of duties in the public sector as the result of liquidation, refusal to accept a geographical transfer or staff reduction, the notice period of 30 days provided for by section 63, paragraph 2 of the Civil Service and Civil Servants Status Act is not reasonable within the meaning of Article 4§4 of the Charter beyond three years of service. The 15-day notice period provided for by section 63, paragraph 2 of the Civil Service and Civil Servants Status Act is not reasonable beyond three months of service. The ruling out of notice periods and/or severance pay in lieu thereof in all other cases of dismissal provided for by section 63, paragraph 1 of the Civil Service and Civil Servants Status Act is not in conformity with Article 4§4 of the Charter.

(…)The Committee points out that protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). It considers that in the present case, ruling out notice periods and/or severance pay in lieu thereof is not in conformity with Article 4§4 of the Charter in the following situations:

Termination of the employment contract on the grounds provided for in Article 82(b), (d), (e), (i) and (j) of the Code;

During probationary periods, as provided for by Article 63, paragraph 2 of the Code;

Termination of duties in the public sector governed by the Civil Service and Civil Servants Status Act, as a result of circumstances beyond the control of the parties, as provided for by section 62, paragraph 1 of that Act;

Dismissal from a public sector post on disciplinary grounds provided for by section 64(c) to (e) of the Civil Service and Civil Servants Status Act.]

Article 5: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 5 of the Charter on the grounds that:

- trade unions not operating nationwide are required to belong to a national, sectoral or inter-sectoral trade union in order to acquire legal personality which unduly restricts the right to form trade unions; (…).

[The Committee concluded in its previous conclusion (Conclusions 2010) that the requirement imposed by Section 10 of the Law on Trade Unions, that primary trade union organisations may acquire the status of legal entity only if they are members of a national branch or national intersectoral trade union, is not in conformity with Article 5 as it constitutes an undue restriction on the right to form trade unions. From the analysis of Section 10(5) of the Law on Trade Unions, the Committee observes that the situation has not changed and is therefore still not in conformity with the Charter on this point.]

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

- the restrictions to the right to strike for public officials and employees in sectors such as the public administration, state security sectors and national defence do not comply with the conditions established by Article G of the Charter;
- the right to strike is denied to all employees in electricity and water supply services, telecommunication and air traffic control;

- it is not established that the restrictions to the right to strike of the employees of the customs authorities comply with the conditions established by Article G of the Charter;
- the restrictions imposed on workers on strike to protect the enterprise installations and equipment and to ensure their uninterrupted functioning do not comply with the conditions established by Article G of the Charter.

Other parliamentary measures:

Article 4§5: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 4§5 of the Charter on the ground that, after all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves and their dependants.

[The Committee points out that the objective of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers that, in the present case, the limits set by Article 149 of the Code allow situations to persist in which workers receive only 70% or 50% of the minimum wage, an amount which does not allow them to provide for themselves and their dependants.]

Article 5: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 5 of the Charter on the grounds that:

- it has not been established that compensation and penalties are provided for by law in case of discrimination based on trade union membership;
- it has not been established that the national law is applied in such a way that it does not impair the freedom to register a trade union.

[The report describes some general provisions of the Civil Code with regard to compensation of moral and material damages under tort. However, it does not explain in which cases or circumstances the provisions of the Civil Code are applicable to labour relationships. The representative of the Republic of Moldova in the Governmental Committee stated that, since the right to organise is an integral part of the labour law, penalties can be imposed in case of violation of other labour rights in the absence of express provisions (Report concerning Conclusions 2010, p. 65). The report does not indicate which penalties are applicable in labour relationships in case an employee is dismissed based on trade union membership or participation in its activities, nor if an adequate and proportionate compensation to the harm suffered by the victim is provided in case of dismissal. Additionally, there are no examples from the practice.

The Committee considers that the situation remains not in conformity with the Charter on this point.(…)

In its previous conclusion (Conclusions 2010), the Committee noted that the Supreme Court has validated the refusal of the Ministry of Justice to register the Trade Union of Public Administration and Civil Service Staff (USASP). The Committee requested that the next report specifies what the grounds were for such a refusal.

The Committee understands from the report that USASP submitted its statutes for registration on 19 February 2007. Following a letter of the Ministry of Justice dated 17 March 2007 stating that the Ministry has to create territorial trade unions in order to register

USASP, the process of registration was suspended. On 5 May, the USASP once again submitted its statutes for registration. After examining the documentation submitted, the Ministry of Justice refused the registration by Decision No. 17 of 4 June 2007 on the grounds that the statutes were not in conformity with the requirements of the legislation in force, especially the USASP's declaration that it is the legal successor of the Federation of Trade Unions of Public Service Employees (SINDASP).

On 3 July 2007, the USASP requested the Ministry of Justice to repeal its decision of 4 June 2007. The Ministry refused its request. Thereafter, the USASP filed a complaint with the Court of Appeal of Chisinau requesting the registration by the Ministry and a monetary compensation for material and moral damages caused by the late registration. By a decision dated 2 June 2008, the Court of Appeal of Chisinau partially admitted the claim and requested the Ministry to register the USASP. The Ministry submitted an appeal to the Supreme Court, which was admitted, and the case was sent to the Court of Appeal in order to be re-examined. On 2 June 2008, the Court of Appeal of Chisinau again partially admitted the claim of USASP and disposed the registration by the Ministry. Against the latter decision, both parties have filed an appeal. Through a decision dated 12 November 2008 the Civil and Administrative Disputed Claims Board of the Supreme Court of Justice rejected the appeal formulated by USASP and admitted the appeal of Ministry of Justice. The report does not indicate the grounds of admitting the appeal. The Committee notes from another source that the Supreme Court concluded that the Court of Appeal of Chisinau came to an erroneous conclusion as the Ministerial Decision No. 17 of June 2007 was legal and well-grounded at the moment of its issuance and that subsequent amendment of the statutes does not operate retroactively (Report No. 356 of March 2010 of the ILO Committee on Freedom of Association, paras. 91-94).

Finally, the Government states in the report that the USASP may re-apply for registration by submitting the required documentation even if there is an irrevocable decision refusing its registration, and that the Ministry of Justice has not received such a request yet. From another source (Report No. 356 of March 2010 of the ILO Committee on Freedom of Association, paras. 91-94), the Committee notes that another request for registration was submitted on 3 July 2007 to the Ministry of Justice along with the amended statutes in which the USASP no longer declared itself the legal successor of SINDASP, which was denied. Also, the same source indicates that since its establishment on 3 February 2007, the USASP has applied for registration several times, which has repeatedly been denied.

The Committee recalls that in order to ensure or promote the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interest and to join those organisations under Article 5, the Governments undertake to ensure that national law shall not be such as to impair, nor shall it be applied in such a way as to impair this freedom. In light of the above mentioned information, the Committee considers that the situation is not in conformity with Article 5 of the Charter as it cannot be established that the national law has been applied in such a way that it does not impair the freedom to register a trade union.

Article 6§2: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 6§2 of the Charter on the ground that it has not been established that voluntary negotiations between employers or employers' organisations and workers' organisations are promoted in practice.

Article 26§2: The Committee concludes that the situation of the Republic of Moldova is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work.

[The Committee points out that victims of harassment must have effective legal remedies to seek compensation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or forced to resign for reasons linked to psychological harassment.

The Committee takes note of the penalties provided for by the Criminal Code and asks what provision has been made for the compensation and reinstatement of victims of psychological harassment. Pointing out that the effectiveness of the legal protection against psychological harassment depends on how the domestic courts interpret the law as it stands, the Committee repeats its request for relevant examples of case law in the field of psychological harassment, particularly under civil law. In the meantime, it does not consider it to have been established that in the Republic of Moldova employees are given appropriate and effective protection against psychological harassment in the workplace or in relation to work.]

Article 28: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 28 of the Charter on the grounds that it has not been established that:

- workers' representatives, other than trade union representatives are guaranteed protection against dismissal or prejudicial acts other than dismissal where they are exercising their functions outside the scope of collective bargaining;
- facilities identical to those afforded to trade union representatives are provided to other workers' representatives.

The Netherlands

Normative action:

Article 2§1: The Committee concludes that the situation in Netherlands is not in conformity with Article 2§1 of the Charter, on the ground of the exclusion of certain categories of workers from the statutory protection against unreasonable working hours.

[In its previous conclusion, the Committee asked what the applicable daily and weekly working time limits that applied to certain categories were, such as sports professionals, scientists, performing artists, military personnel and the police. The report states that these categories, as well as workers whose wages are more than three times the gross minimum wage, are not subject to the limits set in the Working Hours Act. There are no limits for daily or weekly working hours that would apply to these individuals. The military and the police are however covered by the Act. According to the report, the exceptions mentioned are consistent with those allowed in the EU Working Time Directive (2003/88/EC).

The Committee considers that in the absence of any statutory limit to daily and weekly working hours for these categories of workers, they are left without any guarantees that they will not be asked to perform unreasonable daily and weekly working hours, in situations that go beyond what can be considered as exceptional circumstances. The Committee considers that the exclusion of all these categories from the statutory protection amounts to a violation of Article 2§1 of the Charter.]

Article 2§2: The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§2 of the Charter, on the ground that work performed on a public holiday in the hotel and catering industry is not adequately compensated.

[According to the report, where it is not possible to grant time off in lieu for the time worked during a public holiday, in the hotel and catering industry, a bonus of 50% of the hourly wage must be paid.

The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday. In this respect, in light of the information available, the Committee considers that a compensation corresponding to the regular wage increased by 50% is not sufficiently high to constitute an adequate level of compensation for work performed on a public holiday. Accordingly, it concludes that the situation in the Netherlands is not in conformity with Article 2§2 of the Charter.]

Article 2§3: The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§3 of the Charter on the ground that the employees' right to take at least two weeks of uninterrupted holiday during the year in respect of which the holidays were due is not sufficiently guaranteed.

[The Committee previously noted (Conclusion XIV-2 (1998) that, under the Civil Code, all employees are entitled to annual holiday with pay, equal to four times the number of working days per week (20 days of annual holiday for people working five days a week, 24 days for people working six days a week). If a worker has not been working for a full year, the holidays are calculated proportionally. As long as the employment agreement is in force, the employee cannot waive his holiday entitlements in exchange for compensatory damages.

According to the Civil Code, Book 7, Article 638§1, it is for the employers to ensure that their employees take the leave to which they are entitled within the year, but it is also the employees' responsibility to take their leave on time. The Committee notes from the ILO database (Netherlands working time 2011) that the employer must as much as possible take care of ensuring that the worker is able to take the consecutive period of leave in the period between 30 April and 1 October and the leave must be granted for a period of at least two weeks, or one week if required by the business or preferred by the worker.

The report indicates that on 12 January 2012 the legislation was amended to bring it in line with the EU Working Time Directive (2003/88/EC). As a result of these amendments, statutory leave will lapse six months after the end of the year in which it was accrued,

unless the employee was not reasonably able to take it within this period, for example in case of long-term sickness. In this case, the limitation period is five years.

Unused periods of annual leave may not be cashed in, but may be carried over to the next year. The Committee asked in this respect what proportion of the minimum statutory leave may be postponed, and in particular whether all of it may be postponed. In response to this question, the addendum to the report indicates that there are no limitations to the number of statutory leave days that may be carried over to the following year.

The Committee recalls that, under Article 2§3 of the Charter, an employee must take at least two weeks of uninterrupted annual holiday during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. In the light thereof, the Committee finds that the situation is not in conformity with Article 2§3 of the Charter, on the ground that the employees' right to take at least two weeks of uninterrupted holiday during the year the holidays were due is not sufficiently guaranteed.]

Article 2§4: The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 of the Charter, on the ground that workers performing dangerous or unhealthy work are not entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

[In its previous conclusion (Conclusion 2010) the Committee held that the situation was not in conformity with Article 2§4 of the Charter, on the grounds that no provision is made for reduced working hours, additional paid holidays or another form of compensation for dangerous and unhealthy occupations.

It notes from the report that there is no list of occupations which are considered inherently dangerous or unhealthy in the Netherlands. However, each employer has the obligation to assess the risks connected to their activities, and social partners are strictly involved in the adoption of all necessary measures to comply with the occupational safety and health goals. The measures that can be adopted in this respect might include compensation measures in the sense of Article 2§4, namely measures dealing with the organisation of work (management of working rythmes, in terms of daily, weekly and annual resting periods) aimed at preserving the workers' vigilance and psycho-physical health. However, the adoption of these measures is not regulated at a central level, but is left to the agreements reached by social partners themselves in each sector. Since Dutch legislation does not provide for any of the compensatory measures required by Article 2§4 of the Charter, the Committee reiterates its finding of non-conformity in this respect.]

Article 2§5: The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§5 of the Charter on the ground that, in certain sectors, there are insufficient safeguards to prevent that workers may work for more than twelve consecutive days before being granted a rest period.

[The Committee previously noted (Conclusion 2010) that under the Working Hours Act, as amended in 2007, work on Sundays is in principle prohibited. However, exceptions are possible where the nature of the work makes work on Sunday inevitable or the company's specific circumstances necessitate it. Employees who work on Sunday are entitled to 13 Sundays off per year, but exceptions to this rule can be provided for in collective

agreements provided that the employees agree to it. According to the report, less than 15% of employees work on Sundays.

*The Committee notes from the addendum to the report that the Working Hours Act provides, as a rule, for a maximum of eleven consecutive working days. In fact, the workers should be granted 72 hours rest within any given period of 14 days. The 72 hours rest can also be spread in a different way, provided that the minimum length of a rest period of 32 hours is guaranteed. Furthermore, exceptions are possible in specific sectors (e.g. transport sector, mining industry) in conformity with the Working Hours Decree (*Arbeidstijdenbesluit*) and the Working Hours Decree in the Transport sector (*Arbeidstijdenbesluit vervoer*). For example, in the mining industry work can be organised via rosters of 14 days work and 14 days rest. The consent of the workers' representative is required in case of work on land, but not in case of offshore work.*

The Committee recalls that the weekly rest period may be deferred to the following week, as long as no worker works more than twelve consecutive days before being granted a two-day rest period. In the light of the information above, it considers that the situation is not in conformity with Article 2§5 of the Charter on the ground that, in certain sectors, there are insufficient safeguards to prevent than workers may work for more than twelve consecutive days before being granted a rest period.]

Article 4§2: The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§2 of the Charter, on the ground that workers may be asked to work extended hours without any of these counting as overtime and therefore not remunerated at an increased rate.

[In its previous conclusion the Committee observed that with the entry into force of the new Working Hours Act the statutory distinction between normal working time and overtime had been abolished. The Committee considered that the abrogation of the notion of overtime could lead to long working days -agreed by the parties – which would not be remunerated as such in the absence of a collective agreement covering this matter.

In the context of these legislative developments, the Committee asked to what extent collective agreements have provided for an increase in basic pay for unsocial or extended working hours.

The Committee notes from the report that no general information is available on the provisions on extra remuneration for unsocial or extended working hours in collective agreements.

The Committee recalls that the aim of Article 4§2 is to protect workers' health and safety – hence their lives – without neglecting more general interests, particularly economic ones. Working hours are assessed by taking into account not only normal working hours, but also overtime, which should therefore also be regulated in the sense that it should not be left to the discretion of the employer or the worker. The utilisation and/or the length of overtime should be limited in order to avoid exposing the worker to the risks of accidents at the end of a working day. The Committee recalls that the principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate that is higher than the normal wage.

The Committee has held that flexible working time arrangements, in which working hours may vary between specific maximum and minimum hours without any of them

counting as overtime, are not contrary to Article 4§2 (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§2).

The Committee has also held that restrictions to an increased remuneration for additional hours of work can exist only if they are provided by law, pursue a legitimate aim and are proportionate to that aim (Confederation General du Travail (CGT) v. France, Complaint No 55/2009, decision on the merits of 23 June 2010, §§ 87-89).

The Committee considers that the legislative developments that have abrogated the notion of overtime, may result in extended working hours that are not remunerated at an increased rate or not at all, cannot be considered as pursuing a legitimate aim. Therefore, the Committee considers that the situation is not in conformity with the Charter, on the ground that the legislation permits overtime working hours that will not be remunerated.]

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

- notice periods are not reasonable;
- no notice of termination is required during the probationary period.

[The report confirms the statutory notice periods under Article 7:672, paragraph 2 of the Civil Code:

- At least one month's notice up to five years of service;
- Two months' notice between five and 10 years of service;
- Three months' notice between 10 and 15 years of service;
- Four months' notice after 15 years of service.

(…) The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee notes in the present case that no significant change occurred during the reference period. It examines notice periods in combination with available compensation and notes that situations may be left under judicial rescission on important grounds in which, neither a notice period, nor compensation in lieu thereof is granted. It therefore concludes that notice periods are not reasonable under Article 4§4 of the Charter.

(…)The Committee points out that the protection under Article 4§4 of the Charter extends to probationary periods (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). It notes in the present case that Article 7:676 of the Code has not been amended and that the situation with regard to notice on dismissal during the probationary period has not changed during the reference period. It also notes that under Article 7:652, paragraphs 3 to 6 of the Code, probationary periods may not exceed two months overall, and one month under employment contracts of less than two years of duration. These limits may be derogated by collective agreement or regulation. The Committee therefore reiterates

its previous conclusion of non-conformity to Article 4§4 of the Charter on the ground that no notice of termination is required during the probationary period. It would add that, considering that one week of notice is insufficient below six months of service (Conclusions XIII-3 (1995), Portugal) and two weeks of notice is insufficient beyond that length of service (Conclusions XVI-2 (2003), Poland), notice periods may last less than one month if probationary periods are short.

Other parliamentary measures:

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

- It has not been established that the statutory minimum wage ensures a decent standard of living;

The reduced rates of the statutory minimum wages applicable to young workers are manifestly unfair.

The Committee concluded from Conclusions IX-1 (1985) onwards that the situation in the Netherlands in matters of remuneration was not in conformity with Article 4§1 of the Charter on the ground that the minimum wage paid to workers from 18 to 22 years old was manifestly unfair. It asked that the next report demonstrate how the level of the minimum wage and any available supplements and benefits ensured a decent standard of living (Conclusions 2010).

The report indicates an annual median wage net of social contributions and tax deductions which was €26 500 in 2009 and €27 380 in 2013 (overall full-time workers); it was €23 680 in 2009 and €24 700 in 2013 (single full-time workers). The monthly statutory minimum wage for 2013 was €1 469.40 (which is €17 632.80 per annum) gross.

According to EUROSTAT data for 2012 (table "earn_nt_net"), the average annual earnings of single workers with no children (100% of the average worker) were €47 075.41 gross and €31 959.92 net of social contributions and tax deductions; the gross monthly minimum wage (table "earn_mw_cur-1") (workers 23 to 64 years of age; full-time equivalent) was €1 456.20 (which is €17 108.16 per annum); in 2011 the gross minimum wage as a proportion of the average earnings (table "earn_mw_avgr2") was 43,8%.

The Committee notes from a previous report that the net statutory minimum wage for single workers with no children was about 85% of the gross statutory minimum wage. According to another source (Stichting Loonwijzer), the statutory minimum wage for a single worker, net of social contributions (excluding pension contributions) and tax deductions, was €1 235.37 per month (which is €14 824.44 per annum) in 2012.

In reply to the Committee's request, the report reiterates that the Minimum Wage and Minimum Holiday Allowance Act of 27 November 1968 purports to ensure earnings which are sufficient to cover living expenses. About 3% of full-time workers are paid the minimum wage, and most workers are paid at least the lowest wage set by collective agreement, which often is above the statutory minimum wage. A statutory holiday allowance of 8% of the statutory minimum wage applies to all workers who are paid that wage. Depending on personal circumstances, workers may apply for child benefits, housing benefits, a reduction in the cost of medical insurance, or for local benefits which promote participation in social, cultural and educational activities.

The Committee notes the statutory minimum wage's reduced rates applied to young workers in 2012:

- *85.00% for 22 year-olds (which is €1 237.77 gross and €1 063.36 net per month);*
- *72.50% for 21 year-olds (which is €1 055.75 gross and €919.59 net per month);*
- *61.50% for 20 year-olds (which is €895.56 gross and €793.23 net per month);*
- *52.50% for 19 year-olds (which is €764.51 gross and €690.68 net per month);*
- *45.50% for 18 year-olds (which is €662.57 gross and €611.32 net per month).*

(…) The Committee points out that, to comply with Article 4§1 of the Charter, a decent wage must exceed the minimum threshold, set at 50% of the national net average wage. This is the case when the net minimum wage exceeds 60% of the national net average wage. Where the net minimum wage is between 50% and 60% of the national net average wage, it is for the State Party to show that this wage makes it possible to ensure a decent living standard (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee notes in the present case that the net statutory minimum wage is below 60% of the net average wage. It also considers that, except for the statutory holiday allowance, the information on available supplements and benefits provided in the report does not establish that the statutory minimum wage ensures a decent standard of living within the meaning of Article 4§1 of the Charter. The Committee asks that the next report provide data on the net average wage and the net minimum wage paid to a single worker without children, as well as more precise information and data on supplements and benefits available to such worker.

The Committee also points out that, although it may be acceptable to pay a lower minimum wage to younger workers, the reduction must be shown to further a legitimate aim and be proportionate to achieve that aim (General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §60). It notes in the present case that the reduced rates of the statutory minimum wage applicable to young workers remain clearly below the minimum threshold. It therefore reiterates its previous conclusion of non-conformity on this ground. It emphasises that any purpose reduced rates of the statutory minimum wage may serve should not be achieved to the detriment to a decent remuneration which the Netherlands undertook to ensure under Article 4§1 of the Charter.

The Committee notes from EUROSTAT (Monthly minimum wages, country-specific information) that the Government may decrease the statutory minimum wage in certain enterprises or sectors in case of severe economic adversity. It requests that the next report provide information on this point.

Article 26§2: The Committee concludes that the situation in Netherlands is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees are effectively protected, in law or in practice, against moral (psychological) harassment.

[The Committee points out that, under Article 26§2, victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient

amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.

The addendum to the report refers to the possibility for victims of harassment to claim compensation for pecuniary and non pecuniary damages under the tort law. The Committee asks the next report to provide more detailed information and examples of case law concerning remedies that are available to employees who suffered from harassment at work, compensation awarded for material and moral damages before civil or administrative courts and reinstatement in the event of unlawful dismissal. In the meantime, it finds that it has not been established that employees are effectively protected, in law or in practice, against moral harassment.]

Norway

Normative action:

Article 2§1: The Committee concludes that the situation in Norway is not in conformity with Article 2§1 of the Charter on the ground that daily working hours can be authorised to go up to 16 hours.

[In its previous conclusion (Conclusions 2010) the Committee took note of the new Working Environment Act (WEA), which entered into force in 2006. The report states that no significant amendments have been implemented in the reference period.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter, on the ground that the legislation provided that the total amount of working hours in a 24-hours period could in certain cases go up to 16 hours.

The report states in this regard that the rule allowing a total of 16 working hours, which can only by applied by undertakings bound by a collective agreement, is an exception requiring the presence of several conditions. First, a written agreement must be entered into with the employees' elected representatives. Second, a total of 16 working hours may only be worked if the employee is assigned to overtime work, for which, according to section 106 (1) and (2), there must be an exceptional and time-limited need.

The Committee notes from the information provided by the representative of Norway to the Governmental Committee (Report concerning Conclusions 2010, § 39) that this is a general regulation which could be used in any given sector if the requirements of the law were met.

The Committee recalls that daily working time should in all circumstances amount to less than 16 hours per day in order to be considered reasonable under the Charter (Conclusions XIV-2, General Introduction). Exceptions are only allowed in extraordinary circumstances. This is a limit which must be respected and cannot be waived by foreseeing compensatory measures.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity.]

Article 4§3: The Committee concludes that the situation in Norway is not in conformity with Article 4§3 of the Charter on the ground that in equal pay litigation

cases pay comparisons cannot be made with companies other than the company directly concerned.

[In its Statement of Interpretation of 2012 (XIX-1) the Committee held that Article 20 (Article 1 of the Additional Protocol of 1988) requires that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation in the Netherlands complied with this principle, because in equal pay cases in the Netherlands comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands).

In reply to the Committee's question under Article 20 regarding equal pay comparisons (Conclusions 2012), the report states that the equal pay provision (the right to equal pay), such as the right to equal pay for the same work and work of equal value, is limited to the same enterprise. This means that the equal pay requirement cannot be based on comparisons between employees in different enterprises, even if the enterprises are operated and owned by the same physical or legal entity. The Committee considers that the situation is not in conformity with the Charter as regards equal pay litigation cases, since according to the report, comparison cannot be be made outside the company directly concerned.]

Article 4§4: The Committee concludes that the situation in Norway is not in conformity with Article 4§4 of the Charter on the grounds that the following notice periods are not reasonable:

- general notice periods, for workers with more than three years of service and those with ten years of service who are younger than 60;
- notice periods applicable to temporary workers with less than one year and those with more than three years of service;
- notice periods applicable to civil servants with more than seven years of service.

[The Act of 14 December 2012 (No. 80/2005) amending the Act of 17 June 2005 on the working environment, working hours and employment protection (No. 62/2005) (WEA) retained the existing statutory notice periods. The Civil Servants Act of 17 June 2005 (No. 103/2005) provides for three weeks' notice during probationary periods, which are limited to six months, one month's notice for civil servants with up to one year of service, and three months' notice for civil servants with more than one year of service.

The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined primarily in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee considers that in the present case, the period of one to three months set out in section 15-3, paragraphs 1 and 2 of the WEA is not reasonable within the meaning of Article 4§4 of the Charter beyond three years of service, and the period of four to six months set out in section 15-3, paragraph 3 of the WEA is not reasonable as long the employee with more than ten years of service is younger than

60. It asks that the next report indicate any compensation which may supplement or complement the notice periods in force.

The Committee also points out that protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the ground for the termination of their employment (Conclusions XIV-2 (1998), Spain). It notes in the present case that the notice period of 14 days during the probationary period set out in section 15-7, paragraph 7 of the WEA is reasonable within the meaning of Article 4§4 of the Charter, given that the probationary period is limited to six months under section 15-6, paragraph 3 of the WEA. It also considers that maintaining the notice of termination in the cases of the employer's death, insolvency, or interruption of business under section 15-3, paragraph 10 of the WEA is in conformity with Article 4§4 of the Charter. It notes, however, that section 14-9, paragraphs 4 and 5 of the WEA on temporary work suppresses any notice of termination for employees with less than one year of service and limits its period to one month for employees with more than one year of service. It therefore concludes that notice periods applicable to temporary workers are not in conformity with Article 4§4 of the Charter for workers with less than one year and those with more than three years of service. Similarly, the three months' notice applicable to civil servants with more than one year of service falling under the Civil Servants Act is insufficient with regard to civil servants with more than seven years of service.]

Article 4§5: The Committee concludes that the situation in Norway is not in conformity with Article 4§5 of the Charter on the ground that there are insufficient guarantees in place to prevent workers from waiving their right to limits to deduction from wages.

[The Committee notes that the legislation identifies precisely under what circumstances deductions from wages are authorised. It points out that the objective of Article 4§5 of the Charter is to guarantee that workers who are protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It also points out that the way in which deductions from wages are determined should not be left at the disposal of the parties to the employment contract (Conclusions 2005) and that, while such negotiations are not prohibited as such, they must be subject to legal rules established by legislation, case law, regulations or collective agreements (Conclusions XIV-2 (1998), United Kingdom). It considers that in the instant case, as section 14-15, paragraph 2(c), (e) and (f) of the WEA retains the possibility of waiving the rights to limited deductions from wages, while entrusting employers with the task of assessing employees' financial situation and the "amount reasonably needed" for them to support themselves and their families, and absent any strictly protected wage portion, section 14-15, paragraphs 3 and 4 of the WEA, resulting from the amendment which came into force on 1 January 2010, do not afford workers and their dependants sufficient protection from being deprived of their means of subsistence. Accordingly this provision is not in conformity with Article 4§5 of the Charter.]

Other parliamentary measures:

Article 21: The Committee concludes that the situation in Norway is not in conformity with Article 21 of the Charter on the ground that it has not been established that all categories of workers enjoy the right to information and consultation.

[Article 21 of the Charter provides for the right of employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on their employment situation in the undertaking.

States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. In this regard, the Committee considers that thresholds such as those permitted by Directive 2002/14/EC, which are undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state, are in conformity with this provision.

In this context, the Committee points out that all categories of worker (all employees holding an employment contract with the company regardless of their status, length of service or place of work) must be included in the calculation of the number of employees enjoying the right to information and consultation (judgments of the Court of Justice and the European Union, Confédération générale du travail *and Others, Case No. C-385/05 of 18 January 2007, and* Association de médiation sociale, *Case No. C-176/12 of 15 January 2014).*

Pursuant to the Companies Act, the Committee notes the following information:

- *in companies with more than 30 employees, employees may demand that one member and one observer be elected on the board of the company by and among employees;*
- *in companies with more than 50 employees, employees may demand that one third or at least two members be elected on the board of the company by and among employees;*
- *in companies with more than 200 employees, there shall be a corporate assembly where one third of the members shall be elected by and among the employees. The corporate assembly shall then elect the board. In case an agreement not to establish a corporate assembly is concluded between the company and local trade unions, the employees shall elect an additional board member or two observers.*

The 2005 Act requires employers to inform and consult workers' representatives in enterprises with more than 50 employees. In its last conclusion (Conclusions 2010), the Committee asked to be informed on the scope of the 2005 Act as regards the calculation of this minimum threshold. In the absence of this information, the Committee concludes that the situation is not in conformity on the ground that it has not been established that all categories of workers enjoy the right to information and consultation. The Committee asks the next report to indicate precisely the categories of workers included in the calculation of this threshold, including temporary workers, workers with other status, non permanent workers, etc.]

Article 22: The Committee concludes that the situation in Norway is not in conformity with Article 22 of the Charter on the ground that it has not been established that workers and/or their representatives have legal remedies when their right to take part in the determination and improvement of working conditions is not respected.

[The Committee asked in its last conclusion (Conclusions 2010) whether employees or their representatives are entitled to appeal to the relevant courts in respect of an alleged

breach of their right to take part in the determination and improvement of working conditions. The report does not provide an answer in this respect. The Committee therefore concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that workers and/or their representatives have legal remedies when their right to take part in the determination and improvement of working conditions is not respected.]

Article 28: The Committee concludes that the situation in Norway is not in conformity with Article 28 of the Charter on the ground that it has not been established that the protection granted to workers' representatives is extended for a reasonable period after the end of period of their mandate.

[In its previous conclusion (Conclusions 2010), the Committee asked to be informed on how long the protection for workers' representatives lasts after the cessation of their functions and what remedies are available to workers' representatives who are unlawfully dismissed. The Committee notes that the Government only provides information on the period of notice required before dismissing a shop steward and does not provide an answer as to how long the protection for workers' representatives lasts after the cessation of their functions. The Committee therefore concludes that the situation is not in conformity with the Charter, on the ground that it has not been established that the protection granted to workers' representatives is extended for a reasonable period after the end of period of their mandate.]

Romania

Normative action:

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

- the notice period for dismissal for physical or mental incapacity or for professional inadequacy or as a result of the abolition of posts is insufficient;
- the legislation makes no provision for notice periods during probationary periods and in the event of legally automatic termination of employment.

[Under Article 75, paragraph 1 of the Code, employees dismissed for mental or physical incapacity, professional inadequacy or as a result of the abolition of posts are entitled to a standard notice period, which has now been extended to 20 days. According to another source (ILO-EPLEX), in the event of dismissal owing to the abolition of posts, the national collective agreement for 2007-2010 provided for a notice period of 20 days and the payment of severance pay of at least one month's wages. However, as the Social Dialogue Act of 10 May 2011 (No. 62/2011) abolished collective bargaining, this collective agreement came to an end on 31 December 2010. By derogation, Article 75, paragraph 2 of the Code rules out notice during probationary periods, during which contracts end immediately (Article 31, paragraph 3 of the Code). Article 80, paragraph 1 of the Code makes no provision for notice or severance pay in the event of unfair dismissal other than compensation for the damage suffered by the employee.

Article 56, paragraph 1 of the Code makes no provision for notice applying to legally automatic causes of termination of employment, such as death of employers who are natural persons; winding up of employers which are legal persons; and withdrawal of permits, authorisations or certificates required to perform work.

The Committee points out that in accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. Protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain).

The Committee considers that in the instant case the notice period of 20 days provided for by Article 75, paragraph 1 of the Code is not reasonable within the meaning of Article 4§4 of the Charter, except in the case of disciplinary offences provided for by Article 61(a) of the Code, which is the only situation in which immediate dismissal is authorised (Conclusions 2010, Armenia). Furthermore, the ruling out of notice during probationary periods, provided for by Article 75, paragraph 2 of the Code, is not in conformity with Article 4§4 of the Charter (General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, Decision on the merits of 23 May 2012, §§26 and 28). The same applies to the ruling out of any notice period in the event of legally automatic termination of employment provided for by Article 56, paragraph 1 of the Code].

Article 5: The Committee concludes that the situation in Romania is not in conformity with Article 5 of the Charter on the ground that the right of the non-representative trade unions to exercise key trade union prerogatives is restricted.

[The report indicates that the new Law on Social Dialogue establishes representativeness criteria for social partners at all levels (company, group of companies, sectoral and national). As regards the trade unions, the report states that the new provisions do not amend the old legislation related to representativeness at national and sector levels, but only provide new rules for representativeness at company level.

At company level, the new Law recognises the right of a trade union to bargain and sign a collective agreement only if its members represent at least half plus one of the company's total number of employees (compared with one-third in the previous legislation). This amendment's consequence is that only one trade union can be representative in a company, compared to up to three under the old legislation.

The Committee notes that under the new Law on Social Dialogue, the representative trade unions are entitled to bargain collectively (Article 134 of Law on Social Dialogue) and they have the right to negotiate through the collective agreement at company level to have access to premises and facilities for their activities (Article 22 Law on Social Dialogue). Additionally, the new Law provides that the representative trade unions may participate in board meetings of the company to discuss matters of professional, economic and social interest and may receive from the employers or their organisations the necessary information for conducting collective bargaining (Article 30 of the Law on Social Dialogue). The Committee understands that all the above mentioned attributes belong to the representative trade unions only and that non-representative trade unions do not enjoy any of these rights.

In this respect, the Committee recalls that areas of activity that are restricted to representative unions should not include key trade union prerogatives. In this context, "a trade union that is not representative should enjoy certain prerogatives, for example, they may approach the authorities in the individual interest of an employee, they may assist an employee who is required to justify his or her action to the administrative authority; they may display notices on the premises of services and they receive documentation of a general nature concerning the management of the staff they represent" (Conclusions XV-1 (2000), Belgium). Therefore, the Committee considers that the situation is not in conformity with Article 5 of the Charter on the ground that the right of the non-representative trade unions to exercise key trade union prerogatives is restricted.]

Article 6§4: The Committee concludes that the situation in Romania is not in conformity with Article 6§4 of the Charter on the ground that only representative trade unions may take collective action.

[The Committee notes that according to Article 183 of the Law on Social Dialogue the right to call a strike belongs to the representative trade unions involved in the conflict and it requires the written approval of at least half of the respective trade unions' members. The Committee recalls that it has held that limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 of the Charter (Conclusions XV-1 (2000) France).

The Committee found in its previous conclusions (Conclusions 2002, 2004, 2006, 2010) that the situation was not in conformity with Article 6§4 of the Charter, on the grounds that according to the previous legislation a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members. The Committee recalls that subjecting the exercise of the right to strike to prior approval by a certain percentage of workers is in conformity with Article 6§4, provided that the ballot method, the quorum and the majority required are not such that the exercise of the right to strike is excessively limited (Conclusions XIV-1 (1998) United Kingdom).

The Committee observes that the situation in Romania has not changed as a result of the adoption of the Law on Social Dialogue. Therefore, the situation remains to be not in conformity with the Charter on this point.]

Article 28: The Committee concludes that the situation in Romania is not in conformity with Article 28 of the Charter on the ground that the protection granted to workers' representatives is not extended for a reasonable period after the end of their mandate.

[The Committee understands from the report and from the legislation examined (the Law on Social Dialogue and the Labour Code) that the protection is afforded to workers' representatives only during their mandate, but not after the end of period of their office as workers' representatives. The previous legislation, however, provided that trade union representatives cannot be dismissed for the duration of their mandate and for a period of two years following its expiration for reasons connected with their mandate, as noted by the Committee in a previous conclusion (Conclusion 2007).

The Committee recalls that the rights recognised in the Charter must take a practical and effective, rather than a purely theoretical form (International Movement ATD Fourth

World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59). To this end, the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of Interpretation on Article 28). The Committee has in other instances found the situation to be in conformity with the requirements of Article 28 in countries such as Estonia (Conclusions 2010) and Slovenia (Conclusions 2010), where the protection is extended for one year after the end of the mandate of workers' representatives or in Bulgaria (Conclusions 2010) where the protection granted to workers' representatives is extended for six months after the end of their mandate.

The Committee considers that the situation in Romania is not in conformity with Article 28 of the Charter on this point.]

Other parliamentary measures:

Article 4§1: The Committee concludes that the situation in Romania is not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage is not sufficient to ensure a decent standard of living.

[The report indicates a monthly national minimum wage set by Government decision No. 1225/2011 for 2012 (for a single person without dependants) at RON 700 (€157.30) gross and at RON 531 (€119.30) net of social contributions and tax deductions. For 2012, the average monthly income was estimated at RON 2 137 (€479.55) gross and at RON 1 547 (€347.64) net, meaning that the gross national minimum wage as a proportion of the gross average income was 32.80%.

According to EUROSTAT data for 2012 (table "earn_nt_net"), the annual average wage of single workers without children (100% of an average worker) was €5 634.97 (€469.58 per month) gross and €4 004.03 per year (€333.67 per month) net of social contributions and tax deductions. The national minimum wage as a proportion of gross average earnings (table "earn_mw_avgr2") was 34.20%.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be above the minimum threshold, which is set at 50% of the average net wage. This is the case when the net minimum wage is more than 60% of the net national average wage. When the net minimum wage lies between 50 and 60% of the net national average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee takes note of the efforts made to improve the pay situation in the long term. It notes, however, that the net national minimum wage is 34.32% of the net average wage, which is below than the minimum threshold, and can therefore not be regarded as a decent wage within the meaning of Article 4§1 of the Charter. It asks for information in the next report on any social transfers or benefits awarded to workers earning the national minimum wage and their families.]

Article 4§5: The Committee concludes that the situation in Romania is not in conformity with Article 4§5 of the Charter on the ground that, after the subtraction of the combined amount of all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

[It previously concluded (Conclusions 2007 and 2010) that the situation in Romania was not in conformity with Article 4§5 of the Charter on the ground that it had not been

established that deductions from wages would not deprive workers and their dependents of their means of subsistence. It asked for information on the measures preventing workers from waiving their right to limited deductions from wages, on the other grounds for deduction authorised (such as trade union dues, fines and reimbursement of advances on wages), and the limits applied in such cases.

Article 169, paragraph 4 of the Labour Code, as amended by Law No. 40/2011 of 31 March 2011, retains the previous provisions according to which the combined amount of deductions from wages may not exceed 50% of wages net of social contributions and tax deductions. Furthermore, Article 257, paragraph 2 of the Code limits the monthly amounts that can be deducted for the purposes of compensation for damage caused to an employer in the performance of work to one third of net wages, within the limit of the combined amount of deductions of 50% of net wages.

The Committee notes that there has been practically no change in the situation since the previous reference period. It points out that the goal of Article 4§5 of the Charter is to guarantee that workers who are protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It reiterates in the instant case that the general limit imposed by Article 169, paragraph 4 of the Code allows cases to persist in which workers have only 50% of the minimum wage, net of social contributions and tax deductions, which is an amount that does not enable them to provide for themselves and their dependants].

Russian Federation

Normative action:

Article 4§2: The Committee concludes that the situation in the Russian Federation is not in conformity with Article 4§2 of the Charter on the ground that an increased time off for overtime hours is not guaranteed.

[The Committee notes from the report that in their judgements regarding overtime remuneration, the courts have referred to Article 4§2 of the Charter and found that overtime must be remunerated at a higher rate.

The Committee further observes that according to Article 152 of the Labour Code, at the employee's request, instead of an increased remuneration, overtime work may be compensated by granting additional time off, the duration of which may not be less than the overtime worked.

In this respect, the Committee recalls (Conclusions XIV-2, Belgium) that granting leave to compensate for overtime is in conformity with Article 4§2, on the condition that this leave is longer than the overtime worked. It is not sufficient, therefore, to offer employees leave of equal length to the number of overtime hours worked. The time off granted in lieu of overtime remuneration should be of an increased duration. Therefore, the Committee considers that the situation is not in conformity with the Charter.]

Article 4§4: The Committee concludes that the situation in the Russian Federation is not in conformity with Article 4§4 of the Charter on the grounds that:

The notice period is not reasonable in the following cases:

- dismissal of employees with more than fifteen years of service following the dissolution of the organisation or reduction in staff numbers;

- dismissal of employees with more than six months of service for medical incapacity, call-up for military service, judicial or administrative reinstatement of the employee or refusal to be transferred when an employer relocates;
- dismissal during probationary periods;
- dismissal of employees in additional employment with more than six months of service upon reinstatement of the principal postholder;
- early termination of temporary contracts;

Notice periods applicable to employees of self-employed persons or religious organisations or to home workers are left to the discretion of the parties to the employment contact.

[The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the notice period may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding notice period. The Committee considers that in the instant case, the notice period and any severance pay that applies to seasonal contracts (Article 296, paragraphs 2 and 3 of the Code) are reasonable within the meaning of Article 4§4 of the Charter. It also considers that the notice period and severance pay are reasonable within the meaning of Article 4§4 of the Charter in certain circumstances, but inadequate in the following circumstances:

- *Dismissal of employees with more than 15 years of service when the organisation is dissolved or staff numbers are reduced (Article 178, paragraphs 1 and 2, and Article 180, paragraph 1 of the Code);*
- *Early termination of temporary contracts (Article 292, paragraph 2 of the Code);*
- *Dismissal of employees in additional employment with more than six months of service upon reinstatement of the principal postholder (Article 288 of the Code);*
- *Dismissal for medical incapacity, call-up for military service, judicial or administrative reinstatement of the employee or refusal by the employee to be transferred when the employer relocates, for employees with more than six months of service (Article 178, paragraph 3 of the Code).*

(…) The Committee notes that notice periods for the dismissal of employees of self-employed persons (Article 307, paragraph 2 of the Code) and religious organisations (Article 347, paragraph 2 of the Code), as well as of home workers (Article 312 of the Code) are determined by the employment contracts.

The Committee points out that protection by means of notice and/or compensation must cover all workers regardless of whether they have a fixed-term or a permanent employment contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection covers probationary periods (General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The Committee therefore considers that the notice period of three days which

applies to dismissal during probationary periods (Article 71, paragraph 1 of the Code) is insufficient in the light of Article 4§4 of the Charter.

The Committee considers that the following grounds amount to a serious offence, which is the sole exception justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania): repeated or serious professional misconduct; accounting errors leading the employer to lose trust; immoral acts making it impossible for employees to be kept in teaching posts; or the use of forged documents or false information for the negotiation of employment contracts (grounds provided in Article 81, paragraph 1, numbers 5, 7, 8 and 11 of the Code). The same does however not apply to duly confirmed insufficient qualifications for the post; changes in the ownership of the organisation; single breaches of professional duties; single breaches of professional duties by senior management; withdrawal of access to top-secret information; cases specified in the contracts of senior management or board members; and cases provided for by federal legislation (grounds given in Article 81, paragraph 1, numbers 3 (b), 4, 9, 9 to 12 and 14 of the Code). It asks for information in the next report on the notice periods and/or compensation that apply to these cases. It also asks for information on the notice and/or compensation that applies to termination of employment under Article 77, paragraph 1 of the Code under the following circumstances: refusal of the employee to continue the employment relationship when there is a change in ownership of the organisation (ground provided in Article 75, paragraph 3 of the Code); refusal of the employee to accept significant changes in working conditions as a result of changes in organisation or technologies (ground provided in Article 73 of the Code); refusal of the employee to agree to a medical transfer (ground provided in Article 72, paragraph 2 of the Code); reasons beyond the control of the parties (grounds provided in Article 83, paragraph 1 of the Code); and breaches of the rules on the negotiation of collective agreements (ground provided in Article 84 of the Code). It also notes that the cumulative duration of successive fixed-term contracts is limited to five years (Article 58, paragraph 1 of the Code) and asks for information on the notice and/or compensation applicable in the event of early termination of such contracts.

The Committee considers that in order to ensure that the protection granted by Article 4§4 of the Charter is effective, the notice and/or compensation should not be left to the discretion of the parties to the employment contract, but should be governed by legal instruments such as legislation, case law, regulations or collective agreements. In the instant case, the rule that notice periods for the dismissal of employees of self-employed persons (Article 307, paragraph 2 of the Code) and of religious organisations (Article 347, paragraph 2 of the Code), as well as of home workers (Article 312 of the Code) are determined by the employment contracts, is not in conformity with Article 4§4 of the Charter.

(…) The Committee considers that in order to ensure that the protection granted by Article 4§4 of the Charter is effective, the notice and/or compensation should not be left to the discretion of the parties to the employment contract, but should be governed by legal instruments such as legislation, case law, regulations or collective agreements. In the instant case, the rule that notice periods for the dismissal of employees of self-employed persons (Article 307, paragraph 2 of the Code) and of religious organisations (Article 347, paragraph 2 of the Code), as well as of home workers (Article 312 of the Code) are determined by the employment contracts, is not in conformity with Article 4§4 of the Charter.

Other parliamentary measures:

Article 2§4: The Committee concludes that the situation in the Russian Federation is not in conformity with Article 2§4 of the Charter, on the ground that not all workers who are in practice exposed to residual risks are entitled to appropriate compensation measures.

[The Committee recalls that, while States have a certain discretion to determine what activities are to be considered as inherently dangerous or unhealthy and what are the risks concerned, the Committee monitors their decisions. They must at least consider sectors and occupations that are manifestly dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding, and occupations exposing employees to ionising radiation, extreme temperatures and noise. The Committee asks the next report to specify whether these sectors and occupations are covered by the relevant legislation and what prevention and compensation measures apply to workers exposed to risks associated with such activities.

According to the report, workers involved in the activities listed in the abovementioned decree of 1974 are entitled to reduced working hours (Article 92 of the Labour Code) and to additional days of annual paid leave (Article 117 of the Labour Code, Government Decree of the Russian Federation of 20 November 2008, No. 870 "On establishing reduced working hours, additional annual paid leave, increased pay for workers employed in hard labour in harmful or hazardous and other special labour conditions"). The Committee notes, however, from the report that during the reference period no compensatory measures applied to workers involved in activities which were not included in the list, but whose harmful/dangerous character was established through the abovementioned workplace certification. In addition, no regulatory act has been adopted yet, pursuant to paragraph 2 of the abovementioned Decree No. 870 of 2008, to establish different types and amounts of compensation depending on the degree of hazard class of working conditions. The report refers to some case law changes occurred in this respect in 2013, out of the reference period (ruling No. 135-O of the Constitutional Court of 7 February 2013, ruling No. AKPI12-1570 of the Supreme Court of 14 January 2013). The Committee asks the next report to provide information on the impact of this case law on the rules concerning compensatory measures for workers exposed to harmful or hazardous labour conditions.

The Committee also notes that, according to the statistical data provided, out of 48.7 million jobs employing 68 million workers, 26.6 million jobs involved dangerous work conditions. In particular, in the processing, transportation and mining industry, the proportion of workers employed under harmful labour conditions was, at the end of 2012, respectively 33.4%, 35.1% and 46.2% of the total number of workers. 41.8% of the total number of employees were entitled to at least one form of remuneration. In particular, 31.1% of the total number of employees was entitled to an additional leave and 3.7% of the total number of employees was entitled to reduced working hours. The other compensatory measures provided included free nutrition in view of medical prevention reasons (1.8%), free milk or other equivalent nutrition products (18.8%), a higher salary (27.5%), free protective clothing, special footware and other means of personal protection (76.6%) and early retirement (18.9%).

The Committee points out that the aim of the compensation must be to offer those concerned sufficient and regular time to recover from the associated stress and fatigue,

and thus to maintain their vigilance. Accordingly, Article 2§4 encompasses measures such as reduced working hours, additional paid holidays and other similar measures to comply with health and safety objectives. However, early retirement or financial compensation are not relevant and appropriate measures to achieve the aims of Article 2§4. The Committee notes from the information provided that the situation is not in conformity with Article 2§4 of the Charter, on the ground that not all workers who are in practice exposed to residual risks are entitled to appropriate compensation measures.]

Article 4§5: The Committee concludes that the situation in the Russian Federation is not in conformity with Article 4§5 of the Charter on the ground that, following all authorised deductions, the wages of employees with the lowest pay do not enable them to provide for themselves or their dependants.

[The Committee points out that the goal of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It notes that in the instant case circumstances authorising deductions from wages are defined clearly and precisely by the law. It considers, however, that the limits of 20%, 50% and 70% of salary net of tax deductions provided for by Articles 176, paragraph 2 of the Code and section 99 of Federal Law No. 299-FZ still allow situations to subsist in which employees are left with only 50% or even 30% of the minimum wage, an amount that does not allow them to provide for themselves or their dependants. It asks for the the next report to state to what extent the deductions applied for the compensation of damage to employers or third parties caused by employees are subject to the limits of 20%, 50% or 70% of salary net of tax deductions.

The Committee also points out that, under Article 4§5 of the Charter, employees may not waive their right to limited deductions from wages and the way in which deductions from wages are determined should not be left to the discretion of the parties to the employment contract (Conclusions 2005, Norway). In this connection, it asks for the next report to state whether Article 136, paragraph 5 of the Code in practice allows employees to agree to the assignment of their wages to employers or third parties.]

Serbia

Normative action:

Article 4§4: The Committee concludes that the situation in Serbia is not in conformity with Article 4§4 of the Charter, on the ground that the notice period for dismissal for professional incompetence is not reasonable for employees with more than three years of service.

[The Committee recalls that, by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. Protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the grounds for the termination of employment (Conclusions XIV-2 (1998), Spain). The Committee considers that in the

present case, except for serious misconduct provided for in section 179, paragraph 1, sub-paragraphs 3 and 4 of the Act, which is the only circumstance in which immediate dismissal is authorised (Conclusions 2010, Armenia), the notice period for dismissal for professional incompetence is only reasonable for employees with less than three years of service. Furthermore, since the severance pay awarded for unfair dismissal is not mandatory, it may not replace the notice period required under Article 4§4 of the Charter.

The Committee asks that the next report indicate whether the period of five days set out in section 180, paragraph 1 of the Act in the cases of dismissal covered by section 179, paragraph 1, sub-paragraph 1 to 6 of the Act is a notice period. It also asks for information in the next report on the amounts of severance pay awarded in practice when employees are not allowed to work during notice periods pursuant to section 189, paragraph 3 of the Act. It also asks for information on the notice periods that are applied during probationary periods; to atypical employment relationships referred to in sections 197 to 202 of the Act; to civil servants and state employees; and to any other grounds for termination of employment referred to in sections 175 and 176 of the Act.]

Article 5: The Committee concludes that the situation in Serbia is not in conformity with Article 5 of the Charter on the ground that the miminum threshold imposed by legislation in order to form an employer's organisation constitutes an obstacle to the freedom to organise.

[The Committee notes that, in order to form an employers' organisation, the founding members must employ no less than 5% of the total number of employees in a given branch of industry, group, sub-group, or a line of business or in a territory of a given territorial unit (Section 216 of the Labour Law). The Committee reiterates that "when the legislation sets a minimum number of members required to form a trade union which may be considered to be manifestly excessive, this could constitute an obstacle to founding trade unions and, as such, infringe freedom of association." The Committee considers that the minimum threshold established in Section 216 of the Labour Law constitutes an obstacle to the freedom to organise, notably in the case of very small, small and medium-sized undertakings, and is therefore not in conformity with Article 5 of the Charter.]

Other parliamentary measures:

Article 6§4: The Committee concludes that the situation in Serbia is not in conformity with Article 6§4 of the Charter, on the ground that workers are not involved on the same footing as employers during the procedures that are conducted to determine the "minimum service" required in connection with the restrictions on the right to strike with regard to some "general interest" services.

[From a "Direct Request" drawn up by the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (ILO/CEACR), the Committee notes that under Section 10 of the Law on Strike Action, in the case of strikes involving activities "in the general interest", employers have the power to unilaterally determine the minimum services required after having consulted the trade union. If such services are not determined within the five-day period before a strike, the competent public or local authority takes the necessary decisions. The same source indicates that the International Trade Union Confederation (ITUC) states that "the notion of "essential services" is very broad, and that the procedures for determining the minimum

service are set out in Government regulations and can even lead to a total ban on strike action." It furthermore indicates that the Confederation of Autonomous Trade Unions of Serbia (CATUS) considers that "decisions on minimum services are made in practice without taking the trade union's opinion into account" (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Serbia (Ratification: 2000)).

The Committee recalls that establishing a minimum service in essential sectors may be considered to be in conformity with Article 6§4 of the Charter (Conclusions XVII-1 (2004), Czech Republic). However, it is essential that, even if the final decision is based on objective criteria prescribed by law (such as the nature of the activity, the extent to which people's lives and health are endangered and other circumstances, such as the time of year, the tourist season or the academic year), workers or their representative bodies are regularly involved in determining, on an equal footing with employers, the nature of "minimum service". The Committee notes that in Serbia, there is no guarantee that workers will be involved in such procedures.

Furthermore, the Committee notes that in the ITUC's 2009 Annual Survey of Violations of Trade Union Rights is stated that in Serbia, "strike action cannot be undertaken if parties to a collective agreement do not reach an agreement. The dispute is then subject to compulsory arbitration". The Committee invites the Government to comment on this statement.]

Slovak Republic

Normative action:

Article 2§1: The Committee concludes that the situation in Slovak Republic is not in conformity with Article 2§1 of the Charter on the ground that the working hours in a 24 hours period may be up to 16 hours.

[In its previous conclusion (Conclusions 2010) the Committee found that the situation was not in conformity with the Charter as the Labour Code permitted daily working time of up to 16 hours in certain types of work.

Article 92 of the Labour Code states that an employer is obliged to arrange working time in such a way that between the end of one shift and the beginning of another, an employee has the minimum rest of 12 consecutive hours within 24 hours. Such a rest period may be reduced to 8 hours for an employee older than 18 years in continuous operations and when performing urgent agricultural work, urgent repair work concerning the averting of a threat endangering the lives or health of employees and in case of extraordinary events.

As regards the situation of non-conformity, the report states that the Labour Code allows the maximum admissible daily working time to be no more than 12 hours, with no exceptions. It also states, however, that even where in exceptional cases an 8-hour break between two shifts is allowed, the working time must be scheduled so that the maximum working time in the course of any 24 hour period does not exceeded 12 hours.

The Committee considers that in a single 24 hour period it will be impossible to schedule working time in a way that would meet both conditions: the maximum of 12 hours of uninterrupted working time and the 8 hours break between the shifts. It is the Committee's

understanding that in practice wherever the rest period between the shifts is reduced to 8 hours, the remaining time (16 hours) will be considered as available working time in any single 24 hour period.

The Committee reiterates its previous conclusion of non-conformity on the ground that the working hours in a 24 hour period may be up to 16 hours in certain occupations which go beyond what can be considered as extraordinary or exceptional circumstances.]

Article 2§2: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated, when the minimum standards of compensation are applied.

[The Committee takes notes of the list of public holidays, days of rest and commemorative days laid down by Act No. 241/1993 Coll. and of the list of activities that, as an exception, can be performed on public holidays. It notes that further restrictions to the activities allowed on public holidays apply to certain dates (1st January, Easter Sunday, 24 December after 12:00 hours and 25 December).

Under the Labour Code, the employer and the worker can agree that work performed on public holidays be compensated by an equivalent amount of time off, on a one-to-one basis (1 hour worked = 1 hour off). If the time off agreed is not granted within three months, the worker is entitled to the normal remuneration for the time worked, increased by at least 50% (100% under Act No. 553/2003 concerning the remuneration of certain workers in the public administration). Higher levels of compensation for work performed on public holidays can be defined by the collective agreements or the employment contract. The Committee asks that the next report clarify whether public holidays are paid (worked or not) and in particular whether, in all cases where compensatory time off is granted, the employee working on a public holiday is also entitled to the regular remuneration. It furthermore asks what categories of workers are concerned by the minimum 100% wage bonus as per Act No. 553/2003 and what categories of workers are concerned by the minimum 50% wage bonus.

The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday. In this respect, in light of the information available, the Committee notes that the situation that it previously considered not to be in conformity with the Charter (Conclusions XIX-3 (2010)), has not changed insofar as work performed on a public holiday is not compensated at a sufficiently high level when the minimum standards of compensation are applied.]

Article 2§5: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 2§5 of the Charter on the ground that the weekly rest can be postponed for a period exceeding twelve consecutive working days.

[Article 93 of the Labour Code provides that the employer must arrange working time in such a way that an employee has two consecutive days of continuous rest once per

week, which must fall on Saturday and Sunday or on Sunday and Monday. If the nature of the work or its operational conditions do not permit the scheduling of working time in a way allowing a weekly rest, as provided, the employee must at least be entitled to 24 hours of continuous rest once every two weeks provided that the employer subsequently provides the employee alternative continuous rest during the week within four months of the date when continuous rest in the week should have been provided. According to Article 94, work on days of rest, i.e. days of uninterrupted rest in the week and public holidays, may be ordered only in exceptional cases, following consultation with employee representatives and only to perform essential works that cannot be done on weekdays, namely: a) urgent repair work; b) loading and unloading work, c) stock-taking and closing of accounts work, d) work performed in continuous operations for an employee who failed to take up his/her shift, e) work for averting threat endangering life or health, or in case of extraordinary events, f) imperative work with regard to satisfying the living, health and cultural needs of the population, g) feeding and care of agricultural animals, h) imperative work in agriculture crop production with planting, cultivating and harvesting of crops and in the processing of foodstuff raw materials.

The Committee considers that the weekly rest period may be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two-day rest period. It notes from the report that, although only exceptionally, under Slovak legislation the weekly rest period may be deferred in such a way that a worker might work two weeks, i.e. more than twelve consecutive days, before being granted a rest period. It accordingly holds that the situation is not in conformity with Article 2§5 of the Charter.]

Article 4§4: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§4 of the Charter on the grounds that:

- notice periods on dismissal on economic, health, or any other grounds are not reasonable beyond five years of service;
- three days' notice periods on dismissal during the probationary period are not reasonable.

[The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee examines notice periods in combination with available compensation and considers that severance paid upon dismissal on severe grounds of health (Article 76, paragraph 4 of the Code) is in conformity with Article 4§4 of the Charter. It also considers that notice periods and/or compensation on dismissal on economic grounds or grounds of health (Article 62, paragraph 3 of the Code) are in conformity with Article 4§4 of the Charter in some situations, but not beyond five years of service. It further considers that notice periods and/or compensation in lieu thereof on any other grounds of dismissal (Article 62, paragraphs 2 and 4 of the Code) are not in conformity beyond five years of service.

(…)The Committee points out that the protection under Article 4§4 of the Charter extends to probationary periods (General Federation of Employees of the National

Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). It notes in the present case that the probationary period is limited to three months in general and to six months for managers (Article 45, paragraph 1 of the Code), but may now be extended by collective agreement to six months in general and up to nine months for managers (Article 45, paragraph 5 of the Code). It considers that, given the possible duration of that period, the notice period of three days set out in Article 72, paragraph 2 of the Code is inadequate with regard to Article 4§4 of the Charter.]

Article 4§5: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§5 of the Charter on the grounds that:

- workers may waive their right to limitations on deductions from wages; (…)

[The Committee points out that, under Article 4§5 of the Charter, employees may not waive their right to the restriction on deductions from wages and the way in which such deductions are determined should not be left to the discretion of the parties to the employment contract (Conclusions 2005, Norway). It considers in the present case that any grounds for deduction by written consent under Article 131, paragraph 3 of the Code are not defined by laws, regulations, collective agreements or arbitration awards as required under Article 4§5 of the Charter. It therefore reiterates its previous conclusion of non-conformity on this issue].

Article 6§4: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 6§4 of the Charter on the ground that the restrictions on the right to strike for certain categories of employees (employees of healthcare or social care facilities; employees operating nuclear power plant facilities, facilities with fissile material and oil or gas pipeline facilities; judges, prosecutors and air traffic controllers; members of the fire brigade, members of rescue teams set up under special regulations, and employees working in telecommunications operations) do not comply with the conditions provided by Article G of the Charter.

[The Collective Bargaining Act of the Slovak Republic provides for restrictions to the right to strike as described in the Committee's previous conclusions (Addendum to Conclusions XV-2, pp. 165-168, Conclusions XVI-2, pp. 37-40, Conclusions XVIII-1). Restrictions particularly concern civil servants such as judges, prosecutors, members of the armed forces, fire-fighters and air traffic controllers but also workers employed in the social, health, telecommunication and nuclear sectors, where a strike could endanger people's life or health.

The Committee recalls that any restriction to the right to strike may only be imposed under the conditions laid down in Article G of the Charter (Conclusions X-1 (1987), Norway (regarding Article 31 of the Charter). In the particular circumstances at stake, the Committee has repeatedly asked whether and how the limitations provided in the Slovak law have been interpreted and applied in practice in the light of this provision. Moreover, the Committee asked how minimum services during strike action were organised in practice. None of the previous reports provided the requested information.

Again, the report does not address the abovementioned requests of the Committee. The report confirms that judges, prosecutors, members of the armed forces, employees in

charge of air traffic control, employees operating equipment of nuclear power stations are prohibited from striking. The report indicates that there have been no initiatives to change this situation either from the employees, or from the employers' representatives.

The Committee recalls that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to the public interest, national security and/or public health (Conclusions I (1969), Statement of Interpretation on Article 6§4). However, simply banning strikes in these sectors is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4 (Conclusions XVII-1 (2004), Czech Republic). As there is no provision for the introduction of a minimum service and strikes are simply prohibited for the abovementioned categories of employees, the Committee finds that the situation is not in conformity with the Charter.

The Committee considers that there is no evidence that the restrictions on the right to strike applying to the abovementioned categories of employees fell within the limits of Article G. Since the situation remains unchanged during the reference period, the Committee still considers that it is not in conformity with Article 6§4 of the Charter. The Committee reminds the Government of its obligation to take steps to bring the situation into conformity with the Charter].

Article 28: The Committee concludes that the situation in Slovak Republic is not in conformity with Article 28 of the Charter on the ground that the legislation does not provide for adequate protection in the event of an unlawful dismissal based on trade union membership or activities.

[The Government indicates that workers' representatives have at their disposal the same remedies to allow them to contest acts prejudicial to them as any other person. They are able to anytime file a complaint to the relevant court and begin the court proceedings.

The Government also states that a compensation for the damage suffered by the workers' representative that has been dismissed is guaranteed at the same level as it is guaranteed for any other employee. The court decides on the level of compensation. It is indicated that wage compensation up to the amount corresponding to 36 months may be provided to the person.

The Committee recalls that in the particular case of termination of employment on the ground of trade union activities, it considered – in accordance with its ruling under Article 24 of the Charter, which prohibits termination of employment without valid reason (Conclusions 2003, p. 76-82) – that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement. The Committee considered for example that the situation is not in conformity with Article 28 of the Charter in the case of Bulgarian legislation that provides for damages up to a maximum of 6 months wages in the event of discriminatory dismissal because of trade union activities (Conclusions 2004 Bulgaria).

The Committee considers that the situation in Slovak Republic is not in conformity with Article 28 of the Charter as the legislation does not provide for adequate compensation which would be proportionate to the damage suffered by the victim in case of dismissal based on trade union activities.]

Other parliamentary measures:

Article 4§1: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§1 of the Charter, on the ground that the minimum wage does not ensure a decent standard of living.

[According to Statistical Office data for 2012 (STATDAT table "earnings of employees by NACE Rev.2"), average nominal monthly earnings were €881 (which is €10 572 per annum) overall, and €1 159 in the Bratislava region. They were particularly low in Poltár (€634); Rimavská Sobota (€616); Veľký Krtíš (€617); Bardejov (€604); Kežmarok (€635); Snina (€626); Stropkov (€645); Vranov nad Topľou (€649); Gelnica (€620); and Košice III (€645) counties. Pay was also particularly low in sectors such as accommodation and catering (€545); administrative and support services (€644); arts, entertainment and recreation (€705); education (€717); and agriculture, forestry and fishing (€727).

According to EUROSTAT data for 2012 (table "earn_nt_net"), average annual earnings of single workers with no children (100% of the average worker) were €9 810.00 gross and €7 573.82 net of social contributions and tax deductions; the gross monthly minimum wage (table "earn_mw_cur") (full-time equivalent) was €327.00 (which is €3 924.00 per annum); and that wage as a proportion of the average earnings (table "earn_mw_avgr2") was 36.7%.

The Committee notes that the UN Committee on Economic, Social and Cultural Rights (Concluding observations of 8 June 2012, §15) expressed the concern that, despite efforts in that regard, the minimum wage was not sufficient to ensure a decent standard of living for workers and their families.

The Committee points out that, to comply with Article 4§1 of the Charter, a decent wage must exceed the minimum threshold, set at 50% of the national net average wage. This is the case when the net minimum wage exceeds 60% of the national net average wage. Where the net minimum wage is between 50% and 60% of the national net average wage, it is for the State Party to show that this wage makes it possible to ensure a decent living standard (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee is satisfied in the present case that lower pay rates for young workers and workers with disabilities have been repealed under the Minimum Wage Act. However, it notes that, where applicable, the net statutory minimum wage is 45.53% of the net average wage, a level which remains too low to ensure a decent standard of living within the meaning of Article 4§1 of the Charter.]

Article 4§2: The Committee concludes that the situation in Slovak Republic is not in conformity with Article 4§2 of the Charter on the ground that the time off to compensate overtime work is not sufficient.

[In its previous conclusion (Conclusions 2010) the Committee found that the situation was not in conformity with the Charter as the time off to compensate overtime work was not sufficiently long. In this respect the report states that the length of time-off in lieu of overtime is equal to the length of overtime worked. There have been no proposals or requests from social partners to change this provision when it was drafted during tripartite consultations.

The Committee reiterates the aim of Article 4§2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the

form of an increased rate of remuneration. However,the Committee recognises reward in the form of time off, provided that the aim of the provision is met. This means, in particular, that where remuneration for overtime is entirely given in the form of time off, Article 4§2 requires that this time be longer than the additional hours worked (Conclusions XIV-2, Belgium). The principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage (Conclusions XIV-2, Statement of Interpretation of Article 4§2).

Consequently, the Committee considers the situation which it previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its finding of non-conformity.]

Article 4§5: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§5 of the Charter on the grounds that:

- workers may waive their right to limitations on deductions from wages; (…)

[The report reiterates the grounds for deductions from wages allowed in priority under Article 131, paragraph 1 of the Labour Code, and the grounds for such deductions allowed on the remaining portion under Article 131, paragraph 2 of the Code. Any further deductions from wages require the employee's written consent under Article 131, paragraph 3 of the Code. According to the report, grounds for deduction under this provision are not limited by laws, regulations, collective agreements or arbitration awards, but left to the parties so as to preserve contract freedom. They may include written consent under Article 20, paragraph 2 of the Code to settle claims for damages against the employee.

However, the employer may not deduct more than the portion of the wage which is attachable under Government Regulation No. 268/2006 on the amount of wage deductions in execution of a decision, which sets the following limits:

- *A basic unattachable portion of 60% of the subsistence minimum for an adult person;*
- *An additional unattachable portion of 25% of the subsistence minimum for each dependant person;*
- *An additional unattachable portion of 25% of the subsistence minimum if deductions are made from the payrolls of both spouses;*
- *An additional unattachable portion of 25% of the subsistence minimum for persons in whose favour the enforcement of a decision for recovering a maintenance claim is under way.*

Some further deductions may be allowed, in accordance with Article 277 of the Code of Civil Procedure, on up to one third of the remaining amount. (…)The Committee also points out that the aim of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers in the present case that the unattachable portion of the wage set out in Government Regulation No. 268/2006 is too low to protect a wage level sufficient to ensure subsistence for the worker and his dependents. It therefore reiterates its previous conclusion of non-conformity on this issue.

The Committee asks the next report to indicate whether the limits set out in Government Regulation No. 268/2006 extend to the grounds for deduction from wages set out in Article 131, paragraphs 1 and 2 of the Code. It also asks to indicate limits applied to

other grounds of deductions, such as criminal or disciplinary fines; compensation for wages in kind (Article 127, paragraph 1 of the Code); assignment of wages (Article 130, paragraph 6 of the Code); decline in business].

Article 6§2: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 6§2 of the Charter on the ground that the voluntary negotiations are not sufficiently promoted in practice.

[The Committee takes note of the information provided by the representative of the Slovak Republic in the Governmental Committee according to which it is estimated that only 30% of the total number of employees are covered by collective master agreements in the Slovak Republic (see Report of the Governmental Committee Concerning Conclusions XIX-3 (2010).

The Committee recalls that according to Article 6§2, if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary (Conclusions I, Statement of Interpretation on Article 6§2). The Committee notes that the report does not indicate the concrete positive measures taken by the Slovak Republic in order to facilitate and encourage the conclusion of collective agreements. The Committee considers that the conclusion of collective agreements is not sufficiently encouraged in practice, as it results in a limited number of workers being covered by collective agreements. Therefore, the situation is not in conformity with Article 6§2 of the Charter on this point.]

Slovenia

Normative action:

Article 2§1: The Committee concludes that the situation in Slovenia is not in conformity with Article 2§1 of the Charter on the ground that in some collective agreements on-call time spent at home in readiness for work during which no effective work is undertaken is assimilated to rest periods.

[In its previous conclusion (Conclusions 2010) the Committee asked for some examples of collective agreements in the private sector which contain less favourable provisions for workers regarding on-call time. In reply, the report states that the majority of collective agreements in the private sector refer to on-call work at home in connection with the allowance to which the worker is entitled when he/she is on call (as a rule at a 10% rate, some at a 15% rate).

The report provides several examples of collective agreements regulating on-call work. In the metal products industry and electrical industry on-call time at home must not exceed 5 days per month and is not included in the working hours. The collective agreement of insurance business provides that workers who are on-call at home are entitled to an allowance amounting to at least 10% of the basic salary. The collective agreement for the railway transport industries provides that the total on-call time may not exceed 150 hours per month. The on-call work at home is not included in full-time hours.

The collective agreement on the banking sector defines on-call work as time outside regular working hours ordered by the employer, for which the worker is entitled to receive an allowance.

Some collective agreements also refer to standby duty at the workplace, with an allowance of 20%. The collective agreement for Slovenia's insurance business provides that standby duty is included in the working hours and the worker is entitled to the allowance for overtime work for the hours of standby duty. In addition to the allowance, collective agreement on electricity industry specifies that the effective work performed while on stand-by is paid as overtime work.

The Committee understands that when standby duty takes place at the workplace, it counts as working hours in its entirety. Effective work performed is remunerated at an overtime rate while the rest of the standby period spent in readiness for work, is remunerated with an allowance of for example 20%. However, the on-call periods spent at home do not in all cases count as working hours, unless effective work is undertaken.

The Committee recalls that in its decision on the merits of 23 June 2010 Confédération générale du travail (CGT) v. France (§§ 64-65), Complaint No. 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an inactive part of on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee considers that the situation is Slovenia is not in conformity with the Charter, on the ground that in some collective agreements on-call time spent at home in readiness for work during which no effective work is undertaken is assimilated to rest periods in their entirety].

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

Notice periods are not reasonable for employees with more than three years of service in the following circumstances:

- dismissal in companies with ten employees or fewer in accordance with some collective agreements;
- receivership or liquidation;
- ordinary dismissal for economic reasons;
- No notice period is provided for in the following circumstances:
- dismissal on refusal to transfer a contract to a successor employer;
- dismissal during probationary periods;
- expiry of work permits;
- liquidation where no administrator has been appointed.

[The report states that from 1 January 2009 onwards, the notice periods for ordinary dismissal (Article 92, paragraph 2 of the ERA) were standardised by Law No. 103/2007, which also entitled companies with ten employees or fewer to provide for shorter notice periods than the statutory period by means of collective agreements (Article 91 of the ERA). According to the previous report, to which the current one refers, only four out of

30 collective agreements take advantage of this entitlement by setting a standard period of 30 days. Furthermore, where notice periods are replaced by compensation, there must be a written agreement to this effect between the employer and the employee (Article 94, paragraphs 1 and 2 of the ERA) and the amount paid must at least be equal to what the employee would have earned during the corresponding period of notice.

The Committee notes that, during notice periods, employees are entitled to time off of about two hours per week to look for a new job (Article 95 of the ERA). It also notes that ordinary dismissal for economic reasons or professional incompetence gives rise to payment of compensation in addition to the continued payment of wages during the notice period (Article 109, paragraphs 1, 2 and 4 of the ERA).

The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at meast equivalent to the wages that would have been paid during the corresponding period of notice. Protection by means of notice periods and/or compensation must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain).

The Committee considers that in the instant case, the 30-day notice period applied in companies with ten employees or fewer in accordance with some collective agreements is not reasonable within the meaning of Article 4§4 of the Charter when it concerns employees with more than three years of service. The same applies to the exceptional period of 15 days combined with the severance pay provided for in Article 109 of the ERA in the event of receivership or liquidation (Article 103, paragraph 1 of the ERA) and of 30 days combined with the severance pay provided for in Article 109 of the ERA in the event of ordinary dismissal for economic reasons (Article 108, paragraphs 1 and 2 of the ERA).

The Committee also considers that the grounds for exceptional dismissal without notice or severance pay (Article 111, paragraph 1 of the ERA) generally equate to serious misconduct, which is the only authorised exception to the right of workers to a reasonable notice period (Conclusions 2010, Albania), except as regards refusal to transfer contracts to successor employers and inconclusive probationary periods. In this connection, it points out that the right of workers to reasonable notice periods also applies during probationary periods (General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The lack of a notice and/or compensation in those cases is, therefore, not in conformity with Article 4§4 of the Charter. The same applies to the lack of a notice and/or compensation in the event of automatic termination of employment on the expiry of a work permit, or where no administrator has been appointed in the context of liquidation proceedings (Article 119, paragraphs 2 and 3 of the ERA).

The Committee asks for information in the next report on the notice periods and/or compensation applicable in the event of termination of employment upon death of an employer who is a natural person (Article 78, paragraph 2 of the ERA) and upon early

termination of fixed-term contracts (Article 77, paragraph 2 of the ERA). It notes that the situation in Slovenia has changed since the adoption of the Employment Relations Act of 5 March 2013 (No. 21/2013), which was outside the reference period, and requests up to date information in the next report in the light of this legislation].

Sweden

Normative action:

Article 6§2: The Committee concludes that the situation in Sweden is not in conformity with Article 6§2 of the Charter on the ground that the statutory framework on posted workers does not promote the development of suitable machinery for voluntary negotiations between employers and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

[Regarding posted workers, since the Committee's previous conclusion, the Committee has decided on the admissibility and on the merits of complaint No. 85/2012 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden.

This decision was adopted outside the reference period but concerns legislation adopted during the reference period.

In Sweden, on the basis of Section 5(a) and Section 5(b) of the Foreign Posting of Employees Act (1999:678 / Amendments: up to and including SFS 2012:857, SFS 2013:351), as regards foreign posted workers, collective agreements requested by trade unions may only regulate, with the backing and by means of a collective action, the minimum rate of pay or other minimum conditions – or, as regards the particular case of posted agency workers, the pay or other conditions – within the matters referred to in Section 5 of the above-mentioned Act.

The Committee considers that such provisions impose substantial limitations on the ability of Swedish trade unions in establishing voluntary negotiations on other matters and/or to reach agreements at a higher level.

Moreover, following the changes in Section 2 of the Foreign Branch Offices Act (1992:160, Modified 2009-11-24 by SFS 2009:1083), foreign companies which conduct their economic activities in Sweden are not obliged to create a branch office with independent management in Sweden if the economic activity is made subject to the provisions on free movement of goods and services in the Treaty on the Functioning of the European Union or the corresponding provisions of the Agreement on the European Economic Area (EEA). Swedish trade unions willing to conclude agreements with the abovementioned foreign companies are therefore forced to negotiate and conclude such agreements with the responsible employers abroad.

As regards posted workers, the Committee considers that this statutory framework does not promote the development of suitable machinery for voluntary negotiations between employers and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements. Therefore the Committee concludes that the situation is not in conformity with Article 6§2 of the Charter.]

Article 6§4: The Committee concludes that the situation in Sweden is not in conformity with Article 6§4 of the Charter on the ground that the statutory framework

on posted workers constitutes a restriction on the free enjoyment of the right of trade unions to engage in collective action.

[Regarding posted workers, since the Committee's previous conclusion, the Committee has decided on the admissibility and on the merits of complaint No. 85/2012 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden.

This decision was adopted outside the reference period but concerns legislation adopted during the reference period.

Sections 5(a) and (b) of the Foreign Posting of Employees Act, taken together with the provisions of Section 41(c) of the Co-determination Act (1976:580 / Amendments: up to and including SFS 2012:855), provides that no form of collective action can be taken by trade unions if the employer shows that workers enjoy conditions of employment (including wage levels and other essential aspects of work) that are at least as favourable as the minimum conditions established in agreements at central level (Section 5(a)) or in the user undertaking (Section 5(b)).

Furthermore, under Section 41(c) of the Co-determination Act, collective action taken in violation of Section 5(a) and 5(b) is unlawful, and trade unions acting in breach of the Foreign Posting of Employees Act shall pay compensation for any loss incurred (Section 55 of the Co-determination Act).

The International Organisation of Employers sent some comments to the Committee criticizing the decision on complaint No. 85/2012, which it considers not compatible with the EU legislation on free movement of services as interpreted by the ECJ. It stresses that it is neither conceivable nor possible to change the Swedish legislation in a way that is not compatible with EU law.

The Committee considers however that this statutory framework constitutes a disproportionate restriction on the free enjoyment of the right of trade unions to engage in collective action, since it prevents trade unions taking action to improve the employment conditions of posted workers over and beyond the requirements of the abovementioned conditions. Therefore, the Committee concludes that the situation is not in conformity with Article 6§4 of the Charter.]

Article 29: The Committee concludes that the situation in Sweden is not in conformity with Article 29 of the Charter on the ground that there is no provision that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled.

[According to the report, Section 11 of the Employment Act stipulates that before taking any decision regarding changes of the business which can lead to collective redundancies, the employer must initiate the negotiations with employees' organisations. According to Section 22 of the Employment Protection Act the employer must decide which employee shall be made redundant on the basis of the priority rules, which he/she must negotiate with the trade union. Prior to such negotiations (consultations) the employer shall in good time notify the other party in writing of the reasons for the planned termination, the number of employees concerned and the time period during which such termination will occur as well as the method of calculation of any compensation to be paid.

In reply to the Committee's question regarding the means of redress in case of failure of the employer to fulfil the obligation to prior information and consultation, the report states that if an employer does not fulfil the obligation according to the law a trade union whose rights have been violated can take legal action in the labour court and claim damages. The intention with this kind of damages is to effectively prevent deviations from the law. According to the report, the refusal to negotiate is regarded as a serious breach of the law. The size of the non-punitive damage that the employer has to pay to the trade union is in practice decided by the court.

The Committee recalls that the right to be informed and consulted must be backed by guarantees to ensure that consultation actually takes place. If an employer fails to respect his obligations, provision must be made for preventive measures, that is, the minimum administrative or judicial proceedings before the redundancies take effect, to ensure that they do not take place until the obligation to consult has been fulfilled (Conclusions 2003, Statement of Interpretation). The Committee has observed that there is no right for employee representatives/trade unions to seek an order requiring an employer to inform and consult his/her employees prior to redundancies taking place and thus no provision is made for some possibility of recourse to administrative or judicial proceedings before redundancies are made to ensure that they are not put into effect before the consultation requirement is met (Conclusions 2007).

In reply to the Committee's supplementary question, the Government indicates that the employer cannot, as a main rule, take and implement a decision before he/she has fulfilled the duty to negotiate. According to Article 13 of the Employment Act an employer who is not bound by a collective agreement is obliged to negotiate with all affected employees' organisations in all matters relating to termination of employment as a consequence of collective redundancies.

The Committee considers that there is no provision that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled. Therefore, the Committee holds that the situation is not in conformity with the Charter.]

Turkey

Normative action:

Article 2§1: The Committee concludes that the situation in Turkey is not in conformity with Article 2§1 of the Charter on the ground that the legislation allows weekly working time to be up to 66 hours.

In its previous conclusion (Conclusions 2012) the Committee asked whether the regulations in place (Article 63 of the Labour Act No 4857) would allow a worker to work 66 hours (11 hours per day during a 6 day working week) in some of the weeks of the reference period on condition that the average weekly working time does not exceed 45 hours under flexible working time arrangements.

[The Committee notes in this respect that the Turkish legislation still allows a worker to work 66 hours in some of the weeks of the reference period, provided that this is compensated by working less in other weeks so that the average of the reference period does not exceed 45 hours.

The Committee recalls in this respect that flexibility measures regarding working time are not a such in breach of the Charter. It recalls (Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38) that in order to be found in conformity with the Charter, national laws or regulations must fulfil three criteria:

- *they must prevent unreasonable daily and weekly working time. The maximum daily and weekly hours (up to 16 hours a day and more than 60 hours a week) must not be exceeded in any case.*
- *they must operate within a legal framework providing adequate guarantees. A flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.*
- *they must provide for reasonable reference periods for the calculation of average working time. The reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances.*

The Committee observes that the flexible working time arrangements in Turkey fail to satisfy the first condition, that is, they allow an individual working week to be longer than 60 hours. Therefore, the situation is not in conformity with the Charter.]

Article 4§2: The Committee concludes that the situation in Turkey is not in conformity with Article 4§2 of the Charter on the ground that civil servants are not entitled to an increased time off in lieu of remuneration for overtime hours.

[The Committee notes that according to Article 178 of the Civil Servants Law No 657 and by the Regulation on Procedures of Application of Overtime Work, the work exceeding 40 hours of general weekly duration of work of civil servants is defined as overtime work. Civil Servants can take leave in return for overtime work. One day of leave is calculated for every 8 hours of overtime work performed.

In this connection, the Committee recalls that granting leave to compensate for overtime is in conformity with Article 4§2, on condition that this leave is longer than the overtime worked (Conclusions XIV-2, Belgium). It is not sufficient, therefore, to offer employees leave of equal length to the number of overtime hours worked.

The Committee considers that the time off granted in lieu of remuneration for overtime for civil servants is not of an increased duration. Therefore, the situation is not in conformity with the Charter on this point.]

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

- no period of notice is required for dismissal during a probationary period;
- no period of notice is required for dismissal on the grounds of long-term illness, custody or arrest.

[The Committee points out that protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection includes probationary periods (General Federation of Employees of the National Electric

Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The lack of notice for dismissal during probationary periods (section 15, paragraphs 1 and 2 of the Labour Act) is, therefore, not in conformity with Article 4§4 of the Charter. Noting that the early termination of fixed-term contracts is also subject to the requirements of section 17, paragraph 2 of the Labour Act, but that such contracts may potentially be renewed on an unlimited basis, the Committee requests that the next report indicate whether the length of service taken into account for determining periods of notice and severance pay is in line with the total duration of the repeated contracts.

The Committee also considers that inappropriate lifestyles resulting in duly established health consequences and immoral and dishonourable conduct (grounds given in section 25-I(a) and (b), and 25-II of the Labour Act) correspond to serious offences, which are the sole exceptions justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania). This is, however, not true of the other cases of immediate dismissal on the grounds of long-term illness, force majeure or being taken into custody or arrested (grounds given in section 25-I, last paragraph, 25-III and 25-IV of the Labour Act). The lack of notice or compensation in these cases of dismissal (grounds given in section 25-I, last paragraph, and 25-IV of the Labour Act) is not in conformity with Article 4§4 of the Charter. The Committee asks for the next report to specify the application in law and practice of the provisions in section 14, paragraphs 1 and 2 of Act No. 1475 in respect of dismissal on the grounds of health or force majeure (grounds given in section 25-I and 25-III of the Labour Act). Pending receipt of such information it reserves its position on this issue.]

Other parliamentary measures:

Article 2§6: The Committee concludes that the situation in Turkey is not in conformity with Article 2§6 of the Charter on the ground that it is not established that the right to information on the employment contract is fully guaranteed.

[The report states that under Section 8 of Labour Act No. 4857, the employment contract is not subject to any special form unless otherwise provided by the Labour Act. A written form is required for employment contracts with a fixed duration of one year or more. In cases where no written contract has been made, the employer is under the obligation to provide the employee with a written document, within two months at the latest, presenting the general and special conditions of work, the daily or weekly working time, the basic wage and any wage supplements, the time intervals for remuneration, the duration if it is a fixed term contract, and conditions concerning the termination of the contract. The Committee asks that the next report clarify whether the obligation to provide a written contract or document containing information on the essential working conditions applies to employment relationships of less than one year.

With reference to the question previously raised (Conclusion 2010), the Committee notes that it does not appear from the report that all essential aspects of the employment relationship or contract, as provided for by Article 2§6 of the Charter, are provided in writing to the employees upon commencement of their employment. It accordingly considers it not to be established that the situation is in conformity with Article 2§6 in this respect.]

Article 4§5: The Committee concludes that the situation in Turkey is not in conformity with Article 4§5 of the Charter on the ground that, after all authorised

deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

[The Committee points out that the objective of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It notes that in the present case, the circumstances in which deductions from wages are authorised are not clearly and precisely defined by the legal instruments (laws, regulations, collective agreements and case law) in force. It considers that the available portion of 25% of the wage provided for by section 35 of the Labour Act and, even more so, the right to exceed this amount for the recovery of maintenance payments allows situations to persist in which workers receive only 75% or less of the minimum wage, an amount which does not enable them to provide for themselves or their dependants. This is also the case with the protected portion of the wage described in section 83, paragraphs 1 and 2 of the Enforcement and Bankruptcy Act. The Committee asserts that maintenance obligations in relation to family members should not be fulfilled to the detriment of the protection owed under Article 4§5 of the Charter.]

Article 22: The Committee concludes that the situation in Turkey is not in conformity with Article 22 of the Charter on the ground that it has not been established that legal remedies are available to workers for infringements of their right to take part in the determination and improvement of working conditions and the working environment.

[The report does not provide any information concerning legal remedies and sanctions in cases of breach of the right of workers to take part in the determination and improvement of working conditions, work organisation and working environment. The Committee therefore concludes that the situation is not in conformity on the ground that it has not been established that legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

According to the Law on Occupational Health and Safety No. 6331, workers and/or their representatives are entitled to appeal before the authority responsible for the protection of safety and health at work if they consider that their right to participate in the decision-making process concerning the protection of health and safety within the undertaking is not respected. Article 26 of this Law imposes an administrative fine on the employer who fails to fulfill its obligation. The Committee asks the next report to provide detailed information on the authority responsible for the protection of safety and health at work. It also wishes to know whether there exists a possibility of appeal to the courts when these rights are not respected.]

Article 26§1: The Committee concludes that the situation in Turkey is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work.

[The Committee has previously noted that a sexually harassed worker who quits his/her job under Article 24 of the Labour Code is entitled to severance pay, on condition that he/she has served for at least one year, and to discrimination compensation. In addition, the report states that Article 49 of the Code of Obligations provides that whoever harms

somebody in consequence of a "quasi-delict" and unlawful legal acts has to indemnify this person. Article 417 of the same Code further provides that "the compensation by the employer of the damages – caused by her/his conduct contravening the law and contract – such as the death of the employee, the damage of the employee's physical integrity or the violation of her/his personal rights, are subject to the provisions of responsibility arising from the contradiction to the contract".

The Committee recalls that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or forced to resign for reasons linked to sexual harassment.

The Committee takes note that a right to compensation exists under the abovementioned provisions of the Labour Code and Code of Obligations and reiterates its request of information as regards the right to reinstatement of victims of sexual harassment, including when the person has been pushed to resign because of the sexual harassment. Pointing out that the effectiveness of the legal protection against sexual harassment depends on how the domestic courts interpret the law as it stands, the Committee asks that the next report provide relevant examples of case law in the field of sexual harassment. In the meantime it considers it not to have been established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work.]

Article 26§2: The Committee concludes that the situation in Turkey is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work.

[The Committee has previously noted that a worker who quits his/her job under Article 24 of the Labour Code on account of harassment is entitled to severance pay, on condition that he/she has served for at least one year, to discrimination compensation of up to four month's wages and the restoration of his/her rights. During the reference period, 18 breaches of the principle of equal treatment (Article 5 of the Labour Code) were found, and administrative fines were imposed for a total amount of TRY 15 630 (€ 6 600 at the rate of 31 December 2012).

In addition, the report states that Article 49 of the Code of Obligations provides that whoever harms somebody in consequence of a "quasi-delict" and unlawful legal acts has to indemnify this person. Article 417 of the same Code further provides that "the compensation by the employer of the damages – caused by her/his conduct contravening the law and contract – such as the death of the employee, the damage of the employee's physical integrity or the violation of her/his personal rights, are subject to the provisions of responsibility arising from the contradiction to the contract".

The Committee recalls that victims of moral harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make

good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or forced to resign for reasons linked to moral harassment.

The Committee takes note that a right to compensation exists under the abovementioned provisions of the Labour Code and Code of Obligations and reiterates its request for information as regards the right to reinstatement of victims of harassment, including when the person has been pressured to resign because of the moral harassment. Pointing out that the effectiveness of the legal protection against moral harassment depends on how the domestic courts interpret the law as it stands, the Committee asks the next report to provide relevant examples of case law in the field of moral harassment. In the meantime it considers it not to have been established that employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work.]

Ukraine

Normative action:

Article 2§7: The Committee concludes that the situation in Ukraine is not in conformity with Article 2§7 of the Charter on the ground that the right to just conditions of night work is not guaranteed, that is:

- there is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter;
- it is not established that the law provides for possibilities of transfer to daytime work, and
- it is not established that continuous consultation is ensured with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

[The Committee notes from the report that, although the legislation provides a definition of "night", as the period comprises between 10 pm and 6 am, no specific definition of "night worker" applies. Furthermore, during the reference period, there has been no change to the situation which it previously found to be not in conformity with Article 2§7 on account of the lack of provision for medical examinations prior to employment on night work and regularly thereafter. In addition, the report does not clarify whether and under what circumstances a worker might be removed – on a temporary or permanent basis – from night work and transferred to a daytime suitable post. Moreover, although some consultation with trade unions is provided for as regards the setting up of shift working schedules, the report does not indicate that continuous consultation with the workers representatives is ensured as regards the night work conditions and the measures taken to reconcile the needs of workers with the special nature of night work. For all these reasons, the Committee considers that the situation is not in conformity with Article 2§7 of the Charter.]

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

Notice periods are not reasonable in the following circumstances:

- termination of employment for refusal to agree to a transfer when the undertaking relocates or refusal to accept essential changes in working conditions;

- dismissal as a result of changes in the organisation of production or labour or a reduction in staff numbers;
- dismissal for unfitness for medical reasons, lack of qualification or withdrawal of access to top-secret information; or the reinstatement of the previous post holder, beyond seven years of service;
- termination of employment or dismissal on all other grounds, beyond two years of service;

No notice is required for dismissal during the probationary period.

[The Committee notes that Article 49[2], paragraph 1 of the Code establishes a standard, predetermined notice period of two months, combined, in accordance with Article 44 of the Code, with a payment equivalent to one month's salary upon termination of employment or dismissal on grounds provided for in Article 36, paragraph 1, No. 6 and Article 40, paragraph 1, Nos. 1, 2 and 6 of the Code.

The Committee notes that there is a plan to revise the Code. It points out, however, that its task is to examine the situation that obtains during the reference period. It also reiterates that in accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being primarily determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee considers that in the preseent case, the standard notice period provided for in Article 49[2], paragraph 1 of the Code, together with any compensation provided for in Article 44, are reasonable within the meaning of Article 4§4 of the Charter in some circumstances, but inadequate in the following circumstances:

Termination of employment for refusal to agree to a transfer when the undertaking relocates or refusal to accept essential changes in working conditions (grounds given in Article 36, paragraph 1, number 6 of the Code); dismissal upon changes in the organisation of production or labour or a reduction in staff numbers; on grounds of unfitness for medical reasons, lack of qualification or withdrawal of access to top-secret information; the reinstatement of the previous post holder (grounds given in Article 40, paragraph 1, numbers 1, 2 and 6 of the Code), beyond seven years of service;

Termination of employment or dismissal on all other grounds, beyond five years of service.

(…)The report states that under Article 27, paragraphs 1 and 2 of the Code, probationary periods are in general limited to three months, to one month for unskilled or semi-skilled workers and to six months in cases provided for by collective agreements. Under Article 28, paragraph 2 of the Code, dismissal is authorised at any point during the probationary period without notice or compensation.

The Committee points out that protection by means of notice and/or compensation must cover all workers regardless of whether they have a fixed-term or a permanent employment contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection includes probationary periods (General Federation of Employees of the National Electric

Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The Committee therefore considers that the lack of any notice and/or compensation during probationary periods (under Article 28, paragraph 2 of the Code) is not in conformity with Article 4§4 of the Charter.]

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

- the restrictions on the right to strike for employees working in the emergency and rescue services, at nuclear facilities, in underground undertakings as well as at electric power engineering enterprises do not comply with the conditions established by Article G of the Charter;
- the restrictions on the right to strike for employees working in the transport sector do not comply with the conditions established by Article G of the Charter;
- civil servants are denied the right to strike.

[The Committee recalls that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health (Conclusions I (1969), Statement of Interpretation on Article 6§4). However, simply banning strikes even in essential sectors, particularly when they are extensively defined, is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4 (Conclusions XVII-1 (2004), Czech Republic). As there is no provision for the introduction of a minimum service, and strikes are simply prohibited for the abovementioned categories of employees, the Committee finds that the situation is not in conformity with the Charter.

With regard to the public servants, in its previous conclusion (Conclusions 2010) the Committee found the situation in Ukraine not to be in conformity with Article 6§4 of the Charter on the ground that all civil servants are denied the right to strike. The report indicates that the legislation has not changed during the reference period. Also, the report indicates that according to Article 24 of the Law on the Procedure for Settlement of Collective Labour Disputes, strikes are prohibited for employees, other than technical and maintenance personnel, of the state prosecutor's office, of the judiciary, of the Armed Forces, of state authorities, of security and of law and order state bodies. Furthermore, according to the Law on Civil Service 3723-XII of 16 December 1993, civil servants cannot take part in strikes and take other actions that interfere with the normal functioning of the state body. Moreover, the report indicates that according to the new Law on Civil Service No. 4050-VI of 17 November 2011 which entered into force on 1 January 2014, a civil servant has no right to call a strike and to take part in it.

The Committee recalls that public officials enjoy the right to strike under Article 6§4 of the Charter. Therefore, prohibiting all public officials from exercising the right to strike is not in conformity with Article 6§4. The right to strike of certain categories of public officials may be restricted. Under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest etc (Conclusions I (1969), Statement of Interpretation on Article 6§4). Since the Committee takes the view that a denial of the right to strike to

public servants as a whole cannot be regarded as compatible with the Charter, it concludes that the situation is still not in conformity with Article 6§4 of the Charter on the ground that civil servants are denied the right to strike.]

Other parliamentary measures:

Article 4§5: The Committee concludes that the situation in Ukraine is not in conformity with Article 4§5 of the Charter on the ground that, following all authorised deductions, the wages of workers with the lowest pay are not sufficient to enable them to provide for themselves or their dependants.

[The Committee points out that the goal of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers that, in the instant case, the limits of 20%, 50% and 70% of the wage provided for by Article 128, paragraphs 1 and 2 of the Code and Article 70 of the Enforcement Proceedings Act still allow situations in which workers receive only 50% or even 30% of the minimum wage, an amount that does not allow them to provide for themselves or their dependants. It finds that enforcement of criminal sentences or parents' maintenance obligations to their children should not be implemented at the expense of the protection liable under Article 4§5 of the Charter. It asks for the next report to state whether compensation in connection with the liability of workers for damage they inflict on employers is subject to the limit of 20% of the wage. It also asks for the next report to give the full list of grounds for deduction of up to 50% of the wage provided for by the law.]

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

- it has not been established that the fees charged for the registration of the employers' organisations are reasonable.
- it has not been established that domestic law provides effective sanctions and remedies in case of discrimination and reprisals based on trade union membership and activities.
- it has not been established that domestic law provides for compensation that is adequate and proportionate to the harm suffered by the victim in case of discrimination and reprisals based on trade union membership and activities.
- it has not been established that the criteria used to determine representativeness are open to judicial review.
- the right of nationals of other Parties to the Charter to form trade unions is restricted.

Article 26§1: The Committee concludes that the situation in Ukraine is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work.

[The Committee previously noted that victims of sexual harassment were entitled to compensation for financial loss and moral damage, the latter being compensated irrespective of financial loss. The Committee asked whether there was a right to reinstatement for employees unfairly dismissed or pressured to resign for reasons related to sexual

harassment. It also asked for information on the kinds and amount of compensation provided in cases of sexual harassment. The report does not provide any information in this respect, but refers to the relevant provisions concerning civil action for damages under the Code of Criminal Procedure (Article 128), without providing any relevant examples of their application in respect of sexual harassment. The Committee asks for examples of case law and awards of damages under civil, administrative or labour law.

The Committee points out that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to sexual harassment. In the light of the information provided, the Committee reiterates its questions and in the meantime it considers that it has not been established that employees are given appropriate and effective protection against sexual harassment in the workplace or in relation to work.]

Article 26§2: The Committee concludes that the situation in Ukraine is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees are given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work.

[The report does not provide any information in respect of redress, but refers to the relevant provisions concerning civil action for damages under the Code of Criminal Procedure (Article 128), without providing any relevant examples of their application in respect of moral harassment. The Committee asks for examples of case law and awards of damages under civil, administrative or labour law.

The Committee points out that victims of moral (psychological) harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to moral (psychological) harassment. The Committee reiterates its request for information on these aspects, and in the meantime it finds that it has not been established that employees are given appropriate and effective protection against moral (psychological) harassment in the workplace or in relation to work.]

Article 28: The Committee concludes that the situation in Ukraine is not in conformity with Article 28 of the Charter as it has not been established that:

- workers' representatives, other than trade union representatives, are granted adequate protection;
- appropriate facilities are granted to workers' representatives.

[The Committee recalls that protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions (2010), Statement of Interpretation on Article 28). In its previous conclusion (Conclusions 2010), the Committee noted that as regards trade union representatives, the protection is granted for the entire period of office and for one year after it ends. The Committee

asks if protection is extended for a period beyond the mandate in the case of elected representatives, other than trade union representatives. Given the lack of information, the Committee concludes that the situation is not in conformity as it has not been established that workers' representatives, other than trade union representatives, are granted adequate protection.

(…) The Committee recalls that facilities may include for example those mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their functions, access for workers representatives or other elected representatives to all premises, where necessary, the access without any delay to the undertaking's management board if necessary, the authorization to regularly collect subscriptions in the undertaking, the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities), as well as other facilities such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of Interpretation on Article 28).

The Committee notes from the ITUC-Survey of Violations of Trade Unions Rights (Ukraine) that in some cases, the management refused to provide premises for trade union activities and that trade union leaders do not get time off for trade union activities. The Committee wishes for the Government to comment on these allegations.

Given the lack of information regarding facilities granted to workers' representatives in the report, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that facilities are provided to workers' representatives.]

1961 Social Charter

Czech Republic

Normative action:

Article 2§1: The Committee concludes that the situation in Czech Republic is not in conformity with Article 2§1 of the 1961 Charter on the ground that a rest period may be reduced to a minimum period of 8 hours within 24 consecutive hours for employees in various occupations.

[In its previous conclusion (Conclusions XIX-3 (2010)) the Committee found that the situation was not in conformity with the Charter as daily working hours could be extended to 16 hours in various occupations, such as continuous operations, agriculture, telecommunications, healthcare facilities, urgent repair works, natural disasters or other exceptional cases.

The Committee notes from the information provided by the Representative of the Czech Republic that the Labour Code allows the employee to work up to 16 hours per day but this can only be done exceptionally and can be requested by the employer only for serious operational reasons or in sudden emergencies (e.g. during natural disasters) (Governmental

Committee report concerning Conclusions XIX-3 (2010) (TS-G (2012)1,§19). Therefore, the performance of work for up to 16 hours is entirely exceptional, marginal and not regular.

The Committee notes from the report that by the amendment to Act No 262/2006 Coll., the Labour Code has unified the maximum length of a shift for both equally and unequally allocated working time. The length of a shift may not exceed 12 hours (Section 83 of the labour Code).

In reply to the Committee's supplementary question whether jobs and situations in which workers may be requested to work up to 16 hours go beyond what can be considered as exceptional situations, such as natural disasters, the Government replies that an employee's work including overtime within 24 consecutive hours can be up to a maximum of 15 hours in total which cannot go beyond what can be considered as exceptional situations.

However, the Committee notes that according to Section 90 of the Labour Code a rest period may be reduced to a minimum period of 8 hours within 24 consecutive hours for an employee who is over the age of 18 years, provided that his/her subsequent rest period is extended by the time for which his/her preceding rest period was reduced. This shall apply, among others, to employees working in continuous operations and to employees with unevenly distributed working in continuous operations.

The Committee considers that there have been no changes to the situation which it has previously considered not to be in conformity with the Charter. Therefore, it reiterates its previous finding of non-conformity.]

Article 2§5: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 2§5 of the 1961 Charter on the ground that agricultural workers may, pursuant to collective agreement or individual contract, postpone weekly rest resulting in an excessive number of consecutive working days.

[The Committee notes that the situation, which it has previously found not to be in conformity with the Charter, has not changed: agricultural workers may, pursuant to collective agreement or individual agreement, postpone weekly rest for up to three weeks, thus allowing an excessive number of consecutive working days. As there has been no change in the situation, the Committee reiterates its conclusion of non-conformity.]

Article 4§2: The Committee concludes that the situation in Czech Republic is not in conformity with Article 4§2 of the Charter on the ground that an increased compensatory time-off for overtime hours is not guaranteed.

[The Committee previously asked whether time off could be awarded in lieu of increased remuneration for overtime and if so, whether it would also be of an increased duration (Conclusions XIX-3 (2010)). According to the report, the employer may reach an agreement with the employee on the provision of compensatory time off from work of the length of overtime worked, in lieu of the overtime pay. Section 114 of the Labour Code states that the compensatory time off from work shall be provided to the extent of the overtime work done. According to the report, the Labour Code does not require that the compensatory time off from work for overtime work be longer than the overtime worked.

In this regard, the Committee recalls that granting leave to compensate for overtime is in conformity with Article 4§2 of the Charter on condition that it is longer than the overtime worked. It is not sufficient, therefore, to offer employees time off of equal length

to the number of overtime hours worked (Conclusions XIV-2, Belgium). Therefore, the Committee considers that the situation is not in conformity with the Charter.]

Article 4§4: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 4§4 of the 1961 Charter on the ground that the period of notice and/or the amount of severance pay is not reasonable in cases where the worker has more than 15 years of service.

[It has found since Conclusions XVI-2 (2004) that the situation was not in conformity with Article 4§4 of the 1961 Charter on the ground that two months was not a reasonable period of notice when workers in the private sector had more than 15 years of service. It requested that the next report provide examples of periods of notice arising from one-to-one negotiations (Conclusions XIX-3 (2010)).

In reply, the report explains that in order to counterbalance the short period of notice required by law, some 34% of the collective agreements negotiated in 2012 stipulated a higher severance pay than that provided for under Article 67, paragraph 1 of the Labour Code. The legislation has not undergone any changes during the reference period.

(…)The Committee recalls that in accepting Article 4§4 of the 1961 Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being primarily determined in accordance with the length of service. If it is accepted that the period of notice may be replaced by severance pay, such pay should be equivalent to the wages that would have been paid during the corresponding period of notice. It considers in the present instance that, in the cases of dismissal provided for in Article 52, paragraph 1(a) to (c) of the Code, the period of notice is too short and/or the severance pay too low when workers in the private sector have more than fifteen years of service.]

Article 6§4: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- the thresholds for calling a strike in disputes regarding the conclusion of collective agreements are too high;
- the time that must elapse before mediation attempts are deemed to have failed and strike action can be taken is excessive.

[Pursuant to Section 17 of the Collective Bargaining Act No. 2/1991 the right to call a strike in disputes regarding the conclusion of collective agreements is subject to a majority requirement of two-thirds of the votes cast and a quorum requirement of 50% of the employees concerned by the agreement. In this regard, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) considered in a direct request adopted in 2011 that the majority requirement of two-thirds of the votes cast might be difficult to reach and could restrict the right to strike in practice. The Committee concludes that the situation is not in conformity on the ground that these thresholds are too high.

(…)*According to Section 20(a) of the Collective Bargaining Act, strikes that start before mediation attempts are deemed to have failed are unlawful. The Committee considered in its Conclusions XVIII-1 (2006) that this mediation requirement, which was considerably*

more onerous than a cooling off period, constituted a restriction of the right to take collective action which is not in conformity with the 1961 Charter. In particular, the Committee found that the length of the period prescribed in Section 12 of the Act ("Proceedings before a mediator shall be regarded as unsuccessful if the dispute is not resolved within 30 days of the day when the mediator was acquainted with the subject-matter of the dispute, unless the contracting parties agree on another time-limit") was excessive. Given that the report provides no information in this respect, the Committee concludes that the situation is not in conformity with Article 6§4 on the ground that the time which must elapse before mediation attempts are deemed to have failed and strike action can be taken is excessive.]

Denmark

Normative action:

Article 5: The Committee concludes that the situation in Denmark is not in conformity with Article 5 of the 1961 Charter on the ground that the legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark.

[Since Conclusions XII-1 (1990-1991), the Committee has considered the situation in Denmark not to be in conformity with Article 5 of the 1961 Charter because the legislation on the International Shipping Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark. This restriction impairs the right of non-resident seafarers engaged on vessels entered in the Register to be fully represented by their trade unions, and the right of Danish trade unions to effectively protect the social and economic interests of such workers.

The report indicates that the Danish International Register of Shipping Framework Agreement of 2013 (DIS Main Agreement) states that seafarers who are not resident in Denmark, but who work on board ships entered in the Register, are entitled to be members of several trade unions, that is both a Danish trade union and a trade union in their country (see the report on Article 6§2). The report does not mention any change in respect of the right of Danish trade unions to represent the rights of non-resident seafarers engaged on vessels entered in the Register.

The representative of Denmark in the Governmental Committee emphasized that the framework agreement reached between the ship owners' associations and Danish seafarers' unions laying down minimum working conditions also for foreign seafarers allows for the participation of Danish unions in negotiations between the ship owners' association and non-Danish seafarers' unions to ensure that working conditions are satisfactory. The representative of Denmark also stated that the distinction was solely based on residence since Danish nationals who did not have residence in Denmark were in the same situation as seafarers of other nationalities not having residence in Denmark (see Governmental Committee Report concerning Conclusions XIX-3 (2010), p. 39).

The Committee notes that the situation has not changed and, in addition, in reply to the argument of the Danish representative in the Governmental Committee, it considers that the number of Danish nationals not residing in Denmark and working on board ships

entered in the Register is very limited in comparison with the number of non-Danish seafarers engaged on vessels entered in the Register (not having the residence in Denmark). Therefore the argument is not very convincing. The Committee concludes that the situation is still not in conformity with Article 5 of the 1961 Charter on this point.]

Article 6§2: The Committee concludes that the situation in Denmark is not in conformity with Article 6§2 of the 1961 Charter on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

[The Committee recalls that the situation in Denmark has been in violation of the 1961 Charter since Conclusions XII-1 (1988-1989) on the ground that the legislation impairs the right of non-resident seafarers engaged on vessels entered in the International Shipping Register to be represented by their trade union, and imposes a restriction on the right of Danish trade unions to bargain collectively on behalf of such workers.

The report provides general information regarding the latest Danish International Register of Shipping Framework Agreement from 2013 (referred to as the DIS Main Agreement) which entitles seafarers' contracting parties to be represented in negotiations between non-Danish unions and Danish shipowners' associations in order to ensure that a negotiated result is in accordance with the internationally accepted level in terms of international standards of pay and working conditions. The Main Agreement also states that seafarers who are not resident in Denmark, but who work on board DIS ships, are entitled to be members of several trade unions (i.e. both a Danish trade union and a trade union in their home country). This enables seafarers' organisations to represent and assist seafarers not domiciled in Denmark or foreign trade unions in matters relating to Danish legislation and in dealings with the Danish public authorities.

The report also indicates that in December 2012, an agreement was established on foreign seafarers' representation in connection with the Danish consultation process and the representation on maritime councils and boards established by the Danish Government for, inter alia*, consultative purposes.*

Furthermore, the report illustrates through some statistics that an increasing number of ships have been registered in the DIS since 2007, just as more seafarers have been recorded as serving on ships registered in the DIS. This increase is accounted for especially by foreign seafarers, while the number of Danish seafarers has been relatively constant.

The Committee notes that the restriction imposed on the Danish trade unions to bargain collectively on behalf of the foreign seafarers has not been removed. Therefore the situation has not changed and it is still not in conformity with Article 6§2 of the 1961 Charter on this point.]

Article 6§4: The Committee concludes that the situation in Denmark is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- civil servants employed under the Civil Service Act are denied the right to strike;
- the workers who are not members of a trade union having called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike.

[As far as the restrictions on civil servants' right to strike are concerned, the Committee makes reference to its previous conclusions (Conclusions XIX-3, XVIII-1, XVI-1) where it found that the situation in Denmark is not in conformity with Article 6§4 of the Charter as civil servants employed under the Civil Servant Act are denied the right to strike. (…)
The Committee notes that the report reveals no changes to the situation previously described in Conclusions XVI-1 and XVIII-1. Reducing the number of civil servants does not absolve the Government of its obligation under the European Social Charter. The Committee recalls that, by virtue of Article 31, the right to strike of certain categories of public servants may be restricted, including members of the police and armed forces, judges and senior civil servants. On the other hand, the Committee held that a denial of the right of strike to public servants as a whole cannot be regarded as compatible with the Charter (Conclusions I (1969), Statement of Interpretation on Article 6§4). Therefore, irrespective of their number, the civil servants should enjoy their right to strike, with the exception of senior civil servants whose duties and functions, given their nature or level of responsibility, are directly related to national security, or the general interest.

The Committee considers that civil servants are still denied the right to strike and that this violation of Article 6§4 of the Charter has still not been remedied.]

[The Committee previously found (Conclusions XVII-1) that workers who are not members of the trade union having called a strike are not protected and their participation in a strike is considered as a breach of their contract of employment.

In its previous conclusion (Conclusions XIX-3 (2010) the Committee asked if "non-unionised" workers acting as a collective may, in principle, initiate a strike or if non-members in a given workplace have the freedom to join a strike called by a trade union in the same workplace. Also, the Committee asked whether non-unionised workers enjoy the same protection as unionised workers in such situations, including in respect of reinstatement after termination of the strike.

The report emphasises that the right to strike in Denmark is closely related to the right to collective bargaining. The right is primarily exercised when unions attempt to establish or renew collective agreements on wage and working conditions with employers. The Government is of the opinion that Article 6 protects the right to collective bargaining and the use of collective action as a mean to ensure that this right may be exercised. The report stresses that the right to action in support of attaining a collective agreement is the sole prerogative of a collective of workers – typically a trade union and that the Danish Government does not view Article 6 as relating to an individual right to action in order to secure collective bargaining.

The report further indicates that there is no legislation that further specifies under which conditions members and non-members of a union can strike in order to obtain a collective agreement. The unionised member in a workplace is part of a collective agreement through his/hers membership of the union and the employment is based on the collective agreement. The employer on the other hand is obliged to give the rights (and duties) according to the collective agreement to the non-member employee, but the non-member employee can only obtain rights (and duties) through an individual employment contract with the employer. This means that the non-member is not entitled to participate in a strike initiated by the union unless he or she joins the union concerned.

The Committee recalls that the decision to call a strike can be taken only by a trade union provided that forming a trade union is not subject to excessive formalities (Conclusions (2004) Sweden). But once a strike has been called, any employee concerned, irrespective of whether he is a member of a trade union having called the strike or not, has the right to participate in the strike (Conclusions XVI-1 (2002), Portugal). Therefore, in order to be in conformity with Article 6§4 of the Charter, States must ensure that workers who are not members of the trade union having called a strike also have the right to participate in the strike and, in that case, enjoy the same protection as the others (Conclusions XVII-1 (Denmark)). The Committee considers that the situation is not in conformity with Article 6§4 of the 1961 Charter since workers who are not members of the trade union having called a strike are not entitled to participate in the strike unless they join the union concerned and they do not enjoy the same protection as the trade union members if they do participate in a strike.]

Germany

Normative action:

Article 4§3: The Committee concludes that the situation in Germany is not in conformity with Article 4§3 of the 1961 Charter on the ground that there is a ceiling on compensation in reprisal litigation.

[In its previous conclusion (Conclusions XIX-3 (2010)) the Committee asked what forms of compensation were provided under the Equal Treatment Act in discrimination cases.

In this respect the report states that Section 15.1 provides for full compensation of the material damage caused by a violation on the part of the employer of the prohibition on discrimination set out in section 7 of the Equal Treatment Act. The injured party may claim appropriate compensation for non-pecuniary loss in addition to the payment of compensation for pecuniary damage. The amount of compensation must be appropriate. When determining the amount of compensation, the national courts are bound by ECJ case law. In the case of discrimination regarding pay, there is no ceiling on compensation payable to employees.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as there is a ceiling on the compensation payable to employees dismissed as a reprisal. More specifically, the Committee observed that courts were not free to decide upon the amount aimed at compensating the damage caused by the termination of the working relationship as a consequence of a reprisal dismissal. The Committee noted that the legislator had set 12 months' wage as a ceiling on the compensation of such cases.

The Committee now notes from the report that a dismissal on the part of the employer on the ground that an employee is lawfully exercising a legal right, including the right to non-discrimination with regard to pay, is a so-called disciplinary or retaliatory dismissal, which is prohibited and invalid. According to the report, the possibility to file a request for termination of employment by way of court decision in return for severance pay (section 9 of the Protection against Unfair Dismissal Act), despite the court's finding that the dismissal is invalid is an additional option granted to employees.

According to the report, severance pay fixed by the court has the purpose of compensation and reparation for the socially unjustified loss of employment. Severance pay serves as an

equivalent to replace the continuation of employment. The amount of severance pay is to be fixed by the court after due consideration of the circumstances of the individual case. The report states that imposing a ceiling on the amount of severance pay is important for reasons of legal certainty and legal equality. Leaving the amount of severance pay entirely to the court's discretion would permit inequalities, which would be difficult to justify.

The Committee thus observes that while there is no ceiling on compensation in case of discrimination regarding pay, the legislation establishes, in cases involving reprisal dismissals regarding equal pay, a ceiling of a maximum of 12 months' (or 18 months' in case of longer employment relationship) wages.

The Committee recalls that (Conclusions XVIII-2, (2006), Germany) that in order to ensure the observance of labour law and the effective guarantee of the rights contained in the Charter, where the contract is terminated by the courts at the request of the employee, remedies for violations should not be limited to the payment of the amount of money which is owed. The Committee considers that no ceiling should be set to the remedies, such as the severance pay. To do so risks not being sufficiently deterrent for employers, nor adequately compensatory for the employee. The Committee holds that this principle applies both to litigations involving equal pay and reprisal dismissals. Therefore, the Committee finds that the situation in Germany is not in conformity with the Charter due to the ceiling on compensation in litigation concerning reprisals.]

Article 6§4: The Committee concludes that the situation in Germany is not in conformity with Article 6§4 of the 1961 Charter on the ground that the requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constitute an excessive restriction to the right to strike.

[In Conclusions XV-1 (2001), XVI-1 (2003), XVII-1 (2005), XVIII-1 (2006) and XIX-3 (2010), the Committee said that the situation in Germany was not compatible with Article 6§4 because the requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constituted an excessive restriction on the right to strike. These conclusions take into account the criteria established in German case law which a trade union must fulfill in order to call a lawful strike and are based on the principle established by the Committee that reserving the right to call a strike for trade unions may be compatible with the Charter if workers may easily, and without undue requirements or formalities, form a trade union for the purpose of a strike (cf. Conclusions XV-1 (2001), Sweden).

The report makes no reference to this point. The Committee notes the information provided by the German representative to the Governmental Committee on this subject (Governmental Committee's Report concerning Conclusions XIX-3 (2010)). In this context, the German representative stated that the strike statistics attached to the last report "in no way suggest that the requirements for a lawful strike are hard to satisfy". He further stated that "Germany's case law on the right to collective action deliberately rules out the lawfulness of strikes instigated by a small group of employees outside trade union organisations with collective bargaining powers; this is in line with the principle that effective collective agreements can only be concluded by trade unions with the capacity to bargain collectively in a collective bargaining framework – and if possible without collective action."

Having regard to these statements, the Committee recalls that reserving the right to call a strike for trade unions may be compatible with the Charter if workers may easily,

and without undue requirements or formalities, form a trade union for the purpose of a strike. Regarding the matter to which the breach relates, it wishes to know whether the criteria established in German case law which a trade union must fulfil in order to enjoy the protection flowing from Article 9 para. 3 of the Constitution, including in respect of the right to take collective action, as summarised by the Committee in the Addendum to Conclusions XVI-1 (2001), are still applied.

As the situation has not changed on this point, the Committee considers that the requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constitute an excessive restriction to the right to strike.]

Other parliamentary measures:

Article 4§1: The Committee concludes that the situation in Germany is not in conformity with Article 4§1 of the 1961 Charter on the ground that the lowest wage paid does not secure a decent standard of living.

[The Committee recalls that, in order to secure a decent standard of living within the meaning of Article 4§1 of the 1961 Charter, wages must be above the minimum threshold, set at 50% of the net average wage. This is the case where the lowest wage paid is above 60% of the net average wage. Where the net lowest wage paid is between 50% and 60% of the net average wage, it is for the State Party to show that this wage is sufficient to secure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee notes from the report and the EUROSTAT data that the lowest net wage paid in certain areas of the private sector, such as that paid to hair dressers and beauticians, which may or may not be covered by collective agreements, is below the minimum threshold. It considers that such wages cannot be regarded as decent remuneration wages within the meaning of Article 4§1 of the 1961 Charter.]

Greece

Normative action:

Article 2§5: The Committee concludes that the situation in Greece is not in conformity with Article 2§5 of the 1961 Charter on the ground that domestic workers are not covered by the legislation guaranteeing a weekly rest period.

[The Committee notes from the report that Greece has not yet ratified ILO Convention No. 189 concerning Decent Work for Domestic Workers, adopted in 2011, nor has it modified its legislation. Accordingly, the Committee repeats its finding of non-conformity with Article 2§5 of the Charter on the ground that the law does not provide for the right of domestic workers to a weekly rest period.]

Article 4§1: The Committee concludes that the situation in Greece is not in conformity with Article 4§1 of the 1961 Charter on the grounds that:

(…) The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 provide for the payment of a minimum wage to all workers under the age of 25 which is below the poverty level;

The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 discriminate against workers under the age of 25.

[Follow-up given to collective complaint No. 66/2011 General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, decision on the merits of 23 May 2012

(…)The Committee also refers to Resolution ResChS(2013)2 adopted by the Committee of Ministers on 5 February 2013. It notes that the Government informed the Committee of Ministers that section 74, paragraph 8 of Act No. 3863/2010 and section 1, paragraph 1 of Council of Ministers Act No. 6/2012 were of a provisional nature and would be revoked as soon as the country's economic situation allowed. The report contains no information on this matter.

The Committee notes that, since the publication of the decision on the merits, section 1, paragraph IA, sub-paragraph 11, case 2a of Act No. 4093/2012 has been passed, stipulating that the general minimum wage will be determined by the NGCA, applying solely to the staff of employers which are members of the signatory employer organisations. Circular No. 26352/839 has confirmed the minimum earnings laid down by Circular No. 4601/304. The Committee considers that the amendments introduced by section 1, paragraph IA, sub-paragraph 11, case 2a of Act No. 4093/2012 have not redressed the breaches of Article 4§1 of the 1961 Charter and concludes that the follow-up given by Greece to collective complaint No. 66/2011 is inadequate. It asks that the next report contain information on measures taken to remedy the situation.]

Article 4§4: The Committee concludes that the situation in Greece is not in conformity with Article 4§4 of the 1961 Charter on the grounds that:

(…) There are no periods of notice or severance pay in case of termination of employment during the probationary period and the violation noted by the decision on the merits of Collective Complaint No. 65/2011 has not been remedied.

[The Committee refers to its decision on the merits of Collective Complaint No. 65/2011 in which it held that section 17, paragraph 5 of Act No. 3899/2010 constituted a violation of Article 4§4 of the 1961 Charter on the ground that it made no provision for notice periods or severance pay in cases in which an employment contract, which qualified as "permanent" under that Act, was terminated during the probationary period. It also refers to Resolution ResChS(2013)2 of the Committee of Ministers of 5 February 2013.

It notes the statement by the Government to the Committee of Ministers according to which section 17, paragraph 5 of Act No. 3899/2010 was a provisional measure, which would be withdrawn once the country's economic situation so permitted. The report does not provide any information on this matter. The Committee notes that section 17, paragraph 5 of Act No. 3899/2010 was amended after publication of the decision on the merits, by section 1, paragraph IA, sub-paragraph 12, case No. 4 of Act No. 4093/2012, without the violation of Article 4§4 of the 1961 Charter being remedied.]

Other parliamentary measures:

Article 2§2: The Committee concludes that the situation in Greece is not in conformity with Article 2§2 of the 1961 Charter on the ground that, in the private sector, work performed on a public holiday is not adequately compensated**.**

[The situation that the Committee has previously considered not to be in conformity with the Charter (Conclusions XIX-3 (2010)). In fact, under the Royal Decree 748/1966,

private-sector employees who work on a public holiday are entitled to their daily wage plus a supplement of 75% but not to compensatory days off, while public sector employees are entitled to a compensatory rest day (1 day worked = 1 day off), but not to an increased wage. The Committee asks whether, in this case, employees are entitled nevertheless to their daily wage, in addition to the compensatory rest day.

The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday. In this respect, in light of the information available, the Committee considers that a compensation corresponding to the basic daily wage increased by 75% is not sufficiently high to constitute an adequate level of compensation for work performed on a public holiday. Accordingly, it concludes that the situation in Greece is not in conformity with Article 2§2 of the Charter.]

Article 2§4: The Committee concludes that the situation in Greece is not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual risks in the mining industry do not all benefit from adequate compensatory measures.

[The Committee found in the complaint Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Complaint No. 30/2005, decision on the merits of 12 June 2006) that Article 2§4 had been violated because Greek legislation did not require collective agreements to provide for compensation pursuant to the aim intended by Article 2§4, although employers and employees are of course at liberty to include such measures themselves. The Committee considered therefore that the collective bargaining procedure did not offer sufficient safeguards to ensure compliance with Article 2§4, and noted that no subsequent steps had been taken by the Government to enforce the right embodied in Article 2§4. In its previous conclusion (Conclusions XIX-3 (2010)) it held that the situation was not yet in conformity with the Charter in this respect, insofar as not all employees working underground were entitled to compensatory time off.

The report states that in 2012 there were 473 workers in underground mines, representing less than 3% of the total number of workers in the mining sector and that the intensification of inspections has progressively reduced the number of fatal accidents in mines. The Committee notes that a new Collective Labour Agreement on Mines was signed in 2011, which provides for the payment of an unhealthy work allowance to workers in metal mines, lignite mines and quarries. The Committee points out in this respect that under no circumstances can financial compensation be considered an appropriate response compliant with Article 2§4. It also considers that the additional measures provided for in the collective agreement – one additional day of public holiday and the setting of the weekly period of work at 40 hours – do not adequately correspond to the aim of offering workers exposed to risks regular and sufficient time to recover from the associated stress and fatigue, and thus maintain their vigilance in the workplace. In the light of the information provided in the report on early retirement for mine workers, the Committee does not consider that such a measure is relevant and appropriate to achieve the aims

of Article 2§4. Accordingly, considering the fact that no appropriate measures have been taken to remedy the shortcomings found in the complaint No. 30/2005, the Committee maintains its finding of non-conformity with Article 2§4 of the Charter.]

Article 4§1: The Committee concludes that the situation in Greece is not in conformity with Article 4§1 of the 1961 Charter on the grounds that:

- The minimum wage applicable to contractual staff in the civil service is not sufficient to ensure a decent standard of living;
- The minimum wage applicable to private sector workers is not sufficient to ensure a decent standard of living; (…).

[The Committee reiterates that, to comply with Article 4§1 of the 1961 Charter, a decent wage must exceed the minimum threshold, set at 50% of the national net average wage. This is the case when the net minimum wage exceeds 60% of the national net average wage. Where the net minimum wage is between 50% and 60% of the national net average wage, it is for the State Party to establish that this wage makes it possible to ensure a decent standard of living (Conclusions XIV-2 (1998), statement of interpretation of Article 4§1). It notes in the present case that, after deduction of social security contributions and income tax, which has been applicable since the reduction in the tax-free threshold under Act No. 4024/2011, the minimum wage for all single workers in the private sector is below the minimum threshold. It also observes that, while the wages of tenured civil servants governed by Act No. 3205/2003 are in conformity with Article 4§1 of the 1961 Charter, the minimum wage for contractual staff in the civil service is less than the minimum threshold and accordingly does not permit a decent standard of living.]

Article 4§4: The Committee concludes that the situation in Greece is not in conformity with Article 4§4 of the 1961 Charter on the grounds that:

The severance pay granted to manual workers is inadequate; (…).

(…) *[Manual workers (worker-technicians) are still governed by the rules in section 1, paragraph 1 of the Royal Decree of 16-18 July 1920 extending Act No. 2112/1920 to workers, technicians and servants and section 1 of Act No. 3198/1955 of 9 April 1955 amending and completing provisions on termination of employment. These provisions provide for the payment of severance pay amounting to:*

- *seven days' wages for between one and two years of service;*
- *15 days' wages for between two and five years of service;*
- *30 days' wages for between five and ten years of service;*
- *60 days' wages for between ten and 15 years of service;*
- *100 days' wages for between 15 and 20 years of service.*

(…) The Committee points out that by accepting Article 4§4 of the 1961 Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice of termination of employment, the reasonable nature of the period being determined mainly in accordance with the length of service (Conclusions XIII-4 (1996), Belgium). While it is accepted that the period of notice may be replaced by severance pay, such pay should be as a minimum equivalent to the wages that would have been paid during the corresponding period of notice. The Committee considers that in the present case, the periods of notice combined with severance pay are reasonable with regard to

Article 4§4 of the 1961 Charter in the cases of termination of employment provided for in section 1, paragraph IA, sub-paragraph 12, cases Nos. 1 to 3 of Act No. 4093/2012, and that severance pay for manual workers provided for under section 1, paragraph 1 of Royal Decree of 16-18 July 1920 and section 1 of Act No. 3198/1955 is not reasonable. It therefore concludes that the situation in Greece is not in conformity with Article 4§4 of the 1961 Charter on this issue.]

Iceland

Normative action:

Article 2§1: The Committee concludes that the situation in Iceland is not in conformity with Article 2§1 of the 1961 Charter, on the ground that the working hours for seamen may go up to 72 hours per week.

[In its previous conclusion the Committee also found that the the situation was not in conformity with the Charter, on the ground that the working hours for seamen could go up to 72 hours per week.

The Committee notes in this regard that the situation has not changed. Article 64 of the Seamen's Act No 35/1985, with subsequent amendments, includes detailed provisions on seamen's rest time and provides that the maximum working week shall be limited to 48 hours on average. The Committee also notes in this connection that the average actual working hours in the fish processing industry were 42.4 hours in 2011 and 43.5 hours in 2012.

However, the Committee understands that in a single week the working time is still allowed to be up to 72 hours.

According to the report, a task force is working in the Ministry of the Interior to prepare a draft bill on the amendment of the Maritime Traffic Act. The report states that the Committee's conclusions will be taken into account.

The Committee considers that during the reference period there was no change to the situation which it has previously considered not to be in conformity with the Charter. Therefore, it reiterates its previous finding of non-conformity on this point.]

Article 4§3: The Committee concludes that the situation in Iceland is not in conformity with Article 4§3 of the 1961 Charter, on the ground that the law does not provide for reinstatement in cases in which an employee is dismissed in retaliation for bringing an equal pay claim.

[The Committee refers to its conclusion under Article 1§2 (Conclusions 2012) where it noted that there is a shift of the burden of proof in cases regarding discrimination based on gender and that there is no ceiling on the amount of compensation that may be awarded in discrimination cases.

In its previous conclusion (Conclusions XIX-3 (2010) the Committee found that the situation was not in conformity with the Charter, on the ground that the law made no provision for declaring a dismissal null and void and/or reinstating an employee in the event of a retaliatory dismissal connected with a claim for equal pay.

In this connection, the Committee notes from the report that under the Gender Equality Act, an employee who seeks redress on the basis of the Act may not be dismissed for that

reason. The same applies if the employer is in breach of the prohibition on dismissal, in which case he/she has to demonstrate that the dismissal or alleged injustice was not based on the employee's demand for redress.

However, according to the report, it is not compatible with Icelandic law to put individuals into employment positions by a court order. This applies equally when the employer does not wish to engage with a particular worker or when the worker does not wish to do the work. This is a basic principle which applies to the Icelandic labour market according to a very long tradition and has often been confirmed by case law.

In cases of violation of the Gender Equality Act in which people have not been engaged, or have been dismissed from a job, the remedy applied by the courts has been to award compensation to the person concerned so as to put him/her in the same position as he/she would have been in if he/she had been engaged or retained the job.

The Committee recalls that in the event of retaliatory dismissal, the remedy should in principle be reinstatement in the same job or a job with similar duties. Only when reinstatement is not possible or the employee has no desire to be reinstated, should damages be paid instead.

The Committee considered, therefore, that the situation is not in conformity with the Charter, on the ground that the law does not provide for reinstatement in cases in which an employee is dismissed in retaliation for bringing an equal pay claim.]

Article 5: The Committee concludes that the situation in Iceland is not in conformity with Article 5 of the 1961 Charter on the grounds that:

- the existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment infringes the right not to join trade unions;
- the statutory obligation on an employer to pay the industry charge infringes the right to organise.

[In its previous conclusion (Conclusions XIX-3 (2010)) the Committee concluded that the situation was not in conformity with Article 5 of the 1961 Charter, on the ground that the existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment infringed the right not to join trade unions.

The report provides no new information on this issue; it simply refers to previous reports. The Committee therefore reiterates its conclusion of non-conformity.

The Committee notes the judgment of the European Court of Human Rights of 27 July 2010 (Vörður Ólafsson v. Iceland), which concerns a violation of Article 11 of the European Convention of Human Rights on the ground that the statutory obligation on an employer to pay the industry charge had amounted to an interference with his right not to join an association. Given the absence of information in this respect in the report, the Committee therefore concludes that the situation is not in conformity with Article 5 of the 1961 Charter on the ground that the statutory obligation on an employer to pay the industry charge infringes the right to organise.]

Other parliamentary measures:

Article 4§4: The Committee concludes that the situation in Iceland is not in conformity with Article 4§4 of the 1961 Charter, on the ground that the two weeks' notice period provided for in the collective agreement applying to skilled construction and industrial workers is not reasonable beyond six months of service.

[The report states that the situation has not changed since the previous reports and that the Government informed the social partners that the situation is not in conformity with Article 4§4 of the 1961 Charter. The social partners have not yet managed to deal with the issue in their negotiations.

The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be equivalent to the wages that would have been paid during the corresponding period of notice. The Committee notes that the situation remains unchanged in the present case. It therefore reiterates its finding of non-conformity with Article 4§4 of the 1961 Charter, on the ground that the two weeks' notice period provided for in the collective agreement applying to skilled construction and industrial workers is not reasonable beyond six months of service.]

Article 4§5: The Committee concludes that the situation in Iceland is not in conformity with Article 4§5 of the 1961 Charter on the ground that, after maintenance payments for children and other authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

[The report indicates that, as deductions from wages for the payment of taxes, social contributions and maintenance payments for children is limited to 25% (Regulation on Deductions from Wages (No. 124/2001)), workers are guaranteed that they will receive at least 75% of their wage. The recovery of maintenance payments for children reduces that protected share of the wage to 50% (Regulation No. 491/1996 on the collection and making over of child maintenance payments). According to the report, workers may request that deductions be limited if their wages are not sufficient for them to provide for themselves or their dependants.

The Committee notes that under Act No. 45/1987 (Article 18, paragraph 1) it is possible to request the reimbursement of tax deductions in the event of circumstances such as illness, accident, death or change of job. It also notes that under Article 115, paragraph 1 of the Income Tax Act of 7 May 2003 (No. 90/2003), the protected share of 75% of the wage applies only to income tax and municipal tax debts. Therefore, it asks that the next report state the share covering all simultaneous deductions on competing grounds. It also asks whether the wages concerned are gross or net of contributions to the pension insurance fund and tax deductions. Furthermore, it asks for information on implementation measures of the possibility mentioned in the report which allows workers to request a reduction in deductions if their wages are not sufficient for them to provide for themselves or their dependants.

The Committee points out that the purpose of Article 4§5 of the Charter is to ensure that workers who enjoy the protection afforded by this provision are not deprived of

their basic means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers in the present case that the ceilings provided for by Regulations Nos. 124/2001 and 491/1996 still allow for situations in which workers with the lowest pay are left with only 75% or even 50% of their wage – an amount which does not enable them to provide for themselves or their dependants.]

Article 6§4: The Committee concludes that the situation in Iceland is not in conformity with Article 6§4 of the 1961 Charter on the ground that during the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter.

[The Committee notes that during the reference period the Icelandic Parliament adopted legislation to terminate a strike. Prior to the strike, negotiations on a dispute over wages and terms between aircraft mechanics and the Confederation of Icelandic Employers, representing the airline Icelandair, had gone on for some time under the auspices of the State Mediation and Conciliation Officer, but without any progress being made. The strike began on 22 March 2010. When the strike had lasted for 16 hours, the Althingi (Icelandic Parliament) passed legislation (Act No. 17/2010 on Aircraft Mechanics' Wages and Terms) to end the strike. The Act put an end to the strike, prolonging the collective agreement that was then in force between the parties until 30 November 2010, if no new agreement were concluded between them. The reasons for the passing of the Act were described in the explanatory notes to the bill. These stated that a strike by aircraft mechanics resulted in substantial disruption of air traffic both to and from Iceland, Icelandair being by far the largest aviation operator in Iceland and one of the main pillars of Iceland's tourist industry. It was estimated that a strike would cause substantial damage to the Icelandic economy at a time in which it was ill-prepared for it and would have a negative impact on the jobs of thousands of individuals and enterprises all over the country that depended on the tourist industry and on reliable air communications at a time when the operating environment of all enterprises in the country was very sensitive.

The Committee notes that in the case at hand, even though a work stoppage in the aviation sector may have had important consequences on the economy and this being the primary consideration on which state intervention to terminate the strike was based, it has not been established that such intervention falls within the limits of Article 31 of the 1961 Charter, namely that it was necessary for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. It considers that the situation is not in conformity with Article 6§4 of the 1961 Charter, on the ground that during the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter.]

Latvia

Normative action:

Article 5: The Committee concludes that the situation in Latvia is not in conformity with Article 5 of the 1961 Charter on the ground that a minimum of 50 members or at least one quarter of the employees of an undertaking are required to form a trade union, which is an excessive restriction on the right to organise.

[In its previous conclusions (Conclusions XVII-2 (2005), XVIII-2 (2007) and XIX-3 (2010)), the Committee concluded that the situation was not in conformity with Article 5 of the 1961 Charter on the ground that the requirement, established by Section 3§2 of the Trade Union Act, of a minimum of 50 members or at least one quarter of the employees of an undertaking to form a trade union represents an excessive restriction on the right to organise. The Committee would like to know whether this is also a requirement for the creation of trade unions at other levels, that is, outside of an undertaking.

The Committee notes that in June 2013 the Government approved a "draft law" on trade unions which was submitted to the Parliament and contains new rules on this issue. The Committee asks whether this text was approved and entered into force and, should this be the case, that a full description of its provisions be provided in the next report on the implementation of Article 5 of the 1961 Charter. However, it notes that during the reference period the situation did not change and therefore repeats its conclusion of non-conformity.]

Other parliamentary measures:

Article 6§2: The Committee concludes that the situation in Latvia is not in conformity with Article 6§2 of the 1961 Charter on the ground that the voluntary negotiations are not sufficiently promoted in practice.

[The Committee notes from the report that the number of collective agreements decreased in Latvia during the reference period from 1 712 in 2009 to 1 307 in 2012. The Committee recalls that in the previous reference period, the above-mentioned number decreased from 2 033 in 2005 to 1 921 in 2008. In view of this decrease, in its last conclusion (Conclusions XIX-3 (2010)), the Committee requested information on the effectiveness of the role played by social partners in the implementation of the National Development Plan for 2007-2013 which acknowledges, inter alia*, the fundamental role of social dialogue and encourages social partners to bargain collectively. The Committee also asked the Government to indicate what other measures it had taken or planned to take to facilitate and encourage the conclusion of collective agreements. Meanwhile, it noted from statistics from the European Industrial Relations Observatory (EIRO) that only approximately 20% of the workforce was covered by collective agreements.*

The report indicates that in order to achieve the objectives of the above-mentioned Plan with respect to social dialogue, on 1 August 2011 the Free Trade Union Confederation of Latvia (LBAS) and the Employers' Confederation of Latvia (LDDK) concluded an agreement aimed at widening the cooperation in the context of a favourable socio-economic environment. According to the Plan, a number of activities were carried out by State authorities in cooperation with social partners. In this respect, several examples are provided with respect to the following issues: improvement of quality and efficiency of vocational education, education of workers on occupational health and safety issues, representation of employers' interests in the decision-making process at regional, national and EU level, setting up of business advisory councils at local level, enhancement of the co-operation between the Investment and Development Agency and employers' confederations, effective use of the European Social Fund (ESF) by central administrations, municipalities and NGOs, reduction of unregistered employment and improvement of labour legislation.

More generally, the report details that the decrease in the number of collective agreements is caused by the economic crisis that hit Latvia in recent years, as well as by the fact that,

given the small size of most undertakings, workers and employers very often negotiate their interests directly. In this respect, the report also states that in the framework of the operational programme "Human resources and employment" relating to the planning of the ESF for the period 2007-2013, resources were allocated to both LBAS and LDDK for the implementation of projects aimed at promoting collective bargaining between employers or employers' organisations and trade unions.

The Committee notes that the measures described in the report failed to contribute to increasing the number of workers covered by collective agreements during the reference period. It therefore repeats its finding that the situation is not in conformity with Article 6§2 of the 1961 Charter.]

Luxembourg

Normative action:

Article 5: The Committee concludes that the situation in Luxembourg is not in conformity with Article 5 of the 1961 Charter, on the ground that national legislation does not permit trade unions to freely choose their candidates for joint works council elections, regardless of nationality.

[The Committee points out that the situation was previously found not to be in conformity with Article 5 of the Charter, on the ground that the national legislation does not enable trade unions to choose their candidates for joint works council elections freely, regardless of nationality. According to the report, there were no changes to this situation during the reference period.

The Government states in the report that the impugned provisions concerning the election of representatives from non-EU countries will be abolished. The Committee asks the Government to notify it of any change in the situation in this respect.

In the meantime, noting that there was no change in the situation during the reference period, it maintains its finding of non-conformity in this respect.]

Other parliamentary measures:

Article 2§4: The Committee concludes that the situation in Luxembourg is not in conformity with Article 2§4 of the 1961 Charter, on the ground that it has not been established that, despite the risk elimination policy, workers exposed to occupational risks are entitled to appropriate compensation measures.

[In its previous conclusion (Conclusion XVIII-2 (2007)), the Committee found that the situation in Luxembourg was not in conformity with Article 2§4 of the Charter, on the ground that there was no provision for reduced working hours or additional paid holidays for workers in dangerous and unhealthy occupations. It also asked for up to date detailed information on measures taken to reduce exposure to risks in all occupations where it has not been possible to eliminate all risks.

According to the report, Luxembourg is pursuing a policy of occupational risk prevention and elimination rather than one of compensation. Until all risks to which workers are exposed are eliminated, Luxembourg must be considered to apply the most stringent internationally recognised exposure values to guarantee workers' health and safety. Compliance with these exposure limit values is monitored by the Labour and Mines

Inspectorate, which, in the event of failure to comply, sets in motion the measures required to protect workers' safety and health, either through the implementation of technical measures to once again guarantee exposure limit values, by reducing the time spent working at hazardous workstations so as to ensure that the exposure limit values are not exceeded, or by reducing the working time of staff exposed to such risks.

The Committee notes that the report does not provide a list of occupations regarded as dangerous or unhealthy. However, all employers are obliged to assess the risks inherent to the work carried out by their company and to take the necessary steps to meet occupational health and safety objectives. The Committee previously noted that these measures include the granting of three extra days' paid leave per year for workers and technical staff working in mines (Article L 233-4 of the Labour Code). It also notes that a reduction in working time may also be applied, on a case by case basis, when there is no other way of guaranteeing compliance with certain thresholds for exposure to risks. It notes however that the report fails to present examples and relevant statistical data on the application of these measures, and that it does not give details of the sectors concerned and the legal basis guaranteeing the practical application of specific compensation measures relating to working time (management of work patterns, namely as regards daily, weekly and annual rest periods).

Accordingly, the Committee asks that the next report contains the requested information. In the meantime, it finds that it has not been established that, despite the risk elimination policy, workers exposed to health risks in their work are entitled to appropriate compensation.]

Article 4§1: The Committee concludes that the situation in Luxembourg is not in conformity with Article 4§1 of the 1961 Charter, on the ground that the minimum wage for private sector workers does not ensure a decent standard of living.

[The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the 1961 Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage lies between 50% and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee notes in the present case that the net SSM (€1 540.71) is 49.50% of the net average wage (€3 111.96), which is close to the minimum threshold set at 50% of the net average wage and lower than 60% of the net average wage. It also notes that the available income after the addition of cash benefits in cash and in kind (€1 675.71) does not ensure a decent standard of living. It considers therefore that the SSM cannot be regarded as decent remuneration within the meaning of Article 4§1 of the 1961 Charter.]

Article 4§5: The Committee concludes that the situation in Luxembourg is not in conformity with Article 4§5 of the 1961 Charter on the ground that, after authorised deductions, the wages of employees with the lowest pay do not enable them to provide for themselves or their dependants.

[The Committee also points out that the purpose of Article 4§5 of the Charter is to ensure that workers who enjoy the protection afforded by this provision are not deprived of their

basic means of subsistence (Conclusions XVIII-2 (2007), Poland). It reiterates that, in the present case, the limits to deductions on the grounds provided for in section 5, paragraph 1, sub-paragraphs 1, 2 and 4 of the Law of 11 November 1970 to 10% of wages net of social contributions, tax deductions and reimbursement of expenses is in conformity with Article 4§5 of the 1961 Charter (Conclusions XVI-2 (2004)). It considers, however, that the assignable and attachable portions of the wage, which may be combined and are established by bands of 10%, 20% and 25% under section 4, paragraph 1 of the Law of 11 November 1970 and the Grand-Ducal Regulation of 26 June 2002, still allow situations in which employees with the lowest pay are left with only 75% of the Minimum Social Wage (SSM) net of social contributions, tax deductions and reimbursement of expenses – an amount which does not enable them to provide for themselves or their dependants. This is especially the case where the assignable portion is increased when the person concerned enters into a savings contract or takes a home loan, as authorised by section 4, paragraph 2 of the Law of 11 November 1970.

The Committee also notes that since the Law of 11 November 1970 does not provide for any limitation of deductions for the payment of maintenance debts recovered by means of attachment or assignment, this is determined by the first band, which under the Grand-Ducal Regulation of 26 June 2002 is set at €550. It considers that this limit still allows situations in which employees with the lowest pay are left with only 65% of the SSM net of social contributions, tax deductions and reimbursement of expenses – an amount which does not enable them to provide for themselves or their dependants. This is especially the case where the deductions made on various grounds are combined or the assignable portion is increased when the person concerned enters into a savings contract or takes a home loan.]

Poland

Normative action:

Article 2§1: The Committee concludes that the situation in Poland is not in conformity with Article 2§1 of the Charter, on the ground that the working hours in certain occupations can exceed 16 hours per day, or be up to 24 hours per day.

[In its previous conclusion (Conclusions XIX-3(2010)) the Committee held that the situation was not in conformity with the Charter as regulations permitted daily working time of more than 16 or up to 24 hours. Such an extension of the working day to 16 hours applies to jobs regarding surveillance of machines, and the extension to 24 hours applies to guardianship jobs of goods (parkings, buildings, etc) or persons.

The Committee recalls in this connection that under Article 2§1 of the Charter working time should in no circumstances exceed 16 hours per day.

The Committee further notes from the report that no modification of the Labour Code as regards the extension of working time beyond 16 or up to 24 hours a day was foreseen. Therefore, the Committee reiterates its finding of non-conformity.]

Article 4§2: The Committee concludes that the situation in Poland is not in conformity with Article 4§2 of the 1961 Charter on the ground that workers in both the public and private sectors do not have a right to increased compensatory time off for overtime hours.

[In its previous conclusion (Conclusions XIX-3 (2010)) the Committee held that the situation was not in conformity with the 1961 Charter as the time off granted to compensate for overtime work was not sufficient. The previous report indicated that an amendment to the Labour Code was under consideration, which envisaged 50% extra time off for employees of the private sector and a compensatory time off increased by 25% for civil servants. The current report indicates no change.

The Committee, however, notes from the information submitted to the Governmental Committee by the representative of Poland (Report concerning Conclusions XIX-3 (2010), § 119-120) that the authorities had no intention of pursuing the previously announced amendment to the Law on Public Service on the compensation of overtime work of civil servants.

The Committee notes from the report that for the private sector the question of increased time off for overtime work is one of the topics of on-going discussions with regard to the sixth section of the Labour Code, led by the Working Group on Labour Rights and based on the collective agreements of the Tripartite Commission.

As regards public sector employees, the issue of increased time off was included in the draft amendments to the Public Sector Law which were examined in 2012 and 2013. However, no concrete progress has been achieved to date.

The Committee considers that the situation it previously found not to be in conformity with the 1961 Charter has not changed. Therefore, it reiterates its previous finding of non-conformity.]

Article 4§4: The Committee concludes that the situation in Poland is not in conformity with Article 4§4 of the 1961 Charter on the ground that the notice period which applies in the event of early termination of fixed-term contracts is not reasonable.

[It has concluded since Conclusions XV-2 (2001) that the situation in Poland was not in conformity with Article 4§4 of the 1961 Charter on the ground that the notice period in Article 33 of the Labour Code was not reasonable in cases of early termination of fixed-term contracts.

The report recalls that Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which has been transposed into domestic law, authorises differences in some working conditions – including rules on notice – depending on a permanent or fixed-term type of contract. It also indicates that some collective agreements provide for longer periods of notice than the minimum set by Article 33 of the Labour Code, and that amendments to the legislation are planned to bring the situation in conformity with Article 4§4 of the 1961 Charter.

*The Committee notes that these amendments did not come into force during the reference period. It recalls the fact that when domestic legislation takes up or is based on an EU Directive, it does not automatically ensure conformity with the 1961 Charter. It will, therefore, assess the effects of the EU Directive on the law and practice of the State Party on a case-by-case basis (*Confédération générale du travail *(CGT) v. France, Complaint no. 55/2009, Decision on the Merits of 23 June 2010, §38). It considers in the present case that Article 33 of the Labour Code, which transposes Directive 1999/70/EC into*

domestic law and sets out a two-week notice period in the event of early termination of the contract, deprives employees on fixed-term contracts of their right to a reasonable period of notice provided for by Article 4§4 of the 1961 Charter.]

Article 5: The Committee concludes that the situation in Poland is not in conformity with Article 5 of the 1961 Charter on the grounds that:

- some categories of civil servants may not perform trade union functions;
- home workers do not enjoy the right to form trade unions.

[As noted in its previous conclusion (Conclusions XIX-3 (2010)), some civil servants "exercising public powers" listed in section 52 of the 2008 Civil Service Act, such as representatives on the voivodship veterinary offices, the Office for the registration of medicines, medical devices and biocidal products and the Office of forest seed production, are prohibited from performing trade union functions. In its last conclusion, the Committee held that this list went beyond the exceptions authorised by Article 5 and in the light of Article 31, and hence that the situation was not in conformity with the 1961 Charter. In the same conclusion, the Committee declared the fact that home workers were not entitled to form trade unions incompatible with the 1961 Charter.

The report states that there was no change in the relevant legal framework during the reference period. However, it does state that, with the exception of the provisions relating to officials of the Internal Security Agency (ABW), a reform of the Civil Service Act is being planned. This would make it possible to reverse the finding of non-conformity referred to above. The report points out that the officials of the ABW exercise their functions in the context of an armed training. In a letter dated 28 March 2014, the Committee asked whether the aforementioned officials are part of armed forces and, if so, whether they perform military functions. The Committee considers from the Government's reply dated 16 June 2014 that it is not established with certainty that the officials of the ABW are members of the armed forces, but that their responsibilities alone may have a military character.]

Other parliamentary measures:

Article 4§5: The Committee concludes that the situation in Poland is not in conformity with Article 4§5 of the 1961 Charter on the ground that, after maintenance payments and other authorised deductions, the wages of workers with the lowest wages do not ensure that they can provide for themselves and their dependants.

[In Conclusions XVI-2 (2003), XVIII-2 (2007) and XIX-3 (2010) it found a non-conformity to Article 4§5 of the 1961 Charter on the ground that, after the deductions authorised by law, the wages of workers with the lowest wages did not ensure they could provide for themselves and their dependants.

The report reiterates the following concerning the deductions authorised by the Labour Code:

- *Those corresponding to cash advances are subject to a dual limit of 50% of remuneration, net of social contributions and tax deductions (Article 87, paragraph 3, sub-paragraph 2 of the Code), and 75% of the minimum wage, net of the aforementioned contributions and deductions (Article 871, paragraph 1, sub-paragraph 2 of the Code);*

- *The pecuniary penalties set out in Article 108§2 of the Labour Code are subject to a limit of 10% of remuneration, net of social contributions, tax deductions and the other deductions set out in Article 87, paragraph 1 (Article 108, paragraph 3 of the Code), and a limit of 90% of the minimum wage, net of social contributions and tax deductions (Article 871, paragraph 1, sub-paragraph 3 of the Code).*

In addition, the deduction of consented payments set out in Article 91, paragraph 1 of the Code is subject to a limit of 100% of the minimum wage, net of social contributions and tax deductions, when these payments benefit the employer (Article 91, paragraph 2, sub-paragraph 1 of the Code), or a limit of 80% of the minimum wage, net of the aforementioned contributions and deductions when they benefit a third party (Article 91, paragraph 2, sub-paragraph 2 of the Code).

Furthermore, the deductions for the recovery of maintenance payments, set out in Article 87, paragraph 1 sub-paragraph 1 of the Code, are subject to a sole limit of 60% of remuneration, net of social contributions and tax deductions (Article 87, paragraph 3, sub-paragraph 1 of the Code). According to the report, if family courts do not take account of the Code when deciding on the amount of maintenance payments, the interests of payers and recipients are weighed so as to preserve decent living conditions. Where the amount of maintenance exceeds 60% of remuneration, the unpaid amounts are added together and paid as a lump sum when the maintenance obligation expires.

Lastly, deductions intended for the recovery of sums other than maintenance payments set out in Article 87, paragraph 1, sub-paragraph 2 of the Code, are subject to a dual limit of 50% of remuneration, net of social contributions and tax deductions (Article 87, paragraph 3, sub-paragraph 2 of the Code), and 100% of the minimum wage, net of the aforementioned contributions and deductions (Article 87[1], paragraph 1, sub-paragraph 1 of the Code).

The Committee notes that there was no change in the relevant legislation during the reference period. It considers, however, that the situation has changed in practice since the UN Committee on Economic, Social and Cultural Rights (Concluding Observations concerning Poland of 2 December 2009) welcomed a substantial increase in the minimum wages in Poland and excluded this item from its list of principal subjects of concern.

The Committee recalls the goal of Article 4§5 of the 1961 Charter, which is to guarantee that workers protected by this provision are not deprived of means of subsistence (Conclusions XVIII-2 (2007)). It considers in the present case that the legislation does not set an absolute limit on deductions for the purpose of recovering maintenance payments, and therefore allows cases to persist in which workers have access to only 60% of the minimum wage, net of social contributions and tax deductions. This amount does not enable them to provide for themselves and their dependants.]

Spain

Normative action:

Article 2§1: The Committee concludes that the situation in Spain is not in conformity with Article 2§1 of the 1961 Charter on the ground that the maximum weekly working time may exceed 60 hours in flexible working time arrangements, and for certain categories of workers.

[In its previous conclusions (Conclusions XIX-3, XVIII-2, XVI-1) the Committee found that the Workers' Statute permitted weekly working time in excess of 60 hours in the context of flexible working time arrangement, as well as for certain categories of workers (for example personnel in sanitary and health services).

The Committee notes from the submissions of the Government in response to the trade union comments that the possibility of working days of up to 12 hours and weekly hours of over 60 hours is more theoretical than real, and is certainly not observed in practice during inspections.

The Government acknowledges that it would be hypothetically possible (though highly improbable) to have a maximum working day of 11 hours and 45 minutes for 11 consecutive days, with the following three days off.

The Committee thus understands that there have been no amendments to the Workers' Statute which establishes 12 hours of obligatory rest between two consecutive working days and one and a half days of uninterrupted weekly rest which can be accumulated over 14 days, therefore leading to a working week in excess of 60 hours. The Committee reiterates its previous finding of non-conformity].

Article 4§2: The Committee concludes that the situation in Spain is not in conformity with Article 4§2 of the 1961 Charter on the ground that the Workers' Statute does not guarantee increased remuneration or an increased compensatory time-off for overtime work.

[In its previous conclusion (Conclusions XIX-3) the Committee held that the situation was not in conformity with the Charter as the Workers' Statute did not guarantee workers the right to increased remuneration or to a longer rest period in compensation for overtime.

More specifically, Section 35 of the Workers' Statute simply allows collective bargaining to fix the increased rate of remuneration or compensatory leave. However the Statute provides that overtime cannot be paid at a lower rate than a regular working hour, or should be compensated with leave of equal length to the overtime worked.

According to the report the collective agreement for non-civil service employees in the General Administration of the State provides that overtime shall be compensated preferentially with rest periods which are accruable at two hours per each hour worked.

The Committee notes from the report of the Governmental Committee (TS-G (2012)1, §§124-129) that in 2009 55.99% of all registered collective agreements, contained clauses providing for an increased remuneration for overtime. These agreements cover 52% of workers.

The Committee takes note of the information provided concerning overtime work in the public sector and also of the information about collective agreements providing for an increased remuneration for overtime. The Committee observes, however, that the situation in law which it has previously found not in conformity with the Charter has not changed. Therefore, the Committee repeats its previous finding of non-conformity on the ground that the Workers' Statute does not guarantee increased remuneration or compensatory time off for overtime work.]

Article 4§4: The Committee concludes that the situation in Spain is not in conformity with Article 4§4 of the 1961 Charter on the grounds that:

- the notice period that applies to permanent and fixed-term employment contracts under the following circumstances is not reasonable:
- dismissal when an employment contract expires or when its objectives are realised;
- termination of employment contracts based on the death or retirement of an employer who is a natural person or based on the winding up an employer which is a legal person, beyond three years of service;
- termination of employment contracts for objective reasons, beyond six month of service.
- employees on probationary periods under entrepreneur support contracts may be dismissed without notice;
- notice periods may be left to the discretion of the parties to an employment contract.

[The Committee points out that by accepting Article 4§4 of the 1961 Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined primarily in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be equivalent to the wages that would have been paid during the corresponding period of notice. It considers in the present case that the notice period and/or compensation in lieu are in conformity with Article 4§4 of the 1961 Charter under certain circumstances, but insufficient in the following circumstances:

- *Dismissal when employment contracts expire or when their aims have been achieved (ground given in Article 49, paragraph 1(c) of the TRLET);*
- *Termination of the employment contract on the death or retirement of employers who are natural persons or the winding up of employers which are legal persons (ground given in Article 49, paragraph 1(g) of the TRLET), for employees with more than three years of service;*
- *Termination of the employment contract for objective reasons (ground given in Article 49, paragraph 1(l) of the TRLET), for employees with more than six months of service.]*

[The Committee points out that protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection covers probationary periods (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The Committee notes in the present case that no notice period or compensation is provided for for dismissal during the exceptional probationary period of the entrepreneur support contract. It therefore considers that section 4, paragraph 3 of Law No. 3/2012 is not in conformity with Article 4§4 of the 1961 Charter in this respect.]

[The Committee asserts that in order to guarantee that the protection granted by Article 4§4 of the Charter is effective, the notice period and/or compensation in lieu should not be left to the discretion of the parties to the employment contract but be governed by legal instruments such as legislation, case law, regulations or collective agreements. It considers in the present case that the provisions for notice periods which are to be determined by the mutual agreement of the parties to the employment contract or on grounds set out in the employment contract (under Article 49, paragraph 1(a) and (b) of the TRLET) are not in conformity with Article 4§4 of the 1961 Charter.]

Article 6§2: The Committee concludes that the situation in Spain is not in conformity with Article 6§2 of the 1961 Charter on the following grounds:

Legislation was passed which affects the right to bargain collectively, without consultation of trade unions and employers' organisations.

Act 3/2012 allows employers unilaterally not to apply conditions agreed in collective agreements.

[The Committee has explicitly considered that there are measures that could be taken to combat the economic crisis and its effects, which are not contrary to the Charter (Collective Complaint no. 80/2012, Pensioners' Union of the Agricultural Bank of Greece (ATE) *v. Greece, §66). Taking into consideration the provisions of Article 31 of 1961 Charter mentioned above, the Committee considers in this context that the measures taken in Spain are disproportionate to the aims pursued and therefore they do not comply with the conditions established by Article 31 of the 1961 Charter.*

Through the failure to consult the most representative trade unions or employers' organisations in the drafting of the Royal Decree-Law No. 3/2012, which fundamentally affects the regulation of collective bargaining and working conditions, the Committee considers that the government has failed to promote voluntary negotiation. In this respect, the situation is not in conformity with article 6§2 of the 1961 Charter.

(…)*The Committee considers that the employment court would be bound by Article 41 of Act No. 3/2012 to accept that significant changes in the working conditions, on "economic, technical organizational or production-related grounds" (as defined in article 82(3)), are lawful. This law does not adequately define the bases for unilateral disapplication. The Committee asks for examples or case law interpreting this Article so as to establish what these grounds include. However, it considers that the collective or individual right to appeal to an employment court following decisions by the employer to suspend or disapply matters contained within a collective agreement is not sufficient to prevent the undermining of voluntary negotiation procedures. Furthermore, following the consultation period mentioned by the Government, which may not apply in every case, if no agreement has been reached the employer may still unilaterally apply the changes. The legitimation of unilateral derogation from freely negotiated collective agreements is in violation of the obligation to promote negotiation procedures. Accordingly, the Committee finds that the situation is in violation of Article 6§2 of the 1961 Charter on this point.]*

Article 6§4: The Committee concludes that the situation in Spain is not in conformity with Article 6§4 of the 1961 Charter on the ground that legislation authorises the Government to impose compulsory arbitration to end a strike in cases which go beyond the derogations permitted by Article 31 of the 1961 Charter.

[The Committee recalls that pursuant to Section 10.1 of Royal Legislative-Decree No. 17/1977 of 4 March 1977 the Government may impose arbitration to end a strike in exceptional circumstances, namely when it considers that there is a threat to the rights and freedoms of others because a strike had gone on for too long, the parties' positions were irreconcilable and too much damage was being done to the national economy. According to a Supreme Court judgment of 9 May 1988, a situation permitting Government interference has to be exceptional, or there must be a cumulative series of circumstances, all of which have to be considered by the Government, before it can make use of its exceptional discretionary power.

The Committee recalls that imposing arbitration to end a strike can only be in conformity with Article 6§4 of the Charter if its falls within the limits of Article 31 of the 1961 Charter. Restrictions on the right to strike fall within the limit of Article 31 of the 1961 Charter if they are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others, or for the protection of public interest, national security, public health or morals.

In its last conclusion (Conclusions XIX-3 (2010)), the Committee found that Royal Decree-Law 17/1977 allowed the use of obligatory arbitration in circumstances that exceeded the limits established by Article 31 of the 1961 Charter.

The report states that there has been no change in this respect, therefore the Committee considers that the situation is still not in conformity with the 1961 Charter.]

Other parliamentary measures:

Article 2§4: The Committee concludes that the situation in Spain is not in conformity with Article 2§4 of the 1961 Charter on the ground that it has not been established that all workers exposed to residual risks for health and safety are entitled to appropriate compensatory measures, such as reduction in working hours, exposure time or additional paid leave.

[With regard to compensation for workers exposed to risks, despite the implementation of prevention measures and the reduction of the aforementioned risks, the Committee noted previously that under Article 25 of Law No. 31/95, occupations are considered dangerous if they expose employees to physical, chemical or biological substances which may have mutagenic or toxic effects on procreation. As a result, it advocates the adoption of any appropriate measure – particularly the reduction of exposure times to risk factors, the reduction of working hours or the assignment of employees to other posts – to ensure that posts are suited to workers and vice-versa. Bearing in mind that this law refers to particular arrangements negotiated in the context of collective agreements or company agreements, the Committee has asked repeatedly in what sectors or activities reduced working hours have been introduced by these means (or by decision of the relevant authorities as the case may be).

The report mentions certain legislative amendments, particularly the changes to driving times in road transport (Royal Decree No. 1635/2011), and gives detailed information on prevention measures during pregnancy and nursing, but does not answer the Committee's question.

The Committee points out that under Article 2§4, states are required both to eliminate and prevent occupational risks and to enable workers who are still exposed to such risks

to preserve their vigilance by giving them adequate and regular time to recover from stress or fatigue. This should be achieved particularly through reduced working hours or exposure times, or through the award of additional paid leave. In the absence of the information requested, the Committee considers that it has not been established that the situation in Spain is in conformity with Article 2§4 of the Charter.]

Article 4§1: The Committee concludes that the situation in Spain is not in conformity with Article 4§1 of the 1961 Charter on the grounds that:

- the minimum wage for workers in the private sector does not secure a decent standard of living;
- the minimum wage for contractual staff in the civil service does not secure a decent standard of living.

[The Committee concluded from Conclusions XIV-2 (1998) onwards that the situation was not in conformity with Article 4§1 of the 1961 Charter, on the ground that the minimum wage was manifestly unfair. It previously requested detailed information on the net values of both minimum and average wages.

The report states that Law No. 35/2010 of 17 September 2010 on urgent measures to reform the labour market amended Article 26, paragraph 1 of the Workers' Statute (TRLET) with a view to extending the payment of wages in kind, provided that they do not exceed 30% of the remuneration, and that the amount paid in cash is equal to the minimum interprofessional wage (SMI). Moreover, Royal Decree No. 1888/2011 of 30 December 2011, setting the SMI for 2012, kept the gross SMI at €641.40 per month (€8 979.60 over 14 months).

The report also indicates that the minimum gross annual remuneration for 2012 was €16 451.96 (€1 371.00 per month over 12 months) for civil servants in the Ministry of Defence. The figure was €12 719.59 (€1 059.97 per month over 12 months) for contractual staff in the above Ministry, whose remuneration, in accordance with section 27 of the Basic Status of Public-sector Employees Act of 12 April 2007 (No. 7/2007) (EBEP), is governed by labour legislation, collective agreements and employment contracts.

According to EUROSTAT data for 2012 (table "earn_nt_net"), the average annual earnings (100% of average single workers without children) were €25 894.23 (€2 157.85 per month over 12 months) gross and €19 975.06 (€1 664.59 per month over 12 months) net of social contributions and tax deductions, and the SMI as a proportion of average earnings (table "earn_mw_avgr2") was 34.70%.

The Committee notes the UN Committee on Economic, Social and Cultural Rights' concern (Concluding Observations of 6 June 2012, §§16 and 18) about the SMI being frozen at a level that does not allow for a decent standard of living, 21.80% of the population living below the poverty line, and the percentage of those at risk of falling into poverty having increased considerably due to the economic and financial crisis.

(…) The Committee notes that in spite of repeated requests, the report fails to provide information on net values of both minimum and average wages for the reference period. It recalls that the report must provide full and up to date information on the law and practice on changes that occurred during the reference period. It also recalls that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the 1961 Charter,

remuneration must be above the minimum threshold, set at 50% of the net average wage. This is the case when the net minimum wage is above 60% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, the State Party must show that the wage provides a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1).

In the light of the report and the EUROSTAT data, the Committee notes that the minimum wage of tenured civil servants is above the limit of 60% of the net average wage. It also notes that after social security contributions and income tax, the SMI as well as the minimum wage of contractual staff are below the minimum threshold set at 50% of the net average wage, and are therefore manifestly unfair within the meaning of Article 4§1 of the 1961 Charter].

United Kingdom

Normative action:

Article 2§2: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§2 of the 1961 Charter on the ground that the right of all workers to public holidays with pay is not guaranteed.

[The Committee notes from the report that there is no specific entitlement to take leave on bank and public holidays in the United Kingdom. Bank and public holidays are included in the sum of paid annual leave, which is 5.6 weeks (28 days) for most workers. Accordingly, if a worker prefers not to take leave on bank holidays, he/she is still entitled to the same amount of total paid leave, but it might be taken on an alternative day(s). The rate of pay and circumstances in which work may be performed on bank holidays is a matter for individual contracts, subject to employment law restrictions. According to a survey mentioned in the report, 79% of employees were paid at least their basic rate for all the bank holidays not worked.

The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday. In this respect, in light of the information available, the Committee considers that in the United Kingdom the right of all workers to public holidays with pay is not guaranteed.]

Article 4§2: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§2 of the Charter on the ground that workers do have no adequate legal guarantees to ensure them increased remuneration for overtime.

[In its previous conclusion (Conclusions XIX-3 (2010)) the Committee held that the situation was not in conformity with the 1961 Charter, as workers did not have adequate legal guarantees to ensure them increased remuneration for overtime.

The Committee further notes from the report that there have been no changes to the situation. Beyond certain minimum standards set out in law, employers and employees are free to negotiate terms and conditions. The relationship between employer and employee is governed by English contract law. In many cases, the norm is that an employer pays

an increased rate for overtime hours. Entitlement to overtime pay is not a right that is enforced by the Government.

The Committee recalls the principle of Article 4§2 of the 1961 Charter, which is that work performed outside normal working hours requires an increased effort on the part of the worker. Not only must the worker receive payment for overtime, therefore, but also the rate of such payment must be higher than the normal wage rate (Conclusions I, Statement of Interpretation of Article 4§2, p. 28). Where remuneration for overtime is entirely given in the form of time off, Article 4§2 requires this time to be longer than the additional hours worked (Complaint No. 57/2009, European Council of Police Trade Unions *(CESP) v. France, Decision on the merits of 1 December 2010, §31).*

In the absence of any changes to the legislation, the Committee reiterates its previous finding of non-conformity.]

Article 4§4: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§4 of the 1961 Charter on the ground that notice periods are inadequate below three years of service.

[The Committee has concluded since Conclusions VI (1979) that the situation was not in conformity with Article 4§4 of the 1961 Charter on the ground that the notice periods were too short below three years of service.

(…)The report merely states that there have been no changes to the relevant legislation. It also indicates that the Employment Act of 2006 extended the rights of full-time employees to notice, as well as certain rights during notice to part-time employees, but does not state which rights are at stake. It also states that, under the Employment Act of 1996 (which according to the official legislation website refers to section 86, paragraph 1 of the Employment Rights Act of 22 May 1996 (No. 18/1996)), employees are entitled to at least one week of notice per year of service. According to the report, about one third of employers outside the public sector give four weeks of notice to employees on fixed-term contracts in practice.

The Committee points out that by accepting Article 4§4 of the 1961 Charter, the States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be equivalent to the wages that would have been paid during the corresponding period of notice. The Committee considers that the problem in the United Kingdom, including the Isle of Man, is that whether defined as statutory minima or negotiated in practice, the notice periods for employees with less than three years of service are not reasonable. It asks that the next report specify which rights to notice of full-time employees were extended under the Employment Act of 2006. It also asks for information on any existing severance pay and on notice periods applied in Northern Ireland and to situations of termination of employment other than dismissal (such as bankruptcy, employer invalidity or death, or early termination of fixed-term contracts). It then asks for information on notice periods applied to workers who are in their probationary period, on fixed-term contracts, and in the civil service.]

Article 4§5: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§5 of the 1961 Charter, on the grounds that:

(…) the determination of deductions from wages higher than the National Minimum Wage is left at the disposal of the parties to the employment contract.

[The Committee points out that, under Article 4§5 of the 1961 Charter, the determination of wage deductions shall not be left at the disposal of the parties to the employment contract and, if such negotiation is not prohibited per se, it must be subject to legal instruments such as statutes, case law, regulation or collective agreements (Conclusions XIV-2 (1998), XVI-2 (2003) and XVIII-2 (2007)). It notes in the present case that, as section 31, paragraphs 1 et seq. of Regulations No. 584/1999 sets out the grounds on which deductions are admissible, this requirement is met in situations where wages are paid at NMW level. However, as section 13, paragraphs 1 et seq. of the Employment Rights Act mainly refer to contract stipulation or prior written consent, this requirement is not met in the majority of situations where wages are higher than the NMW.]

Article 5: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 5 of the 1961 Charter, on the ground that legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represent unjustified incursions into the autonomy of trade unions.

Article 6§2: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6§2 of the 1961 Charter on the ground that workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining.

Article 6§4: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- the possibilities for workers to defend their interests through lawful collective action are excessively limited;
- the requirement to give notice to an employer of a ballot on industrial action is excessive; (…)

[In its previous conclusions (Conclusions XVII-1 (2004), XVIII-1 (2006), XIX-3 (2010)), the Committee concluded that the scope for workers to defend their interests through lawful collective action was excessively circumscribed in the UK. In this respect, the Committee noted in its last conclusion that lawful collective action was limited to disputes between workers and their employer, which prevented unions from taking action against the de facto employer if this was not the immediate employer. It furthermore noted that British courts excluded collective actions concerning a future employer and future terms and conditions of employment in the context of a transfer of part of a business (University College London NHS Trust v. UNISON).

The Committee notes that in 2012 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) upheld the need to protect the right of workers to take industrial action in relation to matters that affect them, even though, in certain cases, the direct employer may not be a party to the dispute, and to participate in sympathy strikes, provided that the initial strike they are supporting is lawful. Moreover, ILO-CEACR recalled that the globalisation of the economy and the delocalisation of work

centers may have a severe impact on the right of workers' organisations to organise their activities in a manner so as to effectively defend their members' interests, should lawful industrial action be too restrictively defined (Observation CEACR (adopted 2012) – Freedom of Association and Protection of the Right to Organise Convention, (No. 87)).

The Government indicates that within the context of the UK's system, practices and traditions of industrial relations, the restrictions in terms of the prohibition of secondary action are necessary in a democratic society for the protection of the rights and freedoms of others, or for the protection of the public interest. It further indicates that these restrictions are proportionate, particularly when the UK context and history of industrial relations is taken into account. Therefore, the Government states that it has no plans at present to change the law in this area. However, it points out that it considers it prudent to monitor the application of the law to ensure that the legal framework is fit for purpose.

The Committee considers that employees nowdays often do not work solely for and under the direction of a single clearly defined employer, as evidenced by outsourcing, working in networked organisations, the formation of inter-organisational partnerships, particularly in public services, but also more use of agency staff, secondments and joint partnership working. The result is a far more diverse and complex matrix of contractual relationships with workers who used to share the same employer being split amongst different employers, even while they may find themselves simultaneously brought together with workers from other industries under new employment arrangements. As a consequence, trade unions increasingly find themselves representing a workforce whose terms and conditions are to a large extent not determined by their direct employer.

The Committee notes that the ban on secondary action forms part of a matter brought before the European Court of Human Rights by the National Union of Rail, Maritime and Transport Workers (RMT) – Judgment of 8 April 2014. In that case, the Court found that secondary action was protected under the relevant International Labour Organisation Convention and the European Social Charter, and that it would be inconsistent for the Court to take a narrower view of freedom of association of trade unions than that which prevailed in international law. However, because the right to organise had still been partially effective, the United Kingdom's legislation was found by the Court to be within the margin of appreciation within the framework of the European Convention of Human Rights and the interference was therefore not considered to be disproportionate.

The Committee notes that Article 6§4 of the Charter is more specific than Article 11 of the Convention. It therefore considers that while the rights at stake may overlap, the obligations on the State under the Charter extend further in their protection of the right to strike, which includes the right to participate in secondary action.

In view of the extension of these work models and their impact on the ability of trade unions to represent the interests of their members, the Committee reiterates its finding that the restriction established in Section 244 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), which limits lawful collective action to disputes between workers and their employer, constitutes an interference with the right of workers guaranteed in Article 6§4 of the 1961 Charter. As regards the arguments put forward by the Government with respect to Article 31 of the 1961 Charter, the Committee holds that the maintenance of such restriction is not proportionate to the aim of protecting the rights and freedoms of others or the public interest in a democratic society.]

[The Committee considered in its previous conclusion (Conclusions XVIII-1, 2010) that the requirement to give notice to an employer of a ballot on industrial action is excessive, since in any case unions must issue an additional strike notice before taking action. Given that no change has occurred with respect to the relevant legal framework, the Committee considers that the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, remains not in conformity with Article 6§4 of the Charter.]

Other parliamentary measures:

Article 2§4: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§4 of the 1961 Charter on the ground that it has not been established that workers exposed to occupational health risks, despite the existing risk elimination policy, are entitled to appropriate compensation measures.

[According to the report, the "Managing Shift Work" Guidance (HSG256), the Good Practices Guidelines of 2006 and the Fatigue Risk Index Calculator provide employers with comprehensive advice and tools to enable them to properly control the health and safety risks associated with working hours. Specific regulations and measures applying to identified risks are mentioned in the report. However, these focus on prevention rather than on measures compensating the risks that subsist despite the preventive arrangements that are implemented.

The Committee takes note of the information provided on the measures taken to minimise the risks to health and safety at work. It notes that, in the absence of specific rules that create an obligation to compensate workers dealing with residual risks, for example by reduced working hours or additional holidays, the non-binding guidance that is currently being applied does not allow to establish that the situation is in conformity with Article 2§4 of the 1961 Charter.]

Article 2§5: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§5 of the 1961 Charter, on the ground that there are inadequate safeguards to prevent that workers may work for more than twelve consecutive days without a rest period

[The Committee, in its previous conclusion (Conclusions XIX-3 (2010)) that the situation was not in conformity with Article 2§5 of the 1961 Charter, on the ground that the list of situations in which it was possible to postpone weekly rest periods, and work for more than 12 consecutive days, was very broad-ranging and contained few safeguards. It notes from the report that the situation has not changed and accordingly renews its finding of non-conformity.]

Article 4§1: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§1 of the 1961 Charter on the ground that the minimum wage applicable to workers in the private sector does not secure a decent standard of living.

[The Committee recalls that the report must provide full information, including updates on changes that occurred during the reference period. It therefore repeats its request for information on net values of both minimum and average wages and, where applicable, direct taxation, social security contributions, the costs of living and earnings-related

benefits. It also recalls that by subscribing to Article 4§1 of the 1961 Charter, States Parties undertook to recognise the right of workers to a remuneration such as will ensure them and their families a decent standard of living. In this respect, the remuneration must be above the minimum level, set at 50% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, the State Party must show that the wage provides a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1).

The Committee notes from the report and the EUROSTAT data that, after deductions due to social security contributions and income tax, the NMW is below the minimum level set at 50% of the net average wage. It therefore considers that, in spite of the relative improvement in the situation of workers and young workers who are paid the NMW, remuneration is still manifestly unfair within the meaning of Article 4§1 of the 1961 Charter.

Article 4§5: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§5 of the 1961 Charter, on the grounds that:

- it has not been established that the limits on deductions from wages equivalent to the National Minimum Wage are reasonable; (…)

[The Committee points out that, if the common law principle of proportionality in theory could provide a valid and reasonable limit with regard to the amount of deductions, it had not been established that this principle was applied to wage deductions in practice (Conclusions XVI-2 (2003) and XVIII-2 (2007)). Furthermore, the report does not establish either that the amount of deductions, taken individually or in combination, are subject to any reasonable limit under the Employment Rights Act, Regulations No. 584/1999 or any other legal instrument. As a result, whether wages are paid at the NMW or not, situations may exist in which the wage left after all authorised deductions is not sufficient to ensure the workers' and their dependents' subsistence.]

Article 6§4: The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- (…) the protection of workers against dismissal when taking industrial action is insufficient.

[Pursuant to the ERA-2004, workers participating in lawful industrial action are protected against dismissal for twelve weeks. In its last conclusion, the Committee held that the period of twelve weeks after which those concerned lost their employment protection was arbitrary and reiterated its conclusion of non-conformity. ***(…)****The Committee notes that the situation has not changed in this respect and therefore reiterates its conclusion of non-conformity.]*

Appendix 8.

Observations by the Committee on texts submitted by the Committee of Ministers

In 2014, the Committee adopted comments only on one text submitted to it by the Committee of Ministers:

Parliamentary Assembly Recommendation 2044 (2004) on ending child poverty in Europe

The European Committee of Social Rights takes note of Recommendation 2044 (2014) and Resolution 1995 (2014) of the Parliamentary Assembly on "ending child poverty in Europe"

In interpreting Article 30 of the Charter (the right to protection against poverty and social exclusion) the European Committee of Social Rights has held that living in a situation of poverty and social exclusion violates the dignity of human beings. States Parties are under an obligation to give effect to the right to protection against poverty and social exclusion by adopting measures aimed at preventing and removing obstacles to access to fundamental social rights.

In this context, by reaffirming this human rights approach, the European Committee of Social Rights has emphasised the very close link between the effectiveness of the right recognised by Article 30 of the Charter and the social, legal and economic protection of the family (Article 16), including migrant families, as well as of children and young persons (Article 17). States are required to ensure the economic protection of the family by appropriate means, in particular family or child benefits provided as part of social security, available either universally or subject to a means-test.

With respect specifically to child poverty, the Committee concurs with Recommendation 2044 (2014) that more prominence and greater priority should be accorded to this issue.

Having regard to *children living without parental care or suffering from neglect* (paragraph 1 of Resolution 1995 (2014) the Committee refers to its decision in Defence for Children International (DCI) v. Belgium (Complaint No. 69/2011, decision on the merits of 23 October 2012) where it stated that persistent failure to accommodate unlawfully present and unaccompanied minors poses a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity of children. Assistance should be provided to non-accompanied children. In fact, assistance should be provided by States where the minor is unaccompanied or if the parents are unable to provide such assistance.

Having regard to *children living in families caught in 'cycles of poverty'* (paragraph 4 of the Resolution) the Committee shares the view of the Parliamentary Assembly that it is essential to interrupt the cycle of poverty by taking targeted measures and global and coordinated approach as required by Article 30 of the Charter. In its statement concerning the economic crisis (Conclusions 2009, General introduction), the Committee held that the crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are

bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.

In this respect, the Committee wishes to invite the Parliamentary Assembly and the Committee of Ministers to encourage States Parties not having done so, to accept the Revised European Social Charter and, in particular, its Article 30, as well as the Collective Complaints procedure, which reinforces the effectiveness of the rights of the Charter.

Appendix 9.

Selection of judicial decisions referring to the European Social Charter

National Courts

Czech Republic

Supreme Administrative Court of the Czech Republic, case of Š. W., M. Z. and D. H. v. South Bohemia Region, 4 Ads 134/2014 – 29, judgment of 30 October 2014 (rights of children with disabilities to services, reference to Article 14 of the Charter).

Estonia

Supreme Court of Estonia, decision No. 3-4-1-67-13 of 5 May 2014 in which reference was made to the 2013 assessment of the European Committee of Social Rights according to which the Estonian situation is not in compliance with Article13§1 of the Revised European Social Charter as the level of social assistance granted to persons without resources is inadequate.

France

Conseil d'Etat, cases Nos 58349, 358412, 358552, 358619, 358628, *Syndicat National des Collèges et des Lycées et autres* (reference to Article 5 of the Charter).

Conseil d'Etat, case No. 358992, *Fischer* (reference to Article 24 of the Charter: direct effect in French law).

The Netherlands

Central Administrative Court of Appeal, judgment of 17 December 2014 – ECLI: NL CRVB 2014:4178 (Conference of European Churches v. the Netherlands, Complaint No. 90/2013, decision on the merits of 01/07/2014).

Lower Court of the Hague, Case No. AWB 14/8686, judgment of 23 December 2014 (Conference of European Churches v. the Netherlands, Complaint No. 90/2013, decision on the merits of 01/07/2014).

Poland

Constitutional Tribunal, decision No. K 43/12 of 7 Mai 2014 (reference to Article 12 of the Charter).

Appelate Court Bialystok, judgment No. III AUa 131/14 of 1 July 2014 (reference to Article 4§1 of the Charter).

Constitutional Tribunal, decision No. P 26/12 of 21 January 2014 regarding local government employees (reference to the Article 4§2 of the Charter).

Spain

Social Tribunal No. 3 of Barcelona, judgment No. 352/14 of 5 November 2014 (reference to Article 30 of the Charter).

Constitutional Court, judgment No. 119 of 16 July 2014 (appeal on unconstitutionality No. 5603/2012 against Law 3/2012, of 5 July, on urgent measures to reform the labour market; dissenting opinion by 3 judges: reference to General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23/05/2012).

High Court of Justice of Catalonia (Social Chamber), judgment No. 7937 of 2 December 2014, appeal No. 5253/2014 (procedure of dismissal, reference to Article 4 of the Charter).

Labour Court of Toledo, judgment of 27 November 2014 (procedure of dismissal No. 536/2014, reference to General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants'Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23/05/2012).

European Court of Human Rights

Case of the National Union of Rail, Maritime and Transport Workers v. the United Kingdom, Application No. 31045/10, judgment of 8 April 2014 – final on 8 September 2014 (reference to the Committee's case law on Article 6§4 of the Charter).

Case of Stefanetti and Others v. Italy, Applications Nos 21838/10 21849/10, 21852/10, 21855/10, 21860/10, 21863/10, 21869/10 and 21870/10, judgment of 15 April 2014 – final 08/09/2014 (reference to Article 12 of the Charter and the Committee case law on the adequacy of benefits).

Case of Berger-Krall and Others v. Slovenia, Application No. 14717/04, judgment of 12 June 2014 – final 13/10/2014 (reference to European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009)

Case of Hrvatski Liječnički Sindikat v. Croatia, Application No. 36701/09, judgment of 27 November 2014 (separate opinion by Judge Pinto-Albuquerque: reference to Article 6§4 of the Charter).

Case of Veniamin Tymoshenko and others v. Ukraine, Application No. 48408/12, judgment of 2 October 2014 – final 02/01/2015 (reference to the Committee's case law on Article 6§4 of the Charter).

Appendix 10.

Main meetings with the participation of the European Committee of Social Rights and its Secretariat in 2014

1. Meetings organised by the Department of the European Social Charter

Brussels (Belgium), 27 May
Meeting on follow up to conclusions and decisions regarding Article 15 of the European Social Charter.

Moscow (Russian Federation), 27 May
Meeting on the deferred and non-conformity conclusions under the European Social Charter.

Baku (Azerbaijan), 25 June
Meeting on the non-accepted provisions of the European Social Charter.

Samara (Russian Federation), 16-17 September
Meeting on the implementation of the European Social Charter.

Copenhagen (Denmark), 23 September
Meeting on the ratification of the European Social Charter (revised) and the collective complaints procedure.

Turin (Italy), 17-18 October
High level Conference on the European Social Charter.

Belgrade (Serbia), 4 November
Meeting on the non-accepted provisions of the European Social Charter and on the European Code of Social Security.

2. Meetings organised by the Parliamentary Assembly

Paris (France), 14 March
Hearing with the Committee of Social Affairs, Health and Sustainable Development.

Paris (France), 8 September
Exchange of views between members of the European Committee of Social Rights and the Committee on Equality and Non-Discrimination.

Turin (Italy), 17 October
Meeting of the Sub-Committee on the European Social Charter.

Paris (France), 10 November
Parliamentary seminar on "Ensuring safe and healthy working conditions".

3. Meetings organised by or in co-operation with other Council of Europe Departments

Dubrovnik (Croatia), 27-29 March
Conference on the implementation of the Council of Europe Strategy for the Rights of the Child 2012-1015: Growing with Children's Rights, organised by the Division of Children's Rights, Directorate of Human Dignity and Equality (Directorate General of Democracy).

Moscow (Russian Federation), 22-24 April
Seminar on "Improvement of national legislation and acceptance of international obligations in social-labour field" organised by the SRSG in the Russian Federation together with the Ministry of Labour and Social Protection of the Russian Federation.

Minsk (Belarus), 19 June
Round table on the protection of social rights co-organised with the Directorate of Political Advice and the Council of Europe Info Point in Minsk.

Turin (Italy), 17 October
Meeting on Article 30 of the European Social Charter organised by the Human Rights Committee of the INGOs Conference of the Council of Europe.

4. CoE/EU regional joint programme "Strengthening the capacity of lawyers and human rights defenders for domestic application of the European Convention on Human Rights and of the Revised European Social Charter"

Kyiv (Ukraine), 17-20 January
Training session on the European Social Charter.

Baku (Azerbaijan), 20 February
Training session on the European Social Charter.

Chisinau (Republic of Moldova), 26 June
Thematic seminar on the European Social Charter.

Tbilisi (Georgia), 7 November
Thematic seminar on the European Social Charter.

Lviv (Ukraine), 6 December
Thematic seminar on the European Social Charter.

Moscow (Russian Federation), 9 December
Training session on the European Social Charter.

Chisinau (Republic of Moldova), 16-17 December
Regional Conference "Strengthening the capacity of lawyers and human rights defenders for domestic application of the European Convention on Human Rights and of the Revised European Social Charter".

Appendix 11.

Other meetings and training sessions, seminars, conferences and colloquies

1. Meetings organised by or in co-operation with other international organisations

The Hague (the Netherlands), 15-17 September
First Global Forum on Statelessness organised by the United Nations High Commissioner for Refugees (UNHCR).

Geneva (Switzerland), 1-2 April
Technical meeting on "Strengthening health and human rights standards for safe abortion" organised by the World Health Organisation (WHO).

Geneva (Switzerland), 8-9 October
International Workshop on "Enhancing co-operation between regional and international mechanisms for the promotion and protection of human rights" organised by the Office of the High Commissioner for Human Rights (OHCHR).

Vienna (Austria), 30-31 October
Supplementary Human Dimension Meeting "Human rights and fundamental freedoms in economic crisis" organised by the Organisation for Security and Co-operation in Europe (OSCE).

2. Conferences organised by the European Union

Athens (Greece), 27-28 May
Meeting of the Mutual Information System on Social Protection in Europe (MISSOC) network organised by the European Commission.

Rome (Italy), 10-11 November
Conference on "Migration and the importance of a fundamental rights-oriented approach to EU policy in this field" organised by the Fundamental Rights Agency (FRA) and the Italian Presidency of the Council of the European Union.

3. Seminars organised by or in co-operation with social partners

Barcelona (Spain), 11 June
Conference on the "Impact of the European Social Charter" organised by the *UGT-Catalunya.*

Helsingør (Denmark), 19-20 November
Annual Conference of the Network of the Trade Union Legal Experts (NETLEX) of the European Trade Union Confederation (ETUC).

Helsinki (Finland), 28 November
Training session on the collective complaints procedure organised by the Finnish Construction Trade Union.

4. Events organised by non-governmental organisations

Rome (Italy), 4 April
Colloquy "*Italia Romani* – Roma inclusion in Italy: which strategy?" organised by the non-governmental organisation *21 Luglio* under the patronage of the European Commission.

Madrid (Spain), 13 June
Workshop "Finding real solutions to the housing crisis" organised by the European Federation of National Organisations Working with Homeless People (FEANTSA).

Paris (France), 17 June
Colloquy on the European Social Charter and the collective complaints procedure organised by the *Fédération Internationale des Associations de Personnes Agées* (FIAPA).

Dublin (Ireland), 30 September
Meeting on the European Social Charter and the collective complaints mechanism organised by the Community Action Network (CAN).

Moscow (Russian Federation), 7-8 October
4th Congress of Social Workers and Social Pedagogues of Russia.

Amsterdam (the Netherlands), 10 November
Presentation on the European Social Charter at the Conference organised by the NGO *Kerk in Actie* dedicated to the collective complaint by the Conference of European Churches (CEC) against the Netherlands.

5. Colloquies organised by Universities

Limoges (France), 27 June
"Colloquy on labour law" organised under the Cycle of French-Turkish colloquia « *La dynamisation des droits sociaux par le Comité européen des Droits sociaux* » by the Universities of Limoges (France), Marmara and Galatasaray (Turkey).

Brussels (Belgium), 20 September
"A Belgian academic network on the European Social Charter?" – meeting organised by the *Université Saint-Louis* of Brussels.

6. Miscellaneous

Brussels (Belgium), 5 March
13th European Fourth World People's University on "Reflecting upon and constructing a Europe without exclusion together" organised by the International Movement ATD Fourth World.

Paris (France), 14 March
Training session with lawyers at the Bar of Paris.

Stockholm (Sweden), 26 March
Meeting with the Committee on Posting of Workers of the Swedish Parliament.

Seville (Spain), 25 April
Symposium on the European Social Charter organised by the *Centro de Estudios Andaluces.*

Trabzon (Turkey), 4-5 September
5th International Social Security Symposium organised by the Social Security Institution (SSI) of Turkey.

Thessaloniki (Greece), 22 September
Conference "We are all citizens" organised by the European Environment Agency (EEA) Grants NGO Fund Programme in Greece.

Poznań (Poland), 27 September
Conference on Persons with Disabilities organised by the Polish Bar Council.

Rome (Italy), 23-24 October
Conference on "Making the Charter of Fundamental Rights of the European Union a living instrument" organised by the National Research Council.

Athens (Greece), 30 October-1 November
The 10th Congress on "The Future of the Constitutional Welfare State in Europe" of the *Societas Iuris Publici Europaei* (SIPE).

Geneva (Switzerland), 1 December
Meeting of the International Labour Organisation (ILO) Committee of Experts on the adoption of the Conclusions on the application of the European Code of Social Security and its Protocol.

Appendix 12.

The Committee's contribution to the Turin Conference: Some proposals concerning the role and status of the European Committee of Social Rights on the occasion of the High-Level Conference in Turin, Italy, 17-18 October 2014

The Committee welcomes the organisation by the Italian Minister of Labour and Social Policies, the Mayor of Turin and the Secretary General of the Council of Europe of the High-Level Conference on the European Social Charter on 17 and 18 October 2014.

The Committee shares the objectives of the Conference, in particular the intention to re-launch the normative system based on the Charter as an effective source of European and international law, and to affirm the protection and promotion of social rights as a founding value for all European States and the European Union.

With a view to pursue such a crucial goal, the Committee considers that the European Social Charter should now be at the forefront and that its own role as the independent and authoritative monitoring body of the Charter should be strengthened. In this respect, it highlights the unique character and the usefulness of the monitoring procedures under the Charter, in particular the collective complaints mechanism.

On the occasion of the Conference, the Committee therefore wishes to put forward a number of proposals and invites all stakeholders and interested parties to reflect on these proposals, as well as on others that may emerge, in the follow-up to the High-Level Conference as an important dimension of the "Turin Process". The Committee is available to take part in the discussions.

- The 1991 Amending Protocol ("the Turin Protocol") provides that Committee members be elected by the Parliamentary Assembly. Pending the entry into force of this Protocol, the Committee of Ministers could consider applying this provision immediately, in the same way as it has already decided to apply all the other provisions of the Protocol. This would also be in keeping with what the Parliamentary Assembly has recommended. Election by the Parliamentary Assembly would strengthen and make more visible the Committee's democratic basis and its independent status, which is crucial for a body operating with monitoring and quasi-judicial procedures.
- The number of members of the Committee should be increased from the current 15, in particular to ensure a better overall balance in the Committee of the different legal traditions and social models in Europe. This would furthermore contribute to cope with the increasing workload by allowing further improvement of the Committee's working methods. This would also provide a much-needed opportunity for a revision of the distribution of States in the groups for the election process.
- The Committee also considers that in order to strengthen its role and the performance of its institutional functions, its secretariat should be reinforced and its status should be upgraded. It has already made proposals to this effect concerning the qualifications and experience of staff, the level of their grades and their number.

- The four-month embargo on the Committee's decisions on the merits of collective complaints is a procedural anomaly which hinders communication on and visibility of the procedure. The Committee wishes to initiate a reflection on how to overcome this problem, one possibility being that States concerned accept immediate publication.

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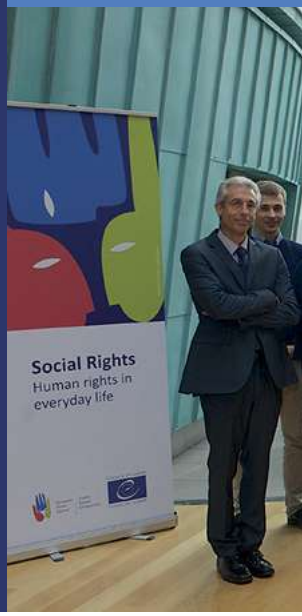

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