

Activity report 2010

HUMAN RIGHTS - DROITS DE L'HOMME
DEMOCRACY - DEMOCRATIE
RULE OF LAW - ÉTAT DE DROIT



18-10
1961
2011

50th anniversary

European Social Charter

50^e anniversaire

Charte sociale européenne

European Committee of Social Charter

Activity report 2010

European Social Charter
Directorate General of Human Rights and Legal Affairs
Council of Europe

The European Committee of Social Rights, a committee of independent experts established by Article 25 of the Charter as amended by the 1991 Turin Protocol, 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 organisations.

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.

Contents

Introduction	5	Appendix 5	31
by Mr Luis JIMENA QUESADA, President of the European Committee of Social Rights, <i>page 5</i>		Bilateral meetings (action plan), joint programmes CoE/EU and meetings on non-accepted provisions of the Charter in 2010, <i>page 31</i>	
2010 activities of the European Committee of Social Rights	9	Appendix 6	33
Overview, <i>page 9</i>		Meetings and training sessions, congresses and colloquies in 2010, <i>page 33</i>	
Reports, <i>page 11</i>		Appendix 7	35
Collective complaints , <i>page 16</i>		Books and articles, <i>page 35</i>	
Non-accepted provisions, <i>page 19</i>		Appendix 8	37
Election of members to the Committee , <i>page 21</i>		Selected judicial decisions referring to the European Social Charter in 2010 , <i>page 37</i>	
50th Anniversary of the European Social Charter in 2011 , <i>page 22</i>		Appendix 9	39
Appendix 1	23	Council of Europe ceremony on the occasion of the 60th anniversary of the European Convention on Human Rights on 19 October 2010, <i>page 39</i>	
List of the members of the European Committee of Social Rights as of 1 January 2011, <i>page 23</i>		Appendix 10	41
Appendix 2	25	Committee opinions on texts submitted by the Committee of Ministers, <i>page 41</i>	
Signatures and ratifications of the European Social Charter, its Protocols and the European Social Charter (revised), <i>page 25</i>		Appendix 11	53
Appendix 3	27	Contribution to the development of a general comment on the right to sexual and reproductive health by the UN Committee on Economic, Social and Cultural Rights, <i>page 53</i>	
Summary tables of the Committee's Conclusions for 2010, <i>page 27</i>			
Appendix 4	29		
Collective complaints list and state of procedure as of 31 December 2010, <i>page 29</i>			

Introduction

by Mr Luis JIMENA QUESADA, President of the European Committee of Social Rights

The European Social Charter adopted in 1961 was conceived as the counterpart to the European Convention on Human Rights and as the hallmark treaty of the Council of Europe on social rights. The 50th anniversary of the Charter in 2011 should carry proper acknowledgment of its emblematic stature. Indeed, the dogma that all human rights (civil and political, social and economic...) are indivisible should not lead us to overlook what is really at stake in the effective realisation of the rights of the Charter. Indivisibility is already a definite gain and therefore self-evident. Yet an outward appearance of indivisibility often disguises a considerable degree of invisibility. In that sense, indivisibility should be synonymous with the visibility and day-to-day actuality of the Charter.

The present annual activity report seeks to illustrate the outcome of the work carried out in 2010 by the European Committee of Social Rights with the necessary support of its Secretariat. Each committee member's dedication to tangible day-to-day protection of the rights enshrined in the Charter would not be sufficient to accomplish this task without the qualification and constant effort of the Secretariat staff. Failing a permanent status for the Committee and its members, it is thanks to the Secretariat's assistance that the Committee is able to rule on the conformity of national

legislation and practice to the Charter and consequently to help ensure that the Charter improves the daily life of millions of people.

The report is an illustration of the fact that the Charter is a useful, living instrument, and that the Committee's case law is consolidated day by day. Accordingly, the report contains a summary of the Committee's "typical" activities, that is of the conclusions adopted under the system of reports on the labour-related rights which underwent examination in 2010, and of the decisions on admissibility and merits made public in 2010 as part of the collective complaints procedure. In addition, it comprises "atypical" activities such as opinions on several recommendations of the Council of Europe Parliamentary Assembly or a contribution concerning the activities of the United Nations Committee on Economic, Social and Cultural Rights with regard to sexual and reproductive health in the light of Article 11 of the Charter.

Concerning the system of reports, in addition to a case law selection that illustrates especially problematic national situations, the annual report records certain decisions taken by the Committee in order to encourage the States Parties to fulfil their obligations more satisfactorily in terms of quality and timing, that is to submit national reports of better quality and within the deadlines set. Moreover,

the national examples of progress in the application of the Charter testifies to its potential as an effective social rights instrument.

In fact, both the procedure for processing the *input* (analysis based on the national reports) and monitoring the execution of the *output* (following up the conclusions adopted by the Committee) constitute two major concerns from the Committee's point of view. The large number of conclusions (totalling 569 of which 271 declare conformity and 184 non-conformity, with 114 deferrals for lack of information) points to an obvious overload of work while at the same time, paradoxically in a sense, the examination of each thematic group of rights every four years indicates too slow a pace, detracting from the effective protection of these rights. Consequently, for one thing the Committee's working methods clearly need to be thought over: for example, a preliminary and prioritised selection or screening of the more arguable national situations in order to make the Committee's interpretative function more productive by obviating, notably, ponderous analyses of the national situations in regard to plainly repetitive conclusions of conformity. Besides, it is expedient to think about introducing more functional supervision cycles allowing a more "real-time" assessment of the implementation of social rights. Concurrently, the monitoring of the conclusions of non-conformity carried out by the Committee of Ministers, which scrutinises these more difficult national situations in order that the states may take the necessary measures, would become more effective.

These more functional and operative working methods and tempos would call for additional reflection on the possibility of vesting the European Committee of Social Rights (or certain of its members) with a permanent or semi-permanent status. Ancillary measures are also necessary to upgrade the Secretariat staff, both qualitatively (professional status more suited to the magnitude and complexity of the workload) and quantitatively (more staff).

As to the collective complaints procedure (up to the end of 2010, 63 complaints were registered), it indubitably helps raise the judicial profile of the European Committee of Social Rights. As mentioned in the report, the time taken for resolution of the admissibility of complaints (4-5 months) and for the merits phase (less than 11 months) for each collective complaint is fairly reasonable. Of course, the possible incidence of serious violations of fundamental rights would justify an accelerated procedure for the sake of good administration of justice. That should not preclude consideration of practical solutions allowing the adoption of urgent or immediate measures during the proceedings and at the stage of the implementation of the decisions on the merits.

The decisions on the merits made public in 2010 also show that the European Committee of Social Rights endeavours to improve the quality of its decisions through development of judicial interpretation techniques and methods. By their quality, the collective complaints and correspondingly the governments' replies add credit to the Committee's effort. Plainly however, the performance of the Committee and of the collective complaints procedure should be measured primarily by the degree to which the decisions are carried out. In that regard, the report includes a list of the resolutions adopted in 2010 by the Committee of Ministers, whose role in supervising this phase of execution is essential. It would thus be desirable for the Committee of Ministers to adopt a similar approach to the one followed in supervising the execution of the judgments of the European Court of Human Rights (including *mutatis mutandis* an annual report on the follow-up to the conclusions and decisions of the European Committee of Social Rights).

This comparative approach, in the context of the 50th anniversary of the Charter, militates in favour of immediate publicity for the decisions on the merits by the European Committee of Social Rights as a compelling practical solution, since the four-month rule prescribed by Article 8 of the 1995 Protocol is less than meaningful bearing in mind that all

other documents or material included in the file of each complaint are published forthwith on the Charter website.

At all events, the major challenge for the collective complaints procedure and, to be honest for the Council of Europe, is not being a spectator at the 50th anniversary of the Charter but actively celebrating those fifty years thanks to significant acceptance of the procedure by the member states not yet having accepted it. While the transition from the 1961 Charter (binding on only 13 states) to the Revised Charter of 1996 (30 States Parties) signifies a necessary evolution, it must be acknowledged that the Charter's success hinges on consolidation of this collective guarantee rather than on extension of the catalogue of rights. Ratification of the Revised Charter of 1996 and acceptance of the collective complaints procedure should be an essential condition of membership of the Council of Europe: indivisibility of rights should go hand in hand with indivisibility of their safeguards if social rights are really to be made effective. The three pillars of the Council of Europe need social cornerstones: the *social* state, *social* democracy, and *social* rights.

Thought must be given to the necessity of reducing these mismatches (1961 Charter and 1996 Charter, the reporting system by itself or in combination with the collective complaints procedure), including the "old" system of "selective" ratification. In this perspective, the annual report also refers to another "typical" activity of the Committee (prescribed by Article 22 of the 1961 Charter), the procedure (solely written or with meetings in the countries concerned) relating to provisions which have not been accepted. Besides these meetings, both the members of the Committee and the legal specialists in the Secretariat have attended an extensive series of meetings under the Warsaw Summit Plan of Action or under Joint Programmes with the European Union, as well as training sessions and activities organised by an array of agents involved in the effective implementation of the Charter (intergovernmental organisations, non-governmental organisations, universities, etc.). The intensity of these activities reflects strong commitment of the Charter Department and

the European Committee of Social Rights to improve visibility, publicity, dissemination and finally optimisation of the effective protection of social rights.

While preserving its independence and its judicial practice (at the seven sessions held in the "Agora" building in Strasbourg each year), these other parallel activities of the Committee represent a real challenge in which the stake is to promote observance of the Charter in close collaboration with other entities or structures that pursue the same aim of giving this fundamental instrument of social rights its proper place. The celebration of the Charter's 50th anniversary in 2011 should be an opportunity to strengthen the Committee's joint initiatives with these other agents and interlocutors in politics, the labour market, civil society, the legal realm (for example with the European Judicial Training Network or the European Fundamental Rights Agency) and the academic world (particularly with the Academic Network on the European Social Charter or the International Institute of Human Rights). The last two aspects (judicial and academic) warrant including in the annual activity report a selection of national judicial decisions and bibliographical references concerning the Charter.

The "atypical" activities appearing in Appendix 10 to the report (opinions of the European Committee of Social Rights on texts submitted by the Committee of Ministers, drawn up either by the Congress of Local and Regional Authorities on prevention of violence against children or by the Parliamentary Assembly on the European Higher Education Area, education on sexual and reproductive health, the wage gap between women and men, the situation of migrants and refugees, or non-discrimination towards women in the context of the economic and financial recession) bear witness to the fact that Council of Europe activities and organs necessarily complement each other. In this atmosphere of collaboration, the report cites the exchanges of views which the European Committee of Social Rights has held with the Parliamentary Assembly (Social, Health and Family Affairs Committee) or with the Secretary General, and the participation of

the President, Ms Konçar in a meeting with the presidents of the Council of Europe monitoring bodies.

This interaction materialises in growing mutual enrichment of the case-law of the European Court of Human Rights and the European Committee of Social Rights, as emphasised in Ms Konçar's address (Appendix 9 to the report) when she took part in the 60th anniversary of the European Convention on Human Rights. It would be desirable to intensify such interaction with the Court of Justice of the European Union as well (the report also alludes to a fruitful meeting held in March 2010 between the Committee and the President of the Court of Justice of the European Union, Mr Skouris, attended by the President of the European Court of Human Rights, Mr Costa). Court of Justice case-law is taken into consideration by the Committee when likely to improve the standard of protection prescribed by the Charter. Naturally the legal foundations of the European Convention (Article 53), the Charter of Fundamental Rights of the European Union (Article 53) and the Charter (Article 32 of the 1961 Charter and Article H of the Revised Charter) invoke this complementary relationship founded on selection of the solution most conducive to the effectiveness of fundamental rights. This dialogue acquires a more global dimension when the Committee amplifies its case law in the light of inputs from other international judicial authorities such as the Inter-American Commission on Human Rights (*COHRE v. Italy*, Complaint No. 58/2009). Furthermore, a sizeable contribution to the development of the collective complaints procedure, in the capacity of *amicus curiae* or through other kinds of qualified intervention, can be made by other important Council of Europe players (Commissioner for Human Rights) or those of the United Nations (Office of the High Commissioner for Refugees) – *COHRE v. Croatia*, Complaint No. 52/2008.

Appendix 11 rounds off the list of “atypical” acts with a contribution by the European Committee of Social Rights to the development of a general observation by the UN Committee on Economic, Social and Cultural Rights on the right to sexual and

reproductive health. This interaction of the two bodies has proved to be especially worthwhile in certain decisions on the merits by the European Committee concerning the right to housing (*FEANTSA v. Slovenia*, Complaint No. 53/2008). Besides, this synergy may be intensified with the outlook for the future application of the machinery for individual communications to the UN Committee. Until such time as it actually comes into operation, this machinery should in any case encourage the Council of Europe member states not to lose sight of the possible introduction of the individual petitions mechanism in the sphere of social rights, but above all to bear in mind the high-priority and necessary consolidation of the collective complaints procedure both in quantitative terms (acceptance by more states, *supra*) and qualitative terms (inter alia, immediate publicity of decisions on the merits or effective implementation, *supra*).

Finally, the quantity and intensity of the activities conducted in 2010 should be attended by greater visibility, especially within the Council of Europe. I am convinced that the Charter's complementarity to the European Convention on Human Rights, above and beyond rhetorical discourse on indivisibility, deserves to be given material expression by placing the European Committee of Social Rights among the “institutions” of the Council of Europe that appear on the home page of its website (www.coe.int) beside the European Court, the Commissioner for Human Rights, etc. That would be a handsome 50th anniversary gift for the Charter but above all for the individuals to whom it secures positive and effective rights. This kind of *signal political act*, or others like it (such as unanimous decisions of the Committee of Ministers enhancing the judicial profile of the European Committee of Social Rights) in the context of this celebration will facilitate *standing judicial acts* by the European Committee of Social Rights which, with the contribution of the other players involved in protecting social rights, will boost the effectiveness of these rights in the daily lives of millions of people.

2010 activities of the European Committee of Social Rights

Overview

The Committee, set up pursuant to Article 25 of the European Social Charter, held 7 sessions in Strasbourg in 2010:

1. from 25 to 29 January 2010
2. from 15 to 19 March 2010
3. from 26 to 30 April 2010
4. from 21 to 25 June 2010
5. from 13 to 17 September 2010
6. from 18 to 22 October 2010
7. from 29 November to 3 December 2010

The Committee's function is to rule on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter.

In 2010, the Committee:

- ♦ examined reports presented by the States Parties describing how they have implemented the Charter in law and in practice as regards the labour rights provisions (thematic group 3);
- ♦ ruled on collective complaints against States having accepted this procedure: it registered four new collective complaints against three countries, it ruled on the admissibility of three complaints, and finally it rendered its decision on the merits in respect of six complaints (a list of

the pending complaints and resolutions of the Committee of Ministers appear in Appendix 4);

- ♦ gave its opinion on texts submitted to this effect by the Committee of Ministers, in particular this concerned recommendations by the Parliamentary Assembly; (these opinions are reproduced in Appendix 10); a contribution was also made to the development of a general comment on the right to sexual and reproductive health by the UN Committee on Economic, Social and Cultural Rights (see Appendix 11);
- ♦ met representatives of several Council of Europe bodies, including the Parliamentary Assembly Social, Health and Family Affairs Committee, as well as representatives of other international institutions, notably the President of the Court of Justice of the European Union, Mr Skouris; the Committee also held an exchange of views with the Secretary General of the Council of Europe, Mr Jagland; it was represented in meetings of the Presidents of Monitoring Mechanisms organised by the Directorate General of Human Rights and Legal Affairs of the Council of Europe and it contributed to the 60th anniversary of the European Convention on Human Rights¹.

Committee delegations also visited several countries in 2010 to discuss with their authorities:

- ♦ the Committee's findings in previous supervision cycles and the likely assessment in the current cycle of those countries' policies concerning their Charter undertakings;
- ♦ in the case of countries that had not yet done so, the prospects for their ratification to the Revised Charter, and more generally the prospects for all these countries' acceptance of the provisions not yet accepted.

A list of the relevant meetings appears in Appendix 5.

1. For the speech of the Committee's President, Ms Končar, on the occasion of the 60th anniversary of the Convention, see Appendix 10.

Reports

The Charter's reporting procedure with its continuous and systematic monitoring of national situations has shown its worth – especially since the reforms of the early 1990s strengthening the role of the Committee – and its combination with the collective complaints procedure makes the Charter mechanism truly unique in international law.

In 2010, in accordance with the principles laid down by the Committee of Ministers on 3 May 2006 concerning the presentation of reports on accepted provisions, the Committee examined reports on the application of provisions belonging to the thematic group on labour rights: Articles 2 (right to just working conditions), 4 (right to fair remuneration), 5 (right to organise), 6 (right to bargain collectively), 21 (right to information and consultation), 22 (right to participation), 28 (right of workers' representatives to protection) and 29 (right to protection in collective redundancies) of the Charter and the Revised Charter.

The deadline for submission of the reports was 31 October 2009. Reports were presented by Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, France, Georgia, Germany, Greece, Iceland, Italy, Latvia, Lithuania, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, the United Kingdom and Ukraine.

The Committee again had to note that several States submitted their reports with significant delays and that only a minority of reports were received within the deadline. The reports of Finland, Hungary, Ireland and Luxembourg did not arrive in time to allow examination by the Committee.

In addition, the quality of certain reports is still not adequate and does not allow the Committee to assess the situation forcing it therefore to defer the conclusion. However, since the Committee has adopted the practice that it will defer a conclusion for lack of information only once, the number of cases where a conclusion of non-conformity is adopted on the ground that it has not been

established by the State in question that the situation is in conformity with the Charter is increasing.

In its General Introduction to the Conclusions 2010 (Revised Charter) and Conclusions XIX-3 (1961 Charter) the Committee made the following statement in this respect:

"The Committee emphasises that the Charter requires the submission of a complete report. This means that formulae such as "no new developments", "the situation has not changed" (since the previous cycle) or similar ones may in certain situations be valid in relation to the legal framework, but they are not sufficient when the Form for Reports asks for information on practical measures and developments (e.g. updated statistics on the number of sanctions, accidents, etc.) in order to demonstrate the application of the Charter in practice. In such cases, lack of the requisite information will lead the Committee to a conclusion of non-conformity.

Furthermore, in case of non-submission of a report, the Committee considers that there is a violation of the formal obligation to report and that there is, in effect, nothing to demonstrate that the situation as regards the substantive provisions concerned is in conformity with the Revised Charter."

The Committee's findings

The Committee published its Conclusions 2010 and XIX-3 in December 2010. The Committee reached a total of 569 conclusions - 400 in respect of the Revised Charter and 169 in respect of the 1961 Charter - of which 271 were conclusions of conformity, there were 184 findings of non-conformity and finally 114 conclusions were deferred pending receipt of additional information (a table summarising the conclusions adopted appears in Appendix 3).

The substantive findings of the Committee cover a very wide spectrum of individual and collective labour rights. Although the reference period for the reports went up to the end of

2008 only, some of the measures taken by the States Parties already give indications of the kind of pressure under which these rights are coming due to the economic and financial crisis and the consequent search for growth and competitiveness under conditions of economic austerity.

While the many specific findings defy a simplistic taxonomy, certain typical problems of conformity nevertheless stand out:

The right to just working conditions

- Working time in certain occupations not limited in a reasonable manner (upper limits of 14-16 hours or more daily or 60 hours or more weekly are not in conformity with the Charter) or in some cases no specific limit is defined at all;
- On-call periods where no effective work is performed are assimilated to rest periods;
- Reference periods for calculating average working hours are excessively long (12 months or longer) thus allowing for too long working hours in individual weeks);
- Insufficient remuneration/compensation for work on public holidays;
- Workers who fall ill during their annual paid holiday are not entitled to take the days lost at another time;
- Absence or inadequacy of measures to reduce exposure to risk in dangerous or unhealthy occupations;
- Postponement of the weekly rest period so as to permit an excessive number of consecutive working days;
- No compulsory medical examination for workers prior to being employed on night work.

The right to fair remuneration

- Net minimum wages in several States Parties falling below the threshold of 60% of net average wage;
- Overtime work not remunerated at an adequate level;
- Certain flexible working time arrangements impact negatively on the right of workers to increased remuneration for overtime;
- Legislation does not permit pay comparisons to determine whether there is equal

pay for equal work or work of equal value beyond a single employer;

- Domestic law makes 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;
- Insufficient periods of notice of dismissal for workers with a significant length of service (for example two months is not reasonable notice for employees with more than fifteen years service) ;
- Deductions from wages by the employer may in some cases deprive workers and their dependents of their very means of subsistence.

The right to organise

- Inadequate protection against discriminatory dismissal based on involvement in trade union activities;
- The continued existence of clauses in collective agreements which give priority to members of certain trade unions in access to employment infringes the right not to join trade unions;
- Excessive number of members required to establish a trade union;
- Unjustified restrictions on the autonomy of trade unions;
- Right of civil servants to organise excessively restricted;
- Police personnel do not enjoy the right to form trade unions or restrictions on the right are excessive.

The right to bargain collectively

- Coverage of workers by collective agreements not sufficient;
- Right to enter collective bargaining limited to trade unions representing at least 33% of the employees at the level at which the agreement was concluded;
- Workers do not have the right to bring legal proceedings against employers who made offers to co-workers in order to induce them to surrender their union rights;
- Absence of conciliation or arbitration procedures in the public service;

- Compulsory arbitration is permitted in circumstances which go beyond the limits set out in Article G;
- Civil servants are denied the right to strike;
- Workers in various “essential” sectors are denied the right to strike;
- The right to call a strike is reserved only to trade unions the formation of which may take excessively long time (for example up to thirty days);
- Only representative trade unions have the right to call strikes in the public sector;
- Strikes not aimed at achieving a collective agreement are prohibited;
- Requirement to notify the duration of strikes concerning essential public services to the employer prior to strike action is excessive;
- Legislation enacted to terminate collective action in circumstances which went beyond those permitted by Article G;
- Protection of workers against dismissal when taking industrial action is insufficient.

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

- No effective participation by employees in the decision-making regarding the protection of health and safety within the undertaking, outside the scope of negotiations of collective agreements.

Right of workers’ representatives to protection in the undertaking and facilities to be accorded to them

- Union representatives are protected against dismissal during the performance of their functions only until their mandate expires;
- Legislation does not provide for adequate protection in the event of an unlawful dismissal based on the employee’s status as a trade union representative or activities linked to this status.

Examples of progress in the application of Charter rights

The Committee welcomes the fact that despite the context of the economic and financial crisis, many States Parties have taken account of the Committee’s conclusions in different areas in order to adjust the relevant laws and regulations or eliminate practices contrary to the standards laid down by the Committee.

Thus, in the course of examining the national reports the Committee took note, inter alia, of the following examples of the impact of the Charter:

- ◆ Austria: Pursuant to Federal Act No. 4 of 2006 all migrants can now stand as candidates to works councils, irrespective of their citizenship (Article 5 ESC).
- ◆ Denmark: The Act on Protection against Dismissal due to Association Membership was amended in 2006 in order to protect the right not to be a member of a union including during recruitment. Closed shop agreements have therefore become prohibited (Article 5 ESC).
- ◆ Latvia: As from 1 January 2006 police staff are entitled to establish and join trade unions and enjoy union prerogatives under the Police Act (Article 5 ESC).
- ◆ Romania: Law No. 188/1999 on the status of public servants has been amended in 2006 and 2008 to the effect that all civil servants, including high ranking civil servants, are entitled to the right to establish or join trade unions (Article 5 ESC).
- ◆ Malta: Section 20 of the Organisation of Working Time Regulations entitles the Director to prohibit or restrict the possibility of exceeding the maximum weekly working hours for reasons of health and safety of workers (Article 2§1 RESC).
- ◆ Czech Republic: the Collective Bargaining Act was amended in 2005 to enable the extension of higher-level collective agreements to further employees in the relevant branch (Article 6§2 ESC).
- ◆ Cyprus: The Defence Regulations 79A and 79B authorising the requisitioning of workers and prohibition of strikes in cases other than those permitted by the Revised Charter were repealed by an Order of the

Council of Ministers published in the Official Gazette on 22.09.2006 (Article 6§4 RESC).

- ♦ Estonia: New draft legislation is currently before Parliament to amend the situation under which almost all civil servants are denied the right to strike in violation of the Revised Charter (Article 6§4 RESC).
- ♦ Belgium: On 13 October 2010 the National Labour Council adopted a new collective agreement bringing the situation as regards breastfeeding breaks into conformity with the Revised Charter (Article 8§3 RESC).

For additional examples of the impact of the Charter mechanism, see below in the section on collective complaints.

The Committee's statements of interpretation and general questions

In accordance with its longstanding practice the Committee in Conclusions 2010 and XIX-3 made several statements explaining and developing its interpretation of certain specific provisions of the Charter. The General Introduction thus contained the following **statements of interpretation**:

Statement of interpretation on Article 2§2 : public holidays with pay

The Committee considers that work performed on a public holiday requires a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked.

Statement of interpretation on Article 4§1

The Committee holds that a 'decent standard of living' which is at heart of this provision of the Charter, goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities. It follows that guaranteeing a decent standard of living means ensuring a minimum

wage (and supplemented by any additional benefits where applicable) the level of which should be sufficient to meet these needs.

Statement of interpretation on Article 5

Unemployed and retired workers may join and remain in trade unions. However, States are not required to allow them to form trade unions, as long as they are entitled to form organisations which can take part in consultation processes that may impact on their rights and interests.

Statement of interpretation on Article 6§2

The Committee considers, like the ILO Freedom of Association Committee, that the extension of collective agreements should take place subject to tripartite analysis of the consequences it would have on the sector to which it is applied" (Digest of the Freedom of Association Committee of the Governing Body of the ILO, 5th (revised edition), 2006, para. 1051).

Statement of interpretation on Article 28

The Committee considers that the protection afforded to worker representatives should extend for a period beyond the mandate.

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 shall be extended for a reasonable period after the effective end of period of their office.

The Committee considers that protected workers must be granted the following facilities: paid time off to represent employees, financial contributions to works councils, the use of premises and materials for works councils, as well as other facilities mentioned by 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 authorisation 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). The Committee also considers that participation in training courses on economic, social and union issues should not result on a loss of pay. Training costs should not be borne by the workers' representatives.

The Committee also posed the following general questions to all States Parties concerned:

Article 6§2

The Committee asks that the next report on Article 6§2 contain information on the procedures governing the possible extension of collective agreements.

Article 28

When worker representatives are required to travel in order to perform their functions what arrangements are made for covering the cost of their expenses.

Collective complaints

The collective complaints procedure is intimately linked to democracy and the rule of law and acceptance of this procedure should be regarded as a priority by any European democracy. The procedure has not only opened up for a much more active involvement of the social partners and civil society in general, it has also profoundly changed the role of the Committee. The Committee now acts as a quasi-judicial body judging the conformity of national law and practice, using increasingly judicial methods demonstrating that social rights can be justiciable.

In the course of its 7 sessions in 2010, the Committee adopted decisions on the merits in 6 collective complaints and decisions on admissibility in 3 complaints. The Committee of Ministers adopted resolutions in 8 complaints. 4 new complaints were registered in 2010.

By the end of 2010 a total of 63 complaints had been registered since the entry into force of the procedure (1998). The time required to process the complaints remains within the established deadlines (6 months for admissibility and 12 months for the merits). The average duration of the admissibility stage was 4.5 months (as in 2009) and the average duration of the merits stage was 10.8 months (same as in 2009). Decisions on admissibility were adopted in all complaints registered before November 2010.

Of the 6 decisions on the merits handed down by the Committee, the following 5 have now become public:

The Committee adopted its decision on the merits with regard to the case "*Centre on Housing Rights and Evictions (COHRE) v. Croatia*" (No. 52/2008) on 22 June 2010. The complainant organisation alleged a violation of Article 16 of the Charter (the right of the family to social, legal and economic protection), read alone or in conjunction with Article E (non-discrimination) of the Charter, on the grounds that the ethnic Serb population displaced during the war in Croatia was subjected to discriminatory treatment insofar as the families have not been allowed to reoccupy their former dwellings prior to the

conflict, nor have they been granted financial compensation for the loss of their homes.

The Committee concluded that there is a violation of Article 16 read in light of the non-discrimination clause of the Preamble on the grounds of failure to implement the housing programme within a reasonable timeframe, and of failure to take into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular.

The Committee adopted its decision on the merits with regard to the case "*Confédération Générale du Travail (CGT) v. France*" (No. 55/2009) on 23 June 2010. The complaint relates to Articles 2 (the right to just conditions of work) and 4 (the right to a fair remuneration) of the Revised Charter. The CGT (Confédération Générale du Travail) claimed that the new regulations on working time introduced in France on 20 August 2008 (Act n° 2008-789) violates these provisions).

The Committee concluded unanimously that there was violation of Article 2§1 (Reasonable working time), on the ground of annual working days system and on the ground of on-call duty; violation of Article 2§5 (weekly rest period) given the consequences on weekly rest day of the assimilation of on-call periods to rest periods; violation of Article 4§2 (increased remuneration for overtime work), on the ground of the annual working days system, but that there is no violation of Article 4§2 of the Revised Charter due to the introduction of the unpaid solidarity day.

The Committee also adopted its decision on the merits with regard to the case "*Confédération française de l'Encadrement CFE-CGC c. France*" (No. 56/2009) on 23 June 2010. The CFE-CGC claimed that the new regulations on working time introduced in France on 20 August 2008 (Act n° 2008-789) constituted a violation of Articles 1 (right to work), 2 (right to just conditions of work), 3 (right to safe and healthy working conditions), 4 (right to

a fair remuneration), 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), and 27 (right of workers with family responsibilities to equal opportunities and equal treatment), read alone or in conjunction with Article E (non-discrimination), of the Revised Charter.

In its decision, the Committee concluded that there was violation of Article 2§1 (reasonable working time) of the Revised Charter, on the ground of the excessive length of weekly working time permitted and the absence of adequate guarantees under the annual working days system; and violation of Article 4§2 (increased remuneration for overtime work) of the Revised Charter, on the ground of the remuneration of overtime work as provided for under the annual working days system. The Committee also concluded that the invoked claims did not come within the scope of Article 1§1 (right to work – policy of full employment) of the Revised Charter and of Article 3 (the right to safe and healthy working conditions) of the Revised Charter and that the claim under Article E taken in conjunction with Articles 20 and 27 regarding the impact of the working time and overtime work on employees coming under the annual working days system was not founded.

The Committee adopted its decision on the merits with regard to the case “*Centre on Housing Rights and Evictions (COHRE) v. Italy*” (No. 58/2009) on 22 June 2010. The complainant organisation alleged that the recent so-called emergency security measures and racist and xenophobic discourse have resulted in unlawful campaigns and evictions leading to homelessness and expulsions, disproportionately targeting Roma and Sinti. On this basis the complainant organisation asked the Committee to find a violation of Articles 16 (the right of the family to social, legal and economic protection), 19 (the right of migrant workers and their families to protection and assistance), 30 (the right to protection against poverty and social exclusion) and 31 (the right to housing),

read alone or in conjunction with Article E (non-discrimination) of the Revised Charter.

In its decision, the Committee concluded that there was violation of Article E in conjunction with Articles 16, 19§1, 19§4(c), 19§8, 30 et 31§§1-3. The decision became public after the Resolution of the Committee of Ministers (Res CM/ChS(2010)8) adopted on 21 October 2010.

The Committee finally adopted its decision on the merits with regard to the case “*European Council of Police Trade Unions v. France*” (No. 54/2008) on 2 December 2010. The complaint covers the period of work of the command corps of the police and the compensation of overtime. In its decision, the Committee concluded that there was no violation of Articles 2§1 (reasonable working time) and 4§2 (increased remuneration for overtime work) of the Revised Charter. The decision became public after the Resolution of the Committee of Ministers (Res CM/ChS(2011)1) taken on 19 January 2011.

Again in 2010, 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:

- ◆ Bulgaria: Article 12(c) of the Social Assistance Act which provided the interruption of social assistance for unemployed persons after 18 or 12 months was abolished by an amendment to the Act entering into force on 1 January 2011.
Resolution Res/CMChS(2010)2 of 31 March 2010 (ERRC v. Bulgaria).
- ◆ Bulgaria: Since the adoption of the decision of the Committee (3 June 2008), significant progress has been achieved in the sphere of education of children and pupils residing in homes for mentally disabled children.
Resolution CM/ResChS(2010)7 of 20 September 2010 (MDAC v. Bulgaria).
- ◆ France: Abolition of discrimination between guides certified by the Réunion des Musées nationaux and state-certified interpreters/lecturers, as regards access to conduct guided tours in the Palace of

Versailles. (Administrative Court of Appeal of Versailles, Judgment of 14 October 2009) (*SNPT v. France*).

- ◆ Netherlands: On 6 April 2010 the District Court of Utrecht rendered a judgment applying the Committee's decision in *DCI*

v. Netherlands as regards assistance to foreigners not lawfully resident in the territory.

For a list of the complaints pending before the Committee as of 31/12/2010 as well as a list of the Committee of Ministers resolutions adopted in 2010 as follow-up to decisions on the merits, see Appendix 4.

Non-accepted provisions

Under Article 22 of the 1961 Charter States Parties have the obligation to submit reports at intervals to be determined by the Committee of Ministers on the Charter provisions which they did not accept at the time of ratification or subsequently.

In December 2002, the Ministers' Deputies adopted a new procedure concerning examination of the non-accepted provisions under Article 22:

The Deputies 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".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights has reviewed non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Past experience had shown that governments tended to overlook that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation on a continuous basis and encourage them to accept more provisions whenever possible.

The 2010 procedure on non-accepted provisions concerned the following 7 States Parties: Andorra, Bulgaria, Cyprus, Estonia, Georgia, Ireland and Malta.

Andorra

This was the first time the exercise was carried out in respect of Andorra, however at the request of the Andorran authorities the meeting with the Committee was postponed to the first quarter of 2011. The meeting is now scheduled to take place on 18 February 2011.

Bulgaria

The exercise was carried out for the second time in respect of Bulgaria following the first examination in 2005.

A delegation of the Committee held an exchange of views on the non-accepted provisions in March 2010 in Sofia and the Bulgarian authorities submitted a written report in December 2010. The Committee will examine this report and make public its assessments in the beginning of 2011.

Cyprus

The first meeting with Cyprus took place in 2005. In 2010, the Committee decided to carry out the exercise in written form exclusively and it requested the Cypriot authorities to submit a report by 30 June 2010. The authorities subsequently informed the Committee that it was preparing the acceptance of 11 additional provisions and in December 2010 the draft bill to this effect was awaiting final vetting by the Attorney General before being submitted to Parliament.

The provisions concerned are Articles 2§3, 2§6, 4§5, 7§7, 8§5, 22(b), 25, 27§2, 29, 31§1 and 31§2.

Estonia

The second meeting with Estonia was held in Tallinn, Estonia, and it largely confirmed the assessment made following the first meeting in 2005 that Estonia is in a position to accept several additional provisions of the Revised Charter

The Committee concluded that there were no legal obstacles to Estonia accepting in particular Articles 2§4, 3§4, 7§6, 10§2, 18, 26 and 30. On the part of the Government a clear political will was expressed to proceed to the acceptance of additional provisions as soon as possible.

Georgia

Georgia ratified the Revised Charter in 2005 and the meeting held in Tbilisi, Georgia, in July 2010 represented the first examination of the provisions not accepted by this country.

The Committee's assessment will be made public in the beginning of 2011.

Ireland

For the second examination of the provisions not accepted by Ireland, the Committee had invited the Government to submit a report by 30 June 2010. The report has still not been submitted.

Malta

Also for Malta the exercise was carried out for the first time since the ratification of the Revised Charter in 2005. A meeting was held in La Valetta, Malta, in December 2010. The Committee will make public its assessment in the beginning of 2011.

Election of members to the Committee

The composition of the Committee is governed by Article 25 pursuant to which its 15 members (see Appendix 1) are appointed by the Committee of Ministers for mandates of six years, renewable once.² Members shall be “independent experts of the highest integrity and of recognised competence in international social questions”.

Election takes place every second year with a third of the seats being up for election.

At the 1097th meeting of the Ministers’ Deputies on 10 November 2010 the Committee of Ministers held an election to fill the five seats falling vacant on 31 December 2010. Mr Lauri Leppik (Estonian) and Mr Colm O’Cinneide (Irish) were elected for a second term and Ms Karin Lukas (Austrian), Mr Giuseppe

Palmisano (Italian) and Ms Elena Machulskaya (Russian) were elected for a first term. The term begins on 1 January 2011 and ends on 31 December 2016.

The Committee wishes to express its appreciation and gratitude to the two outgoing members, Ms Polonca Koncar (Slovenian) and Ms Lyudmila Harutyunyan (Armenian), for their contribution to the Committee’s work and for their tireless efforts to promote social rights. Ms Koncar was elected in 2000 and served for two terms. She was a longstanding member of the Committee’s Bureau and President of the Committee from 2006-2010. Ms Harutyunyan was a member of the Committee from September 2007-2010.

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).

50th Anniversary of the European Social Charter in 2011

On 18 October 2011 it will be 50 years since the European Social Charter was adopted. This anniversary will be marked by the Council of Europe in different ways during the course of 2011. The Committee for its part will launch a reflection on how the visibility and impact can be improved and for this purpose it will, inter alia, review existing procedures and working methods. It also invites the States Parties to consider how a wider application of the Charter can be ensured and in this respect it wishes to encourage those States who have not already

done so will take steps to ratify the Revised Charter and the collective complaints procedure in 2011.

On 8 February 2011 a conference on possible reforms to the Charter is being organised in Helsinki, Finland, at the initiative of the Finnish Government. The event is to be the first in a series of activities in 2011 to prepare the anniversary and pave the way for measures to strengthen the Charter.

Appendix 1

List of the members of the European Committee of Social Rights as of 1 January 2011

	From	Expiration date of mandate
Mr Jean-Michel BELORGEY	01/01/2001	31/12/2012*
Ms Csilla KOLLONAY LEHOCZKY	01/01/2001	31/12/2010*
Mr Andrzej SWIATKOWSKI	01/01/2003	31/10/2012*
Mr Lauri LEPPIK	01/01/2005	31/12/2016
Mr Colm O'CONNOR	08/11/2006	31/12/2016
Ms Monika SCHLACHTER	01/01/2007	31/12/2012
Ms Birgitta NYSTRÖM	01/01/2007	31/12/2012
Mr Rüchan IŞIK	01/01/2009	31/12/2014
Mr Petros STANGOS	01/01/2009	31/12/2014
Mr Alexandru ATHANASIU	01/01/2009	31/12/2014
Mr Luis JIMENA QUESADA	01/01/2009	31/12/2014
Ms Jarna PETMAN	04/02/2009	31/12/2014
Ms Elena MACHULSKAYA	01/01/2011	31/12/2016
Mr Giuseppe PALMISANO	01/01/2011	31/12/2016
Ms Karin LUKAS	01/01/2011	31/12/2016

*. Non-renewable term.

Appendix 2

Signatures and ratifications of the European Social Charter, its Protocols and the European Social Charter (revised)

Situation at 31 December 2011

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)	—	21/09/98	14/11/02
Andorra	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	04/11/00	12/11/04
Armenia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	18/10/01	21/01/04
Austria	22/07/63	29/10/69	04/12/90	—	07/05/92	13/07/95	07/05/99	—	07/05/99	—
Azerbaijan	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	18/10/01	02/09/04
Belgium	18/10/61	16/10/90	20/05/92	23/06/03	22/10/91	21/09/00	14/05/96	23/06/03	03/05/96	02/03/04
Bosnia and Herzegovina	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	11/05/04	07/10/08
Bulgaria	(2)	(2)	(3)	(3)	(2)	(2)	(4)	(4)	21/09/98	07/06/00
Croatia	08/03/99	26/02/03	08/03/99	26/02/03	08/03/99	26/02/03	08/03/99	26/02/03	06/11/09	—
Cyprus	22/05/67	07/03/68	05/05/88	(3)	21/10/91	01/06/93	09/11/95	06/08/96	03/05/96	27/09/00
Czech Republic	27/05/92*	03/11/99	27/05/92*	17/11/99	27/05/92*	17/11/99	26/02/02	—	04/11/00	—
Denmark	18/10/61	03/03/65	27/08/96	27/08/96	—	***	09/11/95	—	03/05/96	—
Estonia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	04/05/98	11/09/00
Finland	09/02/90	29/04/91	09/02/90	29/04/91	16/03/92	18/08/94	09/11/95	17/07/98	03/05/96	21/06/02
France	18/10/61	09/03/73	22/06/89	(3)	21/10/91	24/05/95	09/11/95	07/05/99	03/05/96	07/05/99
Georgia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	30/06/00	22/08/05
Germany	18/10/61	27/01/65	05/05/88	—	—	***	(1)	—	29/06/07	—
Greece	18/10/61	06/06/84	05/05/88	18/06/98	29/11/91	12/09/96	18/06/98	18/06/98	03/05/96	—
Hungary	13/12/91	08/07/99	07/10/04	1/6/05	13/12/91	04/02/04	07/10/04	—	07/10/04	20/04/09
Iceland	15/01/76	15/01/76	05/05/88	—	12/12/01	21/02/02	(1)	—	04/11/98	—
Ireland	18/10/61	07/10/64	(3)	(3)	14/05/97	14/05/97	04/11/00	04/11/00	04/11/00	04/11/00
Italy	18/10/61	22/10/65	05/05/88	26/05/94	21/10/91	27/01/95	09/11/95	03/11/97	03/05/96	05/07/99
Latvia	29/05/97	31/01/02	09/05/97	—	29/05/97	09/12/03	(1)	—	29/05/07	—
Liechtenstein	09/10/91	—	—	—	—	—	—	—	—	—
Lithuania	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	08/09/97	09/06/01
Luxembourg	18/10/61	10/10/91	05/05/88	—	21/10/91	***	(1)	—	11/02/98	—
Malta	26/05/88	04/10/88	(3)	(3)	21/10/91	16/02/94	(2)	—	27/07/05	27/07/05
Moldova	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	03/11/98	08/11/01
Monaco	(1)	—	(1)	—	(1)	—	(1)	—	05/10/04	—
Montenegro	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	22/03/05**	03/03/10
Netherlands	18/10/61	22/04/80	14/06/90	05/08/92	21/10/91	01/06/93	23/01/04	03/05/06	23/01/04	03/05/06
Norway	18/10/61	26/10/62	10/12/93	10/12/93	21/10/91	21/10/91	20/03/97	20/03/97	07/05/01	07/05/01
Poland	26/11/91	25/06/97	(1)	—	18/04/97	25/06/97	(1)	—	25/10/05	—
Portugal	01/06/82	30/09/91	(3)	(3)	24/02/92	08/03/93	09/11/95	20/03/98	03/05/96	30/05/02
Romania	04/10/94	(2)	(3)	(3)	(2)	(2)	(2)	—	14/05/97	07/05/99
Russian Federation	(2)	(2)	(3)	(3)—	—	(2)	(2)	(2)	14/09/00	16/10/09
San Marino	(1)	—	(1)	—	(1)	—	(1)	—	18/10/01	—

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
Serbia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	22/03/05**	14/09/09
Slovak Republic	27/05/92***	22/06/98	27/05/92*	22/06/98	27/05/92	22/06/98	18/11/99	—	18/11/99	23/04/09
Slovenia	11/10/97	(2)	11/10/97	(3)	11/10/97	(2)	11/10/97	(4)	11/10/97	07/05/99
Spain	27/04/78	06/05/80	05/05/88	24/01/00	21/10/91	24/01/00	(1)	—	23/10/00	—
Sweden	18/10/61	17/12/62	05/05/88	05/05/89	21/10/91	18/03/92	09/11/95	29/5/98	03/05/96	29/05/98
Switzerland	06/05/76	—	—	—	—	—	—	—	—	—
“the former Yugoslav Republic of Macedonia”	05/05/98	31/03/05	05/05/98	—	05/05/98	31/03/05	(1)	—	27/05/09	—
Turkey	18/10/61	24/11/89	05/05/98	(3)	06/10/04	10/06/09	(2)	—	06/10/04	27/06/07
Ukraine	02/05/96	(2)	(3)	(3)	(2)	(2)	(2)	—	07/05/99	21/12/06
United Kingdom	18/10/61	11/07/62	(1)	—	21/10/91	***	(1)	—	07/11/97	—

*. 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.

(1) State having signed the European Social Charter (revised).

(2) State having ratified the European Social Charter (revised).

(3) State having accepted the rights (or certain of the rights) guaranteed by the Protocol by ratifying the European Social Charter (revised).

(4) State having accepted the collective complaints procedure by a declaration made in application of Article D para. 2 of Part IV of the European Social Charter (revised).

Appendix 3

Summary tables of the Committee's Conclusions for 2010

1961 Charter: XIX-3 (2010)

	Austria	Croatia	Czech Republic	Denmark	Germany	Greece	Hungary ¹	Iceland	Latvia	Luxembourg ¹	Poland	Slovakia	Spain	"the Former Yugoslav Republic of Macedonia"	United Kingdom
Article 2.1	NA	-	-	NA	-	+		-	NA		-	-	-	0	NA
Article 2.2	+	-	0	0	0	-		NA	NA		NA	-	0	0	-
Article 2.3	+	+	+	-	+	+		+	NA		+	0	-	0	-
Article 2.4	-	+	+	NA	+	-		NA	NA		+	+	+	+	-
Article 2.5	+	0	-	+	-	-		+	NA		+	+	+	+	-
Article 4.1	0	NA	NA	+	-	0		-	NA		NA	-	-	NA	-
Article 4.2	+	NA	+	-	+	+		+	NA		-	-	-	NA	-
Article 4.3		NA			-			-	NA		+			NA	NA
Article 4.4	NA	NA	-	NA	NA	-		-	NA		-	-	-	NA	-
Article 4.5	+	NA	+	NA	+	+		-	NA		-	-	+	NA	+
Article 5	+	+	-	-	+	NA		-	-		-	0	-	0	-
Article 6.1	+	-	+	+	+	NA		+	+		+	+	+	0	+
Article 6.2	+	-	+	-	+	NA		+	-		+	-	+	-	-
Article 6.3	+	-	+	+	+	NA		+	+		+	0	+	0	+
Article 6.4	NA	-	-	-	-	NA		+	+		NA	-	-	0	-
Article 2 AP ²	NA	-	+	+	NA	0		NA	NA		NA	+	+	NA	NA
Article 3 AP ³	NA	0	0	+	NA	+		NA	NA		NA	0	+	NA	NA
	+ Conformity		- Non conformity			0 Deferral			NA Non accepted provision						

1. The report was not submitted in due time.
2. Article 2 of the 1988 Additional Protocol.
3. Article 3 of the 1988 Additional Protocol.

Revised Charter - Conclusions 2010

	Albania	Andorra	Armenia	Azerbaijan	Belgium	Bulgaria	Cyprus	Estonia	Finland ¹	France	Georgia	Ireland ¹	Italy	Lithuania	Malta	Moldova	Netherlands ²	Norway	Portugal	Romania	Slovenia	Sweden	Turkey	Ukraine
Article 2.1	-	+	-	NA	+	NA	+	-		-	-		-	-	0	-	0	-	+	+	0	NA	0	+
Article 2.2	-	+	+	NA	+	+	+	+		+	0		-	+	+	-	0	+	+	-	0	NA	0	0
Article 2.3	-	+	+	NA	-	0	NA	+		-	NA		+	+	+	-	0	+	+	NA	+	+	NA	NA
Article 2.4	-	0	+	NA	+	+	NA	NA		+	NA		-	+	NA	-	-	+	-	+	+	NA	0	+
Article 2.5	-	+	-	NA	-	-	+	+		+	0		+	+	+	-	+	+	+	+	+	+	0	+
Article 2.6	+	+	+	NA	+	+	NA	+		+	NA		+	+	+	-	0	+	0	+	+	+	0	0
Article 2.7	0	0	NA	NA	+	+	+	+		+	+		+	+	NA	-	0	NA	0	+	+	NA	+	-
Article 4.1	-	0	NA	-	0	NA	NA	NA		+	NA		-	-	+	NA	-	+	-	-	-	+	NA	NA
Article 4.2	+	+	-	0	-	-	NA	0		-	-		-	0	+	NA	0	0	+	-	+	NA	+	+
Article 4.3																								
Article 4.4	-	0	-	0	-	-	NA	-		-	-		-	+	-	-	-	+	-	-	+	-	-	-
Article 4.5	-	+	-	0	+	+	NA	+		+	NA		-	-	-	0	+	-	+	-	+	NA	-	0
Article 5	-	0	-	-	-	-	+	0		-	-		+	-	-	-	+	+	+	-	+	0	NA	0
Article 6.1	-	NA	0	0	+	-	+	+		+	0		+	+	0	-	+	+	+	+	+	+	NA	0
Article 6.2	-	NA	-	0	+	-	+	0		+	-		+	-	+	-	+	+	+	+	0	+	NA	0
Article 6.3	-	NA	0	+	+	-	+	+		+	-		+	+	-	-	+	+	-	+	+	+	NA	0
Article 6.4	-	NA	0	0	0	-	-	-		-	0		-	0	0	-	0	-	-	-	+	+	NA	-
Article 21	0	NA	NA	0	+	+	NA	+		+	NA		-	+	NA	-	+	0	0	+	+	+	0	0
Article 22	-	NA	0	0	+	-	NA	-		+	NA		-	+	NA	NA	+	+	0	NA	+	+	0	+
Article 26.1	+	+	NA	0	+	0	NA	NA		+	0		+	+	0	+	0	NA	0	NA	+	+	0	0
Article 26.2	-	+	NA	0	NA	0	NA	NA		+	0		+	+	+	-	0	NA	0	NA	+	+	0	0
Article 28	-	NA	-	0	NA	-	+	+		+	NA		+	+	+	-	+	+	+	+	+	NA	0	0
Article 29	+	NA	NA	0	+	+	NA	+		+	0		+	+	+	-	0	NA	0	+	+	0	0	0
	+ Conformity				- Non conformity				0 Deferral				NA Non accepted provision											

1. The report was not submitted in due time.
2. The report was not submitted in due time in respect of Aruba.

Appendix 4

Collective complaints list and state of procedure as of 31 December 2010

Pending complaints

Centre on Housing Rights and Evictions (COHRE) v. France, No. 63/2010

The complaint was registered on 15 November 2010. It concerns the eviction and expulsion of Roma from their homes and from France during the summer of 2010. The complainant organisation alleges that such evictions and expulsions amount to violations of Article 31 (right to housing) and Article 19§8 (guarantees concerning expulsion) of the Revised Charter. The complainant organisation also argues that the facts at stake constitute discrimination (Article E) in the enjoyment of the above-mentioned rights.

International Federation of Human Rights (FIDH) v. Belgium, No. 62/2010

The complaint was registered on 30 septembre 2010. The complainant organisation alleges a violation of rights related to housing for Travellers under the European Social Charter. The complaint concerns the insufficiency of stopping places, problems stemming from the non recognition of caravans as a home; lack of respect of the required conditions when carrying out evictions, lack of a global and coordinated policy to combat poverty and social exclusion of Travellers, among other issues. These allegations concern Article 16 (right of the family to social, legal and economic protection) and 30 (right to

protection against poverty and social exclusion) of the Revised European Social Charter as well as the non-discrimination clause (Article E).

The European Committee of Social Rights declared the complaint admissible on 1 December 2010

European Roma Rights Centre (ERRC) v. Portugal, No. 61/2010

The complaint was registered on 23 April 2010. The complainant organisation pleads a violation of Articles 16 (the right of the family to social, legal and economic protection), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with Article E (non-discrimination) of the Revised Charter. The ERRC maintains that the sum of housing-related injustices in Portugal (including problems of access to social housing, substandard quality of housing, lack of access to basic utilities, residential segregation of Romani communities and other systemic violations of the right to housing) violates these provisions.

The European Committee of Social Rights declared the complaint admissible on 17 September 2010.

European Council of Police Trade Unions (CESP) v. Portugal, No. 60/2010

The complaint registered on 18 March 2010, relates to Article 4§§1 and 2 (right to adequate remuneration and right to increased rate of remuneration for overtime work), Article 6§§1 and 2 (right to collective bargaining: joint consultation and machinery for voluntary negotiations) and Article 22 (right to take part in the determination and improvement of the working conditions and working environment) of the Revised European Social Charter. The CESP claims that that Portuguese legislation does not allow the investigative personnel of the Criminal Police to receive compensation for overtime work. The CESP also contends that the Portuguese State refuses to negotiate on this matter with national trade unions.

The European Committee of Social Rights declared the complaint admissible on 22 June 2010.

European Trade Union Confederation (ETUC)/ Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats Chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium, No. 59/2009

The complaint was registered on 22 June 2009. The complainant organisations allege that the situation in Belgium is not in conformity with the rights laid down in Article 6§4 (right to strike) of the Revised Charter. They believe that judicial intervention in social conflicts in Belgium, in particular concerning restrictions imposed on the action of picket line, violate this provision.

The European Committee of Social Rights declared the complaint admissible on 8 December 2009.

European Council of Police Trade Unions (CESP) v. France, No. 57/2009

The complaint was registered on 7 May 2009. The CESP claims that the new regulations introduced by the French government on 27 February 2008 (Decree No. 2008-199 modifying Article 3 of Decree No. 2000-194 of 3 March 2000), laying down the conditions for the granting of a payment for extra services to operational members of the

national police force, are in breach of Article 4§2 (right to a fair remuneration) of the Revised Charter, because it establishes – regardless of the grade and step – a fixed compensation system.

The European Committee of Social Rights declared the complaint admissible on 7 September 2009.

List of resolutions adopted by the Committee of Ministers in 2010

- ◆ **CM/ResChS(2010)8E / 21 October 2010**
Resolution – Collective complaint No. 58/2009 by the Centre on Housing Rights and Evictions (COHRE) against Italy (adopted by the Committee of Ministers on 21 October 2010 at the 1096th meeting of the Ministers' Deputies)
- ◆ **CM/ResChS(2010)7E / 16 September 2010**
Resolution – Collective complaint No. 41/2007 by the Mental Disability Advocacy Centre (MDAC) against Bulgaria (adopted by the Committee of Ministers on 16 September 2010 at the 1091st meeting of the Ministers' Deputies)
- ◆ **CM/ResChS(2010)6E / 7 July 2010**
Resolution – Collective complaint No. 47/2008 by Defence for Children International (DCI) against the Netherlands (adopted by the Committee of Ministers on 7 July 2010 at the 1090th meeting of the Ministers' Deputies)
- ◆ **CM/ResChS(2010)5E / 30 June 2010**
Resolution – Collective complaint No. 51/2008 by the European Roma Rights Centre (ERRC) against France (adopted by the Committee of Ministers on 30 June 2010 at the 1089th meeting of the Ministers' Deputies)
- ◆ **CM/ResChS(2010)2E / 31 March 2010**
Resolution – Collective complaint No. 48/2008 by the European Roma Rights Centre (ERRC) against Bulgaria (adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies)
- ◆ **CM/ResChS(2010)1E / 31 March 2010**
Resolution – Collective complaint No. 46/2007 by the European Roma Rights Centre (ERRC) against Bulgaria (adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies)

Appendix 5

Bilateral meetings (action plan), joint programmes CoE/EU and meetings on non-accepted provisions of the Charter in 2010

Meetings in the framework of the Action Plan of Warsaw

- ◆ 24 March, Belgrade (Serbia): Seminar on the Revised Charter
- ◆ 14-15 April, Skopje (“the Former Yugoslav Republic of Macedonia”): Seminar on the Revised Charter
- ◆ 16-17 November, Vologda (Russian Federation): Seminar on the drafting of the first report by the Russian Federation

Meetings in the framework of Joint Programmes with the European Union

- ◆ 11-12 February, Ufa (Russian Federation): Training Seminar for Russian lawyers on the internal application of the European Convention on Human Rights and of the European Social Charter
- ◆ 14-16 April, Ankara (Turkey): Round Table on the European Social Charter and on the positive obligations of Articles 2 and 3 of the European Convention on Human Rights
- ◆ 31 May, Strasbourg: Meeting with the European Commission: Discussion on the Council of Europe input to the European Union annual progress report on candidate countries (enlargement)

- ◆ 1-4 June, Yalta (Ukraine): International Conference on the standards of the European Social Charter and other relevant international instruments in the framework of the “Project on strengthening and protecting women’s and children’s rights in Ukraine” (TRES)
- ◆ 2-3 June, St Petersburg (Russian Federation): Training Session for Prosecutors on the ECHR and on the European Social Charter
- ◆ 14-16 June, Moscow (Russian Federation): Training Session on the drafting of the first national report on the application of the Revised European Social Charter by the Russian Federation
- ◆ 13-15 July, Ankara (Turkey): Round Table on the protection of social rights
- ◆ 28-29 September, St Petersburg (Russian Federation): Round Table with Ombudsmen in the Russian Federation
- ◆ 8-10 November, Ankara (Turkey): Round Table on the protection of social rights

Meetings on the non-accepted provisions of the Charter

- ◆ 4 March, Sofia (Bulgaria)
- ◆ 9 July, Tbilisi (Georgia)
- ◆ 20 September, Tallinn (Estonia)
- ◆ 7 December, La Valetta (Malta)

Appendix 6

Meetings and training sessions, congresses and colloquies in 2010

Conferences organised by Universities

- ◆ 16-18 June, Milan (Italy): International conference on the legal status of Romas and Sintis in Italy
- ◆ 18-19 June, Graz (Austria): Workshop on monitoring bodies
- ◆ 21-22 June, Strasbourg: Colloquium: « Acteurs, stratégies collectives et champ européen des droits de l'homme »
- ◆ 7-9 July, Cuenca (Spain): Conference « La crisis económica: el derecho al trabajo y perspectivas de futuro »
- ◆ 22-24 September, Seville (Spain): International colloquium on social rights
- ◆ 14-15 October, Strasbourg: Colloquium “Droits fondamentaux et entreprise”

Events organised by intergovernmental organisations

- ◆ 3-5 May, Geneva (Switzerland): UN international workshop on Enhancing co-operation between the international human rights system and regional human rights mechanisms
- ◆ 4-8 October, Geneva (Switzerland): Co-ordination meeting with the Office of the UN High Commissioner for Human Rights (OHCHR)

- ◆ 19 November, Brussels (Belgium): EU training on economic, social and cultural rights in co-operation with the Office of the UN High Commissioner for Human Rights and Amnesty International

Events organised by non governmental organisations

- ◆ 24-26 February, Strasbourg: 5th Plenary Assembly of the European Roma and Travellers Forum
- ◆ 5-7 May, Barcelone (Spain): Conference “Housing rights: from theory to practice”, organised by FEANTSA
- ◆ 10-11 May, Cracovie (Poland): Conference on the collective complaints procedure at the spring session of the Eurocop-police Committee
- ◆ 24-25 May, Warsaw (Poland): Conference “Extreme poverty and human rights – a challenge for Poland, a challenge for Europe”, organised by ATD-Fourth world Poland
- ◆ 14-15 October, Moscow (Russian Federation): Third Congress of Russian social workers and pedagogues, organised by Russian Union of Social Workers

Meetings organised by various external actors

- ◆ 11 January, Bern (Switzerland): Hearing on the European Social Charter – state of signature and ratification – to the session of the “Commission de politique extérieure du Conseil des états”
- ◆ 3 February, Athens (Greece): Seminar on the role of the European Committee of Social Rights
- ◆ 3 February, Athens (Greece): Meeting with the Presidium of the Consultative Commission of Human Rights
- ◆ 16-18 June, Barcelone (Spain): Seminar “European Justice and Persons involved”, organised by the European Judicial Network Training
- ◆ 8 September, Sarajevo (Bosnia and Herzegovina): Training course for workers’ representatives and trade union members organised by “Social dialogue Academy for Bosnia and Herzegovina”

Main meetings organised by the Council of Europe

- ◆ 19 March, Strasbourg: Meeting of Presidents of monitoring mechanisms of the Council of Europe
- ◆ 30 September, Budapest (Hungary): Training on the European Social Charter organised by the European Youth Center
- ◆ 13-14 October, Strasbourg: First consultation meeting “Protecting and promoting the right to quality education for all in European education systems”
- ◆ 19 October, Strasbourg: 60th Anniversary of the European Convention on Human Rights
- ◆ 19 October, Strasbourg: Meeting of Presidents of monitoring mechanisms of the Council of Europe
- ◆ 28-29 October, Skopje (“the Former Yugoslav Republic of Macedonia”): Launch of the Council of Europe’s Action Plan for Social Cohesion

Appendix 7

Books and articles

Books

- ◆ *Social Human Rights of Europe*
MIKKOLA Matti, Karelactio, Legisactio Ltd, Finland, 2010, 694 p., ISBN 978 952 92 8040 7
- ◆ *The European Social Charter: a social constitution for Europe – la Charte sociale européenne: une constitution pour l'Europe*
DE SCHUTTER Olivier (coord.), Bruylant, 2010, 192 p., ISBN 978 2 80272799 6

Articles and communications

- ◆ “European legislation and the evolution of the Romanian social law”
ATHANASIU Alexandru, in *The role of the European legislation in the development of the social law in Romania*, University of Bucharest, Editura C.H. Beck, 2010, ISBN 978 973 115 760 3, p. 41-49
- ◆ “The role of the European Social Charter in the 21st century”
BRILLAT Régis, in *ibidem*, p. 106-120
- ◆ “Council of Europe labour law standards concerning decent wages”
WIATKOWSKI Andrzej Marian, in *ibidem*, p. 50-84
- ◆ “Le prospettive della Carta sociale europea”
GUIGLIA Giovanni, in *Forum di Quaderni Costituzionali*, November 2010, p. 1-23
- ◆ “L'éducation sexuelle devant le Comité européen des Droits sociaux: entre protection de la santé et lutte contre les discriminations – Comité européen des Droits sociaux,

International Centre for the legal Protection of human Rights (Interights) c. Croatie, récl. n° 45/2007, 30 mars 2009”

GRÜNDLER Tatiana et ROMAN Diane in *Revue trimestrielle des Droits de l'Homme*, Nemesis et Bruylant, N° 83, juillet 2010, p. 685-703 :

- ◆ “Crónica de la jurisprudencia del Comité Europeo de Derechos Sociales”
JIMENA QUESADA Luis. in *Revista Europea de Derechos Fundamentales*, December 2010
- ◆ “The fundamental right of workers to information and consultation under the European Social Charter”
KOLLONAY LEHOCZKY Csilla, in *European Labour Law Journal*, Intersentia, autumn 2010, p. 3-30
- ◆ “La jurisprudence sociale de la Cour européenne des droits de l'homme: bilan et perspectives”
MARGUENAUD Jean-Pierre et MOULY Jean, in *Droit social*, N° 9/10, septembre-octobre 2010, p. 883-892
- ◆ *Talk, ”Euroopan sosiaalinen peruskirja ja sen valvonta”[in Finnish, transl.: The basics of the European Social Charter and the monitoring thereof]*,
PETMAN Jarna in *Kansainvälistyvä sosiaali oikeus* [Internationalizing Social Law], a seminar organized by the Research Department of the Social Insurance Institution of Finland and the Finnish Social Law Association, Helsinki, 5 October 2010.

- ◆ Editorial, “Sosiaaliset oikeudet eivät ole toisarvoisia” [in Finnish, transl.: *Social rights are not inessential*], PETMAN Jarna in *Helsingin Sanomat*, 13 August 2010, A2 [daily newspaper of Finland]
- ◆ “Euroopan sosiaalisen peruskirjan valvontajärjestelmä : ihmisoikeusjärjestelmä ?” [in Finnish, translation: *The monitoring mechanism of the European Social Charter : a human rights mechanism ?*] PETMAN Jarna in *Avoim, tehokas ja riippumaton: Olli Mäenpää 60 vuotta juhlakirja*, Tuomas Ojanen, Outi Suviranta, Maija Sakslin & Ida Koivisto eds, [Accessible, effective and independent: Festschrift for Olli Mäenpää’s 60th birthday], Edita, Helsinki, 2010, p. 395-412
- ◆ “Access to housing for undocumented migrants” SCAPPUCCI Gioia in *CEPS Liberty and Security in Europe* (paper from the Center for European Policy Studies), October 2010, p. 28-31

Appendix 8

Selected judicial decisions referring to the European Social Charter in 2010

National courts

France

- ◆ Cour de Cassation, judgment No. 889 of 14 April 2010 (right to organise)

Italy

- ◆ Constitutional Court of Italy, “Ordinanza” N° 76 of 22 February 2010 (rights to access to housing for foreigners)

The Netherlands

- ◆ District Court of Utrecht, 6 April 2010, SBR 10/867 WMO (assistance to foreigners not lawfully resident in the territory)

International bodies

European Court of Human Rights, Strasbourg

- ◆ Vördur Olafsson v. Iceland, judgment of 27 April 2010, application No. 20161/06 (right to organise)

Court of Justice of the European Union, Luxembourg

- ◆ Judgment of 10 June 2010, C-395/08 and 396/08, Bruno and Pettini (part-time work, remuneration, equal treatment)
- ◆ Judgment of 15 July 2010, C-271/08, European Commission v. Germany (right to bargain collectively)

Appendix 9

Council of Europe ceremony on the occasion of the 60th anniversary of the European Convention on Human Rights on 19 October 2010

Speech by Ms Polonca Končar, President of the European Committee of Social Rights

Mr President, Ladies and Gentlemen

It is an honour and a pleasure to be here today in order to participate in the celebration of the anniversary of the European Convention of Human Rights.

The celebration of the anniversary of one of Europe's best known Human Rights treaty, the Convention, is the occasion not only to assess the effects of the Convention and the case law of the European Court of Human Rights on the people's lives in the past but also to address the future of the Human Rights protection system in Europe.

In this respect, Mr President, let me say that I feel that I am not only participating in your anniversary but in our common anniversary.

Indeed, I am representing the European Social Charter which is ratified by 43 of the 47 Council of Europe Member States, and the European Committee of Social Rights. Both our two treaties emanate from the Universal Declaration of Human Rights and their aim is to protect and enhance all human rights for all.

The fact that the Council of Europe adopted two different treaties in order to implement the UN Declaration should not undermine the principle of indivisibility of all human rights.

In this respect, I would like to underline the complementarity between the European Social Charter and the European Convention on Human Rights. When the European Committee of Social Rights interprets the Charter, which is especially important within the collective complaints procedure, the Convention and the Court's case law are primary points of reference. And vice versa, the Court now bases itself more and more often on the Charter and the case law of the European Committee of Social Rights.

Such reciprocal references are very important to avoid the development of conflicts between different Human Rights instruments. In our view, they can also contribute to the reinforcement of Human Rights at large.

To conclude, from the viewpoint of the future of the Human Rights covered by the Council of Europe's instruments we should accept the interaction between the fundamental rights and the complementarity of

the Court and other European monitoring bodies : this is the future of a pan European space for all human rights.

Mr President, Ladies and Gentlemen,

I present my congratulations to the Court for its major achievements in enforcing the Convention and my best wishes for its future to the benefit of all human beings.

Appendix 10

Committee opinions on texts submitted by the Committee of Ministers

Opinion of the Committee on Recommendation 272 (2009) of the Congress of Local and Regional Authorities on “preventing violence against children”

The European Committee of Social Rights (“the Committee”) welcomes Recommendation 272 (2009) of the Congress of Local and Regional Authorities on Preventing Violence against children.

The Committee fully supports the proposals made by the Congress to the Committee of Ministers of the Council of Europe relating to consolidation of commitments by Member States in the field of prevention of violence against children, while emphasizing that these commitments must be lasting and not limited in time, and that Member States must organize a careful and continuous monitoring in respect of violence against children within the framework of the family and in other settings.

It recalls that the Revised European Social Charter is the most significant treaty at the European level for children’s human rights. It complements the European Convention on Human Rights in this area and reflects the United Nations Convention on the Rights of the Child, on which its new Article 17 is based.³ Articles 7§10 and 17 guarantee the right of a

child to be protected against all forms of violence and abuse. It also complements ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

To comply with Article 17, States’ domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, States must act with due diligence to ensure that such violence is eliminated in practice. The prohibition of violence and all other forms of degrading punishment or treatment of children must be accompanied by adequate sanctions in penal or civil law. Further Article 17 requires that there must be agencies and services designed to protect and prevent the ill-treatment of children.

3. See *FIDH v. France*, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 36 and *World Organisation against Torture (OMCT) v. Greece*, Complaint No. 17/2003, decision on the merits of 7 December 2004, § 31).

Article 7§10 and ILO Convention 182 require States to take measures to protect children against all forms of exploitation (sexual, economic, slavery and slavery-like practices, etc.) This Article and ILO Convention 182 also cover the trafficking of human beings since this is a form of exploitation. In addition, Article 7 and ILO Convention 182 require States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency and to take positive measures to assist street children as this may also be considered as a form of violence.

Following the most recent examination of national reports on the implementation of Article 17 of the Charter (Conclusions 2005, Conclusions XVII-2), the Committee found that 18 States Parties to the Charter did not comply with this provision because corporal punishment of children was not totally prohibited.⁴ The Committee pays systematic attention to this particular issue and it deferred its conclusions in respect of several other States parties, pending more detailed information. Moreover, under the collective complaints procedure, the European Committee of Social Rights has found several States (Belgium, Greece, Ireland and Portugal) to be in breach of the Charter on the grounds that all corporal punishment and other humiliating treatment were not prohibited.

The Committee recalls that human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights. It is even more mindful of this when considering children's rights under the Charter. It has at times enlarged the scope of the Charter in

order to make this meaningful. For example restricting medical care to children legally present in a State Party is contrary to the Charter as health care is a prerequisite for the preservation of human dignity.

The Committee has often emphasised that if under domestic law local or regional authorities, are responsible for exercising a particular function, for example providing services for children States Parties to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus ultimate responsibility for implementation of Charter rights lies with the State.

The Committee also attaches great importance to the adequate supervision of the child welfare system, and in particular of the institutions involved in caring for children. It is also essential that protection is offered to child victims of violence, exploitation and neglect for as long as is required and not be subject to arbitrary age limits.

While welcoming the Guidelines on National Integrated Strategies for the Protection of Children against Violence and while concurring with the general tenor of the Congress Recommendation, the Committee, in view of the above, considers it regrettable that the Congress Recommendation fails to mention the Charter. The Committee would therefore invite the Committee of Ministers to strongly emphasise, in its reply, the importance of this treaty for children's rights in Europe.

In addition, considering the value of the collective complaints procedure in protecting children's rights the Committee would also invite the Committee of Ministers in its reply to highlight the importance of more States accepting the collective complaints procedure.

4. Included in this list were the following States parties: Belgium, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Lithuania, Malta, Netherlands, Poland, Moldova, Romania, United Kingdom, Slovak Republic, Slovenia, Spain and Turkey.

Opinion of the Committee on Recommendation 1892 (2009) of the Parliamentary Assembly on “the contribution of the council of europe in the development of the higher education area”

The Committee of Ministers has invited the European Committee of Social Rights (“the Committee”) to make comments on Recommendation 1892 (2009) of the Parliamentary Assembly. In particular, paragraph 15.3 of this text recommends that the Committee of Ministers: “analyse whether the European Social Charter (revised) (ETS No. 163) should be amended to ensure social rights including access to higher education for students in their own countries and for students studying abroad, as well as social rights for researchers, teachers and other academic staff working abroad.”

The European Higher Education Area (EHEA) can already draw on the Social Charter for its development. The social aspect of higher education is among the subjects referred to by the Charter as it is interpreted by the European Committee of Social Rights.

As to access to higher education, the Committee has concluded that, in view of the current changes to national systems, in which the distinction between education and training is becoming increasingly blurred at all levels and merging into an approach based on lifelong learning, the definition of vocational training referred to in Article 10 must be understood to include university and non-university higher education.

In the light of the Committee’s case law in its conclusions under this article (see for example, Conclusions 2003, France, pp. 131-132), States must set up mechanisms capable of overcoming the socio-economic and/or practical obstacles which prevent or hamper access to higher education and subsequent access to the labour market.

The positive obligations deriving from public responsibility for securing equal opportunities in access to and the financing of higher education have prompted the Committee to lay down the following requirements:

- ◆ Ensure that enrolment fees and other education costs do not create financial obstacles for some candidates so that access is based solely on individual aptitude.
- ◆ Build bridges between secondary vocational education and higher education and set up mechanisms for the validation of knowledge and experience acquired in the course of work or training activities to enable those concerned to qualify for or enter higher education.

Access to higher education for persons with disabilities is dealt with by the Committee under Article 15 of the Charter for countries which have accepted this article (see, *mutatis mutandis*, Conclusions XIV-2, statement of interpretation of Article 10§1, p. 60). For this purpose, in addition to general measures relating to equal access and fair treatment of qualified candidates (to ensure that obstacles linked to social background and economic status are not causes of exclusion), States must promote educational opportunities for persons with disabilities, particularly through measures such as support and improved access to buildings so that they can be fully integrated into mainstream higher education (Conclusions 2005, Cyprus, p. 99). Similarly, telecommunications and new information technologies must be accessible (Conclusions 2005, Estonia, p. 188) and sign language must have official status (Conclusions 2003, Slovenia, p. 509). This will enable persons with disabilities to be fully fledged members of the higher education community, like all other students (see *Autism Europe v France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48).

Similarly, the Committee has stated that in order to meet the requirements of Article 10 of the Charter, States must take measures to ensure that qualifications acquired in higher education are geared towards integration into the labour market. From this standpoint, both university and non-university higher education may be equated with vocational training in that they enable students to acquire the necessary knowledge and skills to practise a profession.

Furthermore, while recognising that the conditions under which various degrees are acquired may vary, persons with similar qualifications should not be subject to differences in treatment that are incompatible with the right to non-discrimination in employment enshrined in Article 1§2 of the Charter (*Syndicat national des Professions du Tourisme v. France*, Complaint No. 6/1999, decision on the merits of 10 October 2000, §§ 24-26). For example, if each country has a system of higher education credits and this is compatible with the European Credit Transfer System, this should make it easier for credit for qualifications to be transferred from one university to another in connection with Erasmus exchanges or other types of exchange. This is a social aspect of the EHEA which could be extended to teachers and other university staff working abroad and to the social rights of research workers.

The Committee also considers that nationals of other parties working or residing lawfully in the country concerned must enjoy equal treatment with regard to access to higher education (see, *mutatis mutandis*, Conclusions XIV-2, statement of interpretation of Article 10§1, p. 62). This means that would-be students or trainees residing or authorised to reside in a country in whatever capacity because of their ties with persons lawfully residing there must not be subject to any length of residence requirement before beginning their training. In such cases a length-of-residence or employment requirement and/or the

application of a reciprocal agreement would be incompatible with the Charter (Conclusions 2003, Slovenia, p. 475).

Lastly, the case law of the Committee under Article 10 referred to above contributes to the gradual acceptance of the idea of free and extended access to higher education in keeping with Article 13§2.c) of the Covenant on Economic, Social and Cultural Rights, which states that “higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education”. However, the right to free education for all is not recognised as such by this Article or by the personal and material scope of Article 17 of the Charter, which relates to the protection of children and young people and to the free nature of primary and secondary education.

In conclusion, the Committee considers that in view of the advances described above there is no reason for any major changes to be made to the Charter. It might however be worth amending Article 10 of the Charter and extending its scope to offer more explicit coverage of other social aspects of the EHEA (for instance the organisation of courses or university management methods) and equivalent aspects of the European Research Area (such as the recruitment of researchers to higher education establishments or the return to their country of origin of research workers who have done post-doctorate work abroad).

**Opinion of the Committee on Recommendation 1903 (2010)
of the Parliamentary Assembly
on “fifteen years since the international conference
on the population and development programme of action”**

Further to the request for an opinion on Parliamentary Assembly Recommendation 1903 (2010), the European Committee of Social Rights wishes to make the following observations:

The Committee firstly wishes to acknowledge that women’s rights as well as rights related to sexual and reproductive health information, education and services are among those that require an increased vigilance on the part of States and international organisations tasked with ensuring respect for human rights.

The follow-up of the International Conference on Population and Development Programme of Action within the United Nations framework, should at European level take due account of the two main human rights instruments of the Council of Europe, the European Convention on Human Rights and the European Social Charter, both of which are relevant to the issues at stake. In this sense, as far as the Charter is concerned, the European Committee of Social Rights is convinced that its experience is significant and tangible.

The Committee is indeed regularly called upon during its examination of State reports on the implementation of the Charter to assess the efforts of the States Parties related to reproductive health issues, including the consequences of biased gender equality standards and discriminatory practices in sexual and reproductive health education. In fact, special provisions focus on this purpose, such as Articles E (non-discrimination clause), 3 (right to health and safety at the workplace), 8 (the right of employed women to the protection of maternity), 11 (right to protection of health), 16 (necessary conditions for the full development of the family, including the fight against all forms of domestic violence against women, children, etc.), 17 (protection of children from violence, ill treatment and abuse, etc.), 19 (right of migrant workers and their families to protection and assistance), 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), 26 (right of all workers to protection of their

dignity at work, including protection of victims of sexual harassment), or 27 (right to equality of opportunity and treatment for men and women workers with family responsibilities).

Together with the reporting system, the examination of certain collective complaints has allowed the Committee to develop its case law on these matters. In particular, mention may be made of the case *INTERRIGHTS v. Croatia*, Complaint No. 45/2007, decision on the merits of 30 March 2009, which highlighted that in the context of the right to protection of health through the provision of sexual and reproductive health education as set out in Article 11§2 of the Charter, States have a positive obligation to ensure that educational materials do not reinforce demeaning stereotypes and perpetuates forms of prejudice which contribute to social exclusion, embedded discrimination and denial of human dignity.

The Committee is of the view that the above-mentioned provisions of the Charter and the interpretation given to them, provide a good starting point for considering the effects of sexual and reproductive health on population and development and for identifying the measures to be taken to improve the situation. Moreover, it is almost certain that, the Committee in the future will enlarge the scope of its investigations and develop its case law further in this field.

With respect to the call of the Parliamentary Assembly on the Committee of Ministers to start developing a European Convention on sexual and reproductive health (para. 10.1), the Committee is of the opinion that in view of the existing means and procedures within the Council of Europe, notably the reporting system and the collective complaints procedure established by the European Social Charter, it is not necessary to elaborate such a new convention. In effect, to seek to multiply the existing obligations and regulatory procedures at international level would probably not be in accordance with sound principles of economy nor would it necessarily stimulate positive behaviour on the part of States.

Should the Member States nevertheless decide that there are shortcomings in the protection of sexual and reproductive health rights afforded by the existing Council of Europe instruments, these shortcomings might well be remedied by adopting an amendment extending the rights guaranteed by the European Social Charter (revised).

Finally, the Committee wishes to affirm its willingness and availability to cooperate with the Parliamentary Assembly in the preparation of reports and recommendations that so evidently touch upon the key human rights treaty that is the European Social Charter.

Opinion on Recommendation 1907(2010) of the Parliamentary Assembly on “the wage gap between women and men”

The Committee of Ministers has asked the European Committee for Social Rights (“the Committee”) to forward any comments it might have on Recommendation 1907 (2010) of the Parliamentary Assembly. In reply to this request, the Committee wishes to make the following observations:

The Charter is unique in Europe not only in terms of the rights guaranteed, but also because of the double dimension of its supervisory mechanisms : an annual procedure based on national reports on the one hand and a collective complaints procedure allowing civil society organisations to lodge complaints, on the other. The European Committee of Social Rights, the regulatory body of the Charter made up of fifteen independent and impartial experts, rules on the conformity of national law and practice under both these procedures.

With a view to ensuring the effective exercise of the right to equal pay referred to in Recommendation 1907 (2010) of the Parliamentary Assembly, Article 4§3 of the European Social Charter requires States to recognise the right of men and women workers to equal pay for work of equal value. From a wider perspective of safeguarding the right of all workers to workplace equality, the principle of equal pay without discrimination based on sex is also safeguarded by Article 20 of the Revised Charter/Article 1 of the Additional Protocol of 1988. Article 20 is one of the pillars of the Charter, being one of the nine fundamental “hard core” provisions of the Charter.

In the context of its monitoring mechanism, the European Committee of Social Rights has established a case law based on the principle of “equal pay for work of equal value”. Equal pay is thus assessed in terms of the elaboration by States of appropriate methods for evaluating jobs and positions that permit the comparison of wages not only within a given enterprise but also with other companies and branches. The promotion of equal treatment of the sexes and equal opportunities for women and men through collective agreements, including on equal pay matters, is

a prerequisite for the effectiveness of the rights set out in Article 4§3 and Article 20 of the Charter.

In examining the conformity of national situations with Articles 4§3 and 20 of the Charter, the Committee notes that the reasons of the pay gap can be explained by the fact that women work in less valued sectors which are therefore less remunerated. It believes that wage discrimination will continue to exist as long as there will be no effective equal opportunities in the labour market.

Article 4§3 of the Charter requires that the right to equal pay be expressly set out in domestic law and that all clauses in employment contracts or collective agreements which violate the principle of equal pay be held to be null and void. Furthermore, courts must have the power to waive the application of the offending clauses (Conclusions XIV-2, Addendum, Slovak Republic).

More precisely, the Charter through its Article 4§3 requires States to ensure that domestic law provides 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 (Conclusions I, Statement of Interpretation on Article 4§3). Moreover, domestic legislation should provide for a shift of the burden of proof on favour of the complainant in discrimination cases and the victim must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered and act as a deterrent to the offender. Victimisation against a person who has sought to enforce his/her rights is prohibited (Conclusions 2008, Article 20, Malta).

It should be noted that the European Committee of Social Rights oversees that the States encourage the adoption and promotion of other positive measures to reduce the wage gap between women and men. Such measures concern, for example, the implementation of measures to improve the quality of wage statistics and their coverage as well as the inclusion of the issue of equal pay as a priority in national action plans for employment.

Finally, the Committee welcomes the initiative taken by the Parliamentary Assembly with a view to the adoption of Recommendation 1907(2010) and reaffirms its commitment to ensuring compliance with the right to equal pay for work of equal value for women and men. It encourages the systematic sharing of information with other Council of Europe bodies and with Member States with a view to making the work in the field of equal pay more effective.

In conclusion, the Committee invites States Parties of the Charter which have not yet accepted Articles 4§3 and 20 and/or the collective complaints procedure to do so before 18 October 2011 (date of the 50th anniversary of the Charter), as this would enable the competent organisations to submit complaints with the Committee concerning breaches of the right to equal pay.

**Opinion on Recommendations 1910 and 1917
of the Parliamentary Assembly
on “the impact of the global economic crisis
on migration in Europe”
and on “migrants and refugees: a continuing challenge
for the Council of Europe”**

The Committee of Ministers has invited the European Committee of Social Rights (“the Committee”) to make comments on Parliamentary Assembly Recommendations 1910 and 1917.

Since the two recommendations partly serve a similar purpose and some of the arguments they put forward overlap, they will be dealt with in one and the same opinion.

Firstly, the Committee agrees wholeheartedly with the Parliamentary Assembly when it calls for all Member States to be encouraged to accede to and implement the Council of Europe conventions designed to protect migrant workers. One of these conventions is the revised European Social Charter. This can be considered an instrument to protect migrant workers both in so far as several of its articles (18, 19 and E) expressly guarantee migrants and their families treatment no less favourable than that of nationals and prohibit discrimination, and in that it provides for monitoring procedures to check that States are honouring their commitments. This is reflected in the Committee’s regular conclusions on the reports presented by States on the fulfilment of their obligations to nationals of other States Parties in their countries and in several of its decisions on collective complaints.

Some of the more noteworthy examples of this are:

- ◆ the decision on the complaint by the International Federation of Human Rights Leagues (FIDH) v. France (No. 14/2003), which pursues the same aim of protecting the minimum rights needed to guarantee irregular migrants’ human dignity to which the Assembly aspires in Recommendation 1917 in that it finds that there has been a violation of the Charter because the children of illegal immigrants are deprived of medical assistance;
 - ◆ the decision on the complaint by the Centre on Housing Rights and Evictions (COHRE) v. Croatia (No. 52/2008) alleging that persons displaced during the conflict between Serbia and Croatia and now returning to Croatia are being deprived of their full right to housing;
 - ◆ the decision on the complaint by the COHRE v. Italy (No. 58/2009), which concludes that Italy violated the Charter by expelling foreign Roma citizens from Italy.
- It would of course be desirable for those States which have not yet accepted Articles 18 and 19 or have not yet agreed to be bound by the revised Charter and/or the collective complaints procedure to do so. On the other hand, there is no need for any further substantial, or even partial, changes to the Charter, especially if this is simply to add provisions which already figure in other international instruments such as the Geneva Convention. In view of the limited personal scope of the Charter, it would also be a good idea for Member States to sign and ratify other Council of Europe instruments such as Additional Protocol No. 4 to the European Convention on Human Rights prohibiting collective expulsion, Additional Protocols Nos. 7 and 12, and other international agreements on the protection of migrant workers, which the Council of Europe body, ECRI, and the United Nations bodies, the Human Rights Council and the CERD, have repeatedly urged their Member States to ratify, in particular the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

The European Committee of Social Rights also shares the Parliamentary Assembly’s desire for more accurate and up-to-date data on the effects of the economic crisis on migration flows, unemployment rates among migrants and changes in the authorities’ attitude to migration – data which are not currently available despite the work carried out at the Council of Europe by the CDMG and ECRI,

and by the OECD and the ILO. There is undoubtedly a need to gauge the extent to which States' choices have helped to shift what might be termed the mechanical effects of the crisis in one direction or the other. This requires data on trends in voluntary or forced returns of migrants to their countries of origin, family reunions (requests pending and numbers of requests granted per year), asylum applications (applications filed and granted) and any changes since 2008 in the rules on the issuing of residence or work permits. ECRI and the European Committee of Social Rights are familiar with this type of investigation but in view of the infrequency of their reports (on the different articles of the Social Charter in the case of the Committee and on the different countries in the case of ECRI) they are only able to produce a fragmented picture of the situation. Another problem is that many States, as they have often been told, do not have proper national statistical systems.

In the European Committee of Social Rights' opinion the Parliamentary Assembly is right to stress the need for the Council of Europe to play its appointed role, which is to adopt an approach to migration which concentrates more on the people involved in migration processes than on the processes themselves, which is what the European Union focuses on. The Council of Europe would gain much, moreover, from engaging in sufficiently in-depth dialogue with the European Union to ensure that the Union's strategic choices (such as the European pact on immigration and asylum) or the law derived from these (such as the "return" directive or the "refugees"

directive) do not deprive the Council's dialogue with Member States which are also EU members of any significance.

As to the other matters raised, it is not for the Committee to express any view on what form the essential co-ordination within the Council of Europe between the asylum and migration activities of the Commissioner for Human Rights, the European Committee of Social Rights, ECRI, the CPT and the CDMG should take, what practical arrangements should be made for this and what resources should be allocated to it.

The main goal should be to ensure that all these bodies' views, which practically always converge, are put across sufficiently clearly by the Council's highest echelons for the public to see how consistent and relevant they are, and that States can have no doubt about the determination they reflect, whatever field they relate to, be it forced return, family reunion, asylum, refoulement and expulsion procedures, including issues such as turning back boats, detention centres or police violence.

The Committee also believes that these highest echelons should encourage Council of Europe Member States that support such a measure to give the organisation a mandate to step up co-operation with other international organisations. The aim of such co-operation should be either to improve methods of observing migration trends or to introduce measures to support host countries in their efforts to integrate migrants and countries of origin in their attempts to help returning migrants re-establish themselves.

Opinion on Recommendation 1911(2010) of the Parliamentary Assembly on “women and the economic and financial crisis”

The Committee of Ministers has asked the European Committee of Social Rights (“the Committee”) to forward any comments it might have on Recommendation 1911 (2010) of the Parliamentary Assembly. In reply to this request, the Committee wishes to make the following observations:

The Charter is unique in Europe not only in terms of the rights guaranteed, but also because of the double dimension of its supervisory mechanism: an annual procedure based on national reports on the one hand and a collective complaints procedure allowing civil society organisations to lodge complaints, on the other. The European Committee of Social Rights, the regulatory body of the Charter made up of fifteen independent and impartial experts, rules on the conformity of national law and practice under both these procedures.

Pursuant to its Article E, the Revised Charter recognises the enjoyment of rights set forth in the treaty “without discrimination based on sex”. The existence of this provision as a distinct article attests to the high importance given by the States to the principle of non-discrimination in the realisation of fundamental rights guaranteed by the Charter.

Regarding the protection of specific rights in respect of women, Article 20 of the Revised Charter provides for the right to equal opportunities and equal treatment in matters of employment and occupation. Moreover, Article 4§3 of the Charter recognises the right of women and men workers to equal pay for work of equal value. The Committee refers in this regard to its comments on the Recommendation 1907(2010) of the Parliamentary Assembly “The wage gap between women and men”.

Furthermore, the Charter guarantees the right to equality of opportunity and treatment for women and men workers with family responsibilities and between such workers and other workers (Article 27). In addition, Article 26 of the Charter guarantees to all workers the right to protection of their dignity at work and requests States to adopt measures to prevent and properly sanction sexual harassment.

The Committee welcomes the initiative taken by the Parliamentary Assembly with the adoption of Recommendation 1911(2010) and reaffirms its commitment to ensuring an effective equality between women and men. It underlines the necessity of closing the gap between *de iure* and *de facto* equality, especially in the wake of the economic and financial crisis which endanger the modest gains achieved by women in the past.

In its case law, the Committee has stressed that compliance with the principle of equal treatment requires taking positive account of relevant differences as well as taking adequate steps to guarantee genuinely equal opportunities to all. Affirmative measures are needed to eliminate inequalities originating from the social consequences of historic discrimination and from existing stereotypes. They should not be considered as permitted exceptions from equal treatment, as acts of “positive discrimination”. Such an approach would in effect perpetuate the “single standard” perception of equality where equality has to be achieved by women along standards adjusted to male realities.

Unequal division of family and domestic responsibilities is a major cause not only of the discrimination against women on the labour market, in the context of the economic and financial crisis, but also of their limited social and political participation. In this regard, the Committee refers to Recommendation 1800(2007) of the Parliamentary Assembly on the feminisation of poverty and, in particular, to the scope of the Article 30 of the Revised Charter (the right to protection against poverty and social exclusion).

The Committee shares the novel view expressed in the Recommendation about the role of women in the creation of a more stable and safe economic and financial environment. It agrees with the high importance of ensuring gender balance in political leadership, in decision-making positions including in businesses. It invites States to take measures in order to ensure that workers with family responsibilities are not discriminated against due to these responsibilities (Article 27). States should encourage initiatives aimed at

conciliating family life and work for both women and men workers in order to achieve real equality among them.

In conclusion, the Committee invites States Parties of the Charter which have not yet accepted Articles 4§3, 20, 26, 27 and 30 and/or

the collective complaints procedure to do so before 18 October 2011 (date of the 50th anniversary of the Charter), as this would enable the competent organisations to submit complaints with the Committee concerning breaches of discrimination based on sex.

Appendix 11

Contribution to the development of a general comment on the right to sexual and reproductive health by the UN Committee on Economic, Social and Cultural Rights

Sexual and reproductive health topics in the European Social Charter

Article 11 of the European Social Charter³ and the Revised European Social Charter guarantees the right to protection of health. This provision complements Articles 2 and 3 of the European Convention on Human Rights, as interpreted in the case law of the European Court of Human Rights, by imposing a range of positive obligations designed to secure the effective exercise of that right.

Article 11 provides for a series of rights to enable persons to enjoy the highest possible standard of health attainable. These rights consist on the one hand in measures to promote health and on the other hand in the provision of health care in case of sickness.⁴

With its broad scope it would appear evident that Article 11 encompasses sexual and reproductive health rights, however in its case law to date the European Committee of Social

Rights⁵ has addressed only certain topics such as maternal mortality, counselling and screening during pregnancy and in particular sexual and reproductive health education and awareness-raising.

As regards maternal mortality it is one of the indicators that the Committee systematically examines under Article 11§1 in evaluating how well a particular country's overall health system is operating. The Committee considers that maternal mortality is an avoidable risk that can be controlled by human action and it follows that States Parties should take every step to reduce the maternal mortality rate as close to zero as possible.⁶

The Committee also considers that under Article 11§2 counselling and systematic screening should be free for pregnant women.⁷

3. The European Social Charter (hereinafter referred to as "the Charter") sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by States Parties. It was revised, and the 1996 Revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty. 43 States have ratified either the 1961 Charter or the Revised Charter. Three Protocols have been added to the initial 1961 treaty: Protocol No. 1 (1988) which adds new rights – Protocol No. 2 (1991) which reforms the procedure of control regarding reports – Protocol No. 3 (1995) which provides for a procedure of collective complaints.

4. For a detailed description, see "The right to health and the European Social Charter", information document prepared by the Secretariat of the ESC (available at www.socialcharter.coe.int).

5. The European Committee of Social Rights (referred to below as "the Committee") ascertains whether countries have honoured the undertakings set out in the Social Charter. Its fifteen independent, impartial members are elected by the Council of Europe Committee of Ministers for a period of six years, renewable once. The Committee determines whether or not national law and practice in the States Parties are in conformity with the Charter.

– A monitoring procedure based on national reports: Every year the States Parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter. The Committee examines the reports and decides whether or not the situations in the countries concerned are in conformity with the Charter. Its decisions, known as "conclusions", are published every year.

– A collective complaints procedure: Under a protocol opened for signature in 1995, which came into force in 1998, complaints of violations of the Charter may be lodged with the European Committee of Social Rights.

6. Conclusions 2003, France, p. 146.

7. Conclusions 2005, Moldova, p. 452.

The topic of sexual and reproductive health education was examined in some detail in a recent complaint, *Interights v. Croatia*.⁸ The complainant organisation alleged that Croatian schools did not provide comprehensive or adequate sexual and reproductive health education for children and young people.

In its decision on the merits⁹ the Committee stated *inter alia* the following principles:

“43. The Committee recalls that under Article 11§2 States must provide education and aim to raise public awareness in respect of health-related matters. States must adopt concrete measures with a view to implementing a public education policy which is directed towards the population at large as well as particular population groups which are affected by specific health problems. The measures taken should seek to prevent activities that are damaging to health, such as smoking, excessive alcohol consumption and the use of drugs, and encourage the development of a sense of individual responsibility in respect of matters such as healthy diet, sexual and reproductive health and the environment.

44. The Committee considers that apart from the family framework, the most appropriate structure for the provision of health education is the school, inasmuch as the general objective of education is to communicate knowledge which enables pupils to tackle life in its multi-faceted totality. In this regard, the Committee refers in particular to Recommendation No. R (88)7 of the Committee of Ministers of the Council of Europe on school health education and the role and training of teachers.

45. The Committee has previously stated that Article 11§2 requires that health education in school be provided throughout the entire period of schooling and that it cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive health education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits.

(Conclusions XV-2, Belgium, Conclusions 2003, Slovenia).

46. More specifically, in the context of Article 11§2 and the instant case, the Committee understands sexual and reproductive health education as a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour.
47. The Committee acknowledges that cultural norms and religion, social structures, school environments and economic factors vary across Europe and affect the content and delivery of sexual and reproductive health education. However, relying on the basic and widely accepted assumption that school-based education can be effective in reducing sexually risky behaviour, the Committee considers that States must ensure
- ◆ that sexual and reproductive health education forms part of the ordinary school curriculum;
 - ◆ that the education provided is adequate in quantitative terms, i.e. in respect of the time and other resources devoted to it (teachers, teacher training, teaching materials, etc.);
 - ◆ that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health;
 - ◆ that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements.
48. Having regard to the non-discrimination clause in the Preamble to the Charter, sexual and reproductive health education

8. Complaint No. 45/2007.

9. Decision on the merits of 30 March 2009.

must be provided to school children without discrimination on any ground, direct or indirect, it being understood that the prohibition of discrimination covers the entire range of the educational process, including the way the education is delivered and the content of the teaching material on which it is based. This requirement that health education be provided without any discrimination has two facets: children must not be subject to discrimination in accessing such education, which should also not be used as a tool for reinforcing demeaning stereotypes and perpetuating forms of prejudice which contribute to the social exclusion of historically marginalised groups and others that face embedded discrimination and other forms of social disadvantage which has the effect of denying their human dignity.

49. States may also encourage the provision of elective and extracurricular courses, within or outside the school setting or via out-of-school programmes, for school children relating to sexual and reproductive health. These courses may constitute a part of overall public health education policy. However, when such courses are optional and participation is dependent upon the free choice of children and their parents, the Committee does not consider that they should be subject to the same requirements as to content, form and substance which exist in respect of ordinary curricular activities. However, where these courses are approved and/or wholly or partially funded by the Government and/or invoked by the State Party as an element in fulfilling its obligations under the Charter, the sexual and reproductive health education taught through them must remain objec-

tive and must comply with the non-discrimination principle.

50. The Committee wishes to emphasise that the obligation under Article 11§2 as defined above does not in its view affect the rights of parents to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents own religious or philosophical convictions (see European Court of Human Rights, Case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, Judgment of 7 December 1976)."

In its decision, the Committee held unanimously that there was a violation of Article 11§2 in the light of the non-discrimination clause. The Committee considered, based on an examination of specific material contained in the evidence provided by the complainant organisation, that certain specific elements of the educational material used in the ordinary school curriculum in Croatia were manifestly biased, discriminatory and demeaning, notably in how persons of non-heterosexual orientation were described and depicted. The Committee further emphasised that by approving or allowing the use of the textbooks that contain these anti-homosexual statements, the Croatian authorities have failed in their positive obligation to ensure the effective exercise of the right to protection of health by means of non-discriminatory sexual and reproductive health education which does not perpetuate or reinforce social exclusion and the denial of human dignity.¹⁰

10. For the follow-up to this decision, see Resolution Res (2009)7 adopted by the Committee of Ministers on 21 October 2009.

European Social Charter
Directorate General of Human Rights
and Legal Affairs
Council of Europe
F – 67075 Strasbourg cedex

www.coe.int/socialcharter