



European Committee of Social Rights

Activity Report 2013



European
Social
Charter

Charte
sociale
européenne



Activity Report 2013

**European Committee
of Social Rights**

French edition:

Rapport d'activité 2013

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Cover and layout: Documents and publications production Department (SPDP), Council of Europe

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Printed at the Council of Europe

The European Committee of Social Rights rules on the conformity of the situation in States with the European Social Charter.

The Committee adopts "conclusions" in respect of national reports submitted annually by the States Parties, and it adopts "decisions" in respect of collective complaints lodged by organizations.

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

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Introduction

The effectiveness of the European Social Charter and the irreversible nature of the Turin process

L The 2013 annual report takes stock not only of the European Committee of Social Rights’ “typical” activities, in other words its conclusions and statements of interpretation in the context of the reporting system and its decisions in the context of the collective complaints procedure, but also of its “atypical” activities, in other words opinions or comments on documents drawn up by the Committee of Ministers or the Parliamentary Assembly, and a whole range of activities carried out by the Committee and the Department of the European Social Charter, which illustrate the increased effectiveness and impact of this leading Council of Europe instrument in the social rights sphere (such as exchanges of views and institutional or academic meetings or sessions).

All of these activities show that the Charter is a living instrument and, at the same time, that the Committee has an ongoing, day-to-day role in protecting social rights despite its current non-permanent configuration. The manifold and redoubled efforts of the Committee members in pursuit of these goals are made possible by the permanent support of the entire staff of the Department of the European Social Charter.

Apart from this teamwork, I would also like to take this opportunity to pay a special tribute, on the occasion of her retirement at the end of March 2014, to our documentalist, Brigitte Napiwocka, who, in her twenty years of service for the Charter (and I mean “service” in the broadest and most positive sense), has shown great skill, devotion and commitment. The personal and professional qualities reflected in her work have been an example to us all. Fortunately, we will continue to reap the benefits of her friendship, commitment and expertise through her involvement in the Academic Network on the European Social Charter.

As to the reporting system, the conclusions adopted in 2013 mark a positive trend on the procedural front, reflecting the growing attentiveness with which states honour their commitments under the Charter (with a significant reduction in the number of deferrals, from 27% in 2012 to 19% in 2013), and at the same time substantial situations of non-conformity requiring improvements in domestic practice or legislation. Of the 568 conclusions adopted in the areas of health protection – including occupational health, social protection and social security, the protection of elderly persons and protection against poverty and social exclusion, 181 were findings of non-conformity. In addition, statements of interpretation were adopted in order to clarify the Committee's case-law on certain essential and topical issues. These related to new technological or organisational factors giving rise to occupational health and safety risks, the personal scope of the right to social and medical assistance, adequacy of resources and assisted decision-making for the elderly, a more human rights-oriented approach to protection from poverty and social exclusion, and a more detailed definition of the rights of stateless persons.

There were also some interesting developments in the collective complaints mechanism in 2013, in terms both of procedure and of substance. On the procedural level, a growing number of civil society organisations wished to intervene before the Committee as third parties. The Committee also ruled on the first requests for immediate measures. In the substantive field, in 2013 the Committee adopted decisions concerning the health risks posed by environmental problems in Greece, the retirement age for seamen in Norway, posting of workers and problems of reconciling economic freedoms and social rights in Sweden, protection of foreign minors in Belgium, truancy and protection of autistic persons in France and access to abortion procedures in Italy. In 2013, it also took five decisions concerning the reduction of pensions in Greece, which brought to light a strong need for improved synergy between the standards of the Council of Europe and those of the European Union in the field of social rights.

This body of case-law (from the reporting and collective complaints procedures) and the activities of the Committee described in this annual report illustrate the effectiveness of the European Social Charter, in other words the mass of shared social values successfully built up in over fifty years of the 1961 Charter's existence. This is an immutable *Jus Commune Europaeum* of social rights. However, the immutability of this body of law which has been forged and consolidated around the Turin Charter must be preserved by making gradual advances, such as those pursued by the High-Level Conference to be held jointly by the Council of Europe, the City of Turin and the Italian Presidency of the European Union in Turin on 17 and 18 October 2014. Among the goals of this type being pursued are the reduction of potential or actual imbalances between Council of Europe member states which have accepted the instruments making up the Charter system (particularly the Collective Complaints Protocol of 1995 and the Revised Charter of 1996) and those that have not, improved interaction between the European Union and the Council of Europe with regard to the Charter, and the establishment of the Charter as a fully-fledged European Social Pact for Stability in the light of the legal uncertainty being created by unidentified anti-crisis measures.

In point of fact, despite the climate of crisis, positive steps forward continued for the Charter in 2013. These included the firm support from the Secretary General and the Deputy Secretary General for the “Turin process” (preparation of the High-Level Conference in October 2014); productive exchanges of views with the Committee of Ministers and advances in keeping with the Political Declaration of October 2011 on the 50th anniversary of the Charter (ratification of the Revised Charter by Latvia in March 2013 and meeting of the European Committee of Social Rights with the Swiss authorities in Bern in September 2013 with a view to ratification of the Charter by Switzerland); close co-operation with the Parliamentary Assembly (selection of conclusions of non-conformity on which to take action in the form of standard-setting initiatives or other parliamentary activities at national level); increased promotion of the Charter and the case-law of the Committee by the Commissioner for Human Rights; dialogue with national judges (for example, with the Consultative Council of European Judges in July 2013), with the European Court of Human Rights (in May 2013) and with the Court of Justice of the European Union (exchange of views being prepared for the end of 2014); and judicial contacts with the United Nations (session on the collective complaints procedure held in Geneva in October 2013 with the persons in charge of the unit responsible for universal procedures for individual complaints, such as those established by the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights).

Lastly, the impetus given to the “Turin process” is a challenge to us all to act with determination. These positive developments concerning the Charter reflect a process of immutability rather than one of regression and reveal the shortcomings of the “anti-crisis” arguments (or, in other words, the crisis of anti-crisis ideas, as the cost of not protecting social rights is much higher than that of safeguarding them). Rather than reaching a conclusion, I just wish to say a few words about the fact that this annual activity report shows that the Charter is still constantly evolving. If we were faced with self-proclaimed opponents of the Charter (whose views would be difficult to understand if they were aware that the Charter is an instrument from which they themselves benefit – despite everything and despite themselves), we would have to warn them that the Charter is in any case unstoppable and that any effort they deployed in that direction would be vain because, after fifty years of existence of the Charter as a living instrument and also hundreds of years of change, their inquisitorial minds would be confronted with the incontrovertible truth encapsulated in Galileo’s retort to the Inquisition itself, “Eppur si muove” (“And yet it moves”).



Luis Jimena Quesada
President of the Committee

2013 activities of the European Committee of Social Rights

1. Overview

The European Committee of Social Rights¹ conducts its supervision of state compliance within two distinct but inter-related procedures: the reporting procedure where it examines written reports submitted by States Parties with regular intervals and the collective complaints procedure which allows certain national and international organizations to lodge complaints against States Parties that have accepted to be bound by this procedure. In respect of state reports, the Committee adopts "conclusions" and in respect of collective complaints it adopts "decisions".

In 2013, the Committee held 7 sessions in Strasbourg:

- ▶ Session 262: 21-24 January
- ▶ Session 263: 18-21 March
- ▶ Session 264: 13-16 May
- ▶ Session 265: 1-4 July
- ▶ Session 266: 9-13 September
- ▶ Session 267: 21-25 October
- ▶ Session 268: 2-6 December.

As for the procedure on collective complaints, the Committee in 2013 adopted 9 decisions on the merits and 18 decisions on admissibility, including 4 decisions both on admissibility and the merits, but also 4 decisions on immediate measures, concerning, *inter alia*, the right to the protection of health, the right of persons with disabilities, the rights to freedom of association and collective bargaining effects but also the protection for homeless people (see Chapter 3 and Appendix 5).

The Committee examined reports presented by 38 States Parties describing how they implement the Charter in law and in practice as regards the provisions belonging to the thematic group of provisions concerning "health, social security and social protection": Articles 3, 11, 12, 13, 14, 23 and 30 (see Chapter 4 for a detailed presentation).

The procedure on non-accepted provisions concerned the following 4 States Parties: Bosnia and Herzegovina, Norway, Sweden, and Turkey (see Chapter 6).

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

According to the decision made in 2011, in the framework of the 50th anniversary of the Charter, on the strengthening of the co-operation between the Committee and the relevant committees of the Parliamentary Assembly, the Committee transmitted to the Assembly a selection of conclusions of non-conformity whose effective follow-up and implementation required national parliaments and governments to take appropriate legislative measures (see Appendix 7).

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

In the framework of its sessions, the Committee held meetings with representatives of several Council of Europe bodies, with representatives of other international bodies, including an exchange of views with the President of the European Court of Human Rights, Mr Spielmann, and the annual exchange of views with the international Labour Organization.

Delegations of the Committee held bilateral meetings with a number of countries in 2013 to conduct discussions with their authorities, in particular as regards:

- ▶ the Committee's findings in previous supervision cycles and the assessment in the current cycle of those countries' policies concerning their Charter undertakings;
- ▶ the non-accepted provisions of the Charter (the procedure laid down by Article 22 of the 1961 Charter, see also Chapter 6)
- ▶ the preparation of ratification of the Revised Charter and the collective complaints procedure for States that have not yet done so.

Finally, the Committee was represented at numerous international conferences and seminars on human rights-related issues. Lists of these various meetings appear in Appendices 10 and 11.

2. Election of members of the Committee by the Committee of Ministers

The composition of the Committee is governed by Article 25 of the Charter pursuant to which its 15 members are appointed by the Committee of Ministers for mandates of six years, renewable once². 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 (5) being up for election.

On 1 January 2013 Ms Monika Schlachter (German), Ms Birgitta Nyström (Swedish), Ms Eliane Chemla (French), Mr József Hajdú (Hungarian) and Mr Marcin Wujczyk (Polish) took up office for a term ending on 31 December 2018. Ms Schlachter and Ms Nyström began their second term in office.

See Appendix 1 for the current composition of the Committee.

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).

3. Declaration on protecting the independent status of the members of the European Committee of Social Rights³

The European Committee of Social Rights was set up under the European Social Charter as a body of independent experts whose main task – similar to that of the European Court of Human Rights in relation to the Convention for the Protection of Human Rights and Fundamental Freedoms – is to interpret the international legal commitments entered into by the States Parties.

This arrangement is highlighted by the Committee of Ministers when it elects the members of the committee, who must meet the required conditions of competence, independence, impartiality and availability and make solemn declarations to that effect upon taking up their duties.

While the consolidation of the reporting system and the development of the collective complaints procedure have enhanced the Committee's judicial method of operation, at the same time and paradoxically, the vital characteristic of independence is sometimes undermined because of more or less explicit attempts by certain political, institutional or administrative players both inside and outside the Council of Europe to interfere with or exert undue pressure on the Committee and its secretariat.

In this context, given that the European Committee of Social Rights plays a vital part in ensuring compliance with the Charter through its authoritative interpretations, any interference with or undue pressure exerted on the Committee or the secretariat also undermines the realisation of human rights, democracy and the rule of law, which are the pillars of the Council of Europe.

For these reasons, the Committee reasserts the independent status of its members and of its secretariat when assisting the Committee in accordance with Rule 13 of the Committee's Rules and asks all institutions and bodies, both inside and outside the Council of Europe, to make sure that this independence is preserved. Accordingly, whenever that independence is interfered with, the Committee will issue this declaration to the parties concerned.

4. Collective complaints procedure

The Additional Protocol of 1995 providing for a system of collective complaints came into force on 1 July 1998. The current total of member States that have so far indicated their consent to be bound by Protocol stands at 15.

Over the period 1998-2013, the European Committee of Social Rights received 103 collective complaints. The Committee, as a quasi-judicial body, issued 186 decisions, and among them 100 decisions on admissibility, 81 decisions on the merits, including 4 decisions both on admissibility and the merits, 4 decisions on immediate measures and 1 decision to strike out a complaint.

Over the last three years, the Committee experienced a large increase in the number of complaints registered each year. In 2013, 15 new complaints were lodged. In the

3. This declaration was made public in the General Introduction to Conclusions 2013/XX-2.

course of its 7 sessions in 2013, the Committee adopted 9 decisions on the merits and 18 decisions on admissibility (taking into account the 4 decisions both on admissibility and the merits) and 4 decisions on immediate measures. (See Appendix 5)

It is recalled that in February 2012, the Committee of Ministers instructed its Group of Rapporteurs on social and health issues (GR-SOC) to follow up on the decisions of the European Committee of Social Rights in the context of the system of collective complaints. The Committee of Ministers in 2013 adopted 16 resolutions concerning complaints.

The fifteen (15) complaints registered in 2013 were lodged against ten (10) countries: Ireland (3), Italy (3), France (2), Belgium (1), Czech Republic (1) Cyprus (1), the Netherlands (1), Norway (1), Slovenia (1) and Sweden (1). Twelve (12) complaints came from International NGO, two (2) from National Trade Unions and one (1) complaint was filed by an organisation of employers.

The time required to process the complaints by the Committee in 2013 remains within the established deadlines (6 months for the admissibility and 1 year for the merits). The average duration of the admissibility stage was 5.6 months and the average duration of the merits stage was 12.2 months.

At the time of writing this report, seven (7) of the nine (9) decisions on the merits adopted by the Committee in 2013 had become public.

The seven decisions are the following:

■ On 23 January 2013, the Committee adopted its decision on the merits in the case International Federation for Human Rights (FIDH) v. Greece, Complaint No 72/2011.

The International Federation of Human Rights Leagues alleged that the dumping of waste in the River Asopos and the subsequent harmful effects of large scale environmental pollution on the health of the people concerned gives rise to a violation of Article 11 (right to protection of health) of the 1961 Charter. According to FIDH, the Greek State has not taken enough steps to eliminate or reduce the harmful impact of the above-mentioned pollution on the health of the persons concerned, and to ensure that said persons can fully enjoy their right to protection of health.

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

- ▶ that there is a violation of Article 11§§1 and 3 of the 1961 Charter;
- ▶ that there is a violation of Article 11§2 of the 1961 Charter.

The decision became public on 5 June 2013. The Committee of Ministers adopted the Resolution CM/ResChS(2013)15 on 16 October 2013.

■ On 18 March 2013, the Committee adopted its decision on the merits in the case International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 75/2011.

The FIDH alleged that the serious shortage of accommodation for highly dependent adults with disabilities and their families represents a violation of Articles 15§3 (the right of persons with disabilities) and 16 (right to appropriate social, legal and economic protection for the family) of the European Social Charter, taken alone or in conjunction with Article E (nondiscrimination). Further, and more specifically, it

maintained that this shortage deprives highly dependent adults with disabilities and their families of effective access to social and medical assistance, social services and housing, and of their autonomy, social integration and opportunities to take part in community life, in violation of Articles 13§3 (right to social and medical assistance), 14 (right to benefit from social welfare services) and 16, taken alone or in conjunction with Article E. Moreover, according to the FIDH, this lack of legal and social protection exposes them to lasting poverty and exclusion in violation of Article 30 (right to protection against poverty and social exclusion), taken alone or in conjunction with Article E.

In its decision on the merits the Committee concluded unanimously:

- ▶ that there was a violation of Article 14§1 of the Charter because of the significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs;
- ▶ that there was a violation of Article 14§1 of the Charter because of the lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels-Capital Region;
- ▶ that no separate question arose under Article 13§3 of the Charter;
- ▶ that there was no violation of Article 15§3 of the Charter;
- ▶ that there was a violation of Article 16 of the Charter;
- ▶ that there was a violation of Article 30 of the Charter;
- ▶ that there was violation of Article E taken in conjunction with Article 14§1 of the Charter due to the fact that Belgium is not creating sufficient day and night care facilities to prevent the exclusion of many highly dependent persons with disabilities from this form of social welfare service appropriate to their specific, tangible needs;
- ▶ that there was no violation of Article E taken in conjunction with Article 14§1 of the Charter due to the fact that the Brussels-Capital Region has no institutions giving advice and personal help to people with disabilities;
- ▶ that there was no violation of Article E taken in conjunction with Article 13§3 of the Charter;
- ▶ that there was no violation of Article E taken in conjunction with Article 15§3 of the Charter;
- ▶ that there was a violation of Article E taken in conjunction with Article 16 of the Charter;
- ▶ that there was no violation of Article E taken in conjunction with Article 30 of the Charter.

The decision became public on 27 July 2013. The Committee of Ministers adopted the Resolution CM/ResChS(2013)16 on 16 October 2013.

■ On 19 March 2013, the Committee adopted its decision on the merits in the case: European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 82/2012.

EUROCEF alleged that the possibility of suspending family allowances in the event of truancy pursuant to the Acts of 28 September 2010 and 24 March 2011 constitutes a violation of Articles 16 (right of the family to social, legal and economic protection) and 30 (right to protection against poverty and social exclusion), read alone or in conjunction with Article E (non-discrimination) of the European Social Charter.

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

- ▶ unanimously declared the complaint admissible;
- ▶ by 9 votes to 2, concluded that there was no violation of Article 16 of the Charter because of the abrogation of the law.
- ▶ unanimously, concluded that it was not necessary to examine the allegations of a breach of Article E read in conjunction with Article 16 of the Charter;
- ▶ unanimously, concluded that there was no violation of Article 30 of the Charter;
- ▶ unanimously, concluded that no separate issue arose under Article E read in conjunction with Article 30 of the Charter.

Two dissenting opinions were expressed by two members of the Committee.

The decision became public on 10 July 2013 following the adoption by the Committee of Ministers of the Resolution CM/ResChS(2013)14 on the same date.

■ On 2 July 2013, the Committee adopted its decision on the merits in the case *Felles forbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011.

The complainant trade union alleged that the Norwegian Seamen's Act of 30 May 1975, which stipulates retirement for seamen upon reaching the age of 62 years, is to be construed as an unjustified prohibition of employment and a discriminatory denial of seamen's right to work as such, in breach of Article 1§2 (right to work) and 24 (right to protection in case of termination of employment) read alone or in conjunction with Article E (nondiscrimination) of the European Social Charter.

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

- ▶ that there was a violation of Article 24 of the Charter;
- ▶ that there was a violation of Article 1§2 of the Charter.

The decision became public on 16 October 2013 following the adoption by the Committee of Ministers of the Resolution CM/ResChS(2013)17 on the same date.

■ On 3 July 2013, the Committee adopted its decision on admissibility and the merits concerning the case Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012.

The complainant trade unions alleged that the legislative amendments made in April 2010 (so called "Lex Laval"), following the Government's proposal No. 2009/10:48, to the Co-determination Act (1976:580) and the Foreign Posting of Employees Act (1999:678), in the aftermath of the judgment of the Court of Justice of the European Union ("CJEU") of 18 December 2007, Case C-341/05 - Laval un Partneri Ltd. v. Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet ("the Laval case"), violate Articles 4 (the

right to a fair remuneration), 6 (the right to bargain collectively) and 19.4 (Equality regarding employment, right to organize and accommodation) of the European Social Charter.

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

- ▶ unanimously declared the complaint admissible
- ▶ by 13 votes to 1 concludes that there was a violation of Article 6§2 of the Charter
- ▶ by 13 votes to 1 concludes that there was a violation of Article 6§4 of the Charter
- ▶ unanimously concludes that there was a violation of Article 19§4 a of the Charter
- ▶ unanimously concludes that there was a violation of Article 19§4 b of the Charter

The decision became public on 20 November 2013. The Committee of Ministers adopted the Resolution CM/ResChS(2014)1 on 5 February 2014.

■ On 10 September 2013, the Committee adopted its decision on the merits in the case International Planned Parenthood Federation - European Network (IPPF-EN) v. Italy, Complaint No. 87/2012.

IPPF-EN alleged that the formulation of paragraph 4 of Section 9 of Act No. 194 of 1978, which governs the conscientious objection of medical practitioners and other health personnel in relation to the termination of pregnancy, is in violation of Article 11 (the right to protection of health) of the European Social Charter, read alone or in conjunction with the non-discrimination clause in Article E (nondiscrimination), in that it does not protect the rights of women with respect to access to termination of pregnancy procedures.

In its decision on the merits, the Committee concluded:

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

A separate dissenting opinion and a separate concurring opinion were expressed by two members of the Committee.

The decision became public on 10 March 2013.

■ On 11 September 2013, the Committee adopted its decision on the merits in the case European Action of the Disabled (AEH) v. France, Complaint No. 81/2012.

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

In its decision on the merits, the Committee concluded:

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

A dissenting opinion was expressed by two members of the Committee.

The decision became public on 5 February 2014 following the adoption by the Committee of Ministers of the Resolution CM/ResChS(2014)2 on the same date.

Examples of the impact of the decisions of the Committee

Also in 2013, there was a significant impact of the collective complaints procedure on the law and practice of the States Parties. The Committee noted inter alia the following examples:

■ **Belgium:** In response to the Committee's criticism regarding the lack of reception facilities for foreign minors, whether or not accompanied by their families, causing some of them to live in the street, the Government indicated that various measures had been taken in 2012 by both the Federal Agency for the Reception of Asylum Seekers (FEDASIL) and the Belgian State to ensure that the reception facilities for unaccompanied foreign minors would no longer be saturated. This information allowed the adoption of the following Committee of Ministers Resolution:

Resolution CM/ResChS(2013)11 of 11 June 2013 - Defence for Children International (DCI) against Belgium - Complaint No. 69/2011.

■ **Finland:** In response to the Committee's finding that the Finnish legislation allows practices leading to a part of the elderly population being denied access to informal care allowances or other alternative support which constitutes a violation of Article 23 of the Charter, the Government of Finland indicated that a broad-based working group had been established by the Ministry of Social Affairs and Health with the aim to thoroughly analyse the existing situation as regards informal care. The working group was required to take account of the reform of social welfare legislation, including the Act on Supporting the Functional Capacity of the Ageing Population and on Social and Health Care Services for Older People (980/2012), in effect as from 1 July 2013. In addition, the State budget for 2013 included a permanent annual increase of 10 million € in central government transfers to local government. The

increase was intended for developing support services for informal care in municipalities. In 2013, the transfers amounted to approximately 31% of the total costs of the services. This information allowed the adoption of the following Committee of Ministers Resolution:

Resolution CM/ResChS(2013)12E of 11 June 2013 - The Central Association of Carers in Finland against Finland - Complaint No. 70/2011.

■ **Norway:** In response to the Committee's finding that Article 19§1, subsection 7, of the Seamen's Act constituted a violation of the Charter, as it enabled the dismissal of the affected seamen at the age of 62 years regardless of their capacity or conduct, as well as of any operational requirements of the undertaking, establishment or service, the Government of Norway stated, by letter dated 12 September 2013, that Norway has repealed the Seamen's Act of 1975 and has adopted the Maritime Labour Act, which came into force on 20 August 2013, Section 5-12, first paragraph, of which states that employment can be terminated when an employee turns 70. This information allowed the adoption of the following Committee of Ministers Resolution:

Resolution CM/ResChS(2013)17 of 16 October 2013 - *Fellesforbundet for Sjøfolk* (FFFS) v. Norway - Complaint No. 74/2011.

See also Appendix 5:

- ▶ list of pending complaints before the European Committee of Social Rights as of 31 December 2013
- ▶ list of the Resolutions adopted by the Committee of Ministers in 2013 on the follow-up to the decisions of the European Committee of Social Rights
- ▶ table on statistics by country on 31 December 2013
- ▶ table on the number of decisions handed down by the European Committee of Social Rights 1998 – 2013.

5. Reporting procedure

In 2013, the European Committee of Social Rights examined reports submitted by 38 States Parties on the articles of the Charter relating to health, social security and social protection: the right to health and safety at work (Article 3), the right to health (Article 11), the right to social security (Article 12), the right to social and medical assistance (Article 13), the right to social services (Article 14), the rights of the elderly to social protection (Article 23, Article 4 of the 1988 Additional Protocol) and the right to protection against poverty and social exclusion (Article 30). The reports covered the reference period 2008-2011.

Five States Parties (Azerbaijan, Croatia, Iceland, Luxembourg and Portugal) did not submit a report in time and conclusions have therefore not yet been adopted. It is expected that the conclusions for these five States will be adopted in the first half of 2014.

At its session in December 2013, the Committee adopted 568 conclusions in respect of the 38 countries including 181 findings of violations of the Charter. There were 277 conclusions of conformity whereas the number of "deferrals" (cases where the

Committee was unable to assess the situation due to lack of information) went down very significantly compared to previous years accounting for only about 19% of all cases examined (down from 27% in 2012).

While the Committee adopted conclusions of non-conformity for all the countries examined, the number of violations identified was exceptionally high in countries such as Albania and Georgia (each having 6 conclusions of non-conformity out of a total 7 conclusions), the Republic of Moldova (10 out of 13), Ukraine (8 out of 11), Romania (8 out of 13), Greece (9 out of 17) and Poland (7 out of 13).

The Committee also adopted a General Introduction, which contains, *inter alia*, a series of statements of interpretation developing and clarifying the case law on certain of the articles considered in the conclusions.

The economic crisis in Europe and the austerity measures adopted in response have had a negative impact on effective respect for human rights and especially for social and economic rights. Rights relating to health, social security and social protection with the obligations of significant budgetary effort that they entail are particularly vulnerable in this situation.

Already in its Conclusions 2009 when it last examined state reports on these Charter rights, the Committee issued an ambitious statement emphasising that the rights must be fully protected, also under conditions of budgetary austerity. The Committee stated that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.”

The conclusions now being published are testimony that the intended effect of the Committee’s statement has not been fully realised. On the contrary, the proportion of violations is higher than in 2009, the violations are increasingly linked to either inadequate levels of social security benefits and social assistance benefits which disproportionately affect those who are most vulnerable – the poor, the unemployed, the elderly, the sick – or to unequal treatment of migrants under the guise of combating “social benefit tourism”. Public policies during the reference period have clearly been unable to stem a generalised increase in poverty in Europe. The conclusions also reflect that health care systems are under growing pressure from austerity measures and there are signs, at least in some countries, that protection of health and safety at work is being downgraded, notably in small and medium-sized enterprises.

Summary of the Committee’s findings article-by-article

Article 3: the right to health and safety at work

The Committee regards this right as “stemming directly from the right to personal integrity, one of the fundamental principles of human rights”. The purpose of Article 3 is thus directly related to that of Article 2 of the European Convention on Human Rights, which recognises the right to life.

In this respect, the Committee's findings concerning fatal accidents at work are noteworthy. The Committee holds that a fatal accident rate which is more than twice as high as the European average constitutes evidence that measures taken to reduce such accidents are inadequate. On this basis the Committee found the situation in Bulgaria, Lithuania, Republic of Moldova, Romania, the Russian Federation, Turkey and Ukraine to be in breach of the Charter (Article 3§3).

The Committee also found fault with the systems for reporting accidents and occupational injuries in certain countries (Albania, Republic of Moldova) with indications of widespread under-reporting and even concealment of workplace accidents and injuries. In some countries (Albania, Republic of Moldova, Ukraine) the Committee found the entire labour inspection system to be inefficient, including due to insufficient resources, low numbers of inspection visits or ineffective fines and sanctions.

With respect to safety and health regulations (Article 3§2) the Committee proceeds from the presumption that the requirements of the Charter are met if the Community acquis in this field is implemented, which means that the record of compliance with the Charter of the EU member states is high. However, residual problems remain: in some countries, for example, self-employed workers are excluded from the scope of otherwise satisfactory regulations (Andorra, Austria, France, the United Kingdom). In other countries domestic workers are not covered (Hungary, Romania).

In respect of Italy the Committee concluded that there was no functioning overall policy for occupational health and safety taking into account, inter alia, that the Court of Justice of the EU had condemned Italy for not transposing Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

Article 11: the right to health

Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights by imposing a range of positive obligations designed to secure the effective exercise of the right to health. These include in particular measures to promote health through prevention and education and awareness-raising and health care provision in case of sickness.

Under Article 11§1 several countries are in breach of the Charter because of persisting high infant and maternal mortality rates and insufficient measures taken to improve the situation. The Committee holds that where these mortality rates remain considerably worse than the European average this points to weaknesses in the health system and to the inadequacy of measures taken to reduce mortality. The countries concerned were Republic of Moldova, Georgia, Azerbaijan, Ukraine, Romania, Hungary and the Russian Federation.

Georgia is in breach of Article 11 on several other counts. First of all, there is no public health system providing for universal coverage. The Committee held that health regulation is weak and that out-of-pocket payments are the main source of funding for the health system, which reduce access to health care services and medicines for much of the population. The Committee also found measures taken to ensure access to safe drinking water in rural areas in Georgia to be inadequate

(Article 11§3) thus underlining that a healthy environment is a key element of the protection provided by Article 11.

It may also be mentioned here that the situation in Andorra is not in conformity with Article 11§3 on the grounds that it has not been established that appropriate measures have been taken to prevent smoking.

Long waiting lists for health care pose a problem for several countries and is a central concern in the Committee's examination of national situations. The situation in Poland was found to be in breach of the Charter because there had been no progress in the situation since the last examination in 2009. This is the first time that the Committee has reached a conclusion of non-conformity on this ground.

Article 12: the right to social security

Social security is generally recognised as one of the cornerstones of the European social "model". It is not only a key factor in achieving social cohesion and a safeguard against poverty, but it is also essential for well-functioning labour markets and thus for economic prosperity. The necessity of protecting members of society against social risks has become acute in the current economic crisis and therefore, collective funding and solidarity have become increasingly important.

The first three paragraphs of Article 12 concern the scope and coverage of the social security system and the adequacy of the benefits provided within the different branches, whereas Article 12§4 regulates the coordination of social security for persons who move between the States Parties.

As regards the former the Committee found numerous violations of the Charter (Article 12§1) due to inadequate levels of various income-substituting benefits (pension, unemployment, sickness), for example in the Czech Republic, Bulgaria, Finland, Georgia, Italy and the Slovak Republic. It also found violations on grounds of the social security system not providing protection against a sufficient number of risks or not covering a sufficiently large part of the population (Georgia and Armenia). In respect of the Slovak Republic the Committee held that reductions in sickness benefits for beneficiaries who were deemed to have engaged in "risky behaviour" (e.g. alcohol or drug abuse) were discriminatory (health status).

Examining compliance with Article 12§3, which requires States Parties to progressively increase the level of security, the Committee reiterated its finding in a series of collective complaints against Greece that certain austerity measures which reduced significantly pension benefits for a large number of beneficiaries by their cumulative effect were such as to constitute a breach of the Charter.

The Committee also held that insufficient efforts to raise the system of social security to a higher level had been made in Republic of Moldova and Georgia.

With respect to coordination of social security for persons who move between the States Parties (Article 12§4) a very large number of States Parties do not comply with the requirements of the Charter (21 out of 26 countries examined). While the situation between EU member states concerning equal treatment as well as maintenance of accrued rights (for example the export of old-age pensions) and accruing rights

(for example the taking into account of employment periods completed in other countries for the calculation of benefits) is satisfactory on the basis of EU law, the necessary multi- or bilateral agreements to ensure these principles have not been concluded between EU member states on the one hand and the non-EU states on the other hand nor among the non-EU states which are bound by the Charter.

Article 13: the right to social and medical assistance

The guarantee of a genuine individual right to assistance together with a right to legal remedy is a major contribution made by Article 13 and in particular Article 13§1. Social and medical assistance for persons in need and with no resources is a crucial safeguard against poverty which makes it all the more striking and a cause for concern that no fewer than 25 out of 31 countries examined were found to be in breach of this provision. Only two countries, Sweden and the United Kingdom, were found to comply with Article 13§1.

The large majority of the violations concerns inadequate levels of social assistance and discrimination of foreigners as regards access to social assistance. On the first point, the Committee holds that public assistance should not condemn beneficiaries to (income) poverty and that cash benefits, including any supplements, therefore must not fall below 50% of median equivalised income (the poverty threshold as applied by the Committee). An increasing number of States Parties, both EU and non-EU, fail to meet this threshold, although in some cases the Committee had to conclude for non-conformity due to repeated lack of information on the relevant figures.

Discriminatory treatment of foreigners in violation of the Charter usually arises from excessive length of residence requirements before being eligible for assistance, but in some cases it is also due to automatic withdrawal of residence status for foreigners in need of social assistance. It may be mentioned in this respect that Article 13§1 at the outset applies exclusively to those foreigners who are nationals of other States Parties. The countries being condemned for this type of violation include Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Finland, France, Lithuania, Latvia, Spain and “the former Yugoslav Republic of Macedonia”.

Other violations include limits on the duration of social assistance (Bulgaria), which is contrary to the Charter: the Committee holds that assistance must continue for as long as the state of need persists. Age requirements, such as those applied in France and in Spain where social assistance is guaranteed only to persons aged 25 or over, are also not permitted.

In some countries the Committee did not find it established that there was a properly functioning system for providing social and/or medical assistance to persons in need in the meaning of the Charter. This concerned Greece, Hungary, Italy, Republic of Moldova, Romania and Turkey.

Article 14: the right to social services

This right covers both general social welfare services in the broadest sense, potentially aimed at the whole population, whatever the risk people are facing, as well as more specialised social services, such as services for people in need, assistance to families, services and institutions for the elderly, etc.

Article 14 has a very general character and most countries comply with its requirements. In the present examination 10 out of 33 countries were found to be in violation of the Article 14§1, but several of these conclusions were due to a repeated lack of information. However, the following findings deserve mention:

In respect of Spain the Committee did not find it established that effective access to social services is guaranteed; the conditions to be met by providers of social services are not clearly defined; it has not been established that supervisory arrangements for ensuring that providers of social services comply with the conditions ensuring the quality of services exist.

In Latvia and Poland access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

In Austria clients of social services do not have a right of appeal to an independent body in urgent cases of discrimination in all the Länder.

In Bulgaria the Committee did not find it not been established that the number of social services staff is adequate to users' needs.

Finally, in the case of Belgium the Committee referred to its decision on the merits of 18 March 2013 in International Federation for Human Rights (FIDH) v. Belgium, Complaint No 75/2011, in which it found that there had been a violation of Article 14§1 arising from the significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs. Since the situation, in law and in practice, that gave rise to this violation already existed during the reference period, the Committee also concluded, as part of the reporting procedure, that there was a violation of Article 14§1 on this ground.

Article 23: the rights of the elderly to social protection

Certain societal and demographic developments, such as the ageing of the population and the changing structure of the family, for example, have increased the risks to which elderly people are exposed. Elderly people are particularly vulnerable to human rights violations, including to abuse and neglect. Article 23 is an innovation in international law being the first legal instrument to offer specific protection to the elderly.

In its conclusions the Committee examined Article 23 in respect of 20 states and it found 14 states to be in breach of the provision. Findings of non-conformity concerned primarily two issues:

- 1) inadequate resources for elderly persons; and
- 2) lack of non-discrimination legislation.

5 countries were found not to guarantee adequate resources to elderly persons (the Czech Republic, Montenegro, Serbia, the Slovak Republic and Ukraine). When assessing adequate resources the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income.

In light of the existence of pervasive age discrimination in many areas of society throughout Europe (health care, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities) the Committee has held that Article 23 requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services.

10 countries were found not to have adequate legislation protecting elderly person against discrimination on grounds of age (the Czech Republic, Denmark, Finland Greece, Italy, the Netherlands, Norway, Spain, Sweden, Turkey).

It may be noted that the EU is discussing the possible adoption of a Directive on implementing the principle of equal treatment between persons irrespective of age (amongst other discrimination grounds).

The conclusions on Article 23 also raise, *inter alia*, the issues of elder abuse and assisted decision making procedures.

As regards elder abuse the Committee highlighted that this is a serious and hidden problem and has asked all states to report on what measures they have taken to evaluate and tackle such abuse.

The Committee adopted an interpretative statement concerning assisted decision making procedures. The Committee considers that there should be a national legal framework related to assisted decision making for the elderly guaranteeing their right to make decisions for themselves unless it is shown that they are unable to make them. This means that elderly persons cannot be assumed to be incapable of making their own decision just because they have a particular medical condition or disability, or lack legal capacity.

Article 30: the right to protection against poverty and social exclusion

Article 30 adds a new dimension to the Charter by enabling the Committee to monitor the whole machinery set in place by States Parties to combat poverty and social exclusion, a combat to which many other rights contribute. Unfortunately only 16 of the 43 States Parties have accepted Article 30 and of these 14 were examined in 2013.

Under Article 30 the Committee noted that poverty rates generally increased during the reference period in the 14 States Parties examined; a development which is no doubt attributable to growing income inequality in recent decades and particularly after the onset of the current economic crisis in 2007-2008.

In some countries the levels of poverty and social exclusion are extremely high. In respect of Ukraine and Italy, for example, the Committee did not find it demonstrated that the Government had implemented an overall and coordinated approach to combating providing for measures which were adequate to the extent of the poverty problem.

In respect of Belgium, France and Italy the Committee examined the follow-up to decisions in collective complaints in which these two countries had been found to be in violation of Article 30, either alone or in conjunction with Article E, the non-discrimination clause of the Charter. For France the Committee concluded that

the housing policy for the poorest categories of the population and for Travellers remained insufficient and that there were still restrictions on the right to vote for Travellers in violation of Article 30. As regards Italy the Committee upheld its finding that there was discriminatory treatment with regard to the right to vote or other forms of citizen participation for Roma and Sinti (this being a cause of marginalization and social exclusion) concluding that the problem had not been remedied during the reference period.

Emphasising that living in poverty and social exclusion violates the dignity of human beings and hence the urgency of reducing and ending poverty, the Committee adopted a statement of interpretation outlining the requirements of Article 30 and detailing the assessment method it will apply in the future (next examination in 2017). Proceeding on the basis of a human rights approach the Committee will examine a wide range of indicators of poverty and social exclusion and will notably take into account the level of resources deployed by governments to attain the objectives of the "overall and coordinated approach" to combating poverty and social exclusion. In particular, the Committee will consider measures that fall within the scope of other provisions of the Charter such as Articles 1, 11, 12, 13, 14, 15, 16, 17, 20, 23 and 31. Without establishing automatic links to Article 30, findings under these provisions may be of relevance in assessing conformity with Article 30.

Examples of progress in the application of Charter rights

In its examination of state reports for Conclusions 2013/XX-2, the European Committee of Social Rights noted a number of positive developments in the application of the Charter, either through the adoption of new legislation or changes to practice in the States Parties or in some cases on the basis of new information clarifying the situation as regards issues raised in previous examinations (thereby reducing the number of conclusions deferred for lack of information). Below follows a selection of examples:

Article 3 – the right to health and safety at work

Andorra: passed new framework legislation in 2008 and regulations in 2010/2011 along the requirements of the Charter (neither EU nor ILO Member) (Article 3§1).

Russian Federation: changed from a compensation-based to a prevention-based approach of occupational health and safety, including workplace risk assessment, which meets objective to foster and preserve a culture of prevention under the Charter; amended the Labour Code in 2011 to introduce a system for occupational risk prevention through workplace risk assessment at company level, occupational safety services in companies, and a national tripartite commission to allow for consultation between social partners (Article 3§1).

Lithuania: adopted a Strategy for 2009-2012 to pursue and preserve a culture of prevention; amended framework legislation to ensure temporary workers do not begin work until they have been informed of the occupational risks specific to the post (Article 3§1 and 2).

Albania: confirmed that both self-employed workers and employees on fixed-term and temporary contracts are covered by the relevant laws and regulations (Article 3§2).

Belgium: established regulations in 2010 relating to the well-being at work, access to occupational health services of agency and temporary workers, to ensure they enjoy the same level of protection as workers on permanent contracts (Articles 3§2 and 4).

France: amended the Labour Code in 2011 to extend prevention obligations and traceability of occupational exposure beyond occupational risks to arduous work; passed legislation in 2011 to reframe the organization of occupational medicine and offer all domestic workers access to medical supervision (Article 3§2 and 4).

Bulgaria: to limit concealment of occupational accidents, the Social Security Code now allows injured workers to report the accident in lieu of the employer, and regulations adopted in 2010 require physicians to inform the authorities when a temporary incapacity results from occupational accident; however, occupational accident statistics show that the situation in practice is still not in conformity (Article 3§3).

Italy: statistics on occupational accidents show a strong decrease in fatal accidents, thus bringing the situation below EU-27 level (Article 3§3).

Malta: increased the Occupational Safety and Health Authority budget, the overall level of fines, the number of workplaces inspected and warning notices issued, thus making labour inspection effective and turning the situation into conformity (Article 3§3).

Article 11 – the right to health

Italy: Measures to reduce waiting lists were adopted: the National Waiting-List Plan for 2010-2012, which forms part of the agreement between the state and the regions, provides for a stronger commitment on the part of the regions to guarantee suitable access for citizens to health services, which must be carried out through the application of strict treatment adaptation criteria, respect for priority treatment categories and a transparent system at all levels. Among the new elements are an update of the list of specialised outpatient services and hospital care for which maximum waiting times are set by the regions and the autonomous provinces, a decision to make cardiovascular diseases and cancer priority areas for the development of therapeutic diagnosis mechanisms guaranteeing rapid diagnosis and treatment, a new information system for follow-up to both outpatient and hospital services and transparent information for the public through the posting of waiting lists on the websites of the regions, the autonomous provinces, and public and certified private health agencies (Article 11§1).

Slovenia: Several regulations on waiting times were adopted during the reference period, under which the degree of urgency for the provision of medical services has been established, as well as maximum waiting periods. «Urgent» care is to be provided on the spot or within 24 hours, French quotation marks care within 3 months and «regular» care within 6 months. A single, central waiting list has been set up, with the purpose of providing information to patients (Article 11§1).

Turkey: A number of measures to reduce infant and maternal mortality, including access to family doctors, the increase in the number of «Baby Friendly Hospitals» or the «Guest Mother Project», have led to very significant improvements in respect of infant and maternal mortality rates (Article 11§1).

Albania: The Order of the Minister of Health of 16 February 2009 sets out the tasks of mother and child counselling centres states in urban areas. The different regulations guarantee free health monitoring during pregnancy, birth and after birth, including at least 4 ante-natal checks (Article 11§2).

Turkey: Amendments to Law No. 4207 on Preventing the Damage of Tobacco Products and their Control, new regulations have started to be implemented as of May 2008 on passive smoking. It is now prohibited to smoke in all open and closed public spaces (Article 11§3).

Article 12 – the right to social security

"The former Yugoslav Republic of Macedonia": According to the Law on Health Insurance of April 2011 of "the former Yugoslav Republic of Macedonia" all persons who do not have other basis for health insurance shall be covered and exercise the right to health and are no longer be obliged to register as unemployed persons in the Employment Service Agency. They shall exercise the right to health insurance as citizens (Article 12§1).

Bulgaria: Maternity leave period in Bulgaria has been expanded from 315 to 410 days and the compensation paid for maternity leave has been raised to 90% of the average insurance income (Article 12§1)

Slovenia: The personal coverage of unemployment insurance in Slovenia on compulsory and voluntary basis was widened. The minimum and maximum levels of unemployment benefit have increased. In the first three months of unemployment the replacement rate of the benefit was raised from 70% to 80% (Article 12§1/12§3).

Estonia: According to the amendment to the Social Tax Act of 2009 of Estonia, a person is covered by health insurance if he/she is registered as unemployed pursuant to the Labour Market Services Act. All pregnant women are covered from the date their pregnancy is confirmed (Article 12§1/12§3).

Republic of Moldova: Bilateral agreements have been concluded with respect to social security rights (Article 12§4).

Article 13 – the right to social and medical assistance

Andorra: The Committee previously noted that foreign nationals, legally and effectively resident in Andorra, are entitled to social assistance but concluded that the situation was not in conformity with Article 13§1 on account of the fact that, to become eligible to social assistance, they were required to have resided in the country for three years. The Committee also notes from the report that the Regulation on social welfare benefits has been amended in February 2011, with the purpose to bring it into conformity with the Charter: the residence requirements that applied for access to the basic benefits have been entirely abrogated (Article 13§1).

Bulgaria: As regards the breach of the Charter found in European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009, the Committee noted from the report that the provision limiting to 12 months the

entitlement to social assistance was repealed in December 2009 with effect from January 2011 (Article 13§1).

Latvia: The Committee noted two positive developments regarding the GMI benefit which intervened during the reference period. Firstly, the upper limit on the total amount of GMI which could be granted to family households (€135 per family per month) was removed as from 2009. Secondly, the limit on the duration of the benefit period which was 9 months per year, was abolished also in 2009 (Article 13§1).

Malta: The Committee took note of new information showing that the right of appeal is effectively guaranteed, by providing legal aid to people lacking adequate means. In particular, decisions concerning suspension of assistance can be appealed cost-free before the umpire and, in second instance, before the Court of Appeal. The Committee accordingly held that the situation is in conformity on this point (Article 13§1).

Slovak Republic: As from 2009, the new Act on Social Services provides for adequate assistance and necessary care to be available to persons without sufficient financial means, including as regards their basic living needs (accommodation, food, necessary clothing, footwear and basic personal hygiene, crisis intervention and basic social counselling). The Committee also understood that henceforth no length of residence condition is applied to resident foreign nationals to be eligible to the benefit in material need and supplementary social assistance allowances on equal footing with Slovak nationals (Article 13§1).

United Kingdom: In the light of the new explanations and case-law examples provided by the Government, the Committee now holds that the «habitual residence» test, as applied in the United Kingdom is in conformity with the Charter (Article 13§1).

Republic of Moldova: The social services system has been re-organised to ensure operational social services in the meaning of the Charter (Article 13§3).

Germany: The situation had previously been held to be in breach, but based on new information the Committee was now able to ascertain that all persons, without resources, present in Germany may be granted emergency medical and social assistance, even if they are there unlawfully (Article 13§4).

Italy: From new information available the Committee was able to conclude that all persons, in particular foreigners unlawfully present in Italy and not sheltered in Centres for temporary stay or assistance (CTSAs), were entitled to emergency assistance (Article 13§4).

Article 14 – the right to social services

Turkey: Decree Law on the Organization and Functions of the Ministry of Family and Social Policy has set up a general social services system. It constitutes a total shift from previous legislation in the sense that the new regime is more citizen-oriented. It was adopted outside the reference period (Article 14§1).

Czech Republic: Initiatives have been taken to encourage the participation of the public in the running of social services (Article 14§2).

Slovak Republic: In 2008 a new Law on social services was introduced to enable private bodies, which may be charity, civil society, religious organisations or individuals to provide social services (Article 14§2).

Slovak Republic: In 2010 a new Law provides that the State can grant subsidies to voluntary organisations seeking to set up social services (Article 14§2).

Article 23 – the rights of the elderly to social protection

Czech Republic: adopted legislation prohibiting discrimination, inter alia on grounds of age outside of employment (albeit outside the reference period).

Sweden: currently has draft anti-discrimination legislation before Parliament extending to age outside the field of employment.

France, Malta, the Netherlands, Slovenia: in these countries specific measures have been taken to address elder abuse.

Article 30 – the right to protection against poverty and social exclusion

Finland: A guarantee pension was introduced in March 2011 which as a result increased the income level of poor elderly people, especially women and immigrants.

Norway: In 2011 a grant scheme was established to promote the development of social entrepreneurship and social entrepreneurs combating poverty and social exclusion.

Norway: In 2008, the Government appointed the Allocations Committee to examine the development in income inequalities over time, what factors affect allocations and what measures can contribute to a more even distribution. The recommendations of the Committee are currently being followed up by Parliament.

Slovak Republic: based on the objectives of the Europe 2020 strategy, the Slovak Republic has set a national objective including support for social inclusion through a reduction in the risk of poverty and social exclusion to lift at least 170 000 people out of the risk of poverty and exclusion by 2020.

The Committee's statements of interpretation, general questions and other statements

Statements of interpretation

Statement of interpretation on Article 3

In relation to the application of the right to safe and healthy working conditions set out in Article 3, new trends such as increased competition; free movement of persons; new technology; organisational constraints; self-employment, outsourcing and employment within small and medium-sized enterprises; increased work intensity, produce constant change in the work environment and new forms of employment which generate, increase and shift factors of risk to the workers' health and safety. In particular, new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to

work-related stress, aggression, violence and harassment. These may in turn cause mental health problems for the persons concerned, with serious consequences on work performance, illness rates, absenteeism, accidents and staff turnover. They have also been identified as some of the most significant factors of disease and disability worldwide, cutting across age, sex and social strata, impacting low-income and high-income countries alike.

Recent studies have also established that occupational health and safety policies and psychosocial risk management are more common in larger undertakings, and that in practice, the main drivers for addressing in particular psychosocial risks are compliance with legal obligations and requests by workers. They further show that drivers for, and barriers to, psychosocial risk management are per se multidimensional, insofar as the employers' willingness to act depends on a variety of factors such as organisational rationality, economic opportunity, or in any event compliance with legal obligations. The Committee recognises that such complex and multidimensional factors place greater demands on the competence, resources and institutional capacity of labour inspection systems, which States Parties should consider when seeking to fulfil their obligations under the Charter.

The Committee will take these new trends into account when examining situations under the provisions of Article 3.

Under the provisions of Article 3§1 of the Revised Charter, which requires to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment, the Committee will:

- ▶ include work-related stress, aggression and violence when examining whether policies are regularly assessed or reviewed in the light of emerging risks;
- ▶ examine research, knowledge and communication activities on psychosocial risks, when examining the involvement of public authorities in the improvement of occupational health and safety.

Under the provisions of Article 3§2 of the Revised Charter (which relates to Article 3§1 under the 1961 Charter), which requires that most of the risks listed in the General Introduction to Conclusions XIV-2 be specifically covered, the Committee will:

- ▶ include work-related stress, aggression and violence when examining the risks covered by occupational health and safety regulations;
- ▶ examine measures taken by public authorities to protect workers against work-related stress, aggression and violence specific to work performed under atypical working relationships, in examining the personal scope of occupational health and safety regulations.

Under the provisions of Article 3§3 of the Revised Charter (which relates to Article 3§2 under the 1961 Charter), which requires to provide for the enforcement of safety and health regulations by measures of supervision; and in light of Part III Article A§4 of the Revised Charter, whereby States Parties shall maintain a system of labour inspection appropriate to national conditions, the Committee will:

- ▶ examine measures taken by public authorities to address increasingly complex and multidimensional demands on the competence, resources and institutional capacity of labour inspection systems;

- ▶ examine measures taken by public authorities to focus labour inspection on small and medium-sized enterprises (SMEs).

Under the provisions of Article 3§4 of the Revised Charter, which requires to promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions, the Committee will:

- ▶ examine whether occupational health services are trained, endowed and staffed to identify, measure and prevent work-related stress, aggression and violence.

Statement of interpretation on Article 3§3: scope of labour inspection

The Committee considers that under Article 3§3 of the Revised Charter labour inspection should cover all sectors of activity, no matter whether public or private.⁴

Statement of interpretation on Article 13§1 and 13§4

In view of clarifying the specific scope of Article 13§4 in terms of persons protected, the Committee recalls that the general rule concerning the personal scope of the Charter – according to which persons covered by the provisions of the Charter “include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned” – has to be interpreted and applied, according to paragraph 1 of the Appendix to the Charter, “without prejudice to Art. 13, paragraph 4”. Under this paragraph of Article 13, States Parties undertake to apply the provisions referred to in paragraphs 1, 2 and 3 of Article 13 “on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953”. The Committee recalls that, according to Article 1 of the 1953 European Convention, each of the Contracting Parties undertakes “to ensure that nationals of the other Contracting Parties who are lawfully present in any part of its territory to which this Convention applies, and who are without sufficient resources, shall be entitled equally with its own nationals and on the same conditions to social and medical assistance [...] provided by the legislation in force from time to time in that part of its territory”.

In the Committee's view, the wording of Article 13§4, in combination with the “without prejudice clause” provided for by paragraph 1 of the Appendix to the Charter, means that under Article 13§4 there is an obligation on States to extend the application of paragraphs 1 to 3 of Article 13 (which already apply, by virtue of the Appendix, both to nationals of the territorial State and to the nationals of other Parties “lawfully resident or working regularly within the territory of the Party concerned”) to the nationals of other Parties who are “lawfully within their territories”.

Therefore, the Committee considers that States having accepted not only Article 13§1 but also Article 13§4 are under an obligation to provide adequate medical and social assistance to persons in need (as provided for by the provisions of paragraphs 1 to 3 of Article 13) on an equal footing with their own nationals to nationals of other Parties who lawfully resident or working regularly within their territory, or otherwise

4. Under the 1961 Charter this statement applies to Article 3§2.

lawfully present within their territories. With respect to the latter category of persons, i.e. nationals of other States Parties not lawfully resident nor working regularly but otherwise lawfully present within the territory of the State, any restrictions or limitations that States may impose on the enjoyment of this right should accord with the requirements of the European Convention on Social and Medical Assistance and the provisions of Article 31 (original Charter) / Article G (revised Charter).

The Committee further takes the view that the scope of Article 13§4 in terms of persons protected includes only nationals of other Parties who are legally within the territory of the Party concerned. Therefore, foreigners who cannot be considered as being lawfully within the territory of the State (i.e. migrants who are in an irregular situation of stay) will not in general be covered by the provisions of Article 13§4. Migrants who are in an irregular situation of stay instead come within the scope of Article 13§1, in a limited and exceptional way. In this respect, the Committee recalls that “legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter” (International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 32), and that any restrictions of the personal scope of the provisions of the Charter should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter, or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity (Defence for Children International v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, § 28; Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 19; International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30 and 31).

For this reason, the Committee considers that by virtue of the provisions of Article 13§1 of the Charter, which state that any person who is without adequate resources be granted adequate assistance and, in case of sickness, the care necessitated by his condition, States Parties are under an obligation to provide foreign migrants who are in an irregular situation of stay in the territory of the State with urgent medical assistance and such basic social assistance as is necessary to cope with an immediate state of need (accommodation, food, emergency care and clothing). As a result, it will consider issues in respect of this obligation within the framework of Article 13§1 of the Charter, rather than under Article 13§4 as was previously its practice.

This statement of interpretation will be applied when examining the next reports on Article 13 in 2017.

Statement of interpretation on Article 23: adequate resources for the elderly

When assessing adequacy of resources of elderly persons under Article 23, the Committee will take into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life. The emphasis remains on pensions, contributory or non-contributory, but other complementary cash benefits available to elderly persons will also be considered. These resources will then be compared with the median equivalised income in the country concerned. It is

recalled that the Committee's task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

Statement of interpretation on Article 23: assisted decision-making

The Committee considers that there should be a national legal framework related to assisted decision making for the elderly guaranteeing their right to make decisions for themselves unless it is shown that they are unable to make them. This means that elderly persons cannot be assumed to be incapable of making their own decision just because they have a particular medical condition or disability, or lack legal capacity.

An elderly person's capacity to make a particular decision should be established in relation to the nature of the decision, its purpose and the state of health of the elderly person at the time of making it. Elderly persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own.

In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by elderly persons, also in case of reduced decision making capacity. It must be ensured that the person acting on behalf of elderly persons interferes to the least possible degree with their wishes and rights.

Statement of interpretation on Article 30

The Committee has reiterated that living in a situation of poverty and social exclusion violates the dignity of human beings and that Article 30 of the Revised Charter requires States Parties to give effect to the right to protection against poverty and social exclusion by adopting measures aimed at preventing and removing obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance (Statement of interpretation on Article 30, Conclusions 2003).

Furthermore, the Committee has emphasised that these measures should not only strengthen entitlement to social rights but also improve "their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions" (Statement of interpretation on Article 30, Conclusions 2003). In this respect, in its decision on the merits of 19 October 2009 in ERRC v. France, Complaint No. 51/2008, the Committee also emphasised the importance of dialogue with representatives of the civil society as well as persons affected by poverty and exclusion (para. 93).

Based on these premises, the Committee in interpreting Article 30 has taken into account a set of indicators in order to assess in a more precise way the effectiveness of policies, measures and actions undertaken by States Parties within the framework of this overall and co-ordinated approach. One of the key indicators in this respect is

the level of resources (including any increase in this level) that have been “allocated to attain the objectives of the strategy” (Statement of interpretation on Article 30, Conclusions 2005), in so far as “adequate resources are an essential element to enable people to become self-sufficient” (Statement of Interpretation of Article 30, Conclusions 2003). In addition, the main indicator used to measure poverty is the relative poverty rate (this corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income). The at-risk-of-poverty rate before and after social transfers (Eurostat) is also used as a comparative value to assess national situations, without prejudice to the use of other suitable parameters that are taken into account by national anti-poverty strategies or plans (e.g. indicators relating to the fight against the ‘feminization’ of poverty, the multidimensional phenomena of poverty and social exclusion, the extent of ‘inherited’ poverty, etc.).

This interpretation plays a very important role in a context of economic crises. From this perspective, the Committee has stated in the General Introduction to Conclusions XIX-2 (2009) on the repercussions of the economic crisis on social rights, that, while the “increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline”, by acceding to the Charter, the Parties “have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.” Accordingly, it has concluded that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most”. Moreover, the Committee has concluded that “what applies to the right to health and social protection should apply equally to labour law and that while it may be reasonable for the crisis to prompt changes in current legislation and practices in one or other of these areas to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter” (GENOP-DEI and ADEDY v. Grèce, Complaint No. 65/2011, decision on the merits of 23 May 2012, para. 17).

The Committee also considers necessary to recall that “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (International Commission of Jurists v. Portugal, Complaint No. 1/1999, decision on the merits of 9 September 1999, para. 32). In light of this approach, it considers that assessments of the Committee concerning Article 30, like those concerning the other substantial provisions of the Charter, must be based on this human rights approach, which has been recently reaffirmed by the Guiding Principles on extreme poverty and human rights (submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, and adopted by the United Nations Human Rights Council on 27 September 2012) and which has consistently been applied by the Committee (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107, Defence for Children

International v. The Netherlands, Complaint No. 69/2011, decision on the merits of 23 October 2013, para. 81).

In particular, the Committee has interpreted the scope of Article 30 as relating both to protection against poverty (understood as involving situations of social precarity) and protection against social exclusion (understood as involving obstacles to inclusion and citizen participation), in an autonomous manner or in combination with other connecting provisions of the Charter:

- ▶ Concerning the first dimension, the Committee has focused on poverty as involving "deprivation due to a lack of resources" (Statement of interpretation on Article 30, Conclusions 2005), which can arise *inter alia* from the failure of States Parties to fulfil the obligation "to ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population" (DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, para. 100; violation of Article 11); to provide a minimum income to persons in need (ERRC v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009; violation of Article 13), or to adopt a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, paras. 169-170; violation of Articles 30 and 31).
- ▶ Concerning the second dimension, the Committee has held that "Under Article 30, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation" (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107; violation of Article E in conjunction with Article 30). The Committee had also already considered that "the reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes a special importance. In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by Article 30" (ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, para. 99).

These two dimensions of Article 30, poverty and social exclusion, constitute an expression of the principle of indivisibility which is also contained in other provisions of the Charter (for example, enjoyment of social assistance without suffering from a diminution of "political or social rights", Article 13).]

In this context, by reaffirming this human rights approach, the Committee emphasizes the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the

social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31), without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty.

Consequently, together with the indicators mentioned above, when assessing the respect of Article 30, the Committee also takes into consideration the national measures or practices which fall within the scope of other substantive provisions of the Charter in the framework of both monitoring systems (the reporting procedure and the collective complaint procedure). This approach does not mean that a conclusion of non-conformity or a decision of violation of one or several of these provisions automatically or necessarily lead to a violation of Article 30 (EUROCEF v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, para. 59); but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30.

Indeed, the conclusion reached by the Committee on the existence of one or several violations of these provisions should not be conceived as an exception which confirms the existence of a generally satisfactory overall and co-ordinated approach, but rather as a substantial weakness affecting an essential pillar (or several) of the fundamental obligations of States Parties contained in Article 30 in relation to protection against poverty and social exclusion.

Statement of interpretation on the rights of stateless persons under the European Social Charter

The Committee observes that statelessness remains a serious and pressing human rights problem which according to UNHCR estimates affects at least 12 million people worldwide, including up to 600,000 in Europe. Stateless persons tend to be vulnerable to abuse, poverty and marginalization and may at least in practice face discrimination in accessing housing, health care, education, employment, social protection and freedom of movement.

The Council of Europe has drawn up and adopted two conventions relating to statelessness and nationality: the 1997 European Convention on Nationality (ETS No. 166) and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession (ETS No. 200). The Council of Europe Commissioner for Human Rights has repeatedly highlighted the protection needs of stateless persons and has stated that statelessness should prompt the international human rights system to offer greater protection rather than exclude or forget stateless persons from its scope.

In this light and noting that 2014 will be the 60th anniversary of the 1954 United Nations Convention on the Status of Stateless Persons the Committee takes the opportunity to clarify the rights of stateless persons under the European Social Charter.

The Committee recalls that in defining the scope of the European Social Charter in terms of persons protected, the Appendix provides the following in respect of stateless persons:

"3 Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons."

In the past, the Committee had considered stateless persons and refugees to be vulnerable groups (for refugees, see for example Conclusions 2009, Statement of interpretation on Article 14§1) and it has addressed general questions to the States Parties concerning the extension of the right to social security and the right to social and medical assistance to stateless persons and refugees (see Conclusions XII, reference period 1991-1992) and in most cases the Committee was able to ascertain that according to domestic legislation stateless persons were entitled to the same treatment as nationals with respect to these rights.

However, the Committee emphasises that the Charter's protection of stateless persons goes beyond social security and social and medical assistance extending also to the other social rights referred to in the 1954 Convention. The Committee thus considers that treatment on an equal footing with nationals and with nationals of other States Parties, as the case may be, must be guaranteed to stateless persons as defined by the 1954 Convention in respect of matters covered by the Charter and for which the 1954 Convention requires the same treatment as accorded to nationals, such as education, labour legislation, fiscal charges and access to courts. In matters covered by the Charter where the 1954 Convention requires treatment not less favourable than that accorded to aliens generally, such as housing, freedom of movement, trade union membership, access to wage-earning employment and self-employment, transfer of assets and expulsion, the Committee considers that stateless persons must be guaranteed the protection of the Charter on an equal footing with nationals of other States Parties to the Charter.

Furthermore, recalling that the Charter is a living instrument which must be interpreted in the light of its object and purpose based on the notion of human dignity, persons who are de facto stateless (for example, because they are unable to obtain proof of their nationality or because they have for valid reasons renounced the protection of the State of which they are a national) must enjoy the same treatment as de jure stateless persons as recommended in the Final Act of the 1954 Convention.

Finally, having noted that not all States Parties are bound by the 1954 Convention and the 1961 United Nations Convention on the Reduction of Statelessness as well the two above-mentioned Council of Europe conventions, the Committee wishes to encourage the States concerned to ratify these international treaties as soon as possible.

General Questions

The Committee addresses the following general question to all the States Parties and invites them to provide replies in the next report on the provisions concerned:

Article 3

The Committee invites States Parties to provide appropriate information in their next report on the issues mentioned in the statement of interpretation on Article 3 (see above).

Article 11§1

The Committee asks States Parties whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity.

Relationship between Article 12§1 and Article 13§1 (adequacy of benefits)

If the minimum level of income-replacement benefits under the social security system falls below a minimum guaranteed income threshold established by national law, will it be topped up with social assistance? If so, please provide details of any such threshold and the social assistance benefits that may be available in such a case.

Stateless persons

Having regard to its statement of interpretation on the rights of stateless persons under the Charter, the Committee asks all States Parties to provide information in each report concerned on whether equal treatment of stateless persons, be they stateless de jure or de facto, is guaranteed in national law with respect to all relevant and accepted Charter provisions, including in particular information on what measures are taken to ensure that equal treatment is guaranteed in practice.

Other statements

Statement on information in national reports and information provided to the Governmental Committee

The Committee draws the attention of the States Parties to the obligation to systematically include replies to information requests by the Committee in the national reports. Moreover, the Committee invites the States Parties to always include in the report any relevant information previously provided to the Governmental Committee, whether in writing or orally, or at least to refer to such information, and of course to indicate any developments or changes that may have intervened in the period since the information was provided to the Governmental Committee.

Statement on deferred conclusions

The Committee recalls that its assessments of national situations in accordance with Article 24 of the Charter as amended by the Turin Protocol give rise to two types of conclusions only: conclusions of conformity and conclusions of non-conformity. Having regard to the fact that the Committee in several cases had to defer its conclusion due to lack of information in the national report, it wishes to emphasise that the absence of the requisite information amounts to a breach of the reporting obligation entered into by the States Parties concerned under the Charter.

6. Procedure on non-accepted provisions

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

The Contracting Parties shall send to the Secretary General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

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

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

On 26 March 2013, the Parliament of the Republic of Latvia ratified the revised Charter accepting the majority of its provisions, with the exception of the following articles: 4§1, 12§§3 and 4, 19§§2 and 3, 23, 31§§2 and 3. Latvia is now bound by 90 of the Charter's 98 paragraphs. The first review of the provisions not accepted by Latvia will take place in 2018.

In 2012, the procedure on the non-accepted provisions concerned two States Parties: Bosnia and Herzegovina and Sweden. However, the Committee also considered the situation in Turkey, the examination being delayed by one year for practical reasons and in Norway because of the delay in providing the information requested due to the terrorist attacks in 2011.

Bosnia and Herzegovina

Bosnia and Herzegovina ratified the Charter on 7 October 2008, accepting 51 of its 98 paragraphs.

The following provisions were not accepted: 3§§1-4, 4§§1-2 and 4§§4-5, 10§§1-5, 12§§3-4, 13§4, 15§§1-3, 18§§1-4, 19§§1-12, 24, 25, 26§§1-2, 27§§1-3, 29, 30 and 31§§1-3.

The European Committee of Social Rights contacted the authorities in Bosnia and Herzegovina early 2013 with a view to applying for the first time the procedure provided by Article 22 of the 1961 Charter. Consequently, a meeting between the Committee and representatives of various institutions of Bosnia and Herzegovina was held in Sarajevo on 26 June 2013.

The meeting focused on the actual legislative situation in Bosnia and Herzegovina, the situation in practice and the possible acceptance of some or all above-mentioned provisions.

On the basis of the information provided during the meeting, the Committee concluded that acceptance seemed possible in respect of the following 7 provisions: 10, 12§§3-4, 13§4, 15, 24, 26 and 29.

The Committee encouraged the Government of Bosnia and Herzegovina to consider acceptance of these provisions promptly.

The next examination of the provisions not accepted by Bosnia and Herzegovina will take place in 2018.

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

Norway

Norway ratified the 1961 Charter on 26 October 1962 and it ratified the Charter on 7 May 2001 accepting 80 of the 98 paragraphs.

The following provisions were not accepted: 2§7, 3§1, 3§4, 7§4, 7§9, 8§2, 8§4, 8§5, 18§1, 18§2, 18§3, 18§4, 19§8, 26§1, 26§2, 27§1 (sub-paragraph c), 27§3 et 29.

Following the meeting which was organised in 2006, it was agreed with the Norwegian Government that the next time the procedure will take place in written form. With a view to carrying out this procedure in 2011 the Norwegian authorities were invited to provide written information on the non-accepted provisions before 30 June 2011. The Norwegian Ministry of Labour informed the Committee of the ongoing process for the preparation of the written information by letters dated 4 July 2011 and 19 October 2012, a process that was delayed by the terrorist attacks which severely affected the Ministry in July 2011. The requested information was finally submitted in a letter dated 28 January 2013.

On the basis of the written information provided by the Government, the Committee concluded in its report that there were no obstacles in law and in practice to the

acceptance of the following provisions: 2§7, 3§§1 and 4, 7§§4 and 9, 8§4, 18§§1 and 4, 26§1, 27§1 (a and b) and 27§3.

As regards provisions 8§2, 8§5, 18§2, 18§3, 19§8, 26§2 and 29, it appeared that legislative changes were required to bring the situation into conformity with the Charter.

The Committee noted with interest the Government's statement that it is working towards the ratification of Articles 2§7, 3§1, 27§1 and 27§3 and hoped that this work could be completed with a positive result in the near future. It encouraged the Government of Norway to consider acceptance of the other provisions that the Committee has identified in its report.

The next examination of the provisions not accepted by Norway will take place in 2016.

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

Sweden

Sweden ratified the 1961 Charter on 17 December 1962 and the Charter on 29 May 1998 accepting 83 of the 98 paragraphs.

The following provisions were not accepted: 2§§1,2,4 and 7, 3§4, 4§§2 and 5, 7§§5 and 6, 8§2, 8§§4 and 5, 12§4, 24 and 28.

After a first meeting on non-accepted provisions held in Stockholm in 2003 and a second in Strasbourg in 2008, the Swedish authorities have indicated their preference for the preparation of a written contribution in 2013. The Committee is awaiting this contribution.

Turkey

Turkey ratified the Charter on 27 June 2007 and accepted 91 of the 98 paragraphs.

The following provisions were not accepted: 2§3, 4§1, 5, 6§1, 6§2, 6§3 and 6§4.

Since the procedure on non-accepted provisions was due to be carried out in respect of Turkey for the first time in 2012, it was agreed with the authorities that a meeting with the Committee was desirable. However, for practical reasons, it was not feasible to organise the meeting in 2012 and it was therefore held in Ankara on 6 May 2013.

The meeting between the European Committee of Social Rights and representatives of various Turkish institutions focused on the actual legislative situation in Turkey, the situation in practice, and the possible acceptance of some or all above-mentioned articles.

On the basis of the information provided during the meeting, the Committee concluded in its report that acceptance seemed possible in respect of 2 provisions: Article 5 (right to organise) and Article 6 (right to collective bargaining).

In respect of the two other provisions: Article 2§3 (right to four weeks' annual holiday with pay) and Article 4§1 (right to a fair remuneration), the Committee considered

that the remaining obstacles could be superseded and it encouraged the Turkish authorities to take every possible initiative with a view to accept these provisions. The next examination of the provisions not accepted by Turkey will take place in 2017. The Committee's report is available at the following address: www.coe.int/socialcharter.

7. Academic Network on the Charter

In order to acquire formal legal status, the Academic Network on the European Social Charter organized a constitutive meeting in Paris on 29 November 2013.

It created a non-profit organization for an unlimited period called "Academic Network on the European Social Charter and Social Rights" (ANESC), and chose as the applicable law, the local law of Alsace-Moselle. Its headquarters are located in Strasbourg.

During this meeting the members of the Co-ordination Committee were elected:

- ▶ one General Co-ordinator: Mr Jean-François Akandji-Kombé
- ▶ three linguistic Co-ordinators: Ms Aoife Nolan (English), Ms Despina Sinou (French) and Mr Manuel José Terol Becerra (Spanish),
- ▶ one Treasurer: Mr Giovanni Guiglia,
- ▶ one Secretary: Ms Brigitte Napiwocka.

The status of the Network, as well as general policy guidelines were adopted.

Its main objective is the promotion of the European Social Charter and social rights through awareness-raising activities for better dissemination of Charter related topics in the Council of Europe member States.

The Italian section has already been established and other national sections will be constituted in the near future, particularly in Greece and Portugal.

It is expected that the Academic Network will hold a conference in the margin of the High Level Conference on the European Social Charter to be held in Turin in October 2014.

Appendices

Appendix 1

List of the members of the European Committee of Social Rights as of 1 January 2013

Name and first name	Beginning of term	End of term
M. Luis Jimena Quesada President	01/01/2009	31/12/2014
M ^{me} Monika Schlachter Vice-President	01/01/2007	31/12/2018
M. Petros Stangos Vice-President	01/01/2009	31/12/2014
M. Colm O'Cinneide General Rapporteur	08/11/2006	31/12/2016
M. Lauri Leppik	01/01/2005	31/12/2016
M ^{me} Birgitta Nyström	01/01/2007	31/12/2018
M. Rüchan Işık	01/01/2009	31/12/2014
M. Alexandru Athanasiu	01/01/2009	31/12/2014
M ^{me} Jarna Petman	04/02/2009	31/12/2014
M ^{me} Elena Machulskaya	01/01/2011	31/12/2016
M. Giuseppe Palmisano	01/01/2011	31/12/2016
M ^{me} Karin Lukas	01/01/2011	31/12/2016
M ^{me} Eliane Chemla	01/01/2013	31/12/2018
M. József Hajdú	01/01/2013	31/12/2018
M. Marcin Wujczyk	01/01/2013	31/12/2018

Appendix 2

Signatures and ratifications of the 1961 Charter, its Protocols and the European Social Charter (Revised) at 26 March 2013

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 1966 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Albania	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	—	21/9/98 14/11/02
Andorra	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	—	4/11/00 12/11/04
Armenia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	—	18/10/01 21/1/04
Austria	22/7/63	29/10/69	4/12/90	—	7/5/92	13/07/95	(2)	(2)	—	7/5/99 20/5/11
Azerbaijan	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	—	18/10/01 2/9/04
Belgium	18/10/61	16/10/90	20/5/92	23/6/03	22/10/91	21/9/00	14/5/96	23/6/03	3/5/96	2/3/04
Bosnia and Herzegovina	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	—	11/5/04 7/10/08
Bulgaria	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	(4)	21/9/98 7/6/00
Croatia	8/3/99	26/2/03	8/3/99	26/2/03	8/3/99	26/2/03	8/3/99	26/2/03	6/11/09	—
Cyprus	22/5/67	7/3/68	5/5/88	(3)	21/10/91	1/6/93	9/11/95	6/8/96	3/5/96	27/9/00
Czech Republic	27/5/92*	3/11/99	27/5/92*	17/11/99	27/5/92*	17/11/99	27/5/92*	17/11/99	26/2/02	4/4/12 4/11/00
Denmark	18/10/61	3/3/65	27/8/96	27/8/96	—	***	9/11/95	—	3/5/96	—
Estonia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	—	4/5/98 11/19/00
Finland	9/2/90	29/4/91	9/2/90	29/4/91	16/3/92	18/8/94	9/11/95	17/7/98	3/5/96	21/6/02
France	18/10/61	9/3/73	22/6/89	(3)	21/10/91	24/5/95	9/11/95	7/5/99	3/5/96	7/5/99
Georgia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	—	30/6/00 22/8/05
Germany	18/10/61	27/1/65	5/5/88	—	—	***	(1)	(1)	29/6/07	—
Greece	18/10/61	6/6/84	5/5/88	18/6/98	29/11/91	12/9/96	18/6/98	18/6/98	3/5/96	—

Member states	European Social Charter 1961 ETS 035		Additional Protocol 1988 ETS 128		Amending Protocol 1991 ETS 142		Collective Complaints Protocol 1995 ETS 158		Revised European Social Charter 1966 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Hungary	13/12/91	8/7/99	7/10/04	1/6/05	13/12/91	4/2/04	7/10/04	—	7/10/04	20/4/09
Iceland	15/1/76	15/1/76	5/5/88	—	12/12/01	21/2/02	(1)	—	4/11/98	—
Ireland	18/10/61	7/10/64	(3)	(3)	14/5/97	14/5/97	4/11/00	4/11/00	4/11/00	4/11/00
Italy	18/10/61	22/10/65	5/5/88	26/5/94	21/10/91	27/1/95	9/11/95	3/11/97	3/5/96	5/7/99
Latvia	29/5/97	31/1/02	29/5/97	—	29/5/97	9/12/03	(1)	—	29/5/07	26/03/13
Liechtenstein	9/10/91	—	—	—	—	—	—	—	—	—
Lithuania	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	8/9/97	29/6/01
Luxembourg	18/10/61	10/10/91	5/5/88	—	21/10/91	***	(1)	—	11/2/98	—
Malta	26/5/88	4/10/88	(3)	(3)	21/10/91	16/2/94	(2)	—	27/7/05	27/7/05
Republic of Moldova	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	3/11/98	8/11/01
Monaco	(1)	(1)	(1)	(1)	(1)	(1)	(1)	—	5/10/04	—
Montenegro	(2)	(2)	(3)	(3)	(2)	(2)	(2)	22/3/05** 3/3/10	—	—
Netherlands	18/10/61	22/4/80	14/6/90	5/8/92	21/10/91	1/6/93	23/1/04	3/5/06	23/1/04	3/5/06
Norway	18/10/61	26/10/62	10/12/93	10/12/93	21/10/91	21/10/91	20/3/97	20/3/97	7/5/01	7/5/01
Poland	26/11/91	25/6/97	(1)	—	18/4/97	25/6/97	(1)	—	25/10/05	—
Portugal	1/6/82	30/9/91	(3)	(3)	24/2/92	8/3/93	9/11/95	20/3/98	3/5/96	30/5/02
Romania	4/10/94	(2)	(3)	(3)	(2)	(2)	(2)	—	14/5/97	7/5/99
Russian Federation	(2)	(2)	(3)	(2)	(2)	(2)	(2)	—	14/9/00	16/10/09
San Marino	(1)	—	(1)	—	(1)	—	(1)	—	18/10/01	—
Serbia	(2)	(2)	(3)	(2)	(2)	(2)	(2)	—	22/3/05**	14/9/09
Slovak Republic	27/5/92*	22/6/98	27/5/92*	22/6/98	27/5/98	22/6/98	18/11/99	—	18/11/99	23/4/09

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 1966 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Slovenia	11/10/97 (2)	11/10/97 (3)	11/10/97 (3)	11/10/97 (2)	11/10/97 (2)	11/10/97 (2)	11/10/97 (4)	11/10/97 (4)	11/10/97 (4)	7/5/99
Spain	27/4/78 6/5/80	5/5/88 24/1/00	21/10/91 24/1/00	21/10/91 24/1/00	—	—	—	—	23/10/00	—
Sweden	18/10/61 6/5/76	17/12/62 —	5/5/88 —	5/5/89 —	21/10/91 —	18/3/92 —	9/11/95 —	29/5/98 —	3/5/96 —	29/5/98 —
Switzerland	—	—	—	—	—	—	—	—	—	—
“The former Yugoslav Republic of Macedonia”	5/5/98 31/3/05	5/5/98 —	—	5/5/98 —	31/3/05 —	(2)	—	—	27/5/09 —	6/1/12
Turkey	18/10/61 24/11/89	24/11/89 5/5/98	(3) —	6/10/04 —	10/6/09 —	(2)	—	—	6/10/04 —	27/6/07
Ukraine	2/5/96 18/10/61	(2) 11/7/62	(3) (1)	(3) —	(2) —	(2)	(2)	—	7/5/99 —	21/12/06
United Kingdom	—	—	—	21/10/91 —	—	(1)	—	—	7/11/97 —	—

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

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

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

Appendix 3

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

accepted not accepted

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

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

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

6

6. With the exception of professional military personnel of the Serbian Army.

Articles 10-15 Para.	Article 10					Art. 11			Article 12				Article 13				Art.14		Art. 15		
	1	2	3	4	5	1	2	3	1	2	3	4	1	2	3	4	1	2	1	2	3
Albania																					
Andorra																					
Armenia																					
Austria																					
Azerbaijan																					
Belgium																					
Bosnia and Herzegovina																					
Bulgaria																					
Cyprus																					
Estonia																					
Finland																					
France																					
Georgia																					
Hungary																					
Ireland																					
Italy																					
Latvia																					
Lithuania																					
Malta						7										8					
Republic of Moldova																					
Montenegro																					
Netherlands																					
Norway																					
Portugal																					
Romania																					
Russian Federation																					
Serbia																					
Slovakia																					
Slovenia																					
Sweden																					
Turkey																					
"The former Yugoslav Republic of Macedonia"																					
Ukraine																					

7. Sub-paragraphs *a* and *d* accepted.

8. Sub-paragraph *a* accepted.

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

9. Sub-paragraphs 1b and 1c accepted.

10. Sub-paragraphs a and b accepted.

Articles 20-31 Para.	Art. 26	Art. 27	Art.	Art.	Art.	Art. 31						
	20	21	22	23	24	25	1	2	1	2	3	1 2 3
Albania												
Andorra												
Armenia												
Austria												
Azerbaijan												
Belgium												
Bosnia and Herzegovina												
Bulgaria												
Cyprus					11							
Estonia												
Finland												
France												
Georgia												
Hungary												
Ireland								12				
Italy												
Latvia												
Lithuania												
Malta												
Republic of Moldova												
Montenegro									13			
Netherlands												
Norway									14			
Portugal												
Romania												
Russian Federation												
Serbia												
Slovakia												
Slovenia												
Sweden												
Turkey												
"The former Yugoslav Republic of Macedonia"												
Ukraine												

11. Sub-paragraph *b* accepted.

12. Sub-paragraphs *a* and *b* accepted.

13. Sub-paragraph *a* accepted.

14. Sub-paragraph *c* accepted.

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

accepted not accepted

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

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

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

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

Appendix 4

Number of accepted provisions by year since 1962

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

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

Year of ratification	Charter 1961			Revised Charter 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
1997	21. Poland	58	1319				1319
1998		-66	1253	1. Sweden		83	1336
1999	22. Slovak Republic	64	1317			83	1400
		-72	1245	2. France		98	1426
	23. Hungary	44	1289	3. Italy		97	1567
	24. Czech Republic	56	1345	4. Romania		65	1688
		-76	1269	5. Slovenia		95	1707
2000			1269	6. Bulgaria		61	1768
			1269	7. Estonia		79	1847
		-43	1226	8. Cyprus		63	1867
		-63	1163	9. Ireland		93	1897
2001		-60	1103	10. Norway		81	1918
			1103	11. Lithuania		86	2004
			1103	12. Republic of Moldova		63	2067
2002		-72	1031	13. Portugal		98	2093
		-66	965	14. Finland		89	2116
	25. Latvia	25	990			1151	2141
			990	15. Albania		64	2205
2003	26. Croatia	43	1033				1033
2004			1033	16. Armenia		67	2315
		-72	961	17. Belgium		87	2330
				18. Azerbaijan		47	1416
			961	19. Andorra		75	1491
							2452

Year of ratification	Charter 1961			Revised Charter 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
2005	27. "The former Yugoslav Republic of Macedonia"	41	1002				1491
		-55	947	20. <i>Malta</i>		72	1563
				21. <i>Georgia</i>		63	1626
2006		-75	872	22. <i>Netherlands</i>		97	1723
				23. <i>Ukraine</i>		74	1714
2007		-46	826	24. <i>Turkey</i>		91	1888
		-44	782	25. <i>Hungary</i>		60	1948
				Bulgaria		1	1949
2008				26. <i>Bosnia and Herzegovina</i>		51	2000
2009		-64	718	27. <i>Slovak Republic</i>		86	2086
				28. <i>Serbia</i>		88	2174
				29. <i>Russian Federation</i>		67	2241
2010				30. <i>Montenegro</i>		66	2307
2011		-62	656	31. <i>Austria</i>		76	2383
				Cyprus		9	2392
2012		-41	615	32. "The former Yugoslav Republic of Macedonia"		60	2452
				Estonia		8	2460
2013		-25	590	Latvia		90	2550
							3165

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

Appendix 5

List of collective complaints registered in 2013 and state of procedure on 31 December 2013

Bedriftsforbundet v. Norway

Complaint No. 103/2013

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

Associazione Nazionale Giudici di Pace v. Italy

Complaint No. 102/2013

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

European Council of Police Trade Unions (CESP) v. France

Complaint No. 101/2013

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

The European Committee of Social Rights declared the complaint admissible on 21 October 2013.

European Roma Rights Centre (ERRC) v. Ireland

Complaint No. 100/2013

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

The European Committee of Social Rights declared the complaint admissible on 21 October 2013.

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

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

The European Committee of Social Rights declared the complaint admissible on 10 September 2013.

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

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

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

Association for the Protection of All Children (APPROACH) Ltd v. Cyprus
Complaint No. 97/2013

The complaint was registered on 4 February 2013. The complainant organisation alleges that Cyprus does not comply with its obligations under Article 17 (the right of mothers and children to social and economic protection) of the Social Charter because of the lack of explicit prohibition of all corporal punishment of children, in the family, schools and other settings, and because Cyprus has failed to act with due diligence to eliminate such punishment in practice.

The European Committee of Social Rights declared the complaint admissible on 2 July 2013.

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

The complaint was registered on 4 February 2013. The complainant organisation alleges that the lack of explicit prohibition of corporal punishment in the family, in all forms of alternative care and in schools violates Article 17 (the right of mothers and children to social and economic protection) of the Social Charter. In addition APPROACH claims that the Czech Republic has not acted with due diligence to eliminate such violent punishment of children in practice.

The European Committee of Social Rights declared the complaint admissible on 2 July 2013.

Association for the Protection of All Children (APPROACH) Ltd v. Slovenia

Complaint No. 95/2013

The complaint was registered on 4 February 2013. The complainant organisation alleges that Slovenia does not comply with its obligations under Article 17 (the right of mothers and children to social and economic protection) of the Social Charter because of the lack of explicit and effective prohibition of all corporal punishment of children, in the family, schools and other settings, and because Slovenia has failed to act with due diligence to eliminate such punishment in practice.

The European Committee of Social Rights declared the complaint admissible on 2 July 2013.

Association for the Protection of All Children (APPROACH) Ltd v. Italy

Complaint No. 94/2013

The complaint was registered on 4 February 2013. The complainant organisation alleges that many children in Italy are still suffering corporal punishment, and violent punishment of children is still culturally and socially accepted. APPROACH complains of the failure of Italy to adopt the necessary legislation and its lack of diligence to eliminate violent punishment of children in practice in violation of Article 17 (the right of mothers and children to social and economic protection) of the Social Charter.

The European Committee of Social Rights declared the complaint admissible on 2 July 2013.

Association for the Protection of All Children (APPROACH) Ltd v. Ireland

Complaint No. 93/2013

The complaint was registered on 4 February 2013. The complainant organisation alleges that Ireland has taken no effective action to remedy its violation of Article 17 (the right of mothers and children to social and economic protection) of the Social Charter by prohibiting all corporal punishment and other cruel or degrading forms of punishment of children. APPROACH claims in particular that the existence of the Irish common law of "reasonable chastisement" allows parents and some other adults to assault children with impunity.

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

Association for the Protection of All Children (APPROACH) Ltd v. France

Complaint No. 92/2013

The complaint was registered on 4 February 2013. The complainant organisation alleges that France does not comply with its obligations under Article 17 (the right of mothers and children to social and economic protection) of the Social Charter because of the lack of explicit and effective prohibition of all corporal punishment

of children, in the family, schools and other settings, and because France has failed to act with due diligence to eliminate such punishment in practice.

The European Committee of Social Rights declared the complaint admissible on 2 July 2013.

Confederazione Generale Italiana del Lavoro (CGIL) c. Italy

Complaint No. 91/2013

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

Conference of European Churches (CEC) v. The Netherlands

Complaint No. 90/2013

The complaint was registered on 17 January 2013. The complainant organisation, the Conference of European Churches, alleges that the Dutch government has failed to fulfil its obligations under the Social Charter to respect the rights of undocumented adults to food, clothing and shelter. The complainant organisation alleges that law and practice in the Netherlands is not in conformity with Article 13 § 4 (the right to social and medical assistance – specific emergency assistance for non-residents) and Article 31 § 2 (the right to housing – reduction of homelessness).

The European Committee of Social Rights declared the complaint admissible on 1 July 2013 and adopted a decision on immediate measures on 25 October 2013.

Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland

Complaint No. 89/2013

The complaint was registered on 3 January 2013. The complainant organisation, the FAFCE, alleges that Ireland has failed to protect child victims of human trafficking. The FAFCE submits that these weaknesses of the Irish authorities are in breach of Article 17 (the right of mothers and children to social and economic protection) of the Social Charter.

The European Committee of Social Rights declared the complaint admissible on 2 July 2013.

Finnish Society of Social Rights v. Finland

Complaint No. 88/2012

The complaint was registered on 13 December 2012. The complainant association alleges that Finland has not maintained the social security at a satisfactory level and has not endeavored to raise progressively the system of social security to a higher level, in violation of Article 12 (the right to social security) of the Social Charter.

The European Committee of Social Rights declared the complaint admissible on 14 May 2013.

European Federation of National Organisations working with the Homeless (FEANTSA) v The Netherlands

Complaint No. 86/2012

The complaint was registered on 4 July 2012. The complainant organisation alleges that The Netherlands' legislation, policy and practice regarding sheltering the homeless is not in compatible with is not compatible with Articles 13 (right to social and medical assistance), 16 (right of the family to social, legal and economic protection), 17 (right of children and young persons to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion), 31 (right to housing), taken alone or in conjunction with Article E of the Social Charter.

The European Committee of Social Rights declared the complaint admissible on 1 July 2013 and adopted a decision on immediate measures on 25 October 2013.

List of Resolutions adopted by the Committee of Ministers in 2013

CM/ResChS(2013)18 / 11 December 2013

Resolution - European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 60/2010 (Adopted by the Committee of Ministers on 11 December 2013 at the 1187th meeting of the Ministers' Deputies)

CM/ResChS(2013)17 / 16 October 2013

Resolution - Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011 (Adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies)

CM/ResChS(2013)16 / 16 October 2013

Resolution - International Federation for Human Rights (FIDH) v. Belgium, Complaint No. 75/2011 (Adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies)

CM/ResChS(2013)15 / 16 October 2013

Resolution - International Federation for Human Rights (FIDH) v. Greece, Complaint No. 72/2011 (Adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies)

CM/ResChS(2013)14 / 10 July 2013

Resolution - European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 82/2012 (Adopted by the Committee of Ministers on 10 July 2013 at the 1176th meeting of the Ministers' Deputies)

CM/ResChS(2013)13 / 11 June 2013

Resolution - The Central Association of Carers in Finland v. Finland, Complaint No. 71/2011 (Adopted by the Committee of Ministers on 11 June 2013 at the 1173rd meeting of the Ministers' Deputies)

CM/ResChS(2013)12 / 11 June 2013

Resolution - The Central Association of Carers in Finland v. Finland, Complaint No. 70/2011 (Adopted by the Committee of Ministers on 11 June 2013 at the 1173rd meeting of the Ministers' Deputies)

CM/ResChS(2013)11 / 11 June 2013

Resolution - Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011 (Adopted by the Committee of Ministers on 11 June 2013 at the 1173rd meeting of the Ministers' Deputies)

CM/ResChS(2013)10 / 10 June 2013

Resolution - European Council of Police Trade Unions (CESP) v. France, Complaint No. 68/2011 (Adopted by the Committee of Ministers on 11 June 2013 at the 1173rd meeting of the Ministers' Deputies)

CM/ResChS(2013)9 / 29 May 2013

Resolution - European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009 (Adopted by the Committee of Ministers on 29 May 2013 at the 1171st meeting of the Ministers' Deputies)

CM/ResChS(2013)8 / 30 April 2013

Resolution - International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010 (Adopted by the Committee of Ministers on 30 April 2013 at the 1169th meeting of the Ministers' Deputies)

CM/ResChS(2013)7 / 10 April 2013

Resolution - European Roma Rights Centre (ERRC) v. Portugal, Complaint No. 61/2010 (Adopted by the Committee of Ministers on 10 April 2013 at the 1168th meeting of the Ministers' Deputies)

CM/ResChS(2013)6 / 27 March 2013

Resolution - Médecins du Monde – International v. France, Complaint No. 67/2011 (Adopted by the Committee of Ministers on 27 March 2013 at the 1166th meeting of the Ministers' Deputies)

CM/ResChS(2013)3 / 5 February 2013

Resolution - General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011 (Adopted by the Committee of Ministers on 5 February 2013 at the 1161st meeting of the Ministers' Deputies)

CM/ResChS(2013)2 / 5 February 2013

Resolution - General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011 (Adopted by the Committee of Ministers on 5 February 2013 at the 1161st meeting of the Ministers' Deputies)

CM/ResChS(2013)1 / 5 February 2013

Resolution - European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011 (Adopted by the Committee of Ministers on 5 February 2013 at the 1161st meeting of the Ministers' Deputies)

Collective Complaints – Statistics by countries – 31 December 2013

	Registered complaints	Decisions on admissibility	Admissible	Not admissible	Decisions on immediate measures	Decisions on the merits	Violation	Non violation	Strike out
Belgium	7	7	7	0	1	6	5	1	0
Bulgaria	6	6	6	0	0	5	5	0	1
Croatia	2	2	2	0	0	2	2	0	0
Chypre	1	1	1	0	0	-	-	-	0
Czech Republic	1	1	1	0	0	-	-	-	0
Finland	5	5	5	0	0	4	3	1	0
France	31	29 (31*)	27 (29*)	2	0	25 (27*)	19	8	0
Greece	15	15	14	1	0	14	14	0	0
Ireland	6	5 (6*)	5 (6*)	0	1	2 (3*)	2	1	0
Italy	8	6	6	0	0	5	2	3	0
The Netherlands	3	3	3	0	2	1	1	0	0
Norway	2	1	1	0	0	1	1	0	0
Portugal	11	11	10	1	0	10	4	6	0
Slovenia	2	2	2	0	0	1	1	0	0
Sweden	3	2 (3*)	2 (3*)	0	0	1(*) 2	2	0	0
Total	103	96 (100*)	92 (96*)	4	4	77 (81*)	61	20	1

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

Number of decisions handed down by the European Committee of Social Rights 1998-2013

Years	Registered complaints	Pending complaints on 1 January	Decisions on admissibility	Decisions on the merits	Decisions on admissibility and the merits	Decisions on immediate measures	Decisions to strike out	Total decisions
1998	1	0	0	0	0	0	0	0
1999	5	1	2	1	0	0	0	3
2000	4	5	7	5	0	0	0	12
2001	1	4	2	3	0	0	0	5
2002	2	2	2	1	0	0	0	3
2003	10	3	8	2	0	0	0	10
2004	5	11	6	10	0	0	0	16
2005	4	6	5	4	0	0	0	9
2006	7	6	5	4	0	0	0	9
2007	7	9	7	5	0	0	0	12
2008	8	11	8	5	0	0	1	14
2009	5	14	7	7	0	0	0	14
2010	4	12	3	6	0	0	0	9
2011	12	10	11	4	0	0	0	15
2012	13	18	9	15	0	0	0	24
2013	15	16	14 (18*)	5 (9*)	4	4	0	27 (31*)
Total	103	23	96 (100*)	77 (81*)	4	4	1	182 (186*)

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

Appendix 6

Summary of the Committee's Conclusions for 2013 1. European Social Charter Revised – Conclusions 2013

Article	Albania	Andorra	Armenia	Austria	Belgium	Bosnia-Herzegovina	Cyprus	Estonia	Finland	France	Georgia	Hungary	Ireland	Italy	Lithuania	Malta	Montenegro	Netherlands	Norway	Romania	Russian Federation	Serbia	Slovak Republic	Slovenia	Sweden	Turkey	Ukraine
Article 3.1	-	-	-	0	+	-	+	-	+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 3.2	-	-	-	-	+	-	-	-	+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 3.3	-	-	-	-	+	-	-	-	+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 3.4	-	-	-	-	+	-	-	-	+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 11.1	-	-	-	-	+	-	-	-	+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 11.2	0	-	-	-	+	-	-	-	+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 11.3	-	-	-	-	0	-	-	-	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 12.1	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 12.2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 12.3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 12.4	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 13.1	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 13.2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Article 13.3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Article	+ conformity		- non conformity		0 deferral		□ non accepted provision	
	Ukraine	Turkey	Sweden	Slovenia	Slovak Republic	Serbia	Russian Federation	Romania
Article 13.4	-	-	-	-	-	-	-	-
Article 14.1	0	-	-	-	-	-	-	-
Article 14.2	0	-	-	-	-	-	-	-
Article 23	0	-	-	-	-	-	-	-
Article 30	0	-	-	-	-	-	-	-
Albania	-	-	-	-	-	-	-	-
Andorra	-	-	-	-	-	-	-	-
Armenia	-	-	-	-	-	-	-	-
Austria	-	-	-	-	-	-	-	-
Belgium	-	-	-	-	-	-	-	-
Bulgaria	-	-	-	-	-	-	-	-
Bosnia-Herzegovina	-	-	-	-	-	-	-	-
Cyprus	-	-	-	-	-	-	-	-
Estonia	-	-	-	-	-	-	-	-
Finland	0	-	-	-	-	-	-	-
France	-	-	-	-	-	-	-	-
Georgia	-	-	-	-	-	-	-	-
Hungary	-	-	-	-	-	-	-	-
Ireland	-	-	-	-	-	-	-	-
Italy	-	-	-	-	-	-	-	-
Lithuania	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-
Republic of Moldova	-	-	-	-	-	-	-	-
Montenegro	-	-	-	-	-	-	-	-
Netherlands	0	-	-	-	-	-	-	-
Norway	-	-	-	-	-	-	-	-
Romania	-	-	-	-	-	-	-	-
Russian Federation	0	-	-	-	-	-	-	-
Serbia	0	-	-	-	-	-	-	-
Slovak Republic	-	-	-	-	-	-	-	-
Slovenia	-	-	-	-	-	-	-	-
Sweden	-	-	-	-	-	-	-	-
Turkey	-	-	-	-	-	-	-	-
Ukraine	-	-	-	-	-	-	-	-

2. 1961 European Social Charter – Conclusions XX-2 (2013)

Article	Czech Republic	Germany	Denmark	Spain	United Kingdom	Greece	Latvia	Poland	"The Former Yugoslav Republic of Macedonia"
Article 3.1	+	-	+	+	+	-		+	
Article 3.2	+	+	+	+	+	-		+	
Article 3.3	+	+	+	+	+	+		+	
Article 11.1	+	+	+	0	+	0	-	-	+
Article 11.2	+	+	+	+	+	-	+	+	+
Article 11.3	+	+	+	+	+	-	+	+	+
Article 12.1	-	0	+	-	-	-	-	-	-
Article 12.2	+	+	+	+		0		+	+
Article 12.3	+	+	+	+		-	-	-	+
Article 12.4	-	-	-	-		-	-	-	-
Article 13.1	-	0	-	-	+	-	-	-	-
Article 13.2	+	+	+	+	+	+	+	+	+
Article 13.3	0	0	+	+	+	+	-	-	+
Article 13.4	-	+	+	+	0	-	+		+
Article 14.1	0	+	+	-	+	0	-	-	
Article 14.2	+	+	+	-	+	+	+		
Article 4 of the 1988 Additional Protocol			-	-					

+ conformity	- non conformity	0 deferral	<input type="checkbox"/> non accepted provision
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3. Overview of the Conclusions by year

	2013	2012	2011	2010	2009	2008	2007	2006	2005
Examined situations	568	608	950	569	572	425	839	915	685
Conformity	277	277	459	271	281	185	363	461	305
	48,77 %	45,56 %	48,31 %	47,63 %	49,13 %	43,52 %	43,27 %	50,38 %	43,79 %
Non conformity	181	156	256	184	164	126	230	244	126
	31,86 %	25,66 %	26,95 %	32,34 %	28,67 %	29,64 %	27,41 %	26,66 %	18,39 %
Deferral	110	175	235	114	127	114	246	210	254
	19,37 %	28,78 %	24,74 %	20,03 %	22,20 %	26,82 %	29,32 %	22,95 %	37,08 %

Appendix 7

Selection of conclusions of non-conformity 2013 for the attention of the Parliamentary Assembly

Introductory remarks

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

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

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

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

The European Committee of Social Rights is delighted to be part of this form of cooperation and it wishes to thank the Parliamentary Assembly for developing its

vital role in highlighting the importance for States of accepting the collective complaints procedure as well as the Revised Charter thereby strengthening the social aspects of democracy and the guarantee of social rights at national level.

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

Revised European Social Charter

ALBANIA

Normative action:

■ Article 3§2: The Committee concludes that the situation in Albania is not in conformity with Article 3§2 of the Charter on the ground that the health and safety legislation and regulations in force do not specifically cover a majority of risks.

[The Committee takes note that there has been general framework legislation on occupational safety and health since Act No. 10237 came into force. It notes, however, that existing regulations only cover a small proportion of the risks identified in Conclusions XIV-2, and fail to offer protection against significant risks such as heavy loads, asbestos, air pollution, noise and vibration, and chemical, physical and biological agents, or exposed sectors such as dock labour and agriculture. Nor does the report establish that the aforementioned regulations correspond to international standards].

Other parliamentary measures:

■ Article 3§1: The Committee concludes that the situation in Albania is not in conformity with Article 3§1 of the Charter on the grounds that it has not been established that:

- ▶ public authorities are involved in research relating to occupational health and safety, training of qualified professionals, definition of training programmes or certification of processes;
- ▶ employers' and employees' organisations are being consulted by public authorities in practice.

■ Article 3§3: The Committee concludes that the situation in Albania is not in conformity with Article 3§3 of the Charter on the grounds that it has not been established that:

- ▶ occupational accidents and diseases are monitored efficiently;
- ▶ there is an efficient labour inspection.

■ Article 3§4: The Committee concludes that the situation in Albania is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy.

■ Article 11§3: The Committee concludes that the situation in Albania is not in conformity with Article 11§3 of the Charter on the ground that it has not been established that:

- ▶ adequate measures have been taken to prevent smoking;
- ▶ efficient immunisation and epidemiological monitoring programmes are in place.

ANDORRA

Normative action:

■ Article 3§2: The Committee concludes that the situation in Andorra is not in conformity with Article 3§2 of the Charter on the ground that self-employed workers do not enjoy adequate protection.

[Reiterating that all workers, all places of work and all sectors of activity must be covered by the applicable legislation and regulations on health and safety at work, it concludes that self-employed workers (entrepreneurs, farmers, craft workers, etc.) lack sufficient protection within the meaning of Article 3§2 of the Charter. It reiterates its request for information on the protection of home workers. It also asks for confirmation that domestic workers enjoy, in law and in practice, the health and safety conditions imposed by Act No. 34/2008 and the related implementing regulations].

Other parliamentary measures:

■ Article 11§3: The Committee concludes that the situation in Andorra is not in conformity with Article 11§3 of the Charter on the grounds that it has not been established that:

- ▶ appropriate measures have been taken to prevent smoking;
- ▶ appropriate measures have been taken to prevent accidents.

■ Article 13§4: The Committee concludes that the situation in Andorra is not in conformity with Article 13§4 of the Charter on the ground that it is not established that all foreigners can receive emergency and social assistance for as long as they might require it.

ARMENIA

Normative action:

■ Article 12§1: The Committee concludes that the situation in Armenia is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ personal coverage of medical care is insufficient;
- ▶ the minimum level of old age benefit is inadequate.

[In its previous conclusion the Committee asked whether healthcare was secured outside work-related relationships. It notes from the report that the guaranteed medical aid and services are provided irrespective of employment relations.

The Committee further notes from MISSCEO that primary care is provided to all residents (universal system). However, only certain groups are covered under secondary

and tertiary care (other than on the polyclinic level), such as children under 7 years of age, beneficiaries of family benefits, the disabled.

The Committee notes that access to secondary and tertiary medical care is limited to vulnerable groups and is means-tested for other groups of population. The Committee observes in this relation that the income level below which persons would qualify for free medical care is very low. Therefore, the Committee considers that a large proportion of population, for whom the cost of health care could still represent a heavy burden, is outside the coverage. The Committee thus concludes that the personal coverage of medical care is insufficient and therefore the situation is not in conformity with the Charter].

[The Committee notes that the old age social pension is in fact the minimum pension benefit for a single person. According to MISSCEO it is granted to persons lacking adequate length of service upon reaching the age of 65. It is calculated at the amount equal to 100% of the Basic Pension. The Committee notes from MISSCEO that in 2010 Basic Pension stood at Dram 10 500 (€21) per month.

The Committee understands that a single pensioner receiving the minimum pension benefit may as well become eligible for the family benefit. However, it notes that even if combined with the basic family benefit (Dram 13 500 (€27.8), the overall value of all benefits together is still below the poverty line (€62). Therefore, the Committee considers that the minimum old age benefit is inadequate].

■ Article 13§1: The Committee concludes that the situation in Armenia is not in conformity with Article 13§1 of the Charter on the grounds that

- ▶ the level of social assistance paid to a single person without resources is manifestly inadequate and
- ▶ it has not been established that elderly people without resources receive adequate social assistance.

[From official statistical data (“Social Snapshot and poverty in Armenia” survey 2012) that the general poverty line per adult equivalent per month was estimated at AMD 31 017 (€62) in 2011. (...) the Committee concludes that the level of social assistance paid to a single person without resources is manifestly inadequate on the basis that the minimum assistance that can be obtained falls below the poverty threshold].

[The Committee notes that under the Armenian pension system, as reformed from January 2011, old age social pension is granted to people that don't fulfil the required length of service (5 years of covered employment) at the age of 65. The amount of this benefit was AMD 10 500 (€21) in 2010 and AMD 13 000 (€26) for 2012. In its previous conclusion (Conclusions 2009), the Committee had asked what would be the minimum total assistance paid to a single pensioner without resources, including the pension benefit, family benefit and other supplements if applicable. As the report fails to provide information in this respect, the Committee does not find it established that elderly people without resources receive adequate social assistance].

Other parliamentary measures:

■ Article 3§1: The Committee concludes that the situation in Armenia is not in conformity with Article 3§1 of the Charter on the grounds that it has not been established that there is an adequate occupational health and safety policy.

AUSTRIA

Normative action:

■ Article 3§2: The Committee concludes that the situation in Austria is not in conformity with Article 3§2 of the Charter on the ground that self-employed workers are not sufficiently covered by occupational health and safety regulations.

[The Committee previously concluded (Conclusions XVI-2, XVIII-2 and XIX-2) that the situation in Austria was not in conformity with Article 3§1 of the 1961 Charter on the grounds that self-employed workers are not sufficiently covered by occupational health and safety regulations.

The report reiterates that, under the Industrial Code (Gewerbeordnung), approval of industrial or craft production sites is subject to the adoption of technical measures to preserve the owner's safety and health, including, where appropriate, measures to protect safety and health at work. The report states that Act No. 66/2010, which came into force on 19 August 2010, extended the Code's scope to construction sites in order to transpose Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites. The report also reiterates that social partners and social insurance funds organise information campaigns and preventive actions on health and safety at work aimed at self-employed workers.

The Committee notes that, although the protection of self-employed workers by occupational safety and health regulations may be better in industrial or craft production of on construction sites, it still does not cover all workers, all workplaces and all sectors, as required.⁵ It notes that the situation has barely improved in relation to the previous periods and concludes, therefore, that the situation is still not in conformity with Article 3§2 of the Revised Charter].

■ Article 12§4: The Committee concludes that the situation in Austria is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

[The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

The Committee notes from the report that bilateral agreements on social security were signed with Montenegro, the Republic of Moldova and Serbia, in June 2011, September 2011 and January 2012 respectively. The report also states that it is not necessary to introduce any rules with regard to equality of treatment in the field of pension insurance, given that it does not depend on the nationality of the person concerned.

It transpires from a list appended to the report, that there is no agreement with 8 of the States Parties to the Charter, namely Albania, Andorra, Armenia, Azerbaijan, Czech Republic, Georgia, the Russian Federation and Ukraine and that the report does not provide any justification to explain this situation. The Committee therefore concludes that equal treatment with regard to the right to social security is not guaranteed to the nationals of these States Parties].

[In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the state concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the states which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle. Since 1996 (when bilateral agreements laying down the entitlement to family allowance for children living outside the EEA were terminated for financial reasons), Austria has made the payment of family allowances subject to the child's residence in Austria, without length of residence or employment requirements. Nonetheless, contrary to the requirements of the Charter, the Committee notes that Austria has not signed bilateral agreements on this matter with States Parties which apply a different entitlement principle to these benefits and, that, since Austria does not have any plan to do so, the situation remains the same and, as a consequence, that the period of time within which agreements should have been concluded is no longer reasonable. The Committee concludes that equal treatment is not guaranteed with regard to access to family allowances in respect of nationals of all other States Parties].

■ Article 13§1: The Committee concludes that the situation in Austria is not in conformity with Article 13§1 of the Charter on the ground that the granting of social assistance benefits to foreign nationals of other States Parties, other than EU and EEA nationals, legally residing in Austria, is subject to an excessive length of residence condition.

[The official publication "Social Protection in Austria (2012)" indicates that the entitlement to the benefit is linked to the right of permanent residence in Austria, in order to prevent social tourism. Relatives of Austrian (nuclear family), EEA nationals and persons with residence and work permits living in Austria for five or more years, as

well as recognized refugees under the Geneva Convention and persons granted subsidiary protection status are entitled to means-tested minimum income benefits].

■ Article 14§1: The Committee concludes that the situation in Austria is not in conformity with Article 14§1 of the Charter on the ground that clients of social services have not a right of appeal to an independent body in urgent cases of discrimination and violation against human dignity in all the Länder.

BELGIUM

Normative action:

■ Article 12§4: The Committee concludes that the situation in Belgium is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ the retention of accrued benefits is not guaranteed for nationals of all other States Parties.

[The Committee reiterates States' obligation, under Article 12§4, to conclude multi-lateral or bilateral agreements, or to take unilateral measures to ensure the right to retention of accrued benefits whatever the movements of the beneficiary.

Given that no agreement has been concluded with certain States Parties which are not members of the EU and not parties to the EEA (such as Albania, Andorra, Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine), that the situation is unclear with regard to the other States Parties to the Charter which are not members of the EU and not parties to the EEA, and that the report makes no reference to any unilateral measure during the reference period, the retention of accrued benefits for persons moving to a State Party is not guaranteed for nationals of these States. As there has been no change in the situation, the Committee confirms its finding of non-conformity in this regard].

[States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures. The principle of accumulation of insurance or employment periods applies to nationals of States Parties covered by EU regulations. With respect to States not bound by EU regulations, the Committee observes that the guarantee of this principle is one of the parts of the European Convention on Social Security directly applicable to both eligibility to benefits and to the calculation of benefits in all the branches of social security covered in the convention. The Committee considers that Belgium has implemented sufficient means upon ratification of the convention to guarantee the maintenance of accruing rights].

■ Article 13§1: The Committee concludes that the situation in Belgium is not in conformity with Article 13§1 of the Charter on the ground that the guaranteed income for the elderly (GRAPA) is not granted to foreigners without resources unless they are covered by EU law or are nationals of States which have concluded reciprocity agreements with Belgium.

[The guarantee of income for elderly persons applies to Belgian nationals, people coming within the scope of Regulation (EC)883/2004, nationals of countries with which Belgium has reciprocity agreements, foreigners entitled to Belgian old-age or survivor's pensions, refugees or stateless people. The Committee notes from the report that in 2009 a Law was adopted (Law 6 May 2009, Article 110), extending the scope of the guarantee of income for elderly persons to all nationals of states parties to the Charter. However, this provision has not entered into force yet (according to the information provided in an addendum to the report, further legislative amendments in this respect are planned to be adopted soon). The Committee accordingly maintains his finding of non-conformity on this issue].

■ Article 14§1: The Committee concludes that the situation in Belgium is not in conformity with Article 14§1 of the Charter on the grounds that:

- ▶ social services are not organised in such a way that they are adapted to needs;
- ▶ effective and equal access to social services is not ensured to all persons.

[Social and health policies in the Walloon Region have come under the Walloon public services ministry (general directorate of local authorities, social action and health – DG05) and the Walloon agency for the integration of disabled persons (AWIPH).

Social services organised by the French Community Commission in Brussels are provided by non-profit making associations, whose services are concerned with social action, the family, health, social cohesion and persons with disabilities.

Despite the additional information provided, there is nothing to show that the situation is in conformity with the Charter as concerns the organisation of social services adapted to needs due to a lack of information, in particular on the issues covered by the agreements between the government and the provider of social services in the German-speaking Community and, in general, on the organisation of the social services in the Walloon Region.

The Committee has also considered the situation of highly dependent adults with disabilities under Article 14§1 in Collective Complaint No. 75/2011, International Federation for Human Rights (FIDH) v. Belgium. In its decision on the merits of 18 March 2013, the Committee found that there had been a violation of Article 14§1 arising in particular from the lack of institutions giving these persons advice, information and personal help in the Brussels-Capital Region. Since the situation, in law and in practice, that gave rise to this violation already existed during the reference period, the Committee also concludes, as part of the reporting procedure, that there has been a violation of Article 14§1 for this ground].

Other parliamentary measures:

■ Article 14§2: The Committee concludes that the situation in Belgium is not in conformity with Article 14§2 of the Charter on the grounds that it has not been established that:

- ▶ the conditions under which non-public providers take part in the provision of welfare services are adequate;
- ▶ supervisory machinery exists throughout the country to ascertain the quality of the services provided by non-public bodies;

- ▶ users are consulted regarding the development of the policies relating to all social welfare services.

BOSNIA AND HERZEGOVINA

Normative action:

■ Article 12§1: The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 12§1 of the Charter on the ground that the duration of unemployment benefit is too short.

[As regards the duration of unemployment benefit, according to the report it is paid for 3 months if the person concerned has been employed from 8 months to 5 years. Its duration is 6 months in case of employment from 5 to 10 years. In RS 3 months of benefit is paid for employment record from 2 to 5 years. The Committee recalls that in the meaning of Article 12 the duration of unemployment benefit should not be too short. The Committee considers that the duration of unemployment benefit of 3 months is short and therefore the situation is not in conformity with Article 12§1 of the Charter].

BULGARIA

Normative action:

■ Article 13§1: The Committee concludes that the situation in Bulgaria is not in conformity with Article 13§1 of the Charter on the ground that people registered with the Employment Office Directorates are not entitled to social assistance before a minimum period of six months.

[According to the report, an unemployed person must have been registered with the Employment Office Directorates for at least 6 months before the submission of the claim and must not have rejected any jobs or qualification courses offered. Certain categories of people are however exempted from this requirement (single parent caring for a child until the age of 3 or person caring for a sick family member, pregnant woman, person with psychiatric illness or permanent reduced working capacity of at least 50%, student over 18) and, according to the report, a monthly allowance can be granted on a case by case basis to people not registered for employment or having refused an employment (see also Conclusions 2006 for details on the criteria applied as regards the refusal of a "suitable job").

The report states that in 2010 monthly, lump-sum and targeted social support allowances were granted to a total of 116 003 beneficiaries, i.e. over 48% less than in 2008, while the total expenditure increased by 8% from BGN 48 496 508 (€24 754 800 as of 1 January 2008) to BGN 52 410 169 (€26 800 300 as of 1 January 2010). In particular, 44 342 beneficiaries on average per month received monthly assistance in 2010 (for an average expenditure of BGN 47 763 510 i.e. €24 424 200) (against 42 804 beneficiaries in 2008 and an average expenditure of BGN 38 216 915 i.e. €19 507 600). Lump-sum allowances were allocated to 6 400 beneficiaries in 2010 (against 7 791 in 2008), for a total expenditure of BGN 1 311 092 (€670 436).

In response to the Committee's question as to what forms of assistance apply to a person without resources, registered with the employment service, before being

entitled to file a claim for social assistance, the report indicates that the period of compulsory registration with the employment office has been reduced from 9 to 6 months. As there is nothing to indicate that assistance is available to a person with resources within the first six months after registration with the employment service, the Committee holds that the impossibility to get social assistance before the expiry of a six-months period after registering with the employment office is not in conformity with Article 13§1].

Other parliamentary measures:

■ Articles 3§3: The Committee concludes that the situation in Bulgaria is not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive rate of fatal accidents are inadequate.

■ Article 11§3: The Committee concludes that the situation in Bulgaria is not in conformity with Article 11§3 of the Charter on the grounds that it has not been established that there are adequate measures in force for the prevention of road and domestic accidents.

■ Article 12§1: The Committee concludes that the situation in Bulgaria is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum level of pension benefit is manifestly inadequate;
- ▶ the minimum level of unemployment benefit is inadequate.

[The Committee notes that in 2011 50% of the Eurostat median equivalised income stood at €121.

As regards old-age benefit, the Committee notes from MISSOC that the minimum amount of the contributory old-age pension is determined annually by the Law on the Budget of the State Public Insurance. The minimum amount of pension for insurance and old-age is BGN 145 (€74).

The Committee notes from ISSA that old-age pension (social insurance) is paid at the age 63 and 4 months (men) or age 60 and 4 months (women) with at least 37 years and 4 months (men) or 34 years and 4 months (women) of contributions. The Committee notes that old-age social pension (income-tested) stood at BGN 100.86 (€ 50).

The Committee holds that the minimum levels of both contributory and social pension are manifestly inadequate as they fall below 40% of the median equivalised income].

[The Committee notes from the report that since 2009 the daily amount of cash compensation for unemployment was regulated at 60% of the average daily remuneration. The qualifying period for this benefit is 9 months of insurance contributions. Since 2011, the period of calculating of benefit was extended to 18 months and to 24 months in 2012.

The Committee further notes from MISSOC that the amount of unemployment benefit is 60% of the average daily contributory income for the last 24 months preceding the month of the termination of insurance, but not less than the fixed minimum amount. The minimum amount of the unemployment benefit is BGN 7.20 (€3.68) per day.

Those who have terminated the labour contract of their own accord or have been summarily dismissed receive unemployment benefit in the minimum amount. The unemployment benefit is paid on a monthly basis. The monthly amount of the unemployment benefit is the product of the number of working days in the respective month and the daily amount of the unemployment benefit.

The Committee holds that the minimum level of unemployment benefit is inadequate as it falls below 40% of the Eurostat threshold].

■ Article 13§1: The Committee concludes that the situation in Bulgaria is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance is manifestly inadequate.

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit (differentiated minimum income): according to the report and MISSOC a single person under the age of 65, living alone, receives 73% of the GMI, i.e BGN 47 (€24), while a single person over 65 years of age receives 100% of GMI, i.e. BGN 65 (€33) or BGN 91 (€46) if living alone, and BGN 107 (€54) if the person is over 75. The monthly amount of the social pension for old age was BGN 100.86 (€52).
- ▶ Additional benefits: the Committee notes from MISSOC that persons and families whose income is lower than the differentiated minimum income are entitled to targeted heating allowance. Certain categories of persons (orphans till the age of 25, lone elderly people over 70, single parents) whose income for the preceding month is less than 150% of the differentiated minimum income are entitled to a targeted monthly allowance for the payment of rents for municipality lodgings. According to the information provided to the Governmental Committee (see above) the amounts of heating allowance was increased in 2009 and amounted then to BGN 55 per month (€28) and the report indicates that it was BGN 65.72 (€33.5) monthly and BGN 328.60 (€167.5) for the whole season in 2012-2013.
- ▶ Poverty threshold (defined as 50% of median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €121 per month in 2011.

The Committee recalls that in order to assess the level of assistance it takes into account basic benefits, additional benefits and the poverty threshold in the country, which is set at 50% of the median equivalised income (Eurostat) and that it considers that assistance is appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold. In the light of the above data, the Committee holds that the monthly assistance allowance granted remains manifestly inadequate, whether considering the situation of a person under 65 living alone, that of an elderly person over 65 or over 75 years old or of an elderly person over 70 years old receiving social pension for old age].

■ Article 14§1: The Committee concludes that the situation in Bulgaria is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that the number of social services staff is adequate to users' needs.

CYPRUS

Normative action:

■ Article 12§4: The Committee concludes that the situation in Cyprus is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to those benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, a requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle]

In its last conclusion, the Committee asked whether such agreements existed with the following countries: Albania, Armenia, Georgia and Turkey, or whether they were planned and on what timescale. The report indicates that no bilateral agreements have been concluded or are foreseen in respect of child benefit. Therefore, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment is not guaranteed with regard to access to family allowances in respect of nationals of all other States Parties].

[In 2011, Cyprus concluded a bilateral agreement with Serbia and is negotiating one with Russia. However, no bilateral agreement exists with States Parties which are not members of the European Union or the European Economic Area (namely Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, “the former Yugoslav Republic of Macedonia”, the Republic of Moldova, Turkey and Ukraine). Therefore, the Committee considers that accumulation of insurance periods acquired under the legislation of a State Party which is not covered by EU regulations or not bound by an agreement with Cyprus is not guaranteed and that the situation is not in conformity with the Charter].

Other parliamentary measures:

■ Article 12§1: The Committee concludes that the situation in Cyprus is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum level of unemployment benefit is manifestly inadequate;
- ▶ the minimum level of sickness benefit is manifestly inadequate;
- ▶ the minimum level of old age benefit is manifestly inadequate;
- ▶ the minimum level of maternity benefit is manifestly inadequate.

[The Committee notes from Eurostat that in 2011 50% of the Eurostat median equivalised income stood at € 717.

In its previous conclusion the Committee held that the minimum levels of sickness, unemployment, maternity and the social pension were manifestly inadequate as they fell below 40% of the Eurostat median equivalent income. The Committee now notes from the report that due to the financial crisis benefits were reduced and therefore, the situation could not be brought into conformity with the Charter.

According to the report, the amount of the basic insurance earnings on which the basic benefits are assessed were increased from € 141 25 in 2008 to € 167 05 in 2011.

The Committee notes that the minimum levels of sickness and unemployment benefits still represent 60% of the basic insurance earnings (around €430 per month). As regards maternity benefit, the Committee notes from MISSOC that it represents 72% of the weekly value of the basic insurance earnings or around € 516 per month.

As regards the minimum level of pension benefit, according to MISSOC it stood at 85% of the full Basic Pension (Βασική Σύνταξη), based upon basic insurable earnings (Βασικές Ασφαλιστέες Αποδοχές). For a single person the amount of the minimum pension was €88,22 per week (€378 per month)

The Committee also notes from ISSA that the social pension stood at €332,19. If the persons concerned received another pension or a similar payment amounting to less than the social pension, the difference between the two pensions was paid. There is also a special allowance to pensioners at up to €128,15 a month.

The Committee holds that the minimum levels of sickness, unemployment, maternity and pension benefits fall below 40% of the Eurostat median equivalent income and are therefore manifestly inadequate].

ESTONIA

Normative action:

■ Article 12§4: The Committee concludes that the situation in Estonia is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ the retention of accrued benefits is not guaranteed to nationals of all other States Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In

order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

Since the last report, Estonia has concluded bilateral social insurance agreements with the following States: Ukraine, the Russian Federation, the Republic of Moldova. Moreover, Estonia is currently negotiating such agreements with Georgia and the Republic of Azerbaijan. The Committee welcomes the efforts made by Estonia, however, there are still no agreements envisaged with Albania, Andorra, Armenia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro, Serbia and Turkey. Therefore, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment in matters of social security entitlement is not guaranteed between Estonian nationals and nationals of all other States Parties.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to those benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle. The report indicates that no such agreements exist with the following countries: Albania, Andorra, Armenia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro, Serbia and Turkey. Moreover, it states that the draft agreement with Georgia does not cover family allowances. On this basis, the Committee concludes that equal treatment is not guaranteed with regard to access to family allowances in respect of nationals of all other States Parties].

[The Committee notes that the retention of accrued benefits for non-nationals is regulated by Community legislation and bilateral agreements. Given that no bilateral agreements have been concluded with the States Parties which are not EU members and do not form part of the European Economic Area (Albania, Andorra, Armenia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro, Serbia and Turkey), the retention of accrued benefits is not guaranteed for nationals of those states. As there has been no change in the situation, the Committee reiterates its conclusion of non-conformity on this point.

The Committee previously found that the situation was not in conformity because nationals of States Parties which are not covered by EU regulations or not bound by an agreement with Estonia cannot aggregate periods of insurance or employment completed in other countries. Given that no bilateral agreements have been concluded with the States Parties which are not EU members and do not form part of the European Economic Area (Albania, Andorra, Armenia, Bosnia and Herzegovina, Serbia and Turkey), the Committee reiterates its conclusion of non-conformity on this point].

Other parliamentary measures:

■ Article 12§1: The Committee concludes that the situation in Estonia is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum levels of unemployment allowance and unemployment insurance benefit are manifestly inadequate;
- ▶ the minimum level of national pension is manifestly inadequate.

[The Committee observes that the 50% of Eurostat median equivalised income amounted to €233 in 2011.

As regards unemployment benefit, the Committee notes from the report that the number of recipients increased four times during 2008-2010 due to high unemployment and slightly decreased in 2011.

In its previous conclusion the Committee held that the minimum unemployment allowance as well as the minimum unemployment insurance benefit were manifestly inadequate. In this respect the Committee notes from the report that as regards the minimum unemployment allowance, in 2011 its daily rate amounted to € 2.11 (about €65 per month) whereas as of 2013 the daily rate is €3.27 (€100 per month).

The Committee further notes that the maximum length of unemployment insurance benefit is 360 days and the maximum limit of the unemployment insurance benefit is 50% of the three times Estonia's average wage per calendar year. The minimum unemployment benefit rate is 50% of the minimum wage. The Committee thus notes that the minimum unemployment insurance benefit amounted to 50% of €278 or €139 in 2011.

The Committee notes that despite the fact that the Government managed to maintain an upward trend in the amount of unemployment allowance notwithstanding the high demand for this benefit due to high unemployment rate, its level has remained well below the Eurostat at-risk-of-poverty rate and is therefore manifestly inadequate.

The Committee notes from the report that according to paragraph 7(1) of the Labour Market Services and Benefits Act, the Unemployment Insurance Fund will make a decision to terminate registration of the unemployed if the latter refuses, without a good reason, to accept suitable work. The Committee asks in this regard whether unemployment allowance or unemployment insurance benefit will also be withdrawn in this case and whether there is a reasonable initial period where the unemployed may refuse unsuitable employment offer without losing unemployment benefit.

As regards pension benefit the Committee notes that the base value of the pension stood at €114 in 2011 while the national pension stood at €128 and the total number of its recipients stood at 6 428 persons. The Committee considers that the minimum level of pension benefit is manifestly inadequate].

■ Article 13§1: The Committee concludes that the situation in Estonia is not in conformity with Article 13§1 of the Charter on the ground that the amount of social assistance granted to a single person without resources is inadequate.

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: according to the report and MISSOC the subsistence level of a person living alone was €76.70 in 2011 (and €61.36 for each other household member). This level is established on the basis of the minimum expenses needed for food, clothing, footwear and other goods and services to satisfy basic needs. However, the Committee notes from the report that the levels set are lower than the cost of the minimal basket of food, which was estimated at €85.1 in 2011, while the estimated minimum means of subsistence for a single person was estimated at €186.3 (monthly) in 2011. Are entitled to the benefit all persons whose income falls below the subsistence level, after deducting the housing costs (including the rent or maintenance fee of the apartment, the costs for heating, water, gas and electricity as well as the costs of taxes and insurances). The report indicates the "socially justified standards" for dwellings in terms of size and number of rooms, while the limits connected to the housing expenses are determined at local level. The report to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2009, Doc. T-SG(2011)1final, §§271-274) insists on the fact that the subsistence level does not correspond to the subsistence benefit actually paid, which depends on the income of the family and housing expenses incurred in a given month. Thus, the average amount of benefit per application was €98.1 in 2008, €108.38 in 2009 and €146.97 in 2011. The authorities also explain that the housing costs represented 45% of the total amount of the subsistence benefit in 2007 and 47% in 2009 and, although the debts in the payment of housing costs are not subject to coverage from subsistence benefits funds, any person who cannot pay the housing costs is granted assistance to draft feasible debt payment schedules or find a cheaper but decent accommodation. They also indicate that in practice there have been no cases where persons have lost their dwelling and there are very seldom cases where they had to find a different accommodation. According to the information provided to the Governmental Committee, a survey on the use of subsistence benefit and its impact on alleviating poverty was ongoing, with a view to elaborating new policy measures and possibly increasing the subsistence level. The Committee asks the next report to provide updated information in this respect.
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €233 per month in 2011.

In the light of the above data, the Committee considers that the level of social assistance for persons living alone is inadequate on the basis that the minimum social assistance that can be obtained falls below the poverty threshold].

FINLAND

Normative action:

■ Article 12§4: The Committee concludes that the situation in Finland is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;

- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ it has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The coordination of social security systems of the European Union Member States (EU) is governed by Regulation (EC) No. 883/2004 and by Regulation (EC) No. 987/2009 (these regulations apply also to Member States of the European Economic Area – EEA). Article 4 of Regulation (EC) No. 883/2004 explicitly provides for equality of treatment between nationals, on the one hand, and, on the other hand, nationals of other Member States, stateless persons and refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, as well as to the members of their families and to their survivors. Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009 are extended by Regulation (EU) No. 1231/2010 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, as well as to members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State (Article 1). This concerns, inter alia, the situation of a third country national who has links only with a third country and a single Member State.

The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

Finland has not negotiated any bilateral agreements with States Parties that are not EU or EEA members. The report indicates that third country nationals coming to Finland from other Nordic countries (or EU/EEA countries) benefit from equal treatment. However, the report is silent on the situation of third country nationals coming from outside these above-mentioned countries. The Committee, therefore, concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment in matters of social security entitlement is not guaranteed between Finnish nationals and nationals of all the other States Parties.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to those benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, the effective payment of family

benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States, which impose a child residence requirement, are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those

States which apply a different entitlement principle. Given that no such agreements exist with non EU/EEA countries, the Committee concludes that equal treatment is not guaranteed with regard to access to family allowances in respect of nationals of all other States Parties].

[The Committee recalls that in order to ensure the exportability of benefits, States may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures. The report states that work-related benefits are exportable outside the EU/EEA states, but fails to indicate the means ensuring this exportability. The Committee, therefore, concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that it has not been established that the retention of accrued benefits is guaranteed for nationals of all other States Parties.

Given the silence of the report, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that the right to maintenance of accruing rights is not guaranteed for nationals of all other States Parties].

Other parliamentary measures:

■ Article 12§1: The Committee concludes that the situation in Finland is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum level of sickness benefit is manifestly inadequate.
- ▶ the minimum level of old-age benefit is inadequate.

[The Committee notes that 50% of the Eurostat median equivalised income stood at € 909 in 2011.

In its previous conclusion the Committee held that the minimum levels of sickness, maternity and national pension for single persons were manifestly inadequate.

As regards the sickness benefit , the Committee notes from the report that in 2011 the daily allowance for sickness was increased to €22.13 for 25 days a month, thus amounting to €553.25 per month. The Committee holds that the minimum level of sickness benefit is manifestly inadequate as it falls below 40% of the median equivalised income.

As regards old-age benefits, the Committee notes from the MISSOC that the guarantee pension (takkuueläke) guarantees a minimum pension for residents with a small pension or with no other pension. According to the report, the Act on Guarantee Pensions (2010/703) entered into force on 1 March 2011. The guarantee pension is financed by the State and administered by the Social Insurance Institution. The amount of the guarantee pension stood at €688 in 2011. According to the report

the amount of the housing allowance for pensioners is affected by their pension income, including the guarantee pension. The Committee holds that the minimum level of guarantee pension is inadequate as it falls below 40% of the median equivalent income].

■ Article 13§1: The Committee concludes that the situation in Finland is not in conformity with Article 13§1 of the Charter on the ground that the granting of social assistance benefits to foreign nationals from certain States Parties to the Charter, legally residing in Finland, is subject to an excessive length of residence condition.

[A permanent residence permit can be granted when the applicant has been resident in Finland for four consecutive years on a continuous residence permit. Nationals from Nordic countries (Sweden, Norway, Denmark, Iceland), EU and EEA, as well as nationals from Switzerland and Liechtenstein are not required to hold a residence permit. The Committee understands from the information available that nationals which are not from the above-mentioned countries, but are nonetheless from States which are Parties to the Charter, are not entitled to social and medical assistance on an equal footing with Finnish nationals unless they have a permanent residence, i.e. unless they have regularly and continuously been resident in Finland for at least four years. It accordingly holds that the situation is not in conformity with Article 13§1 of the Charter].

■ Article 23: The Committee concludes that the situation in Finland is not in conformity with Article 23 of the Charter on the grounds that:

- ▶ it has not been established that there is an adequate legal framework prohibiting discrimination on grounds of age;
- ▶ the legislation allows practices leading to a part of the elderly population being denied access to informal care allowances or other alternative support;
- ▶ insufficient regulation of fees for service housing and service housing with 24-hour assistance, combined with the fact that the demand for these services exceeds supply, does not meet the requirements of Article 23 of the Charter insofar as these:
 - create legal uncertainties to elderly persons in need of care due diverse and complex fee policies. While municipalities may adjust the fees, there are no effective safeguards to assure that effective access to services is guaranteed to every elderly person in need of services necessitated by their condition.
 - constitute an obstacle to the right to the provision of information about services and facilities available for elderly persons and their opportunities to make use of them as guaranteed by Article 23 of the Charter (Complaint 71/2011).

FRANCE

Normative action:

■ Article 3§2: The Committee concludes that the situation in France is not in conformity with Article 3§2 of the Charter on the ground that the occupational health and safety legislation and regulations do not afford self-employed workers adequate protection.

[It notes that the case-law of the Court of Cassation quoted in the report relates to the reclassification of the legal tie between a self-employed worker and a contracting company into an employment contract. Except in cases of such reclassification, self-employed persons remain excluded from the protection afforded to workers in most activities, and enjoy solely the protection afforded by special regulations applicable to the most dangerous activities. Underlining that all workers, all workplaces and all sectors of activity must be covered by the regulations, the Committee confirms that the occupational health and safety legislation and regulations do not afford self-employed workers a protection in conformity with Article 3§2 of the Charter].

■ Article 12§4: The Committee concludes that the situation in France is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[During the reference period, France did not negotiate any bilateral agreements establishing the principle of equal treatment with States Parties that are not EU or EEA members. Nor does the report mention any unilateral measure taken to extend the principle of equal treatment to nationals of States Parties which are not EU or EEA members and with which France has no bilateral agreement in practice. The Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment in matters of social security entitlement is not guaranteed between nationals and nationals of all the other States Parties.

States Parties may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement, or unilateral, legislative or administrative measures. The principle of aggregation of insurance or employment periods applies to nationals of States Parties covered by EU regulations. With respect to nationals from States Parties not bound by EU regulations, the Committee considers that the guarantee of this principle is one of the parts of the European Convention on Social Security directly applicable to both eligibility to benefits and to the calculation of benefits in all the branches of social security covered by this Convention.

As France has not ratified this Convention, it cannot rely on it to show that it has taken sufficient steps to guarantee the maintenance of accruing rights.

The report specifies that Article 12§4b of the Charter has very limited scope under French social security legislation because most benefits are granted without conditions vis-à-vis insurance periods. This condition is required solely for old-age insurance and exclusively in cases where the person concerned applies for retirement at the legal age of retirement (from the age of 60 onwards) without having the requisite number of quarterly contribution periods to qualify for a full old-age pension. In such cases the old-age pension is paid at a reduced rate. On the other hand, from the age of 65 onwards, insured persons are awarded a full old-age pension and the pension is calculated on the basis of the period of contribution to the insurance system, without a reduction and therefore without having to accumulate all the periods of insurance.

Therefore, reaching the age of 65 is the only requirement to secure payment of a pension, and no accrued rights are lost in the event of an incomplete contribution record under a French scheme.

The Committee notes these explanations and stresses that the fact that Article 12§4b of the Charter has limited scope in France should make it all the easier to guarantee, via unilateral measures, the principle of aggregation of old-age insurance periods for all nationals of States Parties which are not covered by the EU regulations and have not concluded a bilateral agreement with France. Since this is not the case, the Committee reiterates its conclusion of non-conformity on this point].

■ Article 13§1: The Committee concludes that the situation in France is not in conformity with Article 13§1 of the Charter on the grounds that:

- ▶ young persons in need aged under 25 are not all entitled to social assistance;
- ▶ grant of the RSA for foreign nationals with a temporary residence permit, unless EU nationals, is subject to five years of residence on French territory

[The situation in France has not been in conformity with Article 13§1 of the Charter since 2000 on the ground that the minimum age for entitlement to minimum income benefits, except for young people under 25 who have a dependent family, is 25 years. The Committee has always held that in the absence of subsistence aid, the existence of other forms of supplementary or conditional assistance for young people would be insufficient to comply with the Charter. In this regard, it takes note of the information provided to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2009, Doc. T-SG (2011)1final, §§ 275-292) and in the report, that in September 2010, the RSA was extended to young active people, provided they have been engaged in a professional activity for at least the equivalent of two years out of the last three (by the end of 2011, there were around 9 000 young beneficiaries from RSA). It also takes note of the information that different benefits and measures are directly addressed at young people or are available to them, as well as of the Government's argument that the current system is aimed at encouraging family solidarity to combat poverty. In this connection, while noting the progress represented by the extension of the RSA to some young people under 25, the Committee reiterates that under Article 13§1 of the Charter, the right to assistance presupposes that the person is unable to obtain resources "either by his own efforts or from other sources" and that family solidarity cannot be regarded as a sufficiently determinate "other source" of income for a person without resources, but rather takes the form of "a moral value not legally defined". Family solidarity does not provide persons in need with a clear and precise basis of social support, and in addition, many families may not be in a position to supply the necessary minimum level of assistance. The Committee therefore reiterates its previous conclusion of non-conformity on this ground].

[The Committee noted in Conclusions 2009 that the residence condition was no longer required for EU nationals to be entitled to the minimum income benefit. It held, however, that the situation was not in conformity with the Charter because a five-year length of residence was still required for non-EU nationals with temporary residence permits.

The report points out that a number of exceptions exist, concerning refugees, stateless people, single parents and victims of labour accidents/occupational diseases. It confirms, however, that the length of residence condition applies in the other cases.

The Committee recalls that under Article 13§1 of the Charter, in the light of the Appendix to the Charter, foreigners who are nationals of States Parties lawfully residing in the territory of another State Party and lacking adequate resources, must enjoy an individual right to appropriate assistance on an equal footing with nationals (Conclusions XIII-4, Statement of Interpretation on Article 13) and conditions such as length of residence, or conditions which are harder for foreigners to meet, may not be imposed on them.

Accordingly, noting that the situation regarding non-EU nationals as regards their access to RSA has not changed, the Committee maintains its conclusion of non-conformity on this ground].

Other parliamentary measures:

■ Article 11§1: The Committee concludes that the situation in France is not in conformity with Article 11§1 of the Charter on the ground that migrant Roma do not enjoy an adequate access to health care.

[The Committee recalls that, in its decision on the merits of 11 September 2012 of complaint No. 67/2011 lodged by Médecins du Monde – International against France, it found that there had been a violation of Article E in combination with Article 11§1 of the Charter on the ground that the State Party had failed to meet its positive obligation to ensure that migrant Roma, whatever their residence status, including children, enjoy an adequate access to health care.

■ The Committee takes note of the different measures announced aimed at improving Roma integration and, in particular, their access to health care. It considers however that the measures adopted by the Government do not sufficiently ensure adequate health care for migrant Roma, and thus reiterates its finding of non-conformity in Complaint No. 67/2011].

■ Article 11§2: The Committee concludes that the situation in France is not in conformity with Article 11§2 of the Charter on the ground that opportunities for pregnant Roma women and children to have access to free and regular consultations and screening are insufficient.

[The Committee recalls that, in its decision on the merits of 11 September 2012 of complaint No. 67/2011 lodged by Médecins du Monde – International against France, it found that there had been a violation of Article E in combination with Article 11§2 of the Charter on the ground that that there were insufficient opportunities for pregnant Roma women and children to have access to free and regular consultations and screening.

■ The Committee takes note of the different measures announced aimed at improving Roma integration and, in particular, their access to health care. It considers however that the measures adopted by the Government do not sufficiently ensure free and regular consultation and screening for pregnant Roma women and children, and thus reiterates its finding of non-conformity in Complaint No. 67/2011].

■ Article 11§3: The Committee concludes that the situation in France is not in conformity with Article 11§3 of the Charter on the ground of a lack of prevention of diseases and accidents in the Roma community.

[The Committee recalls that, in its decision on the merits of 11 September 2012 of complaint No. 67/2011 lodged by Médecins du Monde – International against France, it found that there had been a violation of Article E in combination with Article 11§3 of the Charter on the ground that that there was an insufficient policy on prevention of diseases and accidents in the Roma community.

The Committee takes note of the different measures announced aimed at improving Roma integration and, in particular, their access to health care. It considers however that the measures adopted by the Government do not sufficiently ensure a policy on prevention of diseases and accidents in the Roma community, and thus reiterates its finding of non-conformity in Complaint No. 67/2011].

■ Article 13§1: The Committee concludes that the situation in France is not in conformity with Article 13§1 of the Charter on the ground that it has not been established that the level of social assistance is adequate.

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: according to the Mutual Information System on Social Protection (MISSOC), the RSA benefit for a single person (not receiving housing benefits) amounted to €466.99 in 2011 or €410.95 (for a single person receiving also housing benefit), i.e. respectively around 28% and 25% of median equivalised income. This constitutes the basic amount for people with no salary. People with low salaries can also receive activity RSA to complement their income.
- ▶ Additional benefits: the report indicates that the low level of basic benefit can be explained by the fact that a number of additional benefits is available (housing benefits, reduced taxes, healthcare benefits, free access to certain services). According to the report, the amount of housing benefits was on average €227 in 2009 for a single RSA beneficiary. The Committee stresses that, in order to assess the level of assistance and its conformity with the Charter, it needs to have detailed figures on monthly basic and supplementary benefits to which a typical claimant living alone is entitled for the years covered by the reference period, or at least for the year at the end of the reference period. It reiterates its request that the next report provide the average amount of all relevant supplementary benefits paid to a single person living alone during the relevant reference period (the next reference period being 2012-2016). In the meantime, it notes respectively from MISSOC and Eurostat sources that in 2009, the basic benefit amount was €454.63 for a single person and that the poverty threshold (defined as 50% of median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold) was €818.50. It finds that the combined amount of basic and additional benefits was in 2009 at a lower level than the poverty threshold. In the absence of information on other relevant additional benefits available and their average amounts, the Committee finds that it has not been established that the level of assistance is in conformity with Article 13 of the Charter.

- ▶ Medical assistance: health costs are met by the universal sickness cover scheme (CMU). The basic cover scheme (CMU-B) is free of charge for the beneficiaries of RSA. People whose income is below a certain amount, including beneficiaries of RSA, also get additional coverage through the complementary cover scheme (CMU-C). As of 13 December 2010, 1 849 people in France were covered by the CMU-B.
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €833 per month in 2011.

The Committee notes that the information provided does not allow to establish that the level of social assistance is compatible with the poverty threshold].

GEORGIA

Possible parliamentary measures to ensure the follow-up of these conclusions:

■ Article 11§1: The Committee concludes that the situation in Georgia is not in conformity with Article 11§1 of the Charter on the grounds that:

- ▶ the measures taken to reduce infant and maternal mortality rates have been insufficient;
- ▶ it has not been established that there is a public health system providing universal coverage.

■ Article 11§2: The Committee concludes that the situation in Georgia is not in conformity with Article 11§2 of the Charter on the grounds that:

- ▶ measures for counselling and screening of pregnant women and children are not adequate;
- ▶ it has not been established that prevention through screening is used as a contribution to the health of the population.

■ Article 11§3: The Committee concludes that the situation in Georgia is not in conformity with Article 11§3 of the Charter on the ground that it has not been established that adequate measures have been taken to ensure access to safe drinking water in rural areas.

■ Article 12§1: The Committee concludes that the situation in Georgia is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the number of risks covered by the system of social security is inadequate;
- ▶ the minimum level of old age benefit is inadequate;
- ▶ the minimum level of maternity benefit is inadequate.

[In the absence of the Eurostat median equivalised income indicator, the Committee notes from the report that in 2011 the subsistence minimum stood at GEL 156,9 (€72). According to the report, this indicator is derived on the basis of current average prices of food and non- food products.

As regards old age pension, the Committee notes from MISSCEO that a flat rate of GEL 80 (€ 37) was paid in 2011. The Committee further notes from the report that as of September 2011 old-age pension amounted to GEL 100 (€ 46). Supplements are

paid in accordance with years worked with GEL 2 for up to 5 years and a maximum of GEL 10 for over 25 years of service. The Committee holds that the level of old-age benefit is inadequate.

As regards the level of sickness benefit, the Committee notes that it is paid at 100% of the previous wage. It asks what is the minimum level of sickness benefit. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

As regards maternity benefit, the Committee notes that 126 of maternity leave are paid and the basis for calculating the amount of maternity benefit is the average monthly wage of the employee. However, the Committee notes from MISSCEO that the basic amount of the cash benefit calculated based on salaries cannot exceed GEL 600 (€ 276). The Committee considers that the maximum amount of maternity benefit, calculated per month of the maternity leave (GEL 142) falls below the poverty threshold. Therefore, the minimum level of maternity benefit is inadequate].

■ Article 12§3: The Committee concludes that the situation in Georgia is not in conformity with Article 12§3 of the Charter on the ground that inadequate measures were taken to raise the system of social security to a higher level.

[The Committee takes note of the information contained in the report submitted by Georgia.

In its previous conclusion (Conclusions 2009) the Committee asked what progress was achieved in practice following the revision of social security legislation.

In reply the Committee takes note of the developments in the child care system, including children in institutions as well as small family type houses, children crisis centres, homeless children shelter etc, during 2008-2011. It notes that by the Order No 281 of the Minister of Labour, Health and Social Affairs child care standards were approved and by Order No 01/13/N of 2011 the day care centres service standards for persons with disabilities were approved. It also takes note of the 2011-2012 Action Plan regarding the major areas of child care system reform.

The Committee notes that children in care is outside the material scope of Article 12§3 and should be reported under Article 17§1.

The Committee notes furthermore that with the Resolution No 218 of 2009 that the coverage of health insurance has been expanded to cover, besides the families below the poverty line, homeless children, state artists, teachers etc. The Committee also notes that the level of old age pension was increased to GEL 100 in the reference period.

The Committee has held (Conclusions XIV-1, Statement of Interpretation on Article 12) that the system of social security should continue to play a crucial part in the redistribution of income and in maintaining social cohesion. In view of the close relationship between the economy and social rights, the pursuit of economic goals is not necessarily incompatible with this requirement. The states may consider that consolidating public finances in order to prevent deficits and debt interest from increasing, is one way of safeguarding the social security system. The Committee

nevertheless, reserves the possibility of assessing whether the methods chosen by the State to achieve these objectives are appropriate.

The Committee recalls that in its decision on the merits of 7 December 2012 of the Complaint No 76/2012 – Federation of employed pensioners of Greece (IKA-ETAM) v. Greece §69, it held that it is necessary by virtue of the requirements of Article 12§3 for the state party to maintain the social security system on a satisfactory level that takes into account the legitimate expectations of beneficiaries of the system and the right of all persons to effective enjoyment of the right to social security. This requirement stems from the commitment of state parties to 'endeavour to raise progressively the system of social security to a higher level' which is expressly set out in the text of Article 12§3.

The Committee further recalls that Article 12§3 requires states to improve their social security system. The expansion of schemes, protection against new risks or increase of benefits are examples of such improvement. In order to ascertain whether the changes introduced do not infringe the principle and spirit of social security, the Committee makes a reasoned assessment of changes to the situation.

The Committee considers that the measures taken during the reference period are inadequate. The modifications carried out are not proportionate to the aim of raising the system of social security to a higher level. Therefore, the situation is not in conformity with the Charter].

■ Article 14§2: The Committee concludes that the situation in Georgia is not in conformity with Article 14§2 of the Charter on the ground that it has not been established that measures are taken to encourage individuals and voluntary organisations to participate in the establishment and running of social welfare services.

[In its last conclusion, the Committee asked the next report to provide information on the following issues:

- ▶ the measures designed to promote the involvement of voluntary organisations and individuals in the provision of social welfare services;
- ▶ the conditions these bodies must satisfy to be allowed to provide social services;
- ▶ how their activities are monitored;
- ▶ how representatives of civil society are involved in designing policies on social welfare services.

Given the absence of information on all these issues the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that measures are taken to encourage individuals and voluntary organisations to participate in the establishment and running of social welfare services.

The Committee wishes also to know whether and how the Government ensures that services managed by the private sector are effective and are accessible on an equal footing to all, without discrimination at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion].

HUNGARY

Normative action:

■ Article 3§2: The Committee concludes that the situation in Hungary is not in conformity with Article 3§2 of the Charter on the ground that self-employed and domestic workers are not protected by occupational health and safety regulations.

[The Committee previously examined (Conclusions XVII (2005), Conclusions XVIII (2007) and Conclusions XIX (2009) the personal scope of legislation and regulations with regard to workers in insecure employment and concluded that the situation in Hungary was not in conformity on the ground that it had not been established that the self-employed and domestic workers were protected by occupational health and safety regulations (Conclusions 2009).]

According to the report the scope of the Occupational Safety Act does not extend to self employed persons and domestic workers.

In the absence of any information establishing that some form of protection is offered to these categories of workers, the Committee finds that the situation in Hungary is in not conformity with Article 3§2].

Other parliamentary measures:

■ Article 11§1: The Committee concludes that the situation in Hungary is not in conformity with Article 11§1 of the Charter on the ground that measures taken to reduce the mortality rate have been insufficient.

[The Committee notes from WHO that life expectancy at birth in 2009 (average for both sexes) was 74.45 (the EU-27 average that same year was 79,0). The life-expectancy rate is still below that of other European countries, but has increased since the last reference period. The report confirms that life expectancy increased for both men and women during the reference period.

The death rate (deaths/1,000 population) fluctuated from 12.95 in 2008 to 12.92 in 2011.

The report mentions that 90% of deaths are caused by five leading groups of diseases: circulatory system (49.9% of deaths), cancer (25.8%), digestive diseases (5.7%), respiratory diseases (5.1%) and external causes (5.2%). In its previous conclusion, the Committee took note of the measures taken to combat activities that were damaging to health, but concluded that the situation was not in conformity with the Charter on the ground that it had not been established that measures taken to reduce the mortality rate were adequate (Conclusions 2009).

The report describes a number of measures taken to reduce mortality during the reference period, for instance, modernisation of the healthcare system, research initiatives in the cancer field, or development of microregional outpatient medical centres. The report, however, also recognises that the mortality rate is still around one and a half times that of the EU-27 average (that is, for a projected population of 10 million persons, this represents an excess mortality of around 28,00 persons per year). This is confirmed by another source¹, which states that Hungary has the highest rate of avoidable mortality among EU countries. On the basis of this information,

and taking into consideration the still comparatively low life expectancy and high mortality rate, the Committee finds that the measures undertaken to reduce mortality have been insufficient, and reiterates its previous finding of non-conformity.

Infant mortality decreased slightly since the last reference period. In 2010 the rate was 5.3 per 1,000 live births, down from 5.9 per 1,000 live births in 2007. The Committee notes that the rate currently stands a bit above the average for other European countries (the EU-27 rate in 2010 was 4.1 per 1,000).

As regards the maternal mortality rate, the Committee notes that in 2010 the rate reached 15.5 deaths per 100,000 live births, showing no improvement since the last reference period. The Committee asks the next report to indicate if any measures are being taken to improve the situation in this field].

■ Article 12§1: The Committee concludes that the situation in Hungary is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum level of old-age benefit is manifestly inadequate;
- ▶ the minimum level of job-seeker's aid is manifestly inadequate.

[The Committee notes that 50% of the Eurostat median equivalised income stood at € 189 in 2011.

As regards the old-age pension, the Committee notes from the report that the minimum pension is the service which guarantees that, if pension contributions were paid subject to the defined conditions, it is not possible to acquire a lower amount of benefit in the system. The Committee notes that the minimum pension as a percentage of net average wage has been decreasing since 2005 and stood at 20,2% in 2011. According to the report, even if the minimum pension is low, it is constantly increasing through indexation. As an example, the report states that for the person who retired in 2008 the minimum pension stood at 28,500 (€ 98) in that year and increased to 32,090 in 2011 (€107).

The Committee notes that the level of minimum pension is manifestly inadequate as it falls below 40% of the median equivalised income.

As regards unemployment benefit, the Committee notes from the report and MISSOC that job seeker's allowance (benefit) amounts to 60% of the worker's average earnings while job-seeker's aid stood at 40% of the minimum wage applicable at the time of the submission of the application. The Committee understands that the minimum level of job-seeker's allowance (benefit) stood at € 150 or 60% of the minimum wage in 2011. As regards job seeker's aid, the Committee notes that it amounts to 40% of the legal minimum wage. The Committee understands that in 2011 it stood at € 100. The Committee notes that the minimum level of job-seeker's aid is manifestly inadequate].

■ Article 13§1: The Committee concludes that the situation in Hungary is not in conformity with Article 13§1 of the Charter on the grounds that:

- ▶ it is not established that adequate assistance is available to any person in need;
- ▶ the level of social assistance paid to a single person without resources, including the elderly, is manifestly inadequate.

[To assess the level of social assistance during the reference period, the Committee takes note of the following information:

- ▶ Basic benefit: the Committee understands from the report and MISSOC that the availability allowance corresponds to 80% of the minimum old-age pension, i.e. HUF 22 800 (€73), that the maximum amount of regular social assistance for a single person living alone corresponds to 90% of the minimum old-age pension, i.e. HUF 25 650 (€82), that the old-age allowance amount for a single person living alone corresponds respectively to HUF 27 075 (€87) if the person is below 75 and HUF 37 075 (€119) after 75. It asks the next report to confirm that this interpretation is correct.
- ▶ Additional benefits: according to the report, three types of home maintenance support are provided to socially deprived persons and families to cover home related expenses. The first one is paid annually to households whose monthly income per capita does not exceed 250% of the minimum old-age pension (HUF 71 250 in 2011 = €228). The amount ranges between HUF 2 500 (€8) and 30% of the acknowledged monthly costs of home maintenance (if the monthly income per capita in the household does not exceed 50% of the minimum old-age pension). The monthly cost for home maintenance is calculated with reference to the number of people in the household and the cost per square metre set by the law, for example the acknowledged cost of home maintenance for a single person household was, as from 2009, HUF 450 x 35 square metres (HUF 15 750 = €50). As an alternative to this support, another one aims specifically at covering debts related to home maintenance while a third type can be provided by local authorities on grounds of equity in addition to the other two types of support as an independent benefit. Between 2007 and 2011, a social support for gas consumption and district heating was also available (aimed at coping with the increase in the price of gas at that time) but was then gradually decreased and restricted until it was entirely replaced by the home maintenance support in 2011. According to the report, in 2011 there were 434027 beneficiaries of the home maintenance support (average annual allowance provided in 2011: HUF 40805 = €130) and 83820 beneficiaries of the local home maintenance support (average annual allowance: HUF 30937 = €99).
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €189 in 2011. According to the data presented in the report, the value would rather be at €167 (this value is compatible with the rate applicable at 31 December 2011).

The Committee recalls that, under Article 13§1 of the Social Charter, the assistance is appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a single person living alone is not manifestly below the poverty threshold. It notes from the information above that the amounts granted in respect of the availability allowance, the allowance for persons of active age and old-age allowance correspond to values between 22% and 36% of the median equivalised income (calculated at the rate of 31 December 2011) and are therefore manifestly inadequate. It notes that while other additional allowances might be available to

complement the basic benefit, in particular the temporary allowance, in the absence of information about the minimum amount available to a single person and the confirmation that such allowance has not a limited duration, it does not find it established that adequate assistance is available to any person in need and it considers that the level of social assistance paid to a single person without resources, including the elderly, is manifestly inadequate].

■ Article 14§1: The Committee concludes that the situation in Hungary is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that effective and equal access to social services is guaranteed to nationals of all other States Parties.

[The Committee notes from its previous conclusion that the main eligibility criterion for social services is need, that is a lack of a capability for self-sufficiency.

In its last conclusion, the Committee asked whether some social services were free of charge and, in respect of services which were not free of charge, what criteria regulated fees. According to section 115/A §1 of the Social Act no fees may be charged for the following services: village and homestead caretaker service, catering at the soup kitchen, family assistance service, community care, street social work, day care for homeless people, and care provided at night-time shelter. For services that are not provided free of charge, a usage fee is payable, which depends on the expenses of the service provider and the amount of state support. The amount thus calculated is the institutional usage fee, which can be reduced if the income of the person receiving care is very low. For example, in the case of long-term residential institutions, are taken into account any monthly regular income of the person receiving care, but also his/her real estate property and any significant financial assets.

The Committee had already asked twice what length of residence was required for nationals of other States Parties to be eligible for services other than residential care, the provision of meals and temporary assistance. Given the absence of a reply to this question again, the Committee concludes that the situation is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that effective and equal access to social services is guaranteed to nationals of all other States Parties].

IRELAND

Normative action:

■ Article 12§4: The Committee concludes that the situation in Ireland is not in conformity with Article 12§4 of the Charter on the ground that the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[The Committee notes that the Irish report contains no information regarding Article 12§4. The Committee refers to its previous conclusion (Conclusions 2009) where it held that the situation was not in conformity with the Charter on the ground that nationals of States Parties not covered by Community regulations or not bound by an agreement concluded with Ireland have no possibility of accumulating insurance or employment periods completed in other countries. The Committee reiterates its previous finding of non-conformity].

Other parliamentary measures:

■ Article 3§4: The Committee concludes that the situation in Ireland is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that the public authorities promote the progressive institution of occupational health services.

■ Article 11§3: The Committee concludes that the situation in Ireland is not in conformity with Article 11§3 of the Charter on the grounds that:

- ▶ it has not been established that adequate measures are in place to prevent the risks arising from asbestos
- ▶ it has not been established that adequate measures are in place to prevent and reduce accidents.

■ Article 12§1: The Committee concludes that the situation in Ireland is not in conformity with Article 12§1 of the Charter on the grounds that the minimum levels of sickness, unemployment, survivor's, employment injury and invalidity benefits are inadequate.

[Ireland has submitted no information on Article 12§1 in its report. The Committee refers to its previous conclusion (Conclusions 2009) where it held that the situation was not in conformity with the Charter on the grounds that the minimum levels of sickness, unemployment, survivor's, employment injury and invalidity benefits were inadequate. The Committee reiterates its previous finding of non-conformity].

■ Article 13§1: The Committee concludes that the situation in Ireland is not in conformity with Article 13§1 of the Charter on the ground that it is not established that foreign nationals without resources, legally residing in Ireland, have adequate access to healthcare.

■ Article 13§4: The Committee concludes that the situation in Ireland is not in conformity with Article 13§4 of the Charter on the ground that it does not find it established that all foreign nationals, legally or irregularly present in Ireland, have adequate access to emergency medical assistance.

■ Article 14§1: The Committee concludes that the situation in Ireland is not in conformity with Article 14§1 of the Charter on the grounds that it has not been established that:

- ▶ there is an effective and equal access to social welfare services;
- ▶ the quality of social welfare services meets users' needs.

■ Article 14§2: The Committee concludes that the situation in Ireland is not in conformity with Article 14§2 of the Charter on the grounds that it has not been established that the quality of social services delivered by non-state providers meets users' needs.

ITALY

Normative action:

■ Article 12§4: The Committee concludes that the situation in Italy is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- ▶ it has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties.

[The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

The report indicates that the agreement signed in 1947 between Italy and Yugoslavia continues to apply in respect of Bosnia and Herzegovina, Serbia and Montenegro. It also applies in respect of "the former Yugoslav Republic of Macedonia", pending the specific agreement now in the process of being ratified. The report further states that there are no social security agreements with Albania, Andorra, Armenia, Azerbaijan, Georgia, the Republic of Moldova, Ukraine or the Russian Federation. The Committee therefore concludes that equal treatment with regard to the right to social security is not guaranteed to the nationals of these States Parties].

[States have the obligation, under Article 12§4, to conclude multilateral or bilateral agreements, or to take unilateral measures to ensure the right to retention of accrued benefits whatever the movements of the beneficiary.

The Committee noted in its previous conclusion (Conclusions 2009) that retention of benefits applies to nationals of States Parties covered by EU regulations or bound by a bilateral agreement with Italy. The Committee asked for confirmation, since its Conclusions 2004, that the exportability of pensions extended to nationals of States Parties not covered by EU regulations or bound by a bilateral agreement with Italy. It also asked whether and how the retention of benefits other than pensions applied to nationals of these countries. In the absence of a reply since then, the Committee concludes that there is nothing to show that Italy is in conformity with the Charter on this ground].

■ Article 23: The Committee concludes that the situation in Italy is not in conformity with Article 23 of the Charter on the ground that it has not been established that there is an adequate legal framework to combat age discrimination outside employment.

[In its previous conclusions (Conclusions 2009 and 2007) the Committee asked if anti-discrimination legislation (or an equivalent legal framework) to protect elderly persons outside the field of employment existed, or was envisaged. The Committee emphasised that in the absence of a reply in the next report, there would be nothing

to prove that the situation of Italy was in conformity on this point. However, again no information was provided on this matter in the current report.

Consequently, the Committee concludes that it has not been established that there is an adequate legal framework to combat age discrimination outside employment].

Other parliamentary measures:

■ Article 3§1: The Committee concludes that the situation in Italy is not in conformity with Article 3§1 of the Charter on the grounds that:

- ▶ there is no appropriate occupational safety and health policy;
- ▶ there is no adequate system to organise occupational risk prevention.

■ Article 12§1: The Committee concludes that the situation in Italy is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ it has not been established that the minimum level of sickness benefit is adequate;
- ▶ the minimum level of pension benefit is inadequate.

[As regards the minimum level of sickness benefit, the Committee notes from the biennial report on the European Code of Social Security that the amount of the sickness benefit paid to workers between the fourth and twentieth day of sickness is set at 50% of their average daily salary. From the twenty-first day onwards the amount is increased to 66.66% of their average total daily salary. The Committee takes note of an example of third level metal worker, with a spouse and two children, earning a monthly wage of €1 575. Such worker would get €35 per day in sickness allowance.

The Committee recalls that in order to assess the adequacy of benefit in question, it considers the minimum level of this benefit as well as the proportion of this benefit to the previous income. The Committee observes from another source that the sectoral minimum wages can range from €600 to €1 300. In this context, the Committee considers that the example of a third level metal worker does not reflect the situation of those employees who receive low or minimum wages. Therefore, the Committee wishes to receive information on the lowest minimum sectoral wages.

In the meantime, the Committee holds that it has not been established that the minimum level of sickness benefit is adequate].

[In its previous conclusion the Committee held that the minimum level of old-age benefit was inadequate. In this connection it notes from the report of the Governmental Committee (Governmental Committee, Report concerning Conclusions 2009, Doc. TS-G (2011)1 final, §147) that the amount of pension is determined by the number of years worked and by the contributions paid. In the event that the amount of pension is less than what is considered 'subsistence level', it will be increased until it reaches the amount determined by law every year. The supplement tops up the income to the amount of the "annual treatment" which is equal twice the "minimum treatment" level.

The Committee further notes from MISSOC that in 2011 the amount of minimum pension (pensione minima) stood at €6 246.89 (€520 per month). The old-age pension (pensione di vecchiaia) is brought up to the amount of the minimum pension if

the annual taxable income of the pensioner is less than twice the minimum pension. The Committee observes that the level of minimum pension falls below 40% of the median equivalised income (Eurostat) and is therefore inadequate].

■ Article 13§1: The Committee concludes that the situation in Italy is not in conformity with Article 13§1 of the Charter on the grounds that:

- ▶ social assistance is not provided for everybody in need;
- ▶ the level of assistance is inadequate;
- ▶ it has not been established that medical assistance is provided for everybody in need.

[The Committee requests the next report to provide information on how, in theory and in practice, each responsible local entity ensures that benefits are effectively provided to any person in need and that their level is not manifestly below the poverty threshold. Meanwhile, it holds that not all persons in need are entitled to social assistance in Italy.]

■ In the absence of relevant information concerning the amounts of benefits paid on average to a single person without resources and the medical assistance available, the Committee holds that the level of social assistance is inadequate and that it has not been established that all persons in need are entitled to medical assistance].

■ Article 30: The Committee concludes that the situation in Italy is not in conformity with Article 30 of the Charter on the grounds that

- ▶ it has not been established that there is an overall and coordinated approach to combating poverty and social exclusion;
- ▶ there is discriminatory treatment of migrant Roma and Sinti with regard to citizen's participation.

[In its previous conclusion the Committee held that Italy had not demonstrated the existence of an overall and coordinated approach providing for adequate measures to combat poverty and social exclusion. The information contained in the present report is not sufficient to alter the Committee's view and taking into account increases in the extent of poverty, the relatively low spending effort on unemployment and social exclusion as well as the moderate effects of social transfers, the Committee reiterates its conclusion of non-conformity in this respect.]

Monitoring and assessment

The Committee recalls that under Article 30 the States Parties must show how they monitor and evaluate poverty reduction measures as well as provide information on the results of such monitoring and evaluation (including on any changes/adaptations undertaken in consequence). It is also important that civil society and social partners are involved in the monitoring and evaluation effort. Furthermore, the Committee considers that the participation of those who experience poverty and social exclusion in the implementation, monitoring and evaluation of poverty reduction measures is crucially important for ensuring the pertinence and efficiency of these measures.

The report provides no information on how the measures to combat poverty and social exclusion are monitored and evaluated in Italy. The Committee asks that the next report contain detailed information in this respect.

The Committee observes from another source, that the National Reform Programmes (NRP) were not well structured to include the participation of all relevant actors (including those experiencing poverty and social exclusion, the social partners, non-governmental organisations and service providers).²

Follow-up to collective complaints

Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010

The Committee refers to its decision on the merits in which it found that there were restrictions on the possibilities for migrant Roma and Sinti to participate in civic decision-making processes. This leads to discriminatory treatment with regard to the right to vote or other forms of citizen participation for Roma and Sinti and, thus, is a cause of marginalization and social exclusion. The Committee held that this situation constituted a violation of Article E taken in conjunction with Article 30.

The information in the present report does not lead the Committee to take a different view of the situation, which consequently remains in breach of Article 30].

LITHUANIA

Normative action:

■ Article 12§4: The Committee concludes that the situation in Lithuania is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ entitlement to State social insurance pensions is subject to a residence requirement;
- ▶ the retention of accrued benefits related to work accidents, occupational disease, sickness or maternity is not guaranteed to nationals of all other States Parties;
- ▶ it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

[The Committee points out that it noted in its previous conclusion (Conclusions 2009) that only permanent residents are entitled to state social insurance pensions and that the requirement to have lived in Lithuania for at least five years without interruption to be considered a permanent resident (section 22 of the 1988 Act on the legal status of foreigners) amounted to a length of residence requirement which was incompatible with the Charter where contributory social security benefits were concerned. Since the report does not mention any change in this field, the situation is therefore still not in conformity in this regard.

In general, the Committee asks how equal treatment between nationals and nationals of all other States Parties is ensured in respect of social security rights for all social security branches].

[The Committee points out that it concluded, in its previous conclusion (Conclusions 2009), that the retention of accrued benefits related to work accidents, occupational disease, sickness or maternity for persons moving to a State Party which is not covered by EU regulations or not bound by an agreement with Lithuania is not guaranteed. It notes that the representative of Lithuania to the Governmental Committee (see Governmental Committee, Report concerning Conclusions 2009, Doc. T-SG(2011)1 final, §209) provided written information according to which, according to Lithuanian legislation and interests, there was no other better option than bilateral agreement. Yet, it notes that no new agreement has been adopted in Lithuania on this matter. As there has been no change in the situation, the Committee confirms its finding of non-conformity in this regard].

[States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures. The principle of accumulation of insurance or employment periods applies to nationals of States Parties covered by EU regulations. With respect to States not bound by EU regulations, the Committee observes that the guarantee of this principle is one of the parts of the European Convention on Social Security directly applicable to both eligibility to benefits and to the calculation of benefits in all the branches of social security covered in the convention.

As Lithuania has not ratified this convention, it cannot rely on it to show that it has taken sufficient steps to guarantee the maintenance of accruing rights. Furthermore, despite the Committee's repeated requests, the report does not state if and how the right to accumulate insurance and employment periods is secured for nationals of States Parties not covered by EU regulations and not bound by a bilateral agreement with Lithuania. The Committee therefore reiterates its conclusion that it has not been established that Lithuania has taken sufficient measures to guarantee the maintenance of accruing rights].

■ Article 13§1: The Committee concludes that the situation in Lithuania is not in conformity with Article 13§1 of the Charter on the ground that the granting of social assistance benefits to nationals of other States Parties is subject to an excessive length of residence requirement.

[In its previous conclusions (Conclusions 2004 and 2009) the Committee held that the situation in Lithuania was not in conformity with the Charter as the granting of social assistance to foreign nationals was subject to an excessive length of residence condition.

The Committee notes from the report that, although the length of residence condition continues to apply, municipalities can grant cash social assistance to people legally residing in Lithuania, although they don't comply with the length of residence condition. The report also explains that in 2011 there were some 4 000 foreigners not covered by social assistance on account of the length of residence condition, and that the resources needed to include them would amount to more than half a million LTL per month, which was not considered compatible with the economic situation of the country. However, some amendments were introduced in 2012 (outside the reference period) to extend partially the social assistance coverage to:

- ▶ aliens holding a long-residence permit to reside in the EU;

- ▶ EU nationals residing in Lithuania for more than three months;
- ▶ aliens granted subsidiary or temporary protection (with the exception of the integration period when they receive social support).

The Committee recalls that, in accordance with the Appendix to the Charter, nationals of other Parties, who are legally resident in the territory of another Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals. This implies that entitlement to assistance benefits, including income guarantees, is not confined in law or in practice to nationals or to certain categories of foreigners and that additional conditions such as length of residence, or conditions which are harder for foreigners to meet may not be imposed on them. While noting the ongoing efforts to extend coverage, and understanding that municipalities can decide, on a case-by-case basis, to grant assistance to foreigners not complying with the legal length of residence condition, the Committee notes that the report does not allow to establish that, in practice, foreigners who are legally resident for less than five years and lack adequate resources are effectively entitled to assistance. Accordingly, it confirms its previous finding of non-conformity on this ground].

Other parliamentary measures:

■ Article 3§3: The Committee concludes that the situation in Lithuania is not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive rate of fatal accidents are inadequate.

■ Article 11§2: The Committee concludes that the situation in Lithuania is not in conformity with Article 11§2 of the Charter on the ground that it has not been established that prevention through screening is used as a contribution to the health of the population.

■ Article 12§1: The Committee concludes that the situation in Lithuania is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum level of unemployment benefit is inadequate;
- ▶ the minimum level of old-age benefit is inadequate;
- ▶ the minimum level of sickness benefit is inadequate.

[In its previous conclusion (Conclusions 2009) the Committee held that the situation was not in conformity with the Charter as unemployment benefit was manifestly inadequate. In this regard it notes from the report of the Governmental Committee to the Committee of Ministers (Governmental Committee, Report concerning Conclusions 2009, Doc. TS-G (2011)1, §148) that after the reform of 2005 the full amount of new unemployment benefit, including both components (the fixed amount and 40% of the insured income of beneficiary) is paid for 3 months and for the remaining period, which depends on the insurance record, the beneficiary gets 20% of former insured income plus the state supported income.

According to the Lithuanian representative, the minimum unemployment benefit is allocated only in exceptional cases when the person does not have the required 18 months of insurance record. Such exceptional unemployment benefit is very low as it comprises basically only one part of unemployment benefit – state supported

income. The Committee further notes from the report that the minimum unemployment benefit in 2010 stood at LTL 350 (€101).

The Committee notes from MISSOC that the monthly Unemployment Insurance Benefit (Nedarbo draudimo išmoka) comprises a fixed and a variable component. The fixed component equals the State Supported Income (Valstybės remiamos pajamos) or LTL 350 (€101).

The full amount is paid during the first three months of unemployment. For the remaining months, till the end of the payment period, the variable component is reduced by 50%. Unemployment Insurance Benefit (Nedarbo draudimo išmoka) cannot be less than the State Supported Income (Valstybės remiamos pajamos), but cannot exceed LTL 650 (€188).

The Committee observes that the minimum amount of unemployment benefit is the same as state supported income and amounted to €101 in 2010 and 2011. The Committee understands that persons who are not eligible for the variable component of unemployment benefit receive this amount to replace their previous income. The Committee holds that the level of this benefit is inadequate as it falls below 40% of the Eurostat median equivalised income].

[The Committee recalls that to assess adequacy of the old-age benefit, the Committee takes into consideration the minimum level of this benefit. In the specific case of Lithuania, the Committee considers two different levels of pension benefit – one paid as social pension to those who cannot claim pension benefit from the social security system, and the second, paid to those having fulfilled 15 qualifying years and having earned the average wage. The Committee notes that these amounts are close (€93 and €101) and none of them comply with the requirement of this provision – they both fall below 40% of the Eurostat median equivalised income.

The Committee therefore, considers that the minimum level of old-age benefit is inadequate. It asks the next report to provide information about the level of old-age pension paid to a person having fulfilled 15 qualifying years and having earned the minimum wage].

[The Committee notes from the report that in 2011 468 000 persons received sickness benefit and the average daily sickness benefit amounted to €16.3. It also notes that since 2009 the replacement rate of this benefit was decreased in view of measures taken in response to economic crisis. In this regard the Committee refers to its conclusion under Article 12§3.

As regards the minimum amount of benefit, it notes from MISSOC that the sickness benefit must not be lower than 25% of the insured income of the year (einamųjų metų draudžiamosios pajamos). The Committee notes that in 2011 the insured income amounted to LTL 1 170 (€339) and therefore, it understands that the minimum amount of sickness benefit was LTL 292.5 (€84).

The Committee considers that the minimum level of sickness benefit is inadequate as it falls below 40% of the Eurostat median equivalised income].

■ Article 13§1: The Committee concludes that the situation in Lithuania is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance paid to a single person, including the elderly, is manifestly inadequate.

[In order to assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: the Committee notes from MISSOC and the report that the monthly benefit level for a single person with no other resources stood at LTL 315 (€91) in 2011, i.e. 90% of the SSI (as increased in August 2008). The same benefit for a couple without children amounted to LTL 630 (€182) whereas for a couple with one child it was LTL 945 (€274);
- ▶ Additional benefits: the Committee notes from the report that the supplements paid for heating and water in 2011 were on average respectively LTL 77 (€22.3) for centralised heating (LTL 125 for other forms of heating, i.e. €36.2), LTL 4.4 (€1.3) for drinking water and LTL 17.1 (€5) for hot water;
- ▶ Medical assistance: the Committee has previously noted that care is free (Conclusions XVIII-1, 2004, 2009). It notes from MISSOC that recipients of social assistance are indeed covered by the State funded Compulsory Health Insurance;
- ▶ Poverty threshold (estimated at 50% of the median equivalised income and calculated on the basis of Eurostat at-risk-of-poverty threshold): it amounted to €167 in 2011.

In the light of the above data, the Committee notes that the combined level of basic and supplementary benefits available to a single person – including elderly people – with no other resources corresponds to 38.5% of the median equivalised income, calculated on the basis of Eurostat data, and is accordingly not compatible with the poverty threshold].

MALTA

Normative action:

■ Article 12§4: The Committee concludes that the situation in Malta is not in conformity with Article 12§4 of the Charter on the ground that it is not established that equal treatment with regard to access to family allowances is guaranteed to nationals of all other States Parties.

[The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

Legal notice 204/1999 recognises the principle of equal treatment for all nationals of Charter States Parties ordinarily residing in Malta. According to the report, the drafting of a new Legal Notice to include nationals of States Parties to the Revised Charter has been finalised and is waiting publication. The report specifies that equal treatment in the application of social security issues is applicable to nationals of the States Parties to the Revised Charter although the new Legal Notice has not yet

been published. In the absence of a reply in the report, the Committee asks again whether the eligibility of nationals of States Parties that are not EU or EEA member states for social security benefits is subject to any general length of residence or employment conditions. The Committee underlines that if the necessary information is not provided in the next report there will be nothing to show that Malta is in conformity with the Charter in this respect.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle.

The Committee asked whether such agreements have been concluded with Albania, Armenia, the Russian Federation, Georgia, Serbia and Turkey, and if not whether they are planned, and within what timescale. The report does not answer this question. The Committee recalls that States Parties can comply with their obligations not only through bilateral or multilateral agreements, but also through unilateral measures. The Committee concludes that it is not established that equal treatment with regard to access to family allowances is guaranteed to nationals of all other States Parties. It asks that the next report indicate whether the Government plans to conclude agreements with States Parties with which there are no such agreements or unilateral measures and, if so, when].

■ Article 13§4: The Committee concludes that the situation in Malta is not in conformity with Article 13§4 of the Charter on the ground that it has not been established that all foreign nationals, whether legally present or in an irregular situation, are entitled to emergency medical and social assistance in Malta.

[The report submitted by Malta contains no information on Article 13§4.

The Committee recalls that Article 13§4 guarantees foreign nationals entitlement to emergency social and medical assistance. States are required to provide appropriate short-term assistance to persons in situations of immediate and urgent need (such assistance may involve the provision of accommodation, food, emergency medical care and clothing). The beneficiaries of this right include foreign nationals who are lawfully present in the country but do not have resident status, as well as foreign nationals who are in an irregular situation in that country. The Committee asks that this matter be duly addressed in the next report, which will allow the situation in Malta to be assessed. In particular, it maintains its request that the next report should provide updated information on the emergency social and medical assistance available to foreign non-resident nationals, both as regards foreign nationals legally present on the territory asylum seekers and persons in an irregular situation. In the

meantime, it finds that it has not been established that all foreign nationals, whether legally present or in an irregular situation, are entitled to emergency medical and social assistance in Malta].

Other parliamentary measures:

■ Article 3§1: The Committee concludes that the situation in Malta is not in conformity with Article 3§1 of the Charter on the grounds that it has not been established that:

- ▶ there is an adequate occupational health and safety policy;
- ▶ occupational risk prevention is organised at company level, work-related risks are assessed and preventive measures geared to the nature of risks are adopted.

■ Article 3§4: The Committee concludes that the situation in Malta is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that measures are taken to promote the progressive development of occupational health services.

[The Committee previously examined (Conclusions 2009) the gradual introduction of occupational health services. It deferred its conclusion pending receipt of information on measures taken to promote the progressive development of occupational health services within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources; and on strategies geared to provide access to such services for all workers in all sectors of activity and all undertakings.

In reply to the Committee's request, the report states that under Section 16 of Regulation No. 36/2003 on general provisions for health and safety at workplaces, workers are entitled to periodic medical examinations, at the employers' cost. Since the employer must ensure that workers are provided with a health surveillance which is appropriate in regard to the occupational risks, additional medical examinations shall be carried out whenever mandatory risk assessment reveal an identifiable disease or adverse health condition in relation to work, or the likelihood that, given the working conditions, such a disease or condition may occur. Arrangements for appropriate health surveillance (hire medical physicians, accommodate in-house expertise, use public health services) are decided by the employer in consultation with the workers' health and safety representative. Quoting from an EU study report, the report also indicates that in practice, a number of workers are not covered by medical examination and have no access to a workers' health and safety representative.

According to another official source, there were 131 registered occupational therapists in 2010 which, on the basis of the labour force published by ILOSTAT, would amount to 0.74 occupational therapist per 1 000 workers. According to the OHSA Report for 2010 (p. 12),³ whereas there is currently a void in occupational medicine, the OHSA's application with the University of Malta for setting up a postgraduate certificate course in occupational health for medical physicians was rejected for lacking demand and expertise.

The Committee takes note of this information. It considers that the report does not establish that workers have access to occupational medicine in practice, that measures

are taken to promote the progressive development of occupational health services, and that strategies are adopted to ensure access to such services for all workers in all sectors of activity and all undertakings].

■ Article 12§1: The Committee concludes that the situation in Malta is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum levels of unemployment and sickness benefits are inadequate;
- ▶ the maximum duration of unemployment benefit is too short.

[The Committee notes that 50% of the Eurostat median equivalised income stood at € 453 per month in 2011.

In its previous conclusion the Committee held that the level of minimum sickness, unemployment and special unemployment benefit was manifestly inadequate.

As regards the amount of unemployment benefit, the Committee notes from MISSOC that it amounts to € 7,37 per day for a single person. Benefit is paid weekly covering 6 days of entitlement. The Committee considers that the level of this benefit remains manifestly inadequate and therefore, the situation is not in conformity with the Charter.

As regards sickness benefit, the Committee notes from MISSOC that the employer pays wage/salary for the maximum total number of full days of sick leave the employee is entitled to under the labour law (Wage Regulation Order) or the individual collective agreement. The amount of benefit for a single person is €12,01 per day. The Committee considers that the amount is inadequate and therefore, the situation is not in conformity with the Charter.

In its previous conclusion the Committee held that the duration for which unemployment benefit was paid was too short. In this regard the Committee notes from MISSOC that the qualifying period for unemployment benefit is 50 weeks of paid contributions. As regards the duration of benefit, the maximum length of unemployment benefit is 156 days (5 months), provided that the number of benefit days paid does not exceed the number of contributions paid under a contract of service. The Committee notes that the situation which it found not to be in conformity with the Charter in its conclusions 2006 and 2009 has not changed. Therefore, the Committee reiterates its conclusion of non-conformity on the ground that the maximum length of unemployment benefit is too short.

The Committee recalls that in the meaning of Article 12§1 there must be a reasonable initial period during which the unemployed may refuse an unsuitable employment offer without losing his/her entitlement to unemployment benefit. The Committee asks whether the legislation foresees such reasonable period. In the meantime the Committee reserves its position on this point].

■ Article 13§1: The Committee concludes that the situation in Malta is not in conformity with Article 13§1 of the Charter on the ground that it has not been established that social assistance is provided to everyone in need.

[The Committee notes from the report that, under the Maltese system, social assistance is aimed at people who, for different reasons are not in a condition to work, namely: a head of household who is not fit for employment due to sickness, physical

or mental illness; a person who according to the Employment Training Centre cannot be employed; single parents or separated persons who cannot engage in full-time employment due to family responsibilities and single persons who are over 18 years old, not living with their parents, who cannot engage in gainful occupation or register for employment. A specific means-tested non-contributory assistance scheme (Carers pension) is furthermore available for single or widow persons taking care on a full time basis of a sick relative. The report and MISSOC indicate that a capital resources test is applied in determining eligibility to social assistance: in the case of a single person, the total capital assets (not including the house and first car) must not exceed €14 000; a means test is also applied including any income from employment, investments or rents.

As regards people not falling in the above mentioned categories, the report mentions unemployment assistance benefits, in respect of which applies the requirement to seek suitable work, referred to in previous conclusions (Conclusions XVIII and 2009). Given that non-contributory benefits of this type can be considered as either social security or social assistance, the Committee asks the next report to indicate the Government's reasons for classifying these benefits as social assistance. It asks in this respect to indicate the eligibility criteria to these benefits and reiterates the questions previously raised concerning the notion of "suitable work", what grounds are considered legitimate in refusing employment and what are the consequences of a non-valid refusal i.e., in particular, what forms of social assistance may be refused in case a person would refuse employment, whether the assistance is entirely withdrawn and whether the withdrawal of such assistance may amount to the deprivation of means of subsistence for the persons concerned.

The Committee furthermore asks the next report to clarify what forms of social assistance, if any, apply to people in need not falling within the social assistance categories indicated above and not eligible for unemployment benefits (such as, for example, workers whose salary would be insufficient to satisfy their basic needs and those of their family). In the meantime, the Committee holds that it is not established that social assistance is provided to everyone in need].

■ Article 13§3: The Committee concludes that the situation in Malta is not in conformity with Article 13§3 of the Charter on the ground that it has not been established that services exist, offering advice and personal assistance to persons without adequate resources or at risk of becoming so.

REPUBLIC OF MOLDOVA

Normative action:

■ Article 3§2: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 3§2 of the Charter on the ground that self-employed workers are not adequately protected.

[The Committee previously concluded (Conclusions 2009) that the personal scope of the legislation and regulations on occupational health and safety were not in conformity with Article 3§2 of the Charter on the grounds that self-employed workers were not adequately protected. It asked for information about the level of protection applicable to domestic workers (Conclusions 2009).

The report states that, insofar as Act No. 186-XVI focuses on employers' responsibility for occupational safety and health, most of its provisions cannot apply to the self-employed.

The Committee takes note of this information. Underlining that all workers, all workplaces and all sectors of activity must be covered by the regulations on occupational health and safety, it concludes that the self-employed are not adequately protected in relation to Article 3§2 of the Charter. It again requests that the next report include information about the level of protection applicable to domestic workers. It also asks about the arrangements for protecting the safety and health of home workers].

Other parliamentary measures:

- Article 3§1: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 3§1 of the Charter on the ground that the public authorities' involvement in research relating to occupational health and safety as well as in the training of qualified professionals is inefficient.
- Article 3§2: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 3§2 of the Charter on the ground that levels of protection against asbestos and ionising radiation are inadequate;
- Article 3§3: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 3§3 of the Charter on the grounds that:
 - ▶ the occupational accident reporting system is inefficient;
 - ▶ measures taken to reduce the excessive number of fatal accidents are insufficient;
 - ▶ the labour inspection system is inefficient.

[The Committee concludes that due to the low level of material and human resources in the labour inspectorate, the fact that the law entrusts the investigation of most occupational accidents to employers and the low amount of administrative fines, it cannot be concluded that the labour inspection system is efficient. In order to gain a more precise picture of the administrative measures that inspectors are empowered to take and the dissuasiveness of the penalties applied, the Committee asks that the next report provide information on the following points:

- ▶ any change in the general framework for labour inspection activities during the reference period;
- ▶ the number, while distinguishing clearly between administrative staff and inspection staff, of inspectors assigned to supervising the application of the legislation and regulations on occupational health and safety;
- ▶ the number of general, thematic and unscheduled inspection visits assigned solely to the occupational health and safety legislation and regulations;
- ▶ the application of the legislation and the regulations on the labour inspectorate throughout the country in practice;
- ▶ details, by category, of administrative measures that labour inspectors are entitled to take and, for each category, the number of such measures actually taken;

- ▶ the outcome of cases referred to the prosecution authorities with a view to initiating criminal proceedings;
- ▶ figures for each year of the reference period].

■ Article 11§1: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 11§1 of the Charter on the grounds that insufficient efforts have been undertaken to reduce the prevailing high infant and maternal mortality rates.

■ Article 11§2: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 11§2 of the Charter on the grounds that it has not been established that:

- ▶ screening for diseases responsible for high levels of mortality is available;
- ▶ free medical supervision is provided throughout the period of schooling.

■ Article 11§3: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 11§3 of the Charter on the grounds that it has not been established that:

- ▶ that there are adequate measures protecting the population from the risks of asbestos;
- ▶ adequate measures have been taken to prevent smoking;
- ▶ efficient immunisation and epidemiological monitoring programmes are in place;
- ▶ there are adequate measures in force for the prevention of accidents.

■ Article 12§1: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ it has not been established that the minimum level unemployment benefit is adequate;
- ▶ the minimum level of old-age benefit is manifestly inadequate.

[The Committee recalls that the minimum amounts of income-replacement benefits should never fall below the poverty threshold. The Committee notes from another source that the living subsistence level in 2011 amounted to around 1 400 lei (€84).

As regards the minimum amount of unemployment benefit, the Committee notes from MISSCEO that the amount of this benefit is based on the national average gross wage for the previous year. Under 5 years of employment it amounts to 50% of the national average wage, for 5-10 years 55%, for 10 years or more at 60%. The amount of benefit is reduced by 15% at three-monthly intervals but may not fall below the minimum wage. The Committee asks the next report to provide information on the minimum wage and to confirm that the minimum level of unemployment benefit may not fall below the minimum wage. In the meantime, it holds that it has not been established that the level of unemployment benefit is adequate.

The Committee notes from the report that in 2011 the replacement rate of the old-age benefit amounted to 27,2%. In the course of 2008-2011 the average pension benefit rose by 35%.

The Committee notes from the report that in 2011 the minimum old-age benefit for farmers amounted to 570,66 lei in 2011 (€ 34) while for other beneficiaries to 641 lei (€38). The Committee notes that this level falls below the poverty threshold. It therefore holds that the minimum level of old-age benefit is manifestly inadequate].

■ Article 12§2: The Committee concludes that the situation is not in conformity with Article 12§2 of the Charter on the ground that it has not been established that the Republic of Moldova maintains a social security system at a level at least equal to that necessary for the ratification of the European Code of Social Security.

[The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of a higher number of parts than ILO Convention No 102 relating to social security; six of the nine contingencies must be accepted although certain branches count for more than one part (old-age counting per three for example).

The Republic of Moldova has signed on 16 September 2003 the European Code of Social Security but has not ratified it. Therefore, the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on the compliance of the states bound by the European Code of Social Security and has to make its own assessment.

In addition, the Republic of Moldova has ratified none of the following conventions of the International Labour Organisation: Conventions No. 102 (Social security, minimum standards, 1952), No. 121 (Employment Injury Benefits, 1964), No. 128 (Invalidity, Old-Age and Survivors' Benefits, 1967), No. 130 (Medical Care and Sickness Benefits, 1969) and No. 168 (Employment Promotion and Protection against Unemployment, 1988).

The social security system covers all the nine branches. The Committee notes, with regard to the personal scope and the level of benefits, that it finds in its conclusion under Article 12§1 that the situation is not in conformity on the grounds that it has not been established that the minimum level unemployment benefit is adequate and that the minimum level of old-age benefit is manifestly inadequate. Furthermore, as it does not have any information on the subject, it asks what the personal scope of a number of the benefits is, namely the percentage of persons insured against this risk out of the total active population.

The Committee also refers to its conclusion under Article 12§3 in which it concludes that the situation is not in conformity with Article 12§3 of the Charter on the ground that efforts taken to progressively raise the system of social security to a higher level are inadequate.

Therefore, the Committee concludes that it has not been established that the Republic of Moldova maintains a social security system at a level necessary for the ratification of the European Code of Social Security].

■ Article 12§3: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 12§3 of the Charter on the ground that efforts made to progressively raise the system of social security to a higher level are inadequate.

[In its previous conclusion (Conclusions 2009) the Committee held that the situation was not in conformity with the Charter on the ground that it had not been established that sufficient steps were taken to raise progressively the system of social security to a higher level.

The Committee now notes from the report that amendments have been introduced to the pension benefit system. The period of contributions for drawing full pension has been increased by 6 months for men and in 2011 it made 30 years and 6 months.

Furthermore, according to the report, with a view to respecting the principle of unity, the first step towards unification of the pension system has been taken, aiming at establishment of a system whereby all persons benefit on an equal footing. The Act No. 100 of 05/28/2010 modified the method of calculation of the pension benefit for MPs and the members of the Government and President of the Republic of Moldova, while the Act No. 56 of 06/09/2011 modified the conditions of establishment and calculation of pension benefit for certain categories of citizens (prosecutors, public officials).

Modifications have been introduced to the sickness benefit branch. The employer pays the salary for the second day of sickness, whereas from the third day onwards, the state social security fund covers it.

The Committee considers that the measures taken during the reference period cannot be considered as sufficient for raising the system of social security system to a higher level. Therefore, the Committee holds that the situation is not in conformity with the Charter].

■ Article 13§1: The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 13§1 of the Charter on the grounds that it has not been established:

- ▶ that the level of social assistance paid to a single person without resources is adequate;
- ▶ that the level of social assistance paid to elderly people without resources is adequate and
- ▶ that people lacking resources are entitled to obtain, free of charge, the medical assistance required by their health condition.

[To assess the level of social assistance during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: the Committee notes from the report that the guaranteed minimum monthly family income, initially set at MDL 430 (€24), was increased to MDL 530 (€32) in January-June 2011 and MDL 575 (€33.5) as from July 2011 and that on average social assistance in 2011 was MDL 680 (€44 – rate of 31 December 2011);
- ▶ Additional benefits: the winter-time monthly allowance was MDL 200 (€ 13) from November 2011 to March 2012;
- ▶ Medical assistance: the Committee notes the information provided to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2009, Doc. T-SG(2011)1final , §310), referred above.

- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of poverty threshold value): in the absence of this indicator, the Committee takes the national poverty threshold into account, i.e. the monetary cost of the household basket containing the minimum quantity of food and non-food items which is necessary for the individual to maintain a decent living standard and be in good health. In this connection, the Committee notes from a progress report by the International Monetary Fund in 2011 that, in 2009, the Absolute Poverty line was set at MDL 945.9 (€63.5) and the extreme poverty line was set at MDL 511.5 (€34); according to the Moldovan national bureau of statistics, the subsistence level was estimated at MDL 1 503 (€91) in 2011. It also notes from the information provided by the authorities to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2009, Doc.T-SG(2011)1final, §310) that in 2010 the guaranteed minimum monthly family income corresponded to the poverty threshold value, established at MDL 530 (€29.5).

The Committee stresses that in order to assess the level of assistance, it takes into account the basic benefits, additional benefits and the poverty threshold in the country. The Committee considers that assistance is appropriate when the monthly amount of assistance benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold (defined as 50% of the median equivalised income). In conducting this assessment, the Committee also takes the level of medical assistance into account. The Committee requests the next report to provide clear data concerning, for a given year within the reference period, the amounts of minimum income (for a single person living alone, without resources), any typical average additional benefits available as well as information concerning the medical assistance and the relevant poverty threshold. In the meantime, in the light of the information available, despite the relevant progress made through the recent legislative changes, it does not find it established that the level of social and medical assistance (including as regards elderly people) in the Republic of Moldova complies with the requirements set by Article 13 of the Charter].

MONTENEGRO

Normative action:

■ Article 12§1: The Committee concludes that the situation in Montenegro is not in conformity with Article 12§1 of the Charter on the ground that the duration of unemployment benefit is too short.

[The Committee further notes from MISSCEO that unemployment benefit is granted to an unemployed person for three months if he/she has insurance service from one to five years; four months if he/she has insurance service from five to 10 years; six months if he/she has insurance service from 10 to 15 years; eight months if he/she has insurance service from 15 to 20 years etc.

The Committee recalls that under Article 12 of the Charter, unemployment benefits must be paid for a reasonable duration. The Committee considers that three or four months are not reasonable and therefore the situation is not in conformity with the Charter.

■ Furthermore, concerning unemployment benefits, the Committee recalls that the adequacy of this benefit is also established, *inter alia*, by considering whether there is a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his/her previous skills without losing his/her unemployment benefits. The Committee asks whether the legislation provides for such a reasonable period].

■ Article 13§4: The Committee concludes that the situation in Montenegro is not in conformity with Article 13§4 of the Charter on the ground that it has not been established that non-resident foreign nationals, whether legally present or in an irregular situation, are all entitled to emergency social and medical assistance.

[The Committee recalls that Article 13§4 grants foreign nationals the right to emergency social and medical assistance. The beneficiaries of this right are foreign nationals who are lawfully present in a particular state but do not have resident status and those who are unlawfully present. By definition, no condition of length of presence on the territory can be set on the right to emergency assistance. Under this provision, States Parties are required to provide for those concerned to cope with an immediate state of need (accommodation, food, emergency care and clothing). They are not required to apply the guaranteed income arrangements under their social protection systems. While individuals' need must be sufficiently urgent and serious to entitle them to assistance under Article 13§4, this should not be interpreted too narrowly. The provision of emergency medical care must be governed by the individual's particular state of health.]

The Committee notes that the report and its addendum do not indicate that any form of emergency social or medical assistance is available to foreign nationals of States Parties who are not resident in Montenegro, or are not refugees, asylum seekers, or persons accorded subsidiary or temporary protection. It accordingly asks the next report to provide any relevant information in this respect, including as regards the emergency social and medical assistance available, if any, to persons in an irregular situation. It also notes that even as regards the categories of people addressed by the law (refugees, asylum seekers, persons accorded subsidiary or temporary protection) the information provided concerns medical assistance only, and the law makes reference to possible separate regulations. It asks the next report to provide further details on the type and extent of the assistance provided, on the basis of the relevant separate regulations referred to, and the conditions applied for entitlement to such assistance. It also asks the next report to indicate what form of emergency social assistance (such as emergency accommodation, food, clothing) are available, if any, to non-resident foreigners – whether legally present or not – including those from the above-mentioned categories. In the meantime, it finds that it has not been established that the legislation and practice guarantee that all non-resident foreign nationals, whether legally present or in an irregular situation, are entitled to emergency social and medical assistance].

Other parliamentary measures:

■ Article 12§1: The Committee concludes that the situation in Montenegro is not in conformity with Article 12§1 of the Charter on the ground that the minimum levels of pension and unemployment benefits are manifestly inadequate.

[As regards unemployment benefits, according to MISSCEO, they amounted to 40% of the minimum wage determined under General Collective Agreement. They are paid on monthly basis. The Committee notes from another source that the monthly minimum wage in 2010 amounted to €141. The Committee notes that the level of the unemployment benefit is inadequate and therefore, the situation is not in conformity with the Charter].

■ Article 13§1: The Committee concludes that the situation in Montenegro is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance is manifestly inadequate.

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: according to MISSCEO and the report, the amount of cash benefits for a family without any income was payable at the monthly rate of €63.50 for a single person, €76.20 for a family of two members, up to €120.70 for a family of five or more members. The amount of the cash benefit payable to a family that has earned an income, is set at an amount equal to the difference between the above mentioned amount and the average monthly income of the family earned in the previous quarter. According to the report, as of April 2012 (outside the reference period), there were 14 451 beneficiary families, including 43 954 people.
- ▶ Additional benefits: the Law on Social and Child Welfare provides for coverage of exceptional expenses in the form of a lump sum cash benefit. The report indicates that, in order to protect the most vulnerable groups, the Government adopted a new program for subsidies of the electricity bills in April 2012 (outside the reference period). The Committee asks the next report to specify the level of the supplementary benefits available to people without resources.
- ▶ Medical assistance: according to the report, recipients of a cash benefit are entitled to healthcare.
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): in the absence of this indicator, the Committee takes the national poverty threshold into account. It notes from an official statistical source that in 2011 the national absolute poverty line stood at €175.25.

The Committee recalls that, according to Article 13§1, the assistance is appropriate when the monthly amount of assistance benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold. In light of the above data, the basic benefit stood much below the poverty threshold and the report does not indicate that regular non-contributory supplementary benefits are available to a single person living alone without resources. The Committee considers, in light of the above data, that the levels of social assistance paid to a single person without resources are manifestly inadequate].

■ Article 23: The Committee concludes that the situation in Montenegro is not in conformity with Article 23 of the Charter on the ground that the minimum level of old-age pension is inadequate.

[The Committee notes from the Mutual Information System on Social Protection of the Council of Europe (MISSCEO) that a person is entitled to a standard old-age pension upon reaching: the age of 67 (for men and women) and having accrued 15 years of pension service; the age of 64 (men) or 59 (women) and having accrued 16 years of pension service (2011); regardless of the age (men and women) with 40 years of pension service. It further notes from the report that the reform of the mandatory insurance system provides for the gradual increase of the age limit for an entitlement to an old-age pension. The Committee asks the next report to provide up-to-date information on the conditions of entitlement to the old-age pension.

The amount of the pension depends on the length of the insurance service period and the wage. According to the Pension and Disability Insurance Law, the Participant has a right to the lowest pension, if his/her earnings related pension according to his/her personal coefficient is lower than the lowest pension guaranteed by the Law.

According to the report, the lowest pension paid on 1 January 2012 equalled € 100.40 (€ 97.86 in January 2011, according to MISSCEO). The Committee notes from the report that apart from the lowest pension, the pensioners are not entitled to additional benefits in the field of pension and disability insurance. However, elderly persons with grave physical, mental or sensory impediment, in need of permanent home care and assistance may pursuant to section 24 of the Law on Social and Child Care, regardless of their financial situation, be entitled to a special additional benefit. The amount of the relevant benefit is € 63.00 per month.

In the absence of data on the at-risk-of-poverty threshold value defined as 50% of the median equivalised income, the Committee refers to its conclusion under Article 13§1, which states that the national absolute poverty line for 2011 stood at €175,25. The Committee refers to its conclusion under Article 12§1 and, having regard to the information on pension levels quoted above, it finds that the minimum level of pension is inadequate. Consequently, the situation is not in conformity with the Charter].

THE NETHERLANDS

Normative action:

■ Article 12§4: The Committee concludes that the situation in the Netherlands is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ the retention of accrued social security benefits (with the exception of old-age benefits) is not guaranteed to nationals of all other States Parties;
- ▶ the retention of accrued supplementary benefits is not guaranteed to nationals of all other States Parties.

[The Committee notes from the report that the old age benefit allocated to married couples is always exported, even if there is no international agreement. It asks what the situation is for unmarried couples and single persons.

The Committee also notes from the report that other social insurances are exported outside the EU only if there is an export treaty with the country in question. The report points out that, pursuant to the Benefit Restrictions (Foreign Residence) Act (Wet beperking export uitkeringen – BEU), it should be possible to verify the lawfulness of the payment of these benefits. The Committee notes the joint statement made

in the framework of the Governmental Committee by the States that were not in conformity because it could not be guaranteed that persons moving to another State Party would retain their accrued rights, according to which: "The (Governmental) Committee considers that ratification of the European Convention on Social Security and the conclusion of bilateral agreements is a means of securing compliance with Article 12§4 of the Charter. The retention of social security benefits, irrespective of the beneficiaries' movements between States Parties, calls for co-ordination of the administrative procedures of the States concerned. States should therefore consider the need for further bilateral agreements with non-member countries of the EU if they have a mutual interest in concluding such agreements and there is a significant movement of population between the two countries concerned."(see Report of the Governmental Committee concerning Conclusions 2009 of the European Social Charter (Revised), document T-SG(2011)1, §209).

The Committee reiterates, however, States' obligation, under Article 12§4, to conclude multilateral or bilateral agreements, or to take unilateral measures to ensure the right to retention of accrued benefits whatever the movements of the beneficiary. The Committee recalls that in the absence of an agreement, the Netherlands are required under Article 12§4 to take unilateral steps to comply with the requirements of this provision, including the retention of benefits arising out of social security legislation, irrespective of the person's movements, particularly for long-term benefits (see Conclusions XIV-1, Finland). As the report does not establish that there are agreements with all States Parties to the Charter or unilateral measures and that efforts are being taken to take the necessary measures, the Committee concludes that the situation is not in conformity with the Charter.

With regard to the export of supplementary benefits, the Committee takes note of the government's arguments, in particular those presented by the representative of the Netherlands to the Governmental Committee. He pointed out that the Social Security Supplements Act (Toeslagenwet - TW) provides for a supplement to invalidity or unemployment benefit if it is lower than the legal minimum wage, so as to bring the benefit into line with the legal minimum wage. This benefit is means tested and linked to the well-being index in the Netherlands. According to him, this is a social welfare benefit which consequently cannot be exported (See the Governmental Committee's report concerning Conclusions 2009 of the European Social Charter, document T-SG(2011)1). The Committee recalls nevertheless that it had previously found the situation not to be in conformity in this respect (see Conclusions 2009) on the ground that the BEU prohibited the export of supplementary benefits provided for by the Social Security Supplement Act (TW). The Government defended this prohibition on the ground that these were social assistance benefits as they were means tested, government funded and intended to top up the beneficiary's income, whatever the amount, to the guaranteed income appropriate to his or her situation. The Government also stated that it does not share the Committee's view that the Charter requires supplementary benefits to be exported. The Committee reiterates that it considers the material scope of the notion of retention of accrued benefits to cover benefits such as invalidity, old-age and survivors' benefits, employment injury benefits and death grants (General Introduction to Conclusions XIII-4). It underlines that the term "benefits" refers to all social security benefits, grants and

pensions, including any supplements or increments, irrespective of their contributory or non-contributory nature, sources of financing or means testing. Since the benefits provided for under the TW fall into the above categories, the Netherlands are required to ensure that they are fully exportable. Consequently, the application of the BEU to the TW is not in conformity with Article 12§4 in so far as this prevents any further progress in the field of the export of supplementary benefits].

■ Article 23: The Committee concludes that the situation in the Netherlands is not in conformity with Article 23 of the Charter on the grounds that there is no adequate legal framework to combat age discrimination outside employment.

[The report provides that equal treatment of all people residing in the Netherlands is guaranteed under article 1 of the Dutch Constitution. The "Equal Treatment in Employment, in force as of 1 May of 2004, prohibits direct and indirect distinction in employment relations on the basis of age. However, there is no specific legislation addressing discrimination against elderly people in other areas. The Committee recalls that the prohibition of discrimination based on age should be progressively expanded to also include the areas of social security, health care, and provision of goods and services and that an adequate legal framework is a fundamental measure to combat age discrimination in these areas. Consequently, it considers that the existing legislation is insufficient to meet the requirements of the Charter in this respect].

Other parliamentary measures:

■ Article 3§4: The Committee concludes that the situation in Netherlands is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy.

[The Committee previously requested (Conclusions 2009) information on consequences in case an employer chooses not to have recourse to external occupational health services, and on workers' access to occupational physicians.

The report states that the strategy on occupational health services has not changed during the reference period. However the Government helped establish a support centre on risk identification and develop more user-friendly digital assessment tools. The report does neither follow-up on the strategies to assist small and medium-sized undertakings described in the previous report, nor provide the information requested by the Committee.

According to another source, employers must involve an occupational health service or an occupational physician to assist workers prevented from working by diseases, conduct the mandatory risk assessment, and perform the mandatory preliminary and periodic health examinations. To help small and medium-sized enterprises, sector-specific solutions approved by the Labour Inspectorate are available in catalogues. According to a further source, based on the labour force data published by ILOSTAT (2010), there are about 2 100 occupational physicians in the Netherlands, i.e. 0.249 physician per 1 000 workers. Occupational physicians must undergo four years of postgraduate training and constantly update their knowledge and practice. They work in-house, as part of private occupational health services, or as self-employed physicians. According to the same source, the priority given in practice to the

management of absenteeism diverts efforts from prevention, and impedes the occupational physician's independence.

The Committee takes note of this information. It recalls that, when accepting Article 3§4 of the Charter, states undertook to give all workers in all branches of the economy and every undertaking access to occupational health services. These services may be run jointly by several undertakings. If occupational health services are not established by every undertaking the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.

The Committee, given the lack of reply to its requests for information, is not in a position to conclude that there is such a strategy in the Netherlands. It renews its request on the consequences for employers who choose not to have recourse to external health services, and on workers' access to occupational physicians. It also requests information on the legislation applicable to occupational health services, any sectors excluded from the scope of such legislation, and on current strategies to ensure that all workers, especially temporary and agency workers, self-employed workers and domestic or home workers have access to occupational health services. The Committee further requests data on the rate of undertakings which, either in-house or through external suppliers, provide access to occupational health services in practice. It asks to be informed on the follow-up on the strategies to assist small and medium-sized undertakings in providing access to occupational health services. It asks for information on means of control that the legal requirements are met in practice].

■ Article 12§1: The Committee concludes that the situation in the Netherlands is not in conformity with Article 12§1 of the Charter on the ground that it has not been established that there is a reasonable initial period during which an unemployed person may refuse unsuitable job offer without losing his/her unemployment benefit.

[The Committee notes from Eurostat that, in 2011, 50% of the median equivalised income stood at €846 per month.

In its previous conclusion, the Committee asked for more information regarding the grounds on which a person is considered 'culpably unemployed' and is therefore not granted unemployment benefit. It notes from the report on the European Code of Social Security that the Dutch Ministry of Social Affairs and Employment wrote to the Employee Insurance Agency (UWV) requesting it to apply sanctions only where neglect or recklessness amounted to wilful misconduct, directly causing the unemployment of the person concerned, in line with the obligation under Article 68f of the Code.

Furthermore, the report provides no information in reply to another question of the Committee whether there is a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his/her previous skills without losing his/her unemployment benefits. Therefore, the Committee holds that it has not been established that there is a reasonable initial period during which an unemployed person may refuse unsuitable job offer without losing his/her unemployment benefit].

NORWAY

Normative action:

■ Article 12§4: The Committee concludes that the situation in Norway is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ the length of residence required for the retention of accrued non-contributory old-age, invalidity and survivors' benefits is excessive;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[The Committee recalls that, in any event, under the Charter, EU and EEA States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU or EEA, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

Norway had previously negotiated agreements with Croatia and Turkey. The Committee noted in its previous conclusion (Conclusions 2009) that no bilateral agreements guaranteeing equal treatment exist with Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, "the former Yugoslav Republic of Macedonia", the Republic of Moldova or Ukraine. The report reveals that several agreements were concluded during the reference period, but none with States Parties to the Charter. The report also indicates that some States have contacted Norway in order to start negotiations with a view to such agreements, but that Norway felt that it was necessary to limit the number of ongoing negotiations. The Committee asks whether these contacts concerned States Parties to the Charter, and, where applicable, what justified refusal. The Committee concludes that equal treatment with regard to the right to social security is not guaranteed to the nationals of the States Parties with which there is no bilateral agreement.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle.

The Committee asked whether such agreements existed with the following countries: Albania, Armenia, Georgia and Turkey. The report states that there are no bilateral agreements which allow for the exportation of family benefits outside of the EEA. The Committee recalls that States Parties can comply with their obligations not only through bilateral or multilateral agreements, but also through unilateral measures. The Committee asks that the next report indicate whether the Government plans to conclude agreements with States Parties with which there are no such agreements and, if so, when. Nonetheless, contrary to the requirements of the Charter, Norway has not signed bilateral agreements on this matter with States Parties which apply a different entitlement principle to these benefits and, that, since Norway does not have any plan to do so, the situation remains the same and, as a consequence, that the period of time within which agreements should have been concluded is no longer reasonable. The Committee concludes that children not residing in Norway are all not guaranteed equal treatment with regard to actual access to family allowances].

[States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures. The principle of accumulation of insurance or employment periods applies to nationals of States Parties covered by EU regulations. With respect to States not bound by EU regulations, the Committee observes that the guarantee of this principle is one of the parts of the European Convention on Social Security directly applicable to both eligibility to benefits and to the calculation of benefits in all the branches of social security covered in the convention. As Norway has not ratified this convention, it cannot rely on it to show that it has taken sufficient steps to guarantee the maintenance of accruing rights. Furthermore, in its previous conclusions (Conclusions 2006 and 2009), the Committee found that the situation in Norway was not in conformity on the ground that legislation did not provide for the accumulation of insurance or employment periods completed by nationals of States Parties not covered by EU regulations or bound by agreement with Norway. As the situation has not improved during the reference period, the Committee reiterates its finding of non-conformity on this point].

■ Article 23: The Committee concludes that the situation in Norway is not in conformity with Article 23 of the Charter on the grounds that there is no adequate legal framework to combat age discrimination outside employment.

[In reply to the Committee's question the report states that the elderly are protected against discrimination outside employment by the Anti-discrimination and Accessibility Act on grounds of reduced functional capacity, and through the requirements regarding impartiality in public sector administration. The Government has no further plans for new legislation against the discrimination of elderly people. The Committee notes from Section 4 of the Anti-Discrimination and Accessibility Act that it is framed as a disability-specific non-discrimination law, and remarks that elderly persons may be discriminated on the ground of their age regardless of their physical condition which might or might not fall under the definition of disability. The Committee recalls that an adequate legal framework is a fundamental measure to combat age discrimination in many areas of social life and considers that the existing legislation is insufficient to meet the requirements of the Charter in this respect].

Other parliamentary measures:

■ Article 13§1: The Committee concludes that the situation in Norway is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance is inadequate.

[To assess the level of social assistance during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: the law does not provide for a fixed amount of the minimum level of benefit, but provides that the benefit has to be set at a level which secures the claimant "a dignified life" or a "decent minimum". Government guidelines exist in this respect, defining the expenses for which support should be given and the reasonable monthly amounts for subsistence allowance (taking into account the most ordinary expenses in daily life but excluding housing allowance, electricity, housing insurance etc., which are paid separately, depending on the actual needs), which stood at NOK 5 288 (€680) in 2011 for a single person. In response to the Committee's finding of non-conformity in its previous conclusion, the report insists on the fact that these amounts are only given as an indication and that in fact each situation is assessed separately, in order to adapt to the need of the individual, both on a regular basis or to cover exceptional additional costs in special circumstances (moving home, short-term loss of income, necessary upgrading of home equipment, etc.). In addition, a number of essential services (such as day-care, school, health and care services) are either free of charge or require a small participation and, according to surveys, those who receive social assistance benefits over a long period of time have actually higher income than that indicated by the guidelines, with the addition of housing expenses. In fact, only a minority of recipients of social assistance (44.5% in 2011) rely on it as their main source of income. Furthermore, the level of benefits recommended in the guidelines is adjusted annually to reflect the increase in the cost of life and, in 2009, it was additionally raised by 5%.

According to the national report, the minimum yearly amount paid at the end of 2010 to the participants in the individual qualification programme was set at NOK 100,855 (€1,080 per month) for persons under 25 years of age and NOK 151 282 (€1 620 per month) for persons over 25 years of age. In reply to the questions raised in the previous conclusion, the report clarifies that there is no minimum income level or fixed amount limit to be used as a basis when assessing whether participants in the individual qualification programme are entitled to receive supplementary benefits: these are granted depending on a case-by-case assessment of the individual applicant's expenses and income.

In respect of individuals who are not participants in the individual qualification programme, the Committee notes that the total average monthly amount of benefit that a typical all-year recipient of social assistance would receive stood at NOK 8 315 (€1 070) for a single man and at NOK 7 699 (€991) for a single woman. It understands that these figures give the closest approximation to total monthly aid payments that is available in the Norwegian system, as all-year recipients of social assistance can be assumed to be largely dependant on social assistance alone. According to the

Governmental Committee's report (Governmental Committee, Report concerning Conclusions 2009, Doc. T-SG (2011)1final, § 315) and the national report, the actual amounts granted take into account each individual situation and, under the new Act on Social Services in the Norwegian Labour and Welfare Administration, a monitoring mechanism has been set up to verify that this is the case. The Committee notes however that these amounts still fall well below the poverty threshold as defined below (it corresponds to 33-35% of median equivalised income) and therefore are not in conformity with Article 13§1 of the Charter.

- ▶ Medical assistance: the Committee notes that public health care services are available for all residents and that health care expenses are taken into consideration when determining the amount of the financial assistance.
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold): it was estimated at €1 517 per month.

In the light of the above information, the Committee concludes that the level of social assistance is inadequate].

ROMANIA

Normative action:

■ Article 3§2: The Committee concludes that the situation in Romania is not in conformity with Article 3§2 of the Charter on the ground that domestic workers are not covered by occupational health and safety regulations.

[The Committee previously examined (Conclusions 2003, 2007 and 2009) the protection of self-employed, home and domestic workers. It concluded that the situation was not in conformity with Article 3§2 of the Charter on the ground that domestic workers were not covered by occupational health and safety regulations (Conclusions 2007 and 2009).]

The representative of the Government informed the Governmental Committee that extending the protection of Act No. 319/2006 and related regulations to domestic workers was being considered, but that no schedule for amendments was determined. The report does not indicate any change in the current exclusion of domestic workers from the scope of Act No. 319/2006 and related regulations.

The Committee takes note of this information. Recalling that all workers, all workplaces and all sectors of activity must be covered by occupational health and safety regulations, it concludes that the situation is not in conformity with Article 3§2 of the Charter on this point].

■ Article 12§4: The Committee concludes that the situation in Romania is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ the retention of accrued benefits is not guaranteed to nationals of all other State Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[The Committee reiterates States' obligation, under Article 12§4, to conclude multi-lateral or bilateral agreements, or to take unilateral measures to ensure the right to retention of accrued benefits whatever the movements of the beneficiary.

In its previous conclusion (Conclusions 2009), the Committee noted that retention of accrued benefits is secured to nationals of States Parties covered by EU regulations or bound to Romania by a bilateral agreement and that bilateral agreements cover retirement, invalidity and survivors' pensions. The Committee asked whether the agreements concluded ensure retention of the benefits accrued in respect of the other types of social security provision and concluded that the situation was not in conformity with the Charter because exportability of benefits was not guaranteed for nationals of States Parties not covered by EU regulations and not bound to Romania by bilateral agreement. The report does not answer the question and again only addresses that concerning the exportability of retirement pensions. In addition, since the situation has not changed, the Committee upholds its finding of non-conformity on the ground that the retention of accrued benefits for persons moving to a State Party which is not covered by EU regulations or not bound by an agreement with Romania is not guaranteed].

[States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures. The principle of accumulation of insurance or employment periods applies to nationals of States Parties covered by EU regulations. With respect to States not bound by EU regulations, the Committee observes that the guarantee of this principle is one of the parts of the European Convention on Social Security directly applicable to both eligibility to benefits and to the calculation of benefits in all the branches of social security covered in the convention. As Romania has not ratified this convention, it cannot rely on it to show that it has taken sufficient steps to guarantee the maintenance of accruing rights.

In its previous conclusion (Conclusions 2009), the Committee noted that accumulation of insurance or employment periods is secured in principle to nationals of States Parties covered by EU regulations or bound to Romania by a bilateral agreement and that bilateral agreements cover retirement, invalidity and survivors' pensions. The Committee asked whether the agreements concluded guarantee the principle of accumulation of insurance or employment periods where the other types of social security provision are concerned. The report states that, under Law No. 76/2002, unemployment benefits may be granted to foreign nationals and stateless persons who were employed in Romania, provided that they contributed to the Romanian unemployment insurance scheme for a minimum of 12 months during the 24 months preceding the date of the application. Unemployment benefit entitlements may be transferred to the countries where the persons concerned live, under the conditions governed by international and bilateral agreements. The report adds that nationals of States Parties to the 1961 Charter and the Charter may receive unemployment benefits for a maximum of 12 months.

The Committee previously found (Conclusions 2004, 2006 and 2009) that nationals of States Parties not covered by EU regulations or not bound to Romania by bilateral agreement did not have the possibility of accumulating insurance or employment

periods completed in other countries. Since the situation has not changed, the Committee upholds its finding of non-conformity on this head].

Other parliamentary measures:

■ Article 3§3: The Committee concludes that the situation in Romania is not in conformity with Article 3§3 of the Charter on the grounds that measures to reduce the excessive rate of fatal accidents are inadequate.

■ Article 11§1: The Committee concludes that the situation in Romania is not in conformity with Article 11§1 of the Charter on the ground that the measures taken to reduce infant and maternal mortality rates have been insufficient.

■ Article 11§2: The Committee concludes that the situation in Romania is not in conformity with Article 11§2 of the Charter on the grounds that it has not been established that:

- ▶ counselling and screening for pregnant women and children are frequent enough or that the proportion of mother and children covered is sufficient;
- ▶ prevention through screening is used as a contribution to the health of the population.

■ Article 12§1: The Committee concludes that the situation in Romania is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum level of unemployment benefit is manifestly inadequate;
- ▶ it has not been established that the legislation provides an effective guarantee of protection against unemployment risk;
- ▶ it has not been established that the minimum level of sickness benefit is adequate.

[The Committee notes from Eurostat that in 2011 50% of median equivalised income amounted to € 88.

As regards unemployment benefit (unemployment indemnity), the Committee notes from MISSOC that the amount of benefit is a function of person's average income, length of contribution period and the Reference Social Indicator. The latter (indicator social de referinta) stood at RON 500 (€112) in 2011.

The Committee further notes from the report that the reference social indicator is set by the Government decision. Persons having contributed to the unemployment insurance for less than 3 years receive 75% of the reference social indicator. The Committee notes such persons received € 84 in 2011 in unemployment benefit.

The report also refers to persons who are 'treated as unemployed' or 'assimilated to unemployed' and states that they receive 50% of the reference social indicator (€ 56) in unemployment benefit. According to the report, this category of workers covers persons, having accumulated a minimum contribution period of 12 months. Such persons will receive unemployment benefit if they are registered at employment agencies, have no income or have income from legal activities but lower than the reference social indicator in force and do not qualify for retirement.

The Committee thus observes that the minimum level of unemployment benefit paid to persons 'treated as unemployed' amounts to € 56 which is well below the poverty threshold and is therefore, manifestly inadequate.

As regards the circumstances in which a person may be refused unemployment benefit or the latter may be withdrawn, the Committee asked in its previous conclusion whether there was a reasonable initial period during which the worker could refuse a job or training offer which did not match his/her skills without losing unemployment benefit. The Committee observes that the report describes the rights emanating from Law No 76/2002 as amended, stipulating the conditions of granting and withdrawal of unemployment benefit. However, the report fails to reply to the Committee's question whether there is a reasonable initial period during which the worker may refuse an unsuitable employment offer without losing the entitlement to benefit. Therefore, the Committee holds that it has not been established that the legislation provides an effective guarantee of protection against unemployment risk].

[As regards sickness benefit, (beneficiu pentru incapacitate de munca) it is paid to the insured persons by the employer from the first day until the 5th day of temporary work incapacity. It amounts to 75% of the average insured gross earnings over the last 6 months. The amount is increased to 100% of the average insured earnings over the last 6 months if the sickness is caused by: tuberculosis, AIDS, any type of cancer, group A infectious and contagious diseases and medical and surgical emergencies.

The duration of sickness benefit (Beneficiu de boala) is 183 days in any one year period, counted from the first day of the contingency. As from the 90th day medical leave can only be extended to 180 days, with the approval of the social insurance expert physician.

The Committee notes that the report fails to provide information on the minimum level of sickness benefit. Therefore, the Committee holds that it has not been established that the level is adequate.

In this respect, the Committee asks that in the absence of the statutory minimum level of this benefit, the next report should contain information on the minimum wage. The Committee seeks confirmation that 75% of the minimum wage will represent the minimum level of benefit in question].

■ Article 13§1: The Committee concludes that the situation in Romania is not in conformity with Article 13§1 of the Charter on the ground that it has not been established that the level of social and medical assistance is adequate.

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: according to MISSOC and the information provided to the Governmental Committee, the guaranteed minimum income was RON 125 (€29) per month for a single person and RON 225 (€53) for a family of two persons. The amount of social aid is calculated as a difference between the guaranteed minimum income and a person's net income and it's increased by 15% if at least one member of the family is working.

- ▶ Additional benefits: according to the report and MISSOC allowances for heating of a dwelling are granted to the beneficiaries of social aid. The information provided to the Governmental Committee indicates that the costs of thermal energy for central heating are 100% reimbursed, costs of gas are reimbursed up to RON 262 (€61) per month if the monthly net income per family member is up to RON 155 (€36) (according to MISSOC, the reimbursement is up to 90% of the heating invoice, with a 10% increase for a single person and 100% can be granted to recipients of social aid) and costs of heating by wood, coal and oil are reimbursed up to RON 58 (€14) for recipients (single persons or families) entitled to Social Aid. The report furthermore indicates that children and students from families entitled to social aid are also entitled to scholarships for compulsory education but also for pre-university and university education. In conformity with the Law No. 116/2002, the local councils are also obliged to ensure access of socially excluded single persons and families to public services of strict necessity, such as water, electrical energy, heating etc. The report to the Governmental Committee furthermore indicates that, under Law No. 208/1997, beneficiaries of social aid are entitled to free social services in the welfare canteens, providing free meals twice a day (people who have temporarily no income can also benefit by these services 90 days a year).
- ▶ Medical assistance: according to MISSOC, the report and the information provided to the Governmental Committee, under Law No. 116/2002 and Law No. 95/2006, the beneficiaries of social assistance are covered by the health care scheme and the contribution for sickness and maternity benefits is paid by the National Agency for Social Benefits. In 2010, 482 711 recipients of social aid were registered to social health insurance, of which 34.2% (165 293 persons) benefited from medical assistance. The Committee notes from the information provided to the Governmental Committee that beneficiaries of social aid are entitled to emergency care as well as special care. It recalls in this respect that under Article 13§1 everyone who lacks adequate resources must be able to obtain medical care free of charge in the event of sickness as necessitated by his/her condition and reiterates its question as to whether a person without resources requiring treatment for a sickness, not necessarily of an emergency type, receives adequate health care. In this connection, it notes from another source (FEANTSA country fiche, 2012) that homeless people are reported to face considerable barriers to healthcare as, according to Law No. 95/2006, uninsured persons can receive a maximum of 72 hours medical care and the unemployed and those not receiving state benefits must pay €8 per month for health insurance cover; the same applies for mental health care. The Committee asks the next report to comment on this and, in the meanwhile, does not find it established that people without resources are entitled to an adequate level of medical care.
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €88 in 2011.

The Committee notes that the guaranteed minimum income, which corresponds barely to 16% of the median equivalised income, is manifestly inadequate. It notes

that a number of additional benefits are available in cash or kind, covering in particular heating, education and food. While considering that these additional benefits are certainly relevant, it notes that the information provided does not allow to deduce to what extent they complement the basic benefit and, therefore, to establish that the level of social assistance is adequate. In addition, it does not find it established that people without resources are entitled to an adequate level of medical care].

■ Article 13§3: The Committee concludes that the situation in Romania is not in conformity with Article 13§3 of the Charter on the ground that it has not been established that people without resources or at risk of becoming so have effective access to adequate services offering advice and personal assistance to prevent, remove or to alleviate personal or family want.

[The Committee notes from the report that, according to the Law on social assistance No. 292/2011, the social services are the activities undertaken to meet social needs, at a general or special level (individual, family or group) to overcome difficult situations, to prevent and fight against social exclusion risks, to promote social inclusion and improve life quality. They are organised in various forms/structures, taking into account the specificity of the activities developed, as well as the special needs of each category of beneficiaries (children, families, persons with disabilities, elderly, victims of domestic violence or human being trafficking, homeless, persons suffering from addictions, etc.) in relation with their socio-economic situation, health, education level and social environment. The services can be organised as public or private services and be provided, with or without accommodation, in a normal or a special regime (i.e. with extended eligibility and access, ensuring for example anonymity of beneficiaries etc.). The categories and types of social services, the activities and functions corresponding to each type of service, as well as the framework regulations of organisation and functioning are established by the classified list of social services, approved by Government decision, at the proposal of the Ministry of Labour, Family and Social Protection.

The persons and families in difficulty benefit of social services within the programmes of community actions aimed at preventing and fighting against risks of social exclusion, approved by decisions of the local/county councils. The social services provides can be public or private persons, but must in any case be accredited according to the law. The report explains in detail the competences in terms of elaboration of public policies, evaluation and monitoring of social services quality, organisation and provision of social services and their financing.

According to the report, under Law No. 116/2002, specific measures aimed at preventing and fighting social exclusion concern young people aged between 16 and 25, which include professional counselling, mediation and employment support (contract of solidarity). The report also provides information on the amounts spent (RON 9 460 064, i.e. €2 216 060) in 2011 through the National Fund of Solidarity to build, renovate, maintain, arrange and modernise social assistance institutions or socio-medical institutions concerning in particular hospitals and care centres for elderly people as well as for other specific categories of people (people with disabilities, victims of domestic violence, homeless people etc.). According to the report, in 2011, RON 23 280 091 (€5 453 460), i.e. 20.6% more than the previous year, have been

spent to subsidize non-governmental organisations and associations providing social assistance and social services on average to 15 718 beneficiaries monthly. The total amount spent through the National Agency for Payments and Social Inspection in order to provide social services (subsidies, programmes of national interest, investments for social assistance centres) was in 2011 RON 37 296 853 (€ 8 736 940), i.e. 14.2% less than in 2010.

As regards the amounts spent for the assistance measures aimed at fighting social exclusion in general, the report indicates that, in 2010, the local councils facilitated the access to housing to 36% of the socially excluded single persons (5 751 individuals) and 35.1% of the socially excluded families (4 379 families) for a total budget of RON 34,324,233 (€8 130 550), representing 43% of the amounts needed. 37 315 single persons and 32 108 excluded families benefited of access to strict necessity public services, for a budget of RON 23 638 628 (€5 599 400). The report indicates that although the allocated amounts represented 67.5% of the amounts needed, compared to the number of beneficiaries, it ensured the access of 92.6% of the socially excluded individuals and 82.8% of the excluded families. During the same period, 38 471 individuals and 34 817 socially excluded families have benefited of other measures taken by local councils for preventing and fighting social exclusion, for a cost of RON 32 817 386 (€7 773 610). In total, in 2010, the amount spent for these measures was RON 90 780 247 (€21 503 600), corresponding only to 59.8% of the amounts estimated as needed.

The Committee recalls that Article 13§3 specifically concerns services offering advice and personal assistance to persons without adequate resources or at risk of becoming so and requires the states to guarantee that such persons are offered advice and assistance to make them fully aware of their rights to social and medical assistance and of the ways to exercise these rights. In this context, the Committee had previously asked whether primary services are provided with sufficient means to give appropriate assistance as necessary, what is the total spending on these services and whether access is free of charge. Considering the fact that the information provided does not indicate to what extent people without resources or at risk of becoming so have effectively access to services offering advice and personal assistance and the fact that the resources allocated to these services are admittedly insufficient to meet the needs, it considers that the situation is not in conformity with Article 13§3 of the Charter].

RUSSIAN FEDERATION

Possible parliamentary measures to ensure the follow-up of these conclusions:

- Article 3§3: The Committee concludes that the situation in Russian Federation is not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive rate of fatal accidents are inadequate.
- Article 11§1: The Committee concludes that the situation in the Russian Federation is not in conformity with Article 11§1 of the Charter on the ground that insufficient efforts have been undertaken to reduce the high infant and maternal mortality rates.

■ Article 12§1: The Committee concludes that the situation in Russian Federation is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of unemployment benefit is manifestly inadequate.

[The Committee recalls that Article 12§1 of the Revised Charter requires that social security benefits are adequate, which means that, when they are income-replacement benefits, their level should be fixed such as to stand in reasonable proportion to the previous income and it should never fall below the poverty threshold defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value (Conclusions 2006, Bulgaria).

In the absence of the Eurostat poverty threshold, the Committee notes from another source¹ that the minimum subsistence level in 2011 stood at 6,369 roubles (€148). In 2010 it stood at 5,688 roubles (€ 132).

The Committee notes from MISSCEO that the minimum level of unemployment benefit (flat rate) in 2012 was fixed at 850 roubles (€19,7) per month and the maximum level at 4,900 roubles (€113) per month. In this regard, the Committee also notes from the report that the minimum amount of unemployment benefit represented 12,2% of the subsistence minimum in 2010. The Committee holds that the minimum level of unemployment benefit is manifestly inadequate and therefore, the situation is not in conformity with the Charter.

Furthermore, concerning unemployment benefit, the Committee recalls that the adequacy of this benefit is *inter alia* also established by considering whether there is a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his/her previous skills without losing his/her unemployment benefits.

In this regard, the Committee notes from the report that the payment of unemployment benefit will be ceased if the beneficiary rejects two suitable employment offers during the unemployment period. The Committee asks what is the definition of 'suitable employment'. It also asks whether the legislation foresees an initial period during which the employed may refuse an offer of an unsuitable job].

SERBIA

Possible parliamentary measures to ensure the follow-up of these conclusions:

■ Articles 12§1: The Committee concludes that the situation in Serbia is not in conformity with Article 12§1 of the Charter on the ground that the duration of the unemployment benefit is too short.

[Concerning the duration of the unemployment benefit, the Committee notes from the report that it shall be three months in case of an insurance period of one to five years, and six months in case of the insurance period of five to 15 years. The Committee holds that the duration of three months is short and the situation is therefore not in conformity with the Charter].

■ Article 13§1: The Committee concludes that the situation in Serbia is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance is manifestly inadequate.

[To assess the level of the social assistance during the reference period, the Committee takes the following information into account:

- ▶ Basic benefits: the level of social assistance is determined on the basis of the consumer price index over the past six months and updated twice a year (in April and October). According to the Mutual Information System on Social Protection of the Council of Europe (MISSCEO), in April 2011 it was RSD6 050 (€58) monthly for an individual. Every other adult and minor in the family gets respectively 50% and 30% of the basic amount. An individual unable to work, a family whose members are all unable to work or a single-parent family are entitled to a 20% supplement.
- ▶ Additional benefits: the Committee notes from MISSCEO that cash benefits' beneficiaries, depending on the size of the household, are entitled to reduced electricity, water and other utility bills (the reductions ranging between 10% and 40%). This reduction falls within the responsibility of the city or municipality governments.
- ▶ The poverty threshold: the Committee notes from several sources (SETimes, June 2011; BalkanInsight April 2011) that the poverty line was considered to be at €80 monthly in 2011. According to the official data based on the 2008 Household Budget Survey, the poverty line stood in 2008 at RSD7 937 (€92.5 at 1 January 2008, €82 at 31 December 2008). Another source (Poverty in Serbia, by Vuk Stojkovic, November 2012) confirms that the poverty line oscillated between €85 and €90 between 2008 and 2010.

The Committee recalls that it considers the assistance to be appropriate where the monthly amount of the assistance benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold (which is set at 50% of the median equalised income). In light of the information above, the Committee concludes that the level of social assistance is manifestly inadequate].

■ Article 23: The Committee concludes that the situation in Serbia is not in conformity with Article 23 of the Charter on the grounds that the level of social assistance for elderly persons with no pension is manifestly inadequate.

[When examining the adequacy of resources of elderly persons under Article 23, the Committee takes into account all the social protection measures guaranteed to the elderly and aimed at maintaining an income level allowing them to lead a decent life, as well as to actively participate in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with the median equalised income. However, the Committee recalls that its task is to assess not only the law, but also the compliance of the practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to the at-risk-of-poverty rates for persons aged 65 and over.

The report provides information on the pension system, which is contributory, and specifies the rate of the lowest pension, which in 2013 (outside the reference period) was RSD12 898 (€113.52). The beneficiaries of this minimum pension are entitled to a cash supplement of RSD4 000 (€35) four times a year. According to the report,

the beneficiaries of the lowest pensions may also be entitled to other benefits. The report provides no information on these benefits, with the exception of the cash social assistance and the long-term benefits available to those taking care of persons requiring assistance for the tasks of everyday life or who are highly dependent.

However, it appears to the Committee that the beneficiaries of the lowest pensions would not be eligible for the cash social assistance, as this assistance is available only to those persons whose income is below the amount of that assistance (currently RSD7 275 (€64). The Committee therefore asks for further information on the additional benefits that those in receipt of the lowest pensions may be entitled to.

The report mentions the introduction of social pensions. The Committee asks for information on these.

According to HelpAge International, 27% of people above the age of 65 receive no pension. The Committee notes that such persons will be eligible for the cash social assistance. It noted in its conclusion under Article 13 that, according to the Mutual Information system on Social Protection of the Council of Europe (MISSCEO), in April 2011, the said assistance amounted to RSD6 050 (€58) monthly for an individual. The Committee notes that the share of persons without an entitlement to a pension is high and asks what the reasons for this are.

The Committee also asks what benefits or assistance such persons are entitled to, in addition to the cash social assistance mentioned above.

The Committee however recalls having found under Article 13§1 the situation not to be in conformity with the Charter due to the manifestly inadequate level of the social assistance. It noted that the basic benefit was RSD6 050 (€58) monthly for an individual (in April 2011) (currently RSD7 275 i.e. €64), and notes from several sources (SETimes, June 2011; BalkanInsight, April 2011) that the poverty line was considered to be at €80 monthly in 2011. According to the official data based on the 2008 Household Budget Survey, the poverty line stood at RSD7 937 (€92.50 at 1st January 2008 and €82 at 31 December 2008). Another source (Poverty in Serbia, by Vuk Stojkovic, November 2012) confirms that the poverty line oscillated between €85 and €90 between 2008 and 2010.

The Committee recalls that it considers pensions and social assistance levels to be appropriate where the monthly amount of benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold (set between 40-50% of the median equivalised income). In light of the information above, the Committee concludes that the level of the social assistance is manifestly inadequate, given in particular the large number of elderly persons who must rely on it. It therefore concludes that adequate resources are not guaranteed.

In the absence of the Eurostat at-risk-of-poverty indicator, the Committee requests that each report provide information about the poverty threshold indicator established by national statistics].

SLOVAK REPUBLIC

Normative action:

■ Article 12§1: The Committee concludes that the situation in Slovak Republic is not in conformity with Article 12§1 of the Charter on the ground that the ground on which sickness benefit can be reduced is discriminatory.

[The Committee notes from MISSOC that only 50% of the sickness benefit is paid if the sickness has been a consequence of alcohol or drug abuse. It considers that linking entitlement to sickness benefit to the nature and origin of sickness is a punitive measure and cannot be justified. It amounts to discrimination in the meaning of Article E (health status). Therefore, the situation is not in conformity with the Charter].

■ Article 12§4: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 12§4 of the Charter on the grounds that it has not been established that:

- ▶ the retention of accrued benefits is guaranteed to nationals of all other State Parties;
- ▶ the right to maintenance of accruing rights is guaranteed to nationals of all other State Parties.

[Right to retain accrued benefits: The exportability of social benefits is guaranteed to nationals of States Parties not covered by EU regulations but bound by a bilateral agreement with the Slovak Republic. However, despite repeated requests by the Committee, the report does not confirm that this exportability is guaranteed to nationals of States Parties not covered by EU regulations or bound by a bilateral agreement with the Slovak Republic. The Committee reiterates its conclusion according to which it has not been established that the retention of accrued benefits for persons moving to another State Party is guaranteed.

Right to maintenance of accruing rights: There should be no disadvantage for persons who change their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefit (Conclusions XIV-1, Portugal; Conclusions XV-1, Italy).

States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures. The principle of accumulation of insurance or employment periods applies to nationals of States Parties covered by EU regulations. With respect to States not bound by EU regulations, the Committee observes that the guarantee of this principle is one of the parts of the European Convention on Social Security directly applicable to both eligibility to benefits and to the calculation of benefits in all the branches of social security covered in the convention. As the Slovak Republic has not ratified this convention, it cannot rely on it to show that it has taken sufficient steps to guarantee the maintenance of accruing rights.

Furthermore, despite the Committee's repeated requests, the report does not state if and how the right to accumulate insurance and employment periods is secured for nationals of States Parties not covered by Community regulations and not bound by a bilateral agreement with the Slovak Republic. The Committee therefore reiterates its conclusion that it has not been established that the Slovak Republic has taken sufficient measures to guarantee the maintenance of accruing rights].

Other parliamentary measures:

■ Article 3§2: The Committee concludes that the situation in Slovak Republic is not in conformity with Article 3§2 of the Charter on the ground that it has not been established that agency and temporary workers and workers on fixed-term contracts enjoy the same standard than workers in permanent employment.

[This is the first time the Committee examines health and safety regulations of the Slovak Republic under the Revised Charter.

The Committee previously examined (Addendum to Conclusions XV-2) the extent of the risks covered by the legislation and regulations on health and safety at work and concluded that the situation was in conformity with Article 3§1 of the 1961 Charter (Conclusions XVIII-2 and XIX-2). The Committee asked for information about the changes introduced by Act No. 124/2006 of 2 February 2006 on health and safety at work.

The report does not provide the information requested. It lists a series of specific laws and regulations, most of which were passed before the reference period, as well as Act No. 67/2010 on the conditions applicable to the placing on the market of chemical substances and chemical mixtures. According to other sources, during the reference period, the limit values established by Directive 2008/46/EC of the European Parliament and of the Council of 23 April 2008 amending Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) were adopted with Ordinance No. 217/2008 amending Ordinance No. 329/2006 on minimum health and safety requirements for protection of employees against hazards relative to exposure to electromagnetic fields. Storage measures for chemical substances as revised by Commission Directive 2009/161/EU of 17 December 2009 establishing a third list of indicative occupational exposure limit values were implemented in domestic law in Ordinance No. 471/2011 amending Ordinance No. 355/2006 on protection of employees against risks due to exposure to chemical factors at work. The protection of the health and safety of forestry workers was regulated by Notification No. 46/2010 of the Ministry of Labour, Social Affairs and the Family providing for the protection of occupational health and safety in forestry work and regulating the professional requirements for execution of certain tasks and manipulation of certain technical equipment.

The Committee takes note of this information. It recalls that the report must provide full, up-to-date information on changes in the legislation and regulations during the reference period.

The Committee previously concluded (Conclusions XVIII-2 and XIX-2), pending receipt of the requested information, that the personal scope protects non-permanent and

temporary workers in accordance with Article 3§1 of the 1961 Charter. It asked for specific examples of how non-permanent and temporary workers are trained and informed on occupational health and safety in practice. It also asked how medical surveillance is made available for these categories of workers and about the arrangements for their representation at work in health and safety matters (Conclusions XVIII-2 and XIX-2). It sought confirmation that Act No. 124/2006 applied to all types of employment contracts (Conclusions XIX-2).

The report does not provide any information on the subject. ILO Convention No. 181 on private employment agencies (1997) was ratified on 22 February 2010.

The Committee takes note of this information. Given the lack of reply to its specific and repeated questions, it does not have the information it requires to establish that agency and temporary workers and workers on fixed-term contracts are provided with information and training about occupational health and safety upon recruitment or when they change employment, that medical surveillance is made available for them, and that they are entitled to representation on occupational health and safety matters. The Committee concludes that it has not been established that the aforementioned workers enjoy the same level of protection than workers in permanent employment].

■ Article 12§1: The Committee concludes that the situation in Slovak Republic is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum level of unemployment benefit is inadequate;
- ▶ the minimum level of sickness benefit is inadequate;
- ▶ the minimum level of maternity benefit is inadequate;
- ▶ the minimum level of pension benefit is inadequate;

[The Committee notes from Eurostat that, in 2009, the poverty threshold set at 50% of median equivalised income stood at €263.

In its previous conclusion, the Committee asked for detailed information regarding the minimum levels of income replacement benefits. It notes from the Governmental Committee's report that in 2009 the minimum amount of sickness benefit calculated on the basis of the daily assessment base, which itself is derived on the basis of the minimum wage, amounted to €142.8, while the minimum amount of unemployment benefit stood at €129.2. As regards minimum pension benefit, according to the report of the Governmental Committee, in 2009 it amounted to €73.5.

The Committee holds that these amounts were manifestly inadequate in 2009 on the basis that they fell below 40% of the median equivalised income.

The Committee requests that the next report provide up-to-date information for the whole reference period on the minimum amounts of sickness, maternity, unemployment and old-age benefits].

■ Article 13§1: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance paid to a single person without resources is manifestly inadequate.

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: according to MISSOC the basic benefit (benefit in material need) varies according to the family composition and is calculated as the difference between the income of the individual and the theoretical base amount of benefit in material need, i.e. €60.50 for a single person without children and up to €212.30 for couples with more than five children.
- ▶ Additional benefits: different other benefits apply as components of benefit in material need, including housing benefits, which for a single person amounted to €55.80. An additional allowance of €63.07 was available for those following a back-to-work programme (activation allowance) or those not in a condition to work (protecting allowance – for people of pensionable age, disabled, long-term sick, caring for a disabled person or single parents caring for a child up to the age of 31 weeks). €2 was paid in allowance for healthcare. The Committee notes from MISSOC that the monthly maximum amount of supplementary benefits for a single person with no other income amounted to €120,87.
- ▶ Medical assistance: according to the law No. 576/2004 Coll. on healthcare, the right to healthcare is guaranteed to all people domiciled or working in the Slovak Republic (contracted doctors are paid by the health insurance institutions).
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €263 in 2011.

In the light of the above data, the Committee considers that social assistance benefits are not adequate, on the basis that the minimum level of assistance that may be obtained is not compatible with the poverty threshold].

■ Article 13§3: The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 13§3 of the Charter on the ground that it is not established that everyone may receive by the competent services such advice and personal help as may be required to prevent, to remove or to alleviate personal or family want.

[The Committee takes note of the information contained in the report submitted by the Slovak Republic.

The report indicates that social services providing assistance and care to persons without adequate resources have been reformed in 2009 (Act. No. 448/2008). They provide social advice at a general or at a specific level, assessing the problems and offering professional assistance to overcome them. The law stipulates that payments for social services take into account the recipient's financial situation, so that even people without resources can get access to them. Social advice is provided free of charge. The specialised assistance includes advice on dealing with the administration, personal documents, drafting submissions, completing forms etc. (further details are available in the report).

The Committee takes note of this information but recalls that Article 13§3 concerns specifically services offering advice and personal assistance to persons without adequate resources or at risk of becoming so. It also notes that the report does

not provide any reply to the questions repeatedly raised in previous conclusions (Conclusions XVIII-1 and XIX-2) on the amount of total spending on social services covered by Article 13§3, on whether services and institutions are adequately distributed on geographical basis and whether they are provided with sufficient means to provide assistance as necessary. It notes however from another source (Ministry of Labour, Social Affairs and Family website) that spending on social assistance was reported in 2008 to be particularly low, compared to the EU average. In the absence of the information requested, the Committee does not find it established that everyone may receive by the competent services such advice and personal help as may be required to prevent, to remove or to alleviate personal or family want].

■ Article 23: The Committee concludes that the situation in Slovak Republic is not in conformity with Article 23 of the Charter on the ground that the level of social assistance for elderly persons with low income is manifestly inadequate.

[The Committee previously asked about minimum pension or income guarantees for older people ensuring that they have adequate and sustainable income in old age. In reply the report states that the concept of a minimum old age pension does not exist in the Slovak Republic.

According to MISSOC, assistance for material need is a universal, non-contributory scheme financed by taxation, whose aim is to ensure a minimum income for those unable to maintain their basic living conditions. The amount of benefits provided under this scheme varies according to the number of household members. The Committee further notes from the report that under Act no. 599/2003 on material need assistance, the assistance scheme includes not only basic assistance in material need benefit but also allowances for specific purposes. Subsistence minimum is the minimum level of a person's income, below which s/he is recognised to be in a situation of material need. For the purposes of the Act no. 599/2003 Coll. on assistance in material need, the subsistence minimum basically covers one hot meal daily, essential clothing and shelter. The material need benefit (€ 60.50/month for a single person) is a means-tested benefit provided to persons residing or staying in the Slovak Republic who are in a situation of material need, i.e. their income is lower than the subsistence minimum. Old-age pensioners may also be granted a protective allowance (€ 63.07/month) together with the basic benefit upon satisfaction of the conditions for payment of material need benefit. Pensioners are also entitled to an allowance for healthcare (€ 2/month) and are paid a housing allowance which is part of the material need assistance system (€ 55.80 for a single person in material need). The Committee asks for clarification to what extent the benefits described can be cumulated.

The poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value was estimated at € 263 in 2011 (the threshold defined on the basis of 40% of the median equivalised income was € 210 per month). The Committee observes that the level of subsistence minimum falls below 40% of the median equivalised income as do the rates of material need benefit, protective allowance benefit and housing allowance even when cumulated. Therefore the Committee concludes that the situation is not in conformity with the Charter.

The Committee further notes from Eurostat that in 2011, 0.3% of persons aged 65 and over received income falling below 40% of median equivalised income (compared to 0.8% in 2010 and 1.5% in 2007). The Committee takes note of this improvement, it notes that the share of elderly persons living in poverty is low and asks for further clarification of the situation].

SLOVENIA

Normative action:

■ Article 12§1: The Committee concludes that the situation in Slovenia is not in conformity with Article 12§1 of the Charter on the ground that the duration of unemployment benefit is too short.

[The Committee notes that the duration of unemployment benefit is 3 months for the contributions period of 1 to 5 years, 6 months for 5-15 years and 9 months for 15-25 years. The Committee holds that the duration of three months is too short and therefore the situation is not in conformity with the Charter].

■ Article 12§4: The Committee concludes that the situation in Slovenia is not in conformity with Article 12§4 of the Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ it has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties;
- ▶ it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

[The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

Since the last report, Slovenia has concluded bilateral social insurance agreements with the following States: Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia. Moreover, Slovenia is currently negotiating such an agreement with Turkey. The Committee welcomes the efforts made by Slovenia, however, there are still no agreements envisaged with namely Albania, Andorra, Armenia, Azerbaijan, Georgia, the Republic of Moldova, the Russian Federation and Ukraine. Therefore, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment in matters of social security entitlement is not guaranteed between Slovenian nationals and nationals of all other States Parties].

[In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to those benefits

on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle. The report indicates that no changes have been made since the previous one, which means that Slovenia has still not concluded such agreements with the following States: Albania, Armenia, Georgia, the Russian Federation and Turkey. Therefore, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment is not guaranteed with regard to access to family allowances in respect of nationals of all other States Parties].

[In its last conclusions, the Committee asked how the retention of accrued rights was guaranteed in the absence of agreements with the following States, namely Albania, Andorra, Armenia, Azerbaijan, Georgia, the Republic of Moldova, Turkey, Serbia , the Russian Federation and Ukraine. As there is no information in the report on the subject, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that it has not been established that the retention of accrued benefits is guaranteed for nationals of all other States Parties].

[In its last conclusions, the Committee asked how the right to accumulate insurance and employment periods was guaranteed in the absence of agreements with the following States, namely Albania, Andorra, Armenia, Azerbaijan, Georgia, the Republic of Moldova, Turkey, Serbia, the Russian Federation and Ukraine. As there is no information in the report on the subject, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that it has not been established that the right to maintenance of accruing rights is guaranteed for nationals of all other States Parties].

Other parliamentary measures:

■ Article 12§1: The Committee concludes that the situation in Slovenia is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum levels of sickness and unemployment benefits are manifestly inadequate;
- ▶ the minimum level of pension benefit is manifestly inadequate.

[The Committee notes that 50% of the Eurostat medial equivalised income stood at € 500 in 2011.

According to the report, sickness benefit cannot be lower than the guaranteed wage, or exceed the wage which the insured person would receive if he or she worked, or the base according to which he or she is insured during absence from work.

The Committee further notes from MISSOC that sickness benefit may not be less than the amount of the Statutory Reference Amount (zajamčena plača SRA), which, according to the report is the same as the guaranteed wage. Since August 2006 the SRA amounts to €237,73 per month (net).

The Committee thus notes that the minimum level of sickness benefit amounted to €237,73 in 2011. The Committee holds that this amount is manifestly inadequate.

In its previous conclusion the Committee held that the minimum level of unemployment benefit was manifestly inadequate.

As regards the minimum level of benefit, according to the report it was raised to € 350 by the Labour Market Regulation Act (Nos 80/2010). In this respect, however, the Committee notes that this amount still falls below 40% of the Eurostat median equivalised income and therefore, it is not adequate].

[The Committee notes from the report of the Governmental Committee (T-SG 2011)1, §176) that there are two rights that arise in respect of old age benefit: the right to pension assessment from the minimum pension rating base and the right to minimum pension support. The former arises irrespective of the scope of insurance and the length of the completed pension qualifying period and amounts to no less than 35% of the minimum pension rating base. The latter is a social corrective measure and is subject to the financial situation of the person concerned and is paid as a difference between the base for assessing minimum pension support and the beneficiary's pension. This implies that all pensioners receiving minimum pensions have the right to minimum pension support.

The Committee further notes from the report that the principles of reciprocity and solidarity are the principles which enable individuals who have paid contributions to the system for 40 years but had very low salaries in their active period and would therefore, fail to reach the minimum pension, to receive decent pensions calculated from the minimum pension base. Financial resources must be provided to cover the difference between the pension that would correspond to contributions paid and the pension that the compulsory pension system guarantees.

According to the report, the minimum pension must ensure that the social minimum which is not only a living minimum for survival but is a certain standard of living. A pension in Slovenia ensures an income higher than is afforded by financial social assistance. In 2011 pension calculated from the minimum pension base amounted to € 438 for 40 years of qualifying service and to € 192 for 15 years of qualifying service. The latter is the guaranteed pension for all insured persons, irrespective of the extent of insurance. As financial assistance amounted to € 229, it follows, according to the report, that the pension for a qualifying period of 40 years was considerably higher than financial social assistance. The report states that pensions are not high but they are in an adequate ratio to financial social assistance and salaries.

The Committee further notes from MISSOC that an insured person entitled to Old-age Pension (starostna pokojnina) is guaranteed the minimum pension in the amount of 35% of the minimum Pension Rating Basis (pokojninska osnova) (€ 192.91 as of January 2011) per month. The minimum Pension Rating Basis is determined by the Pension and Disability Insurance Institute (Zavod za pokojninsko in invalidsko zavarovanje).

The Committee also refers to its conclusion under Article 23 where it took note of the entry into force of the new legislation in 2012 according to which the state pension, as an autonomous benefit, ceased to exist on 1 January 2012 and the former recipients of the state pension and/or the minimum pension support are now entitled to financial social assistance and/or a minimum income supplement under the requirements stipulated by law (see conclusion under Article 12§3 as well).

The Committee also takes note from the report of the adoption in 2012 of the new Pension and Disability Insurance Act and wishes to be informed how the latter affects the minimum levels of pension and disability allowance.

The Committee considers that during the reference period the minimum level of pension benefit fell below 40% of the median equivalised income. Therefore, the situation is not in conformity with the Charter].

SWEDEN

Normative action:

■ Article 23: The Committee concludes that the situation in Sweden is not in conformity with Article 23 of the Charter on the ground that the scope of the legal framework to combat age-discrimination outside employment is not sufficiently wide.

[In its previous conclusion (Conclusion 2009), the Committee noted that the new Discrimination Act of 2009 extended the protection against age-discrimination outside the employment field, namely to educational activities. However, the Committee considered that the scope of the legislative framework was not sufficiently wide, as it did not ensure protection in such other areas as the provision of goods, services and housing, as well as health and medical care, social services or social insurance.

The Committee notes that this legal framework has not been changed during the reference period. The Committee recalls that the prohibition of discrimination based on age should be progressively expanded to include also the areas of social security, health care, and the provision of goods and services. The Committee notes from the report that such an extension is envisaged in a draft Government Bill submitted to the Parliament in 2012. The Committee wishes to be informed of the outcome of this proposal. In the meantime, it maintains its negative conclusion on this point.

The Committee asks for information on the legal framework related to assisted decision-making for the elderly, and, in particular, whether there are safeguards to prevent the arbitrary deprivation of autonomous decision-making by elderly persons. In this respect, the Committee refers to its statement of interpretation in the General Introduction].

Other parliamentary measures:

■ Article 12§1: The Committee concludes that the situation in Sweden is not in conformity with Article 12§1 of the Charter on the ground that it has not been established that the minimum levels of unemployment and sickness benefits are adequate.

[The Committee notes from Eurostat that the at-risk-of-poverty rate calculated on the basis of the 50% median equivalised income stood at €938 in 2011.

In its previous conclusion the Committee held that the level of basic unemployment benefit was inadequate as it fell below 40% of the Eurostat at-risk-of poverty rate. In this connection, the Committee notes from the report that based on the construction of the social security system, one individual benefit cannot be singled out and used as a sole ground for evaluation of the total support to unemployed. Different types of benefits are intertwined and should not be viewed as a number of individual benefits. The Swedish Unemployment Insurance Scheme does not, for example, prevent unemployed persons from getting social assistance or housing assistance combined with unemployment benefit.

The Committee notes from MISSOC that the basic flat-rate unemployment benefit is financed by employers' contributions and covers those not voluntarily insured. Its level stood at, again, SEK 320 per day (€ 37) in 2010. In reply to the Committee's supplementary question regarding the average monthly amount of the basic unemployment benefit, plus additional benefits that a typical unemployed person might receive, the Government states that no statistical data are available that would show the average amount. However, unemployed person might receive housing benefits or social assistance. In the absence of indicators regarding the monthly minimum amount of unemployment benefit, together with the average amount of additional benefits, the Committee considers that it has not been established that the minimum level of unemployment benefit is adequate.

The Committee notes from the supplementary information provided by the Government that sickness benefit compensates for loss of income and is approximately 80% of the annual income. The Committee notes that the report fails to provide information about the minimum level of sickness benefit, together with other supplementary benefits as applicable. Therefore, the Committee considers that it has not been established that the situation is in conformity with the Charter].

TURKEY

Normative action:

■ Article 13§1: The Committee concludes that the situation in Turkey is not in conformity with Article 13§1 of the Charter on the grounds that, during the reference period,

- ▶ there was no legally established general assistance scheme that would ensure that everyone in need had an enforceable right to social assistance;
- ▶ foreign nationals of other States Parties, lawfully residing in Turkey, were entitled to social and medical assistance on an equal footing with Turkish nationals only under condition of reciprocity.

[Since 2000 (Conclusions XV-1), the Committee has repeatedly held that the situation in Turkey was not in conformity with the Charter as all persons without resources were not guaranteed an individual, enforceable right to social and medical assistance. In its previous conclusion, it noted however that a reform was under way and asked to be kept informed about the setting up of a new system of social assistance.

In this respect, the report indicates that, under the Social Security Institution Law No. 5502/2006, the non-contributory payments previously managed by different

institutions and organisations were centralised under a single body, the General Directorate of Non-contributory payment, within the Social Security institution, until end November 2011, when the system was reorganised and the responsibility in this field was transferred to the Ministry of Family and Social Policies pursuant to the Decree Law No. 633 of 3 June 2011.

In addition, the treatment of social assistance requests was streamlined and made more efficient through the setting up of two centralised database systems, the "social assistance information system" (SAIS) in 2009, which rapidly retrieves the applicants' data from 14 different institutional databases, thus allowing to treat in a few seconds requests that previously took several procedural steps and needed 15-20 days, and the "information system of integrated social assistance services" (ISAS), which became operational in October 2011 and which centralises in a common database all data on poverty and social assistance (6.4 million households), allowing for a more efficient treatment of social assistance requests and payments, including inter-institutional data-sharing to avoid abuses related to multiple requests. According to the report, as of February 2012 (outside the reference period), 9 million assistance applications were received through this system, 3.5 million of which led to the granting of assistance. As of January 2012, income test operations of Universal Health Insurance (see below) started also to be carried out through the system.

Furthermore, an Action Plan was drafted in 2010, aimed at associating social assistance with employment policies. Another project, run by the General Directorate of Social Assistance, aims at identifying right-holders by a grading formula based on objective criteria, so as to ensure a fairer distribution of benefits based on need; this system was expected to be tested as from 2012.

The Committee takes note of these developments, which mostly started to be effective at the end of the reference period or beyond it, but finds that the information provided is insufficient to assess whether the new social assistance system complies with the Social Charter. It accordingly asks the next report to provide the following information:

- ▶ What are, under the new system, the eligibility criteria to be entitled to non-contributory social assistance?
- ▶ Is social assistance available to any person in need or only to specific categories of people?
- ▶ Under what conditions is social assistance available to foreign nationals?
- ▶ What are the conditions – if any – under which the benefits might be suspended (for example, is there a requirement not to refuse a suitable job or training offer)?
- ▶ Are the benefits awarded for as long as the situation of need persists?
- ▶ How is the situation of the claimant assessed, i.e.what is included or not in assessing income and property assets?
- ▶ What account is taken of the family size and situation?
- ▶ What forms of assistance are provided?
- ▶ What are, if any, the standard amounts of the main benefits and additional benefits granted?

- ▶ What type of additional benefits are provided, if any?
- ▶ Are the benefits granted adequate when compared to the poverty threshold (set at 50% of the median equivalised income, Eurostat)?
- ▶ Are there any statistical data about the number of requests for social assistance, the number of those accepted (and number of beneficiary individuals and households) and amounts granted?

Pending receipt of this information, the Committee does not find it established that during the reference period there was a legally enforceable individual right to social assistance available to all persons in need].

[Under Law No. 5510/2006 on Social Insurance and Universal Health Insurance, stateless people, asylum-seekers and refugees, are covered by the universal health insurance. In addition, further specific measures have been taken in respect of asylum seekers and refugees (Circulars No. 2010/19 of 19 March 2010, No. 2010/03 of 24 March 2010, No. 8237 of 20 May 2009). The Committee takes note of the statistical data provided concerning the number of beneficiaries and the types and costs of benefits granted in this connection (disaster assistance, accommodation, education, food, clothing, cash, fuel, health costs etc.).

According to Article 60 of the Law No. 5510/2006, foreign residents, not covered by health insurance by their own country, are also covered by the universal health insurance under condition of reciprocity. Furthermore, Law No. 3294 on Social assistance and solidarity fund provides assistance also to foreigners in need residing in Turkey. Applications from foreign residents in need, not benefiting from any social rights, are assessed by the International Social Services Organisation, which examines the situation and establishes a report.

The Committee points out that foreigners who are nationals of Contracting Parties, lawfully residing in the territory of another Party and lacking adequate resources, must enjoy an individual right to appropriate assistance on an equal footing with nationals without the need for reciprocity. Accordingly, the Committee asks the next report to confirm that nationals of Contracting Parties to the Charter, lawfully residing in Turkey, enjoy social and medical assistance rights on an equal footing with Turkish nationals, without any condition of reciprocity. It furthermore asks the next report to provide more detailed information, as well as any relevant statistical data, on the applications for social and medical assistance filed by foreign residents from Contracting Parties and the number of requests leading to the granting of social and medical assistance. In the meantime, it holds that foreign nationals, lawfully resident in Turkey are not entitled to social and medical assistance on an equal footing with Turkish nationals].

■ Article 23: The Committee concludes that the situation in Turkey is not in conformity with Article 23 of the Charter on the ground that it has not been established that there is legislation protecting elderly persons from discrimination on grounds of age.

[In 2007, the Government adopted a National Action Plan on the Situation of Elderly Persons in Turkey and Ageing, the Committee asks to be informed of the outcome of the Plan.

The Committee previously asked whether anti-discrimination legislation (or an equivalent legal framework) to protect elderly persons outside the field of employment existed, or whether the authorities plan to legislate in this area. The report provides no information on any such legislation. Therefore, the Committee concludes that the situation is not in conformity with the Charter in this respect].

Other parliamentary measures:

- Article 3§3: The Committee concludes that the situation in Turkey is not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive rate of fatal accidents are inadequate.
- Article 3§4: The Committee concludes that the situation in Turkey is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to institute access to occupational health services for all workers in all sectors of the economy.

[According to the report, Turkey has 6 771 occupational physicians, i.e. 0.256 practitioner per 1 000 workers, given the labour force (2011 – institutional population excluded – no age limit) published by ILOSTAT. Also, Act No. 6331 of 20 June 2012 on Occupational Health and Safety will ensure that workers in all workplaces, and from all sectors, will have access to occupational health services.

The Committee takes note of this information. It notes that the report does not provide the requested information on how the progressive development of occupational health services is promoted, and that it does not establish the existence, during the reference period, of a strategy to institute occupational health services for all enterprises in all sectors of the economy. Recalling that the report must provide full, updated information on changes that have taken place in the relevant laws and regulations during the reference period, the Committee asks for detailed information in the next report on how Act No. 6331 and relevant regulations ensure that workers in all workplaces, and from all sectors, have access to occupational health services. In particular, it asks for information on the tasks of occupational health services; the proportion of undertakings equipped with such services or sharing them in practice; the number of workers monitored by such as compared to the previous reference period; and any sanctions and supervision mechanisms to ensure that employers comply with legal obligations in the matter].

■ Article 11§2: The Committee concludes that the situation in Turkey is not in conformity with Article 11§2 of the Charter on the ground that it has not been established that counselling and screening of the population at large as well as of children and adolescents, through school medical check-ups, are adequate.

■ Article 14§1: The Committee concludes that the situation in Turkey is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that there exists an effective and equal access to social services.

■ Article 14§2: The Committee concludes that the situation in Turkey is not in conformity with Article 14§2 of the Charter on the ground that it has not been established that the conditions under which non-public providers take part in the provision of welfare services are adequate.

UKRAINE

Normative action:

■ Article 3§2: The Committee concludes that the situation in Ukraine is not in conformity with Article 3§2 of the Charter on the grounds that:

- ▶ the coverage of occupational hazards by specific occupational health and safety legislation and regulations is insufficient;
- ▶ the level of protection against asbestos-related occupational hazards is insufficient.

[According to the Decent Work Country Profile (International Labour Office, Decent Work Country Profile, Ukraine, Geneva : ILO 2011 pp. 46-48), legislation and regulations are focused on technical details, lack a modern approach to promoting prevention of injuries and disease, and do not require risk assessment in all workplaces.

The Committee takes note of this information. It notes that efforts have been undertaken to incorporate international standards of exposure to occupational risks into specific legislation and regulations. It nevertheless notes that, during the reference period, only few relevant ILO Conventions were in force, and much of the Community acquis, stemming from Directive 89/686/EEC of 21 December 1989 on the approximation of laws of the Member States relating to personal protective equipment, as amended by Council Directive 96/58/EC of the European Parliament and the Council of 3 September 1996; Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of laws of the Member States concerning pressure equipment; Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration); Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise); Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work, was not reflected in the current national law. The Committee therefore considers that the legislation and regulations in force do not meet the general obligation under Article 3§2 of the Charter].

Other parliamentary measures:

■ Article 3§3: The Committee concludes that the situation in Ukraine is not in conformity with Article 3§3 of the Charter on the grounds that:

- ▶ measures taken to reduce the excessive number of fatal accidents are insufficient;
- ▶ the labour inspection system is inefficient.

■ Article 3§4: The Committee concludes that the situation in Ukraine is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy.

■ Article 11§1: The Committee concludes that the situation in Ukraine is not in conformity with Article 11§1 of the Charter on the ground of the prevailing high infant and maternal mortality rates.

■ Article 11§2: The Committee concludes that the situation in Ukraine is not in conformity with Article 11§2 of the Charter on the grounds that it has not been established that:

- ▶ public information and awareness raising is a public health priority;
- ▶ prevention through screening is used as a contribution to the health of the population.

■ Article 14§1: The Committee concludes that the situation in Ukraine is not in conformity with Article 14§1 of the Charter on the ground that there are no mechanisms for supervising the sufficiency of social welfare services.

[The previous conclusion (Conclusions 2009) noted that under the 2000 legislation on the licensing of certain economic activities, private social services agencies need a licence to operate, whether or not they are working for the State. Local authorities supervised their operation. The report indicates that the licensing conditions for professional activities in social services and the procedure for supervision thereof were approved in 2008, with the licensing procedure promoting a higher quality of social service provision. However, the report adds that the requirement to obtain a licence was abolished under Law No. 1759-VI (in force since 15 December 2009) on amending certain laws to simplify the business environment. The report cites the global financial crisis as the reason for this change.

The Committee recalls that under Article 14 of the Charter, there must be mechanisms for supervising the adequacy of social welfare services, public as well as private. The report indicates that mechanisms of this kind no longer exist. The Committee therefore holds that the situation is not in conformity with the Charter].

■ Article 23: The Committee concludes that the situation in Ukraine is not in conformity with Article 23 of the Charter on the ground that the level of the minimum pension is manifestly inadequate.

[When assessing adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee recalls that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

Eligibility for an old-age social pension starts at age 63 (men) or age 58 (women). According to the report, the minimum pension benefit has been fixed at the level of no less than the minimum of subsistence established for persons who have lost working capacity, including persons having no pension entitlement. In December

2011, the minimum of subsistence for persons who lost working capacity and the minimum pension benefit amounted to UAH 800 (approx. €77) per month.

According to the report, the Methodology for Integrated Assessment of Poverty determines two indicators: poverty level as per the relative criterion (75% of median cumulative income (spending) per typical adult), and extreme poverty level (60% of median cumulative income (spending) per typical adult). The Committee notes from the report that in 2011 the poverty line equalled UAH 1 062 (approx. €101), and the extreme poverty line (as per the relative criterion) – UAH 850 (approx. €80). The Committee notes that the amount of the minimum pension, although increased compared to previous reference period (see Conclusions 2009) still falls below the poverty level and even slightly below the extreme poverty level. It asks what additional cash benefits/allowances are available for recipients of minimum old age pension (or guarantee pension for low income elderly persons as the case may be). The Committee further notes from the report that the relative-criterion-based poverty rate for elderly persons was 24.3% in 2011, and the extreme poverty rate was 10.7% in 2011 against 11.2% in 2010.

The Committee concludes that the situation is not in conformity with Article 23 of the Charter on the ground that the level of the minimum pension is manifestly inadequate].

■ Article 30: The Committee concludes that the situation in Ukraine is not in conformity with Article 30 of the Charter on the ground that it has not been established that there is an effective overall and coordinated approach to combat poverty and social exclusion.

1961 European Social Charter

CZECH REPUBLIC

Normative action:

■ Article 12§4: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the state concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the states which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4,

to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle. It transpires from a list appended to the report, that there is no bilateral agreement with 6 of the States Parties to the Charter, namely Albania, Andorra, Armenia, Azerbaijan, Georgia and the Republic of Moldova. Therefore, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment is not guaranteed with regard to access to family allowances in respect of nationals of all other States Parties.

In its previous conclusion, the Committee concluded that the situation of the Czech Republic was not in conformity with the 1961 Charter because there were no bilateral or multilateral agreements with Albania, Andorra, Armenia, Azerbaijan, Georgia and the Republic of Moldova, all of which are Parties to the Charter. Given the lack of information, the Committee asks if the right to retain accruing rights is covered by bilateral agreements on social security mentioned above. In the meantime, the Committee reiterates its conclusion of non-conformity, that is, the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties].

■ Article 13§1: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 13§1 of the 1961 Charter on the ground that Czech legislation allows withdrawal of residence permit to foreign nationals in material need.

[The Committee notes that a temporary residence permit can be withdrawn if the person is considered to represent an “unreasonable burden” on the social assistance system, on the basis of a point-based assessment system set up by the Social Security Act (taking into account length of stay, duration of employment and education, potentials for future employability, qualifications etc.). This information is confirmed by the reply given by the Senate of the Czech Republic to a questionnaire on implementation and transposition of Directive 38/2004/EP, submitted during the reference period by the President of the Committee for Civil Liberties, Justice and Home Affairs of the European Parliament (<http://www.europarl.europa.eu/document/activities/cont/200901/20090113ATT46033/20090113ATT46033EN.pdf>).

The Committee recalls that under Article 13§1 of the Charter, foreigners lawfully resident in the territory of a member state cannot be repatriated on the sole ground that they are in need of assistance. In particular, country's authorities are not authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his family. In the light thereof, the Committee holds that the possibility to withdraw a residence permit on the mere ground that the person represents an “unreasonable burden” for the social assistance system is not in conformity with the Charter].

■ Article 13§4: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 13§4 of the 1961 Charter on the ground that it is not established that emergency social assistance is available to all non-resident foreign nationals of other States Parties, irrespective of their status.

[The Committee recalls that Article 13§4 concerns foreign nationals who are lawfully present in the country but do not have resident status and those who are unlawfully present. Under this provision, states are not required to apply to these categories of

foreigners the guaranteed income arrangements under their social protection systems. However, they are required to provide non-resident foreign nationals – whether legally present or not – emergency social and medical assistance (accommodation, food, emergency care and clothing) to cope with an urgent and serious situation of need (without interpreting too narrowly the “urgency” and “seriousness” criteria). In this connection, the Committee notes that the information provided in the report clarifies that emergency social assistance is available to certain categories of non-resident foreigners, but it does not allow to establish that it is available to all foreign nationals of a member state which is party to the Charter, when they are legally present without being resident and when they are in an irregular situation, but not as “victims” for the purpose of Extraordinary immediate assistance. Accordingly, the Committee does not find it established that emergency social assistance (accommodation, food and clothing) is available to all non-resident foreign nationals of other states parties, whether lawfully present in the territory or not.

As regards medical assistance, the Committee has previously noted that any person present in the Czech Republic, irrespective of status, is entitled to medical assistance in cases where the health and life of the person is at risk (Conclusions XIX-2). It asks the next report to confirm that such assistance is provided free of charge].

Other parliamentary measures:

■ Article 12§1: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 12§1 of the Charter on the grounds that:

- ▶ the minimum level of old age benefit is manifestly inadequate;
- ▶ the minimum level of unemployment benefit is manifestly inadequate;
- ▶ the minimum level of sickness benefit is manifestly inadequate.

[The Committee notes from Eurostat that in 2011 50% of the median equivalised income stood at € 310.

In its previous conclusion the Committee held that the minimum level of old-age benefit was manifestly inadequate as it fell below 40% of the Eurostat median equivalised income.

In this regard, the Committee notes from the report that the contributory old age pension consists of two components, the basic part, which stood at CZK 2,170 in 2010 and the percentage part, the minimum level of which stood at CZK 770. Thus the minimum level of pension stood at € 117 in 2010. According to MISSOC, minimum pension in 2011, consisting of a flat-rate basic amount of CZK 2 330 (€92) and a percentage amount (Procentní část) of CZK 770 (€31) stood at €123.

The Committee recalls that in the meaning of Article 12 of the Charter, social security systems encompass universal schemes as well as professional ones and include contributory, non-contributory and combined allowances related to certain risks.

With a view to guaranteeing effective protection of all members of society against the occurrence of social and economic risks, States must ensure the maintenance of their social security systems. Social security systems must be maintained at a sufficiently extensive and compulsory level. Any modifications to the system should not transform it into a basic social assistance system (Statement of Interpretation, Conclusions XIV-1).

The Committee recalls that in its Statement of Interpretation on Articles 12 and 13 (Conclusions XIII-4) it held that, whilst taking into consideration the view of the state concerned as to whether a particular benefit should be seen as social assistance or as social security, the Committee pays particular attention to the purpose of and the conditions attached to the benefit in question in making its own autonomous assessment of the situation in question.

The Committee is aware of the fact that in some situations the minimum level of social security benefits that can be obtained under the contributory system on the basis of the length and amount of contributions paid, may be topped up with non-contributory benefits under the social assistance system. The aim of such top ups is often to ensure that the total income obtained through contributory social security system does not fall short of the level of guaranteed income as established by legislation.

However, the Committee recalls that where the minimum level of an income-replacement benefit examined under Article 12§1 of the Charter, falls below 40% of the median equivalised income (or the poverty threshold indicator), the Committee will not consider that its aggregation with other social assistance benefit can bring the situation into conformity. Where an income-replacement benefit stands between 40% and 50% of the median equivalised income, the Committee will also take into account social assistance benefits, where applicable.

Therefore, the Committee holds that the situation in the Czech Republic is not in conformity with the Charter as the minimum level of old age benefit falls below 40% of the Eurostat median equivalised income].

[The Committee notes from the report that the level of unemployment benefit is determined by the average monthly net salary which the worker received in the last employment prior to the entry in the register of job seekers. It amounts to 65% of the wage in the first two months of the support period, 50% in the next 2 months and 45% of the average monthly earning for the remainder of the support period.

As regards the minimum amount of benefit, the Committee notes that the guaranteed minimum wage in 2011 was determined at CZK 8 000. Therefore, for the first two months of unemployment the minimum level of unemployment benefit would stand at €200, at € 153 during the next two months and at €138 for the remainder of the support period.

The Committee holds that the minimum level of unemployment benefit is manifestly inadequate as it falls below 40% of the median equivalised income].

[The Committee notes from MISSOC that the wage compensation (náhrada mzdy) for sickness is paid from the 4th working day to the 21st calendar day at 60% of the hourly average earnings (průměrný hodinový výdělek). Wage compensation is paid according to the working hours.

The Committee notes from the report that the Czech health insurance system does not work with a defined minimum amount of any benefit as the amount of benefit is always based on the level of income reached. The Committee takes note of an example of a qualified worker (corresponding to the wage of a metal turner – a

machine tool setter and operator) earning a net wage of CZK 19 996, whose monthly sickness benefit would amount to CZK 12 420 (€497).

The Committee observes that using the same calculations, a person earning the minimum wage of CZK 8000 would receive CZK 4976 (€198). The Committee holds that the level of minimum sickness benefit is manifestly inadequate as it falls below 40% of the Eurostat median equivalised income].

■ Article 13§1: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 13§1 of the 1961 Charter on the grounds that it has not been established that the level of social assistance is adequate.

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: the subsistence allowance depends on the composition of the household and represents the difference between a reference level, assessed on a case-by-case basis, and the income of the household, less reasonable housing costs (see below). According to MISSOC, the minimum living level (Životní minimum) for a single person living alone was CZK 3 126 (€129) in 2011 while the minimum subsistence level (Existenční minimum) was CZK 2 020 (€83). The amounts are reviewed at the beginning of the year, if the growth of the consumer price index for sustenance and personal needs exceeds 5%, but can also be reviewed earlier if the circumstances require so.
- ▶ Additional benefits: according to MISSOC, a housing allowance can be granted to a person or a family to cover justified housing costs and cover the gap between the housing costs and the living level. Reasonable housing costs include rent, housing-related services and energy costs. This benefit is granted to permanent residents provided that the housing costs exceed 30% (in Prague 35%) of the household income. The reasonable character of the housing costs is assessed by taking into account the type of housing, size of the household and size of the municipality. The Committee asks the next report to indicate the normative costs for a one-person household depending on the residence area.
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €311 per month in 2011.

The Committee notes that, according to the report, no information can be provided as to the standard level of benefits, insofar as the actual amounts granted take into account a number of variable factors (residence area, efforts spent by the claimant to improve the situation, size and composition of the household, age, self-sufficiency etc.). In these circumstances, the Committee is not in a position to assess whether the assistance is adequate and maintains therefore its finding of non-conformity on this issue].

■ Article 4 of Additional Protocol: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 4 of the Additional Protocol to the 1961 Charter on the ground that the level of the minimum pension is manifestly inadequate.

[When assessing adequacy of resources of elderly persons under Article 4 of the Additional Protocol to the 1961 Charter the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee recalls that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee previously found that that the minimum old-age pension was manifestly inadequate as it was considerably below the poverty threshold and therefore found that the situation was not in conformity with Article 4 of the Additional Protocol on this point.

The Committee noted in its conclusion under Article 12 that the contributory old age pension consists of two components, the basic part, which stood at CZK 2 170 in 2010 and the percentage part, the minimum level of which stood at CZK 770. Thus the minimum level of pension stood at € 117 in 2010. According to MISSOC, the minimum pension in 2011, consisting of a flat-rate basic amount of CZK2 330 (€92) and a percentage amount (Procentní část) of CZK 770 (€31) stood at €123. In addition, pensioners with low pensions are secured minimum income under the System of Assistance in Material Need. Pensioners can also get housing allowance from the State Social Support system if they do not have sufficient resources to cover their housing costs. It further noted from Eurostat that in 2011 50% of the median equivalised income stood at € 310. The Committee concluded under Article 12 that the Czech Republic is not in conformity with the Charter as the minimum level of old age benefit falls below 40% of the Eurostat median equivalised income.

The Committee requested information on additional benefits and allowances those on the minimum pension may receive, according to the information received the pensioners may receive allowance for living, supplement for housing ,extraordinary immediate assistance, housing allowance in case their pension does not reach the living minimum (3 410 CZK – 124€ – in 2012). However the replies received from the Czech Republic also state that “ there is no minimum level of benefits and the benefits are not intended as a supplement to income in order to reach a defined (living, subsistence minimum)”. Therefore the Committee ask again what a single person in receipt of the minimum pension would receive in additional benefits and allowances. Meanwhile it concludes that the minimum pension is inadequate as it falls below 40% of the Eurostat median equivalised income].

DENMARK

Normative action:

■ Article 12§4: The Committee concludes that the situation in Denmark is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;

- ▶ the residence requirement imposed on nationals of states not covered by EU regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pensions is excessive;
- ▶ the retention of accrued benefits is not guaranteed to nationals of all other States Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

■ Article 13§1: The Committee concludes that the situation in Denmark is not in conformity with Article 13§1 of the 1961 Charter on ground that nationals of other States Parties not bound by the European Economic Area agreement or not covered by agreements concluded by Denmark may have their residence permit withdrawn on the sole ground of being in receipt of social assistance for more than six months, unless they have resided in Denmark for more than seven years.

[The report contains no indication that the situation whereby nationals of other States Parties not members of the EEA or not covered by bilateral agreements with Denmark legally resident in Denmark may be repatriated on the sole ground of being in receipt of social assistance for more than six months, unless they have resided in Denmark for more than seven years or are covered by the Nordic Convention on Social Assistance and Social Services, has changed. Consequently, the Committee reiterates its finding of non-conformity on this ground.

The Committee recalls that under the Charter foreign nationals legally resident or regularly working in the territory of another State Party cannot be repatriated on the sole ground that they are in need of assistance. So long as they are lawfully resident or regularly working in a state concerned, they should be entitled to equal treatment with nationals. Once the residence and/or work permit has expired, States are no longer bound by the obligation to provide social assistance within the meaning of Article 13§1 of the Charter. However, the authorities cannot withdraw residence permits solely on the ground that individuals have no means of support and cannot meet their families' needs].

■ Article 4 of the Additional Protocol: The Committee concludes that the situation in Denmark is not in conformity with Article 4 of the Additional Protocol to the 1961 Charter on the ground that it has not been established that there is an adequate legal framework to combat age discrimination outside employment.

[Overall responsibility for the elderly in Denmark lies with the Ministry of Social Welfare (formerly the Ministry of Social Affairs) but implementation of concrete measures belongs to local authorities. There is a senior citizens' council within each local authority that supervises the manner in which personal and practical assistance is provided to elderly persons.

The Committee recalls that it previously found the situation was not in conformity with the Charter on the grounds that it had not been established that there is an adequate legal framework to combat age discrimination outside employment. The report provides little new information on this issue, it states that public administration

is based on the principle of non-discrimination; therefore the Committee finds that the situation is still not in conformity with the Charter on this point].

Other parliamentary measures:

■ Article 13§1: The Committee concludes that the situation in Denmark is not in conformity with Article 13§1 of the 1961 Charter on the following grounds:

- ▶ the level of the ordinary social assistance allowance (kontanthjælp) paid to persons under 25 years of age is not adequate,
- ▶ the level of starting allowance (starthjælp) paid to persons both under and over 25 years of age was not adequate during the reference period;

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: according to MISSOC, in 2011 the basic social assistance allowance (kontanthjælp) amounted to €1 346 for a single person over 25 years of age and €868 for a single person under 25 years living separately from parents. The same allowance paid to persons supporting at least one child amounted to €1 789. The starting allowance (starthjælp) payable to persons who do not meet the length of residence requirement (7 years) amounted to €868 for a single person aged 25 or over and to €719 for a person under 25 not living with parents.
- ▶ Additional benefits: the Committee has previously noted the existence of various supplementary benefits, in particular special needs supplement and housing allowance, which are granted based on an assessment of individual needs (Conclusions XIX-2). However, the Committee again notes that not all recipients of social assistance are entitled to such benefits and in particular for persons on starting allowance, under 25 years of age and not living with their family, restrictions applied during the reference period.
- ▶ Medical assistance: the Committee notes that the situation regarding medical assistance to persons without resources has not changed; medical assistance continues to be provided free of charge.
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €1 100 per month in 2011. The Committee takes note of the on-going work on the possible devising of a nationally defined poverty line and wishes to be informed of any results in the next report.

The Committee recalls that in order to assess the level of assistance, it takes into account basic benefits, additional benefits and the poverty threshold in the country, which is set at 50% of the median equivalised income (Eurostat) and that it considers that assistance is appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold. The arguments presented by the Government in the present report, in particular the criticism of the Committee's use of a poverty threshold equal to 50% of median equivalised income, do not lead the Committee to take any other view. In the light of the above data, the Committee considers that the amount of cash benefit paid to single persons under 25 years of age, living separately from parents

as well as the amount of starting allowance paid to persons both under and over 25 years were not adequate during the reference period].

GERMANY

Normative action:

■ Article 3§1: The Committee concludes that the situation in Germany is not in conformity with Article 3§1 of the Charter on the ground that certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.

[In the conclusion adopted in 2007 (Conclusions XVIII-2), the Committee considered that Germany did not sufficiently safeguard the health and safety interests of self-employed workers. The Committee therefore concluded the situation in Germany was not in conformity with Article 3§1 because certain categories of self-employed workers were not sufficiently covered by the occupational health and safety regulations. In this respect, the Committee recalled that for the purposes of Article 3§1, all workers, including the self-employed, must be covered by health and safety at work regulations (Conclusions I, p. 8 and Conclusions II, p. 182), on the grounds that employed and self-employed workers are normally exposed to the same risks.

In the following conclusion (Conclusions XIX-2, 2009), the Committee noted that there were measures to promote occupation health and safety for the self-employed and that under the law there existed the possibility to make the self-employed insured under the statutory accident insurance scheme and hence to place them under the protection of the health and safety regulations. The Committee also noted that self-employed workers working in agriculture were already compulsorily insured in accident insurance and that the Federal Government had used the EC Council recommendation concerning the improvement of the protection of health and safety at work of self-employed workers (2003/134/EC) to initiate a national action programme to improve safety and health of the self-employed. Nevertheless, the Committee considered that the situation was not in conformity with Article 3§1 on the ground that certain categories of self-employed workers were not sufficiently covered by the occupational health and safety regulations.

The report confirms the information already provided; in particular that all self-employed persons have and will continue to have the possibility at any time to voluntarily comply with the occupational health and safety regulations applicable to employers and employees. However, it points out that the legal status of self-employed persons alone precludes that an employer's duty of care to his/her employees applies to them as well. Based on this information, the report indicates that, in line with European law principles, there is no general application of the legal provisions on safety and health at work to self-employed persons and states that there have been no changes in Germany's position as far as the period covered by the previous report is concerned.

The Committee takes note of this information and considers that the situation is not in conformity on the ground that not all categories of the self-employed are sufficiently protected].

Article 12§4: The Committee concludes that the situation in Germany is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

The Committee notes from the report that Germany is currently negotiating bilateral social security agreements with the Russian Federation and Ukraine. However, the report states that no such agreements exist with Albania, Andorra, Armenia, Azerbaijan, Georgia and the Republic of Moldova. Therefore, the Committee concludes that the situation is not in conformity with Article 12§4 of the 1961 Charter on the ground that equal treatment in matters of social security entitlement is not guaranteed between German nationals and nationals of all the other States Parties].

[In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the state concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the states which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle.

The report indicates that Germany and Turkey have concluded a bilateral social insurance agreement in 1964 that grants a right to family benefits for children living in Turkey. This Agreement only applies if the person is employed in Germany. If the person is not an employee within the meaning of the German-Turkish Agreement on Social Security, he/she can still claim child benefit on the basis of Decision No 3/80 of the EEC-Turkey Association for the months during which he/she continues to benefit from German social insurance. Furthermore, according to the European Interim Agreement on Social Security there is a right to equality of treatment for Turkish nationals who have lived in Germany for at least six months. In relation to Serbia, there also exists a bilateral agreement concluded in 1968 with Yugoslavia and which confers a right to payment of family benefits for children living in Serbia.

However, the Committee notes from the report that there are still no further bilateral agreements on family benefit payments with Albania, Armenia, Georgia and the Russian Federation. In view of the fact that there are no agreements with the above-mentioned States, the Committee concludes that equal treatment is not guaranteed with regard to access to family allowances in respect of nationals of all other States Parties].

[In its last conclusion, the Committee found that the situation of Germany was not in conformity with the 1961 Charter because no bilateral agreement existed with Albania, Andorra, Armenia, Azerbaijan, Georgia or the Republic of Moldova in respect of the right to the maintenance of accruing rights. Given that such agreements have still not been concluded, the Committee reiterates its conclusion of non-conformity].

GREECE

Normative action:

■ Article 3§1: The Committee concludes that the situation in Greece is not in conformity with Article 3§1 of the Charter on the ground that the self-employed are not sufficiently covered by occupational safety and health regulations.

[In its previous conclusions (Conclusions XIII-2, 2007 and XIX-2, 2009), the Committee did not consider self-employed workers were satisfactorily protected in Greece. In particular, the last conclusion was based on the consideration that, despite the improvements made in the reference period and given the high proportion of self-employed workers in Greece (according to 2007 Eurostat data, the highest in Europe with 21% of the total workforce – more than twice the EU average), the self-employed remained only partly covered by the above-mentioned regulations and on an exceptional basis, leaving a number of gaps in their protection (for example, shipyards, agriculture, hotels and restaurants). In this respect, the Committee recalled that that for the purposes of Article 3§1, all workers, including non-employees, must be covered by health and safety regulations as they are exposed to the same risks.

The report stresses that during the reference period, actions were implemented, concerning all workers, without exception, including self-employed persons. It recalls Act No. 3850/2010 (see above), which also concerns, as the other actions undertaken, the category of self-employed workers. More specifically, as far as workers on vessels are concerned, the reports indicates that Article 2§4 of the above-mentioned Act specifies the relevant provisions that apply to sea transport and that Act No. 4078/2012 ratified the ILO Maritime Labour Convention which contains provisions on the protection of seafarers' health and safety and the prevention of accidents. As complementary information on this matter, the report refers to the developments concerning the information and training of the temporary workers on health and safety at work (see above).

Despite the improvements during the reference period, the Committee notes that self-employed workers continue to remain only partly covered by occupational health and safety regulations].

Article 12§3: The Committee concludes that the situation in Greece is not in conformity with Article 12§3 of the Charter on the following grounds:

- ▶ the restrictive evolution of the social security system;
- ▶ deterioration of the social security scheme in relation to minors engaged in special apprenticeship contracts.

[In its decisions on the merits of 7 December 2012 the Committee considered that certain of the reductions that have been introduced by the Government do not, in themselves, amount to a violation of the 1961 Charter. This is particularly the case in relation to the restrictions introduced in respect of holiday bonuses, the restrictions of pension rights in cases where the level of pension benefits is a sufficiently high one, and in cases where people are of such a low age that it is legitimate for the state to conclude that it is in the public interest for such persons to be encouraged to remain part of the work-force than to be retired.

However, the Committee held the view that the cumulative effect of the restrictions, is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned. Therefore, the Committee considered that the situation amounted to the violation of Article 12§3 of the Charter.

The Committee notes from the report that the Government makes every effort so that the financial measures deemed necessary for the exit of the country from the extremely adverse fiscal situation, have the smallest possible impact on pensioners who receive low or moderate pensions. The report states that the Greek Governments, in an attempt to tackle problems related to the effectiveness and sustainability of the social security system and given the fiscal condition of the country, reviewed structural aspects of the social security system (on the basis of the reform Acts 3655/2008 and 3863/2010), so as to ensure its efficiency and financial sustainability. The Committee also refers to its conclusion under Article 12§1 and asks the next report to provide information about the implementation of this reform and its impact on the personal coverage as well as the minimum level of pension.

According to the report, the following legislative developments took place during the reference period, of which the Committee already took note in the context of the above mentioned collective complaints:

- ▶ Law 3863/2010 imposed the solidarity contribution (EAS) on pension of at least €1 400 to foster intergenerational solidarity;
- ▶ Law 3845/2010 stipulated that the Christmas and Easter bonuses and the holiday allowance shall be paid only if the beneficiary – pensioner has attained the 60 years of age and the amount of his/her monthly pension does not exceed €2 500;
- ▶ Law 3986/2011 imposed a deduction of 6% on the total amount of pensions (for pensioners below 60 years of age) higher than €1 700;
- ▶ Law 4024/2011 provided for a reduction of 40% in the amount of the monthly main pension exceeding € 1 000 for pensioners who have not attained their 55 years of age.

The Committee takes note of the restrictive evolution and reiterates that the cumulative effect of the restrictions, is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned and therefore, the situation is not in conformity with the Charter.

The Committee further notes from the Resolution of the Committee of Ministers CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012) that from May 2012, main pensions, which, after previous reductions still exceeded €1 300, were additionally reduced by 12% with retroactive effect for the period January-April 2012 (section 6(1) of Act No. 4051/2012). A new package of austerity measures under the Memorandum of Understanding on the Medium-Term Fiscal Strategy 2013-16 (Memorandum III) was approved by the Greek Parliament in November 2012. With respect to pensions, the legal retirement age was set to rise from 64 to 67 on 1 January 2013, including for social benefits of the EKAS; all pension payments of over €1 000 were cut by between 5 and 15%; Christmas, Easter and summer bonuses for pensioners were abolished, among other measures.

The Committee wishes to be informed about further restrictive measures which have taken place in 2012, i.e. outside the reference period. In particular, it wishes to know whether the Government has conducted the minimum level of research and analysis into the effects of such far-reaching measures that is necessary to assess in a meaningful manner their full impact on vulnerable groups in society. The Committee also asks the next report to indicate in detail what was the impact of these restrictive measures on the pensioners, recipients of the minimum pension, either contributory (after 15 years of contributions) or non-contributory (for those to have less than 15 years of insurance) and how the burden of the crisis was shared by the society as a whole.

In its decision on the merits of 23 May 2012 of the collective complaint No 66/2011, General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece the Committee considered that the highly limited protection against social and economic risks afforded to minors engaged in 'special apprenticeship contracts' under Section 74§9 of Act No. 3863/2010 has the practical effect of establishing a distinct category of workers who are effectively excluded from the general range of protection offered by the social security system at large and that this represents a deterioration of the social security scheme which does not fulfil the criteria to be compatible with Article 12§3 of the 1961 Charter.

The decision was adopted outside the reference period and therefore its follow-up cannot be carried out in this conclusion. However, the facts of these complaints will be taken into account as they occurred during the reference period. Therefore, the Committee reiterates that the situation is not in conformity with the Charter because of the deterioration of the social security scheme in relation to minors engaged in special apprenticeship contracts].

■ Article 12§4: The Committee concludes that the situation in Greece is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;

- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

The report reveals that no bilateral agreement, ensuring equal treatment with regard to the right to social security, have been concluded with the following States Parties to the 1961 Charter and to the Charter not members of the EU: Albania, Andorra, Armenia, Azerbaijan, Georgia, "the former Yugoslav Republic of Macedonia", the Russian Federation, Serbia, Turkey and Ukraine. Therefore, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment in matters of social security entitlement is not guaranteed between Greek nationals and nationals of all the other States Parties].

[In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the state concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the states which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle. In its previous conclusion, the Committee asked whether such agreements existed with the following countries: Albania, Armenia, Georgia, the Russian Federation, Serbia and Turkey. Given the silence of the present report on this question, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment with regard to access to family allowances in respect of nationals of all other States Parties is not guaranteed. Should the next report continue to be silent in this respect, there will be nothing to establish that the situation is in conformity with Article 12§4 of the 1961 Charter].

[In its previous 3 conclusions (Conclusion XVII-1, XVIII-1 and XIX-2), the Committee concluded that accumulation of insurance periods acquired under the legislation of a State Party which was not covered by Community regulations or not bound by an agreement with Greece was not guaranteed and that the situation was not in conformity with the Charter. The report does not provide information on the existence of bilateral agreements with the following States Parties which are not members of the EU or the EEA (namely Albania, Andorra, Armenia, Azerbaijan, Bosnia and

Herzegovina, Croatia, Georgia, "the former Yugoslav Republic of Macedonia", the Republic of Moldova, the Russian Federation, Serbia, Turkey and Ukraine). Therefore, the Committee once again concludes that the situation is not in conformity with Article 12§4 of the 1961 Charter on the ground that accumulation of insurance periods acquired under the legislation of a State Party which is not covered by EU regulations or not bound by an agreement with Greece is not guaranteed].

■ Article 13§1: The Committee concludes that the situation in Greece is not in conformity with Article 13§1 of the Charter on the ground that there is no legally established general assistance scheme that would ensure that everyone in need has an enforceable right to social assistance.

[In its previous conclusion (Conclusions XIX-2) the Committee held that the situation in Greece was not in conformity with Article 13§1 of the Charter as there was no general social assistance scheme in the country that would ensure that all persons without resources have a legally enforceable right to assistance for which the sole criterion is need. It notes from the report and the information provided to the Governmental Committee (Governmental Committee, Report concerning Conclusions XIX-2, Doc. T-SG (2011)2final, §§153-156) that the situation has not changed: the main relevant legislation remains Decree 57/1973 which, together with a Ministerial Decision of March 2009 (J.M.D. No. 31777/2009), provides for an emergency one-off allowance of €600 to people unable to cover their basic living costs from any other source of income.

The Committee refers to its previous conclusions (Conclusions XIV-1, XV-1, XVI-1, XIX-2), where it examined this legal framework and concluded that in the absence of a precise legal threshold below which a person is considered in need or of a common core of criteria underlying the granting of benefits, a one-off allowance cannot be deemed to be a sufficient income guarantee for persons without resources. The Committee maintains its finding that the right to social assistance is not guaranteed as a statutory right and reiterates its previous conclusion on this ground].

■ Article 13§4: The Committee concludes that, during the reference period, the situation in Greece was not in conformity with Article 13§4 of the 1961 Charter on the ground that it cannot be established that foreign migrants in an irregular situation received emergency social assistance as needed.

[The Committee notes that the information provided to the Governmental Committee (Governmental Committee, Report concerning Conclusions XIX-2, Doc. T-SG(2011)2final, §235) reiterates that the need for emergency social assistance is assessed and examined on a case by case basis, except for under-aged children, who receive emergency social assistance on all occasions where such assistance is required. It accordingly asks the next report to clarify whether the new legislation referred to in the report has modified this situation, what are the eligibility criteria for assistance and the scope of the assistance provided to migrants in an irregular situation. It also asks the next report to provide any relevant data in this respect. However, in so far as the reference period is concerned, the Committee cannot find it established that foreign unlawfully present persons in need (including refugees and asylum seekers) received emergency social assistance as needed.

As regards the situation of non-resident nationals of States Parties to the Charter, legally present on the Greek territory, the Committee had previously found that they were entitled to emergency social and medical assistance in conformity with the Charter. As the report does not contain any information in this respect and the previous conclusion referred back to information, which has not been updated for a long period, the Committee asks the next report to provide updated information allowing to establish that the situation is still in conformity with the Charter, i.e. that foreign nationals from States Parties to the Charter, legally present in Greece but not resident there, are entitled, in case of need, to emergency social and medical assistance (accommodation, food, clothing, medical care)].

■ Article 4 du Protocole additionnel: Le Comité conclut que la situation de la Grèce n'est pas conforme à l'article 4 du Protocole additionnel de la Charte de 1961 et du Protocole additionnel de la Charte de 1961, au motif qu'il n'existe pas de législation protégeant les personnes âgées contre la discrimination fondée sur l'âge en dehors de l'emploi.

[Le Comité a demandé précédemment si les autorités prévoient d'élargir la législation antidiscriminatoire (ou un cadre juridique équivalent) en vue de protéger les personnes âgées contre toute discrimination en dehors de la sphère de l'emploi. Selon le rapport, la Grèce soutient pleinement la proposition de la Commission européenne en faveur d'une directive relative à l'égalité de traitement sans distinction d'âge (entre autres), dans d'autres domaines que l'emploi. De toute évidence, la Grèce ne dispose pas à ce jour d'une législation adéquate protégeant les personnes âgées contre la discrimination fondée sur l'âge en dehors de l'emploi. Le Comité conclut que la situation n'est pas conforme à la Charte sur ce point].

Other parliamentary measures:

■ Article 3§2: The Committee concludes that the situation in Greece is not in conformity with Article 3§2 of the Charter on the ground that during the reference period the prevalence of occupational diseases was not adequately monitored.

■ Article 11§2: The Committee concludes that the situation in Greece is not in conformity with Article 11§2 of the 1961 Charter on the grounds that it has not been established that:

- ▶ there are adequate measures for counselling and screening for the population at large;
- ▶ there are adequate measures for counselling and screening for pregnant women and adolescents.

■ Article 11§3: The Committee concludes that the situation in Greece is not in conformity with Article 11§3 of the 1961 Charter on the ground that it has not been established that sufficient measures have been adopted to improve the right to a healthy environment for persons living in lignite mining areas.

■ Article 12§1: The Committee concludes that the situation in Greece is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of unemployment benefit for beneficiaries without dependents is manifestly inadequate.

[In its previous conclusion the Committee held that the minimum level of unemployment benefit for beneficiaries without dependents was manifestly inadequate. It notes from the report in this regard that the basic daily unemployment allowance in 2011 stood at €18,46 or € 461,50 monthly. However, the subsidised persons without dependents would get in 2011 € 230 in unemployment benefit. The Committee notes that this figure is still far below the 40% of the Eurostat at-risk-of-poverty rate and is therefore, manifestly inadequate.

Regarding unemployment allowance, the Committee notes in reply to its previous question that the unemployed shall lose his/her right to unemployment benefit if he/she rejects an appropriate job offer. A job is deemed appropriate when it is offered by the competent agencies and corresponds to the physical and intellectual capabilities as well as to the previous employment of the unemployed. If the person looking for a job considers a job offer unsuitable, he/she can file an objection with the competent collective bodies. An unemployed person shall be deleted from the register of unemployed persons if he/she rejects a job corresponding to his/her qualifications. According to the report in 2011 only six unemployed persons were deleted from the register of unemployed persons. The Committee asks whether there is an reasonable initial period during which an unemployed person may reject an unsuitable job offer without losing unemployment benefit].

LATVIA¹⁸

Normative action:

■ Article 13§1: The Committee concludes that the situation in Latvia is not in conformity with Article 13§1 of the Charter on the ground that the granting of social assistance benefits to foreign nationals is subject to an excessive length of residence requirement.

[There have been no changes to the situations as regards the personal scope of social assistance benefits. Benefits are restricted to persons with a permanent residence permit and non-nationals must have held a temporary residence permit in Latvia for at least five years before being entitled to apply for a permanent permit. The Committee reiterates that this amounts to an excessive length of residence requirement which is not in conformity with the Charter].

■ Article 13§3: The Committee concludes that the situation in Latvia is not in conformity with Article 13§3 of the Charter on the ground that the granting of personal help and advice services to foreign nationals is subject to an excessive length of residence requirement.

[There have been no changes to the situation in which entitlement to the assistance foreseen by Article 13§3 is conditioned on having a permanent residence permit. According to the Immigration Law permanent residence permits may be requested once a foreigner has resided continuously in Latvia for at least 5 years on a temporary residence permit. The Committee holds that this amounts to an excessive length of residence requirement which is not in conformity with the Charter (see also the conclusion under Article 13§1)].

18. Latvia ratified the Revised Charter on 26 March 2013.

■ Article 14§1: The Committee concludes that the situation in Latvia is not in conformity with Article 14§1 of the 1961 Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

[There have been no changes to the situation in which access to social services is conditioned on having a permanent residence permit. According to the Immigration Law, permanent residence permits may be requested once a foreigner has resided continuously in Latvia for at least five years on a temporary residence permit. The Committee holds that this amounts to an excessive length of residence requirement which is not in conformity with the Charter].

Other parliamentary measures:

■ Article 11§1: The Committee concludes that the situation in Latvia is not in conformity with Article 11§1 of the Charter on the ground that insufficient efforts have been undertaken to reduce the prevailing high maternal mortality rate.

■ Article 13§1: The Committee concludes that the situation in Latvia is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance benefits is manifestly inadequate.

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: the Committee notes from the MISSOC database that the minimum income benefit (GMI benefit) is calculated as the difference between the amount set by the Cabinet of Ministers and the person's or the household's income. The maximum amount (for beneficiaries with no income or assets) paid was €50 per month for a single person in 2011. The GMI benefit can be set higher for various groups of persons such as old-age pensioners, persons with disabilities and dependent children, but cannot exceed €129. The Committee notes that the GMI benefit rates increased during the reference period, but they remain far below the poverty threshold (see below).
- ▶ Additional benefits: the Committee observes that besides the GMI benefit there are other benefits, such as housing benefit (including heating and electricity), benefit in emergency situations (lump sum), other benefits for transport, meals, clothing, etc., which may be granted at the discretion of the local authorities (municipalities) depending on their budgetary resources. However, the report does not reply to the Committee's question on the average amount of such benefits paid to a single person living alone and who is entitled to GMI. The Committee notes that in any event these other benefits are not granted as of right to all persons in need.
- ▶ Poverty threshold (defined as 50% of the medium equivalised income and calculated on the basis of the Eurostat at risk-of poverty threshold value): it amounted to €175 per month in 2011.

In the light of the above data, the Committee concludes that the level of social assistance benefit is manifestly inadequate].

POLAND

Normative action:

■ Article 12§4: The Committee concludes that the situation in Poland is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- ▶ equal treatment with regard to access to family benefits is not guaranteed to nationals of all other States Parties;
- ▶ the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the state concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the states which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle.

In its previous conclusion, the Committee asked whether such agreements existed with the following States: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, the Russian Federation, Serbia, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine. Since the last report, Poland has concluded bilateral agreements, ensuring the equal treatment in respect of effective access to family benefits to nationals of all States Parties, with Serbia and Turkey. Moreover, the report indicates that the Republic of Moldova and Ukraine showed no interest in including family benefits within their bilateral agreements with Poland. The Committee welcomes the efforts made by Poland, however, there are still no agreements envisaged with Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Montenegro, Russian Federation and "the former Yugoslav Republic of Macedonia". Therefore, the Committee concludes that equal treatment is not guaranteed with regard to access to family benefits in respect of nationals of all other States Parties.

In its previous conclusion, the Committee found the situation not to be in conformity with the Charter because the aggregation of insurance or employment periods was not guaranteed in respect of nationals of all other States Parties. The Committee recalls that States Parties can choose between bilateral or multilateral agreements

or unilateral measures to fulfil their obligations. In its last conclusion, the Committee asked if bilateral agreements were concluded with the following States: Albania, Andorra, Armenia, Azerbaijan, Georgia, "the former Yugoslav Republic of Macedonia", the Republic of Moldova, Ukraine and Turkey. During the reference period, Poland did not conclude any agreements. Therefore, the Committee reiterates its conclusion of non-conformity].

■ Article 13§3: The Committee concludes that the situation in Poland is not in conformity with Article 13§3 of the 1961 Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

[According to the provisions of the Act on Social Assistance, persons holding Polish citizenship, residing and staying within the territory of the Republic of Poland, and foreigners residing and staying on the territory of the Republic of Poland, holding a residence permit or refugee status, as well as citizens of the European Union and European Economic Area, who stay on the territory of Poland and who hold a stay permit are entitled to social assistance benefits. The Committee previously held (Conclusions XVIII-1 of 2006 and XIX-2 of 2009) that this situation was not in conformity with the Charter, insofar as foreign nationals could not have access to social services within the meaning of Article 13§3 unless they had a permanent resident status, which could only be granted after continuously residing in Poland for at least 5 years. The Committee notes from the report as well as from the information provided to the Governmental Committee (Governmental Committee, Report concerning Conclusions XIX-2, Doc.T-SG(2011)2final, §§226-230) that no amendment of the relevant provisions is planned in order to expand the personal scope and bring the situation in conformity with the Charter. Accordingly, the Committee maintains its previous finding].

■ Article 14§1: The Committee concludes that the situation in Poland is not in conformity with Article 14§1 of the 1961 Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length-of-residence requirement.

[With regard to the fees charged for social services, the Committee refers to its previous conclusion.

When it examined equal access to social services in its last two conclusions (Conclusions XVI-2 and XIX-2), the Committee considered that the situation was not in conformity due to the existence of an excessive length-of-residence requirement (five years without interruption). This report indicates that no amendments were made to the Social Assistance Act during the reference period. The Committee therefore reiterates its finding of non-conformity].

Other parliamentary measures:

■ Article 11§1: The Committee concludes that the situation in Poland is not in conformity with Article 11§1 of the 1961 Charter on the ground that equal access to health care is not ensured because of long waiting lists.

[In its previous conclusion (Conclusions XIX-2), the Committee reserved its position on access to health care pending receipt of information about real waiting times for medical treatment. It notes in this connection from the report that waiting times are still long for some specialist medical treatment involving cardiovascular diseases (in 2011 – 52 days for outpatient cardiology care and 61 days for outpatient vascular care, 40 days for inpatient heart surgery and 94 days (27 days if the case is deemed urgent) for the fitting of a pacemaker, 54 days for vascular surgery), orthopaedics (in 2011 – 281 days for a knee replacement operation if the case is deemed urgent and 450 days if it is stable; 215 days for a hip joint replacement operation if the case is deemed urgent and 388 days if it is stable, 14 days for hand surgery if the case is deemed urgent and 1 065 days if it is stable), ophthalmology (in 2011 – 152 days for a cataract operation if the case is deemed urgent and 395 days if it is stable), dental care (in 2009 – 195 days for treatment with an orthodontic appliance and 104 days for dental prosthesis), ENT treatment (107 days for inpatient care for children in 2011) and hearing and speech disorders (153 days for inpatient care for children in 2011). Waiting times are also long for medical rehabilitation (in 2011 – 232 days in the case of paraplegia and tetraplegia, 217 days for rehabilitation of the locomotor system).]

The Committee notes from the report that, under the Ministry of Health Regulation of 26 September 2005 on medical criteria, waiting lists must be kept in such a way that the principle of just, fair, non-discriminatory and transparent access to health care is respected and in accordance with medical criteria, and that the Ministry of Health Regulation of 20 June 2008, amended on 13 September 2011, governs the scope of the data collected by providers, the methods for recording such data and the transmission thereof to the relevant officials for the public funding of the care. Having taken note of these adjustments designed to improve the management of waiting lists and reduce waiting times, it finds that the situation has not changed significantly since the previous assessment and that efforts to improve efficiency and increase capacity so as to reduce waiting times should be continued. The Committee therefore finds that the situation in Poland is not in conformity with Article 11§1 of the 1961 Charter].

■ Article 12§1: The Committee concludes that the situation in Poland is not in conformity with Article 12§1 of the 1961 Charter on the ground that the minimum level of unemployment benefit is inadequate.

[The Committee notes that 50% of the Eurostat median equivalised income stood at €209 in 2011.

In its previous conclusion the Committee held that the minimum level of unemployment benefit was inadequate. In this connection, the Committee notes from MISSOC that Unemployment Allowance (Zasiłek dla bezrobotnych) is paid monthly as a percentage of the Basic Unemployment Allowance, depending upon the length of economic activity. In 2012, unemployment allowance stood at PLN 794.20 (€195) per month for a period of three months and PLN 623.60 (€153) thereafter.

The Committee notes from the report that as of January 2010 the unemployment benefit amounted to PLN 717(€179) for the first three months and PLN 563 (€140) afterwards (12 months maximum in total). The Committee holds that the minimum

level of unemployment benefit is inadequate as it falls below 40% of the median equivalised income].

■ Article 12§3: The Committee concludes that the situation in Poland is not in conformity with Article 12§3 of the 1961 Charter because of the restrictive evolution of unemployment branch of social security.

[The Committee considers that even if the amount of the benefit in question has been rising with consumer price index and in proportion to the minimum wage and without prejudice to its conclusion under Article 12§1 where it considers that the duration of unemployment benefit of 6 months does not pose a problem of conformity with Article 12§1, the Committee holds that the fact of reducing the duration from 18 to 6 months (12 months only in special cases) still represents a restrictive evolution of the unemployment branch. Therefore, the situation is not in conformity with the Charter].

SPAIN

Normative action:

■ Article 11§1: Pending receipt of the information requested, the Committee defers [for procedural reasons] its conclusion, BUT (on the merits):

[The report supplements the description of the general legal framework and the reforms to it with a specific reference to Royal Legislative Decree 16/2012 of 20 April on urgent measures to guarantee a sustainable national health system and improve the quality and security of care and Royal Decree 1192/2012 of 3 August, which regulates the status of insured persons and beneficiaries for publicly funded health care in Spain through the national health system. However, the Committee notes an amendment in Article 1 of the said Royal Legislative Decree 16/2012 (which the report states is supplemented by Royal Decree 1192/2012), which has the effect of denying foreigners illegally present in the country access to health care except in "special situations" (emergency resulting from serious illness or accident; care for pregnant women, both prenatal and postnatal; foreign minors aged under 18 years). From this point of view, the Committee considers that this denial of access to health care for adult foreigners (aged over 18 years) present in the country illegally is contrary to Article 11 of the Charter. (...)]

The Committee has held here that the States Parties to the Charter have positive obligations in terms of access to health care for migrants, "whatever their residence status" (Médecins du Monde – International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §144). With specific regard to Article 11, the Committee has pointed out that "paragraph 1 requires States Parties to take appropriate measures to remove the causes of ill-health and that, as interpreted by the Committee, this means, *inter alia*, that States must ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population", insofar as "health care is a prerequisite for the preservation of human dignity and that human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or the European Convention on Human Rights" (International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits

of 8 September 2004, § 31; Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 100-101). This idea of universal accessibility has also been underlined as one of the essential elements of the right to protection of health by the United Nations Committee on Economic, Social and Cultural Rights: “§12. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party” [General Comment No. 14 (2000): The right to the highest attainable standard of health, Art. 12 of the International Covenant on Economic, Social and Cultural Rights].

■ Article 12§4: The Committee concludes that the situation in Spain is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ the length of residence requirement for entitlement to non-contributory old-age pensions is excessive.

[The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

In its last conclusion, the Committee asked whether bilateral agreements with States Parties, that are not EU or EEA members, were envisaged with the following States: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, “the former Yugoslav Republic of Macedonia”, Georgia, the Republic of Moldova and Turkey. Given that no such agreements have been concluded during the reference period, the Committee concludes that equal treatment with regard to the right to social security is not guaranteed to the nationals of all other States Parties with which there is no bilateral agreement.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the state concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the states which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle. In its last conclusion, the Committee asked whether such agreements existed with the following States: Albania, Armenia, Georgia, Serbia, Russian Federation and Turkey, or whether they were planned and on what timescale. The report indicates that such an agreement

exists with the Russian Federation since 1996 and is currently negotiated with Turkey. Given that no such agreement exist with the other above-mentioned States Parties, the Committee concludes that the situation is not in conformity on the ground that equal treatment with regard to access to family allowances in respect of nationals of all other States Parties is not guaranteed.

The Committee refers to its previous conclusion where it found that the ten-year residence requirement to benefit from old-age pensions was excessive. Given the absence of information in the present report, the Committee reiterates its conclusion of non-conformity].

■ Article 4 of the Additional Protocol: The Committee concludes that the situation in Spain is not in conformity with Article 4 of the Additional Protocol of the 1961 Charter on the ground that it has not been established that there is legislation protecting elderly persons from discrimination on grounds of age.

[In its previous conclusions, the Committee asked whether non-discrimination legislation exists protecting elderly persons from discrimination on grounds of age. The previous report stated that protection is granted by the Constitution itself which stipulates in its Article 14 that Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstance. The Committee observes that age does not figure explicitly among the grounds of prohibited discrimination.

As regards the protection of elderly persons from discrimination outside employment, the Committee recalls that Article 4 of the Additional Protocol requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services. The European Older People's Platform and other sources point to the existence of pervasive age discrimination in many areas of society throughout Europe (health care, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities) which leads the Committee to consider that an adequate legal framework is a fundamental measure to combat age discrimination in these areas

The Committee finds the situation is not in conformity with Article 4 of the Additional Protocol on the grounds that it has not been established that there is legislation protecting elderly persons from discrimination on grounds of age].

Other parliamentary measures:

■ Article 12§1: The Committee concludes that the situation in Spain is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of sickness benefit is manifestly inadequate.

[The Committee notes that in 2011 50% of the Eurostat median equivalised annual income stood at € 6 258.

As regards sickness benefit, in its previous conclusions XVII-2 and XV-2 the Committee noted that it fell below 50% of the median equivalised income and asked whether additional benefits were paid to a person earning the minimum level of sickness benefit. The Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2011) 2 §83-85) that calculated on the basis of

the average salary of the manual worker, sickness benefit would amount to €32 until the 20th day of sickness (60% of the salary) and to €40 from the 21st day (75% of the salary).

The Committee notes from the report that for cases where the reference to the minimum wage has been replaced by the reference to IPREM pursuant to the provisions set out in the Royal Decree No 3/2004, the annual amount of IPREM was set at € 7 455.14. Therefore, the Committee will take this amount into account in calculating the minimum levels of benefits. The example given of a manual worker cannot be used in the assessment of the situation as his/her salary does not represent the minimum base on which the minimum benefit is calculated.

As regards sickness benefit, the Committee notes that it amounted to 60% of the IPREM and stood at € 4 473. The Committee holds that it falls below 40% of the median equivalised income and is therefore manifestly inadequate].

■ Article 13§1: The Committee concludes that the situation in Spain is not in conformity with Article 13§1 of the Charter on the grounds that, at least in some of the autonomous communities:

- ▶ minimum income eligibility is subject to a length of residence requirement;
- ▶ minimum income eligibility is subject to age requirements (25 years old);
- ▶ minimum income is not paid for as long as the need persists;
- ▶ the level of social assistance paid to a single person is manifestly inadequate (except for the Basque country and Navarra).

[Social assistance in Spain falls under the exclusive competence of the 17 autonomous communities and the two autonomous municipalities; accordingly, each of these local entities has different social assistance systems mostly based on the one hand on a minimum income system and on the other hand on the provision of a social emergency financial support in exceptional cases, including where the person is not eligible to the minimum income.

The Committee has previously repeatedly found since 1996 (Conclusions XIII-4, XIV-1, XV-1, XVI-1, XVII-1, XVIII-1, XIX-2) that the minimum income system in several autonomous communities does not comply with the Charter where eligibility for the minimum income is subject to a length of residence requirement – from six months to three years – and (Conclusions since 2000) where it is subject to a minimal age condition, excluding for example from assistance people younger than 25. In addition, the Committee found (since 2006, Conclusions XVIII-1 and XIX-2) that, contrary to the Charter, the duration of social assistance is limited in time. The report does not provide any new information in this regard, while the information provided to the Governmental Committee confirms the shortcomings already noted (Governmental Committee, Report concerning Conclusions XIX-2, Doc. T-SG(2011)2final, §§174, 175, 177, 182).

The Committee recalls that the domestic legal system cannot exempt a State Party from the international obligations it entered into on ratifying the Charter: even if under domestic law local or regional authorities are responsible for exercising a particular function, States Party to the Charter are still responsible, under their

international obligations, to ensure that their responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the state (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29; International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2010, §56). Accordingly, where social welfare services are decentralised, the Committee assesses the compliance with the Charter taking into account the effective application also by the local bodies. In this respect, although the Charter does not require the same level of protection across the country, it requires a reasonable uniformity of treatment. The Committee considers indeed that, based on their strategic choices and priorities, the local entities (regions, provinces and/or municipalities) must nevertheless comply with Article 13 of the Charter (see, mutatis mutandis, The Central Association of Carers in Finland c. Finland, Complaint No. 70/2011, §§58-59). In the light of the information above, the Committee asks the next report to provide comprehensive and updated information on the social assistance benefits (minimum income and emergency financial support) in the different local entities, the eligibility criteria applied and the duration of the assistance provided. In the meantime, it maintains its previous conclusion of non-conformity both as regards the residence and the minimal age requirements as well as regards the fact that the minimum income is not paid for as long as the need persists].

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: according to the report the amount of minimum income for a single person varies according to regions from €300 in Murcia and Ceuta (the lowest) to €641.40 in Navarra and €658.5 in the Basque country (the highest) in 2011.
- ▶ Additional benefits: the report does not provide any information on any other benefits paid to a single person without resources. According to MISSOC, housing allowances amounting to €525 per year can be provided to beneficiaries of non-contributory old-age or invalidity pensions. The Committee notes that there is no indication that regular supplementary benefits apply to everybody in need and that their amount is adequate. It asks the next report to provide information in this respect;
- ▶ Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €521 per month in 2011.

The Committee recalls that, under Article 13§1 of the Charter, the assistance is considered to be appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a single person living alone is not manifestly below the poverty threshold. In the light of the above data, the Committee considers that in all autonomous communities and municipalities, except for the Basque country and Navarra communities, the level of social assistance paid to a single person is manifestly inadequate on the basis that the minimum assistance that can be obtained falls below the poverty threshold].

■ Article 14§1: The Committee concludes that the situation in Spain is not in conformity with Article 14§1 of the 1961 Charter on the grounds that:

- ▶ it has not been established that effective access to social services is guaranteed;
- ▶ the conditions to be met by providers of social services are not clearly defined;
- ▶ it has not been established that supervisory arrangements for ensuring that providers of social services comply with the conditions ensuring the quality of services exist.

■ Article 14§2: The Committee concludes that the situation in Spain is not in conformity with Article 14§2 of the 1961 Charter on the grounds that it has not been established that:

- ▶ that there are means of monitoring the actions of non-governmental organisations and other non-public service providers;
- ▶ that there is equal and effective access to social services provided by non-governmental organisations and other non-public service providers.

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Normative action:

■ Article 12§1: The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 12§1 of the Charter on the ground that the minimum duration of unemployment benefit is too short.

[In reply to the Committee’s question, the report states that according to Article 67 of the Law on Employment and Insurance in case of Unemployment the unemployed person is not entitled to unemployment benefit when the labour relation has been terminated due to unjustified absence from work for 3 successive working days (breach of the working order and discipline).

In its previous conclusion the Committee held that the situation was not in conformity with the Charter as the minimum duration of unemployment benefit (one month) was too short. It notes from the report in this regard that in view of the unfavourable situation in the country and in cooperation with a number of international institutions, analysis and evaluations have been conducted with a view to shifting the focus from passive to active measures. In defining the duration of unemployment benefit, the proportionality between the minimum and maximum periods of the benefit was taken into account. According to the report, the number of persons who have received the benefit in question for one month only remains low at 0.3% of the total beneficiaries of the benefit. The report states that additional research and analysis will be conducted in the forthcoming period to determine the impact of such measures on the rate of unemployment as well as the financial effects, whereupon adequate solution will be proposed and implemented.

The Committee holds that the situation which it has previously found not to be in conformity with the Charter has not changed. Persons who have been in uninterrupted working relation of 9 months receive unemployment benefit for one month. Therefore, the Committee reiterates its previous finding of non-conformity on the ground that the minimum duration of unemployment benefit of one month is too short.]

■ Article 12§4: The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- ▶ equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- ▶ equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- ▶ it has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties;
- ▶ it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

[Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

In its previous conclusion, the Committee asked if and how equal treatment was guaranteed for non-nationals legally residing or working in “the former Yugoslav Republic of Macedonia” and not covered by bilateral agreements. In this regard, the report indicates that the Law on pension and disability insurance provides that the country’s own nationals and nationals of other countries, who are employed or self-employed in the State, are all covered by the mandatory pension and disability insurance. In addition to pension and disability insurance, the other benefits (i.e. health insurance, healthcare, maternity, rights in case of accidents at work and occupational disease, temporary unemployment) are covered by bilateral social security agreements that “the former Yugoslav Republic of Macedonia” has signed with the following States: Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Netherlands, Germany, Luxembourg, Montenegro, Poland, Romania, Serbia, Slovenia and Turkey. “The former Yugoslav Republic of Macedonia” also maintained bilateral agreements negotiated at the time of the Socialist Federal Republic of Yugoslavia with the following States Parties: United Kingdom, France, Italy, Norway and Sweden. The Committee welcomes the efforts made in this respect, however, there are still no agreements with Albania, Andorra, Armenia, Azerbaijan, Cyprus, Estonia, Finland, Georgia, Greece, Iceland, Ireland, Latvia, Lithuania, Malta, the Republic of Moldova, Portugal, the Russian Federation, Spain and Ukraine. Therefore, the Committee concludes that the situation is not in conformity with Article 12§4 of the Charter on the ground that equal treatment in matters of social security entitlement is not guaranteed to the nationals of all other States Parties.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the state concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States which impose a child residence requirement are under an

obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle.

According to MISSCEO, family benefits are paid to foreign nationals provided that their children are lawfully resident in "the former Yugoslav Republic of Macedonia".

[The Committee notes that the retention of accrued social security benefits is guaranteed in all the agreements concluded by "the former Yugoslav Republic of Macedonia". In its last conclusion, the Committee asked if nationals of States Parties not bound by bilateral agreements may also retain accrued social security benefits. Given that the report does not reply to this question, the Committee concludes that the situation is not conformity with Article 12§4 of the Charter on the ground that it has not been established that the retention of accrued benefits for persons moving to a State Party which is not bound by an agreement with "the former Yugoslav Republic of Macedonia" is guaranteed. Should the next report continue to be silent in this respect, there will be nothing to establish that the situation is in conformity with Article 12§4 of the 1961 Charter.

The Committee has previously noted that the accumulation of employment periods and the pro rata calculation of benefits are guaranteed where a bilateral agreement has been negotiated. In this regard, the Committee asked if and how the principle of aggregation of accruing social security rights is implemented for nationals of all other States Parties that are not bound by bilateral agreements with "the former Yugoslav Republic of Macedonia". Given the silence of the report, the Committee concludes that the situation is not conformity with Article 12§4 of the Charter on the ground that it has not been established that nationals of States Parties which are not covered by an agreement with "the former Yugoslav Republic of Macedonia" can accumulate periods of insurance or employment completed in other countries. Should the next report continue to be silent in this respect, there will be nothing to establish that the situation is in conformity with Article 12§4 of the 1961 Charter].

■ Article 13§1: The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 13§1 of the Charter on the ground that certain benefits such as social financial assistance and permanent financial assistance are granted to nationals of other States Parties only subject to an excessive length of residence requirement.

[According to MISSCEO the granting of basic social assistance benefits, and notably social financial assistance, is conditional on the recipient having a permanent residence permit and the report appears to confirm this information (except in respect of one-off assistance which is open to both permanent and temporary residents). The report explains that permanent residence permits are awarded to persons with a minimum of five years of continuous residence in the territory on the basis of a temporary residence permit. The Committee holds that this amounts to an excessive length of residence requirement which is not in conformity with the Charter].

Other parliamentary measures:

■ Article 13§1: The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 13§1 of the Charter on the

ground that social assistance benefits are not adequate as they fall manifestly below the poverty threshold.

[To assess the situation during the reference period, the Committee takes account of the following information:

- ▶ Basic benefit: according to the report (and MISSCEO) the social financial assistance for persons capable of work and without means of subsistence in 2010 amounted to MKD 2 140 (€ 34.8) per month for a single person household and in 2011 to MKD 2,174 (35.3 €). The amount corresponds to 13.5% of the average net monthly salary of an employee. The full amount is paid during the first two years of receipt, but is reduced to 70% in the following three years and to 50% after that. Persons who are incapable of work and without means of subsistence are entitled to permanent financial assistance which for a single person household amounted to MKD 3 210 (52.2 €) per month in 2010 and to MKD 3,261 in 2011 (53.1 €).
- ▶ Additional benefits – while noting the existence of various other benefits such as financial assistance for social housing, one-off assistance or benefits in kind, it does not appear that these are paid to all recipients of basic benefits. However, the Committee notes the possibility of granting subsidies for electricity expenses and other public utilities and ask that the next report provide estimates of total benefits, basic and supplementary, paid to a typical single person household.
- ▶ Poverty threshold: the report does not contain information on poverty threshold values, but the Committee notes that the State Statistical Office has published information on the at-risk-of-poverty threshold calculated according to the Eurostat methodology.¹ The threshold published for 2010 and re-calculated by the Committee at 50% of median equivalised income correspond to MKD 4,228 (68.8 €) per month. The Committee recalls that in the meaning of Article 13§1 of the Charter the assistance is appropriate where the monthly amount of assistance benefits – basic and supplementary – paid to a person living alone is not manifestly below the poverty threshold.

While noting that the amounts of social assistance benefits have increased steadily (in particular because they are adjusted annually for inflation) during the reference period, the Committee holds that social financial assistance for a single person household are not adequate as they fall manifestly below the poverty threshold. This also applies to permanent financial assistance paid to the elderly without resources].

UNITED KINGDOM

Possible parliamentary measures to ensure the follow-up of this conclusion:

■ Article 12§1: The Committee concludes that the situation in United Kingdom is not in conformity with Article 12§1 of the Charter on the ground that:

- ▶ the minimum levels of short-term and long-term incapacity benefit is manifestly inadequate;
- ▶ the minimum level of state pension is manifestly inadequate;
- ▶ the minimum level of job seeker's allowance are manifestly inadequate.

[The Committee notes from Eurostat that 50% of the median equivalised income stood at € 714 in 2011.

In its previous conclusion the Committee held that the minimum levels of Statutory Sick Pay, Short Term Incapacity Benefits and contributory Jobseeker's Allowance for single person were manifestly inadequate.

The Committee notes from the report and from MISSOC that short-term incapacity benefit stood at £ 71 (€85) and long-term incapacity benefit at £ 94 (€112) per week. ESA and Job-Seekers allowance stood at £67 per week (around €321 per month). As regards the state pension, it stood at £102 (€ 490 per month).

The Committee also notes from the report that there are other types of benefits available, such as housing benefit. It asks whether it is available for single persons earning the minimum levels of short-term and long term incapacity benefits, state pension and job seeker's allowance.

The Committee holds that even if the minimum levels of short term and long term incapacity benefits, state pension and job seeker's allowance may satisfy the requirements of the European Code of Social Security, they are manifestly inadequate in the meaning of Article 12§1 of the Charter as they fall below 40% of the Eurostat median equivalised income].

Appendix 8

Observations by the Committee on texts submitted by the Committee of Ministers

Comments on Parliamentary Assembly Recommendation 2012 (2013) on “Reinforcing the selection processes for experts of key Council of Europe Human Rights monitoring mechanisms”

The European Committee of Social Rights has taken note with interest of Recommendation 2012 (2013) and Resolution 1923 (2013) to which it refers. The Committee welcomes the general aims and objectives laid out by these texts. It concurs with the view that the credibility of the Council of Europe depends on the efficacy and quality of its key human rights monitoring mechanisms and that a careful selection process of their members is therefore essential.

As far as the members of the European Committee of Social Rights are concerned, the Committee would firstly like to point out that they are only 15 members (despite the fact that the Charter is currently ratified by 43 States) and that, according to the procedure followed by the Committee of Ministers, only States Parties may present candidate and each State may present only one candidate at a time. These two important characteristics should be borne in mind when deciding upon the election process, since they may differ from the rules and practice followed in respect of other monitoring bodies.

The members of the European Committee of Social Rights are elected by the Committee of Ministers pursuant to Article 25 of the 1961 European Social Charter. According to this provision members shall be elected “from a list of independent experts of the highest integrity and of recognized competence in international social questions, nominated by the Contracting Parties.”

The Committee wishes to recall that according to Article 25 of the Charter as it appears in Article 3 of the 1991 Amending Protocol (the “Turin Protocol”) the members shall be elected by the Parliamentary Assembly. However, the Turin Protocol has still not entered into force¹⁹ and although the other provisions of the Protocol are being applied on the basis of unanimous decisions by the Committee of Ministers, the provision about election by the Parliamentary Assembly is still not being applied.

In keeping with previous Parliamentary Assembly recommendations (see Recommendation 1958 (2011) on “Monitoring of commitments concerning social rights”), the Committee of Ministers may wish to consider applying the said provision of the Turin Protocol already now, in the same way as it has already decided to apply all the other provisions in the Protocol.

Alternatively, the Committee of Ministers and the Parliamentary Assembly could initiate a dialogue – in the spirit of the present Parliamentary Assembly Recommendation – with a view to developing a procedure which would involve the two organs of the Council of Europe jointly in the process of electing members of the European Committee of Social Rights.

19. The Protocol has still not been ratified by Denmark, Germany, Luxembourg and the United Kingdom.

Finally, the Committee wishes to point out that Article 25§4 of the Charter as it appears in Article 3 of the Turin Protocol provides that "The members of the committee shall sit in their individual capacity. Throughout their term of office, they may not perform any function incompatible with the requirements of independence, impartiality and availability inherent in their office." This provision is reflected in Rule 5 of the Committee's Rules which also provides that "If it appears that a member of the Committee has agreed to undertake functions which may be regarded as incompatible with the provisions of paragraph 1, he/she is obliged to draw the consequences thereof. Failing this, as well as in cases of a violation of the provisions of Rule 3, the Committee is, on the basis of a report by the President, required to take a decision on the situation."

Comments on Parliamentary Assembly Recommendation 2020 (2013) on "Equal access to health care".

The European Committee of Social Rights (the "Committee") has taken note with great interest of Parliamentary Recommendation 2020 (2013) on equal access to health care, which was forwarded to it for information and possible comments. It fully subscribes to the Recommendation's findings and the requests made to the Committee of Ministers, namely that it should urge States that have not yet done so to ratify the Revised Social Charter, and also ensure that States progress in the implementation of the Charter.

The Committee recalls that the Charter has a number of provisions that deal with certain aspects of health or are indirectly linked to health matters in some way (Article 3 on labour health and safety, there is also Article 8 on maternity protection, Article 12 which stipulates health care as one of the branches of social security that States Parties must provide for, and Article 13 on the right to social and medical assistance). The Committee has repeatedly affirmed that the protection of health is a "prerequisite for the preservation of human dignity" and closely linked to the right to physical and moral integrity.

The article which address health in a more direct and comprehensive manner is Article 11. This provision guarantees the right to health in three paragraphs covering issues such as the state of health of the population, access to the health care system and its facilities, health education and prevention policies.

The Committee's interpretation of Article 11, and more particularly Article 11§1, concerning the obligation to remove as far as possible the causes of ill-health establishes two main aspects of the right: the right to the highest possible standard of health and the right to access to health care. The former is to be understood as the best possible state of health for the population according to existing knowledge. Accordingly, States have an obligation to take measures to combat the main causes of death as well as action to prevent all avoidable risks. The Committee has established a series of indicators to assess the overall health care system of a country, such as life expectancy, the principal causes of death, infant and maternal mortality.

These indicators provide valuable information on whether a health system is functioning well or not, and in examining national situations the Committee has sometimes found breaches of the Charter in countries where measures to reduce the general

mortality rate, or more specifically, the infant and maternal mortality rate, were insufficient (Albania, Hungary, Moldova, Romania, Conclusions 2009).

The Committee also holds that effective access to health care for all and without discrimination is a criterion for adequate health care systems. Moreover, access to health care should not constitute an excessive financial burden for individuals, especially the most disadvantaged ones, and the community should bear at least part of it. In a statement of interpretation from 2005 the Committee said that "any restrictions on the right [to protection of health] must not be interpreted in such a way as to impede the effective exercise by disadvantaged and vulnerable groups to the right to protection of health."

In assessing whether the right to protection of health can be effectively exercised, the Committee pays particular attention to the management of waiting lists and average waiting times in health care. It considers that there should be measures to avoid unnecessary delays in the provision of health care and that treatment is provided within acceptable periods. The Committee has found situations where the poor organisation of primary health care led to waiting times of over three years for some specialised services, in breach of Article 11§1 (Turkey, Conclusions XV-2, 2001).

The Committee also examines the measures taken by states to prevent activities that are damaging to health, such as smoking, alcohol and drugs. It also looks at whether states provide free consultation and screening for pregnant women and children, as well as screening for diseases responsible for high premature mortality rates. It has found breaches of Article 11§2 when states have not supplied sufficient information on the availability of such screening programmes.

With respect to the right to health in the collective complaints procedure, the Committee in a decision on the merits in Complaint No. 46/2007 European Roma Rights Center v. Bulgaria, said that: "There is sufficient evidence showing that Roma communities are faced with disproportionate health risks and that they do not live in healthy environments." It further held that "The health status of Roma being inferior to that of the general population, the authorities have also failed to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services. In sum, the failure of the authorities to take appropriate measures to address the exclusion, marginalisation and environmental hazards which Romani communities are exposed to in Bulgaria, as well as the problems encountered by many Roma in accessing health care services, constitute a breach of Article 11 in conjunction with Article E (Non-discrimination)." More recently, also concerning non-discriminatory access to health care, in Complaint No. 67/2011 Médecins du Monde-International v. France, the Committee found that there had been a violation of Article E in combination with Article 11§1 because the State had failed to meet its positive obligation to ensure that migrant Roma, whatever their residence status, including children, enjoyed an adequate access to health care.

In the context of the collective complaints procedure, by its decision of 6 December 2006 on the merits of the complaint lodged by the Marangopoulos Foundation for Human Rights against Greece, the Committee explicitly recognised environmental protection as one of the pillars of the right to health and addressed the issue of State

responsibility for regulating, supervising and monitoring a polluting activity which could be harmful to health. In addition, although the Charter does not enshrine the precautionary principle in matters of public health, it takes due account of this principle, as established by international law and the law of the European Union, namely that the public authorities are required to take early action regarding risks and/or possibilities of harm when full knowledge or scientific evidence concerning the likelihood of their occurrence and their potential impact is lacking. In its decision of 17 October 2001 on the merits of the complaint lodged by STTK ry and Tehy ry against Finland, the Committee, implicitly applying the precautionary principle, considered that, at present, it cannot be stated that exposure to radiation even at low levels is completely safe and ruled that work involving exposure to radiation in the health sector must be considered as dangerous and unhealthy within the meaning of Article 2 § 4 of the Charter.

In its decision of 23 January 2013 on the merits of the complaint lodged by the International Federation for Human Rights against Greece, the Committee, again implicitly applying the precautionary principle, took the view that, where there were threats of serious damage to human health, the lack of full scientific certainty should not be used as a reason for postponing appropriate measures.

The Committee also recalls that, whilst the personal scope of the Charter in principle only applies to nationals of other Parties lawfully residing or working within a State Party, it has extended the scope through the collective complaints procedure in cases where a right of fundamental importance to an individual was at stake, namely the right to health which is linked to the right to life itself and thus to human dignity. The first case with such an approach was in the decision on the merits in International Federation of Human Rights Leagues (FIDH) v. France, from 2004, where it held that "legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter". This type of interpretation has been subsequently applied in other cases, as well as in the reporting procedure.

Whilst obligations on States Parties under Article 11 are of a general kind, and the latter retain a considerable discretion on the measures to achieve the aims of this provision, the Committee considers that States Parties should implement Article 11 taking into account the content and limits to the right to health mentioned above. Finally, the Committee recalls that the observations it has previously submitted on Parliamentary Assembly Recommendation 1959 (2011) "Preventive health care policies in the Council of Europe member states", are still relevant in the context of the present Recommendation.

Comments on Recommendation 340 (2013) of the Congress of Local and Regional Authorities on "Local and regional authorities responding to the economic crisis".

The European Committee of Social Rights takes note of Recommendation 340 (2013) of the Congress of Local and Regional Authorities on "Local and regional authorities responding to the economic crisis".

The Committee can broadly subscribe to the analysis of the crisis and its consequences as set out in the recommendation, in particular consequences such as rising unemployment and reduction of social welfare programmes, and it shares Congress' concern at the economic inequality and social problems and unrest that follow.

The Committee notes with interest the proposal in paragraph 15, letter h, to exclude priority social services such as health, education and social protection for vulnerable groups from budget expenditure limits. Already in its General Introduction to Conclusions 2009 (pp. 12-13) commenting on the consequences of the economic crisis, the Committee recalled that under the European Social Charter the States Parties have undertaken to pursue by all appropriate means the attainment of conditions in which the rights may be effectively realized, even in a situation where the number of beneficiaries increase while revenues from tax and social security contributions decline. The Committee emphasized that the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter remain effectively guaranteed at a period of time when beneficiaries need the protection most.

Having also noted that Congress supports the position of the Parliamentary Assembly that austerity measures may represent a danger to democracy and social rights (cf. Parliamentary Assembly Resolution 1884 (2012)), the Committee would like to draw the attention to its recent decisions in a series of collective complaints in which it ruled that certain austerity measures adopted by Greece were not in conformity with the Charter.²⁰

As regards Congress' suggestion in paragraph 15, letter i, to remove legal requirements which impose expensive service provision, the Committee wishes to sound a note of caution. While acknowledging the difficult financial situation of local and regional authorities in the current context, the Committee considers that removing legal requirements could lead to undermining social rights guarantees such as those contained in the Charter. Instead a re-prioritisation of resources that safeguards fundamental rights should be undertaken at all levels: national, regional and local.

The Committee finally wishes to emphasise that respecting the European Social Charter is a means not only to cushioning the effects of the crisis, but also to overcoming it. It therefore invites all Council of Europe member states to ratify and fully implement the Charter (revised) and to adhere to the collective complaints procedure.

20. GENOP-DEI / ADEDY v. Greece, Complaint No. 65/2011, GENOP-DEI / ADEDY v. Greece, Complaint No. 66/2011, IKA -ETAM v. Greece, Complaint No. 76/2012, Panhellenic Federation of Public Service Pensioners v. Greece, Complaint No. 77/2012, Pensioners' Union of the Athens-Piraeus Electric Railways v. Greece, Complaint No. 78/2012, Panhellenic Federation of pensioners of the public electricity corporation v. Greece, Complaint No. 79/2012 and Pensioner's Union of the Agricultural Bank of Greece v. Greece, Complaint No. 80/2012.

Appendix 9

Selection of judicial decisions referring to the European Social Charter

National Courts

FRANCE

Decision of the Conseil d'Etat, No. 351316, 351317 of 20 February 2013 (quotation of the article 2 of the Charter), application by the Union Générale des Fédérations des Fonctionnaires CGT.

Decision of Conseil d'Etat, No. 341533 of 4 July 2012 (mention of the article 15 of the Charter) application by the Confédération française pour la promotion sociale des aveugles et des amblyopes.

GERMANY

Decision of the German Federal Constitutional Court, No. 1BvL 1/08 of 8 May 2013 (quotation to the Article 10§4 of the Charter).

ITALY

Judgment of the Administrative Regional Court of Roma (Lazio), section II bis, No. 633 of 21 January 2013, (quotation of the Article 20 of the Charter).

Judgment of the Corte Suprema di Cassazione No. 16732 of 4 July 2013 (reference to the Article 4§2 of the Charter).

Judgment of the Corte Suprema di Cassazione No. 21377 of 18 September 2013 (reference to the Article 4§2 of the Charter).

Judgment of the Corte Suprema di Cassazione No. 22064 of 26 September 2013 (mention of the Social Charter).

Judgment of the Corte Suprema di Cassazione No. 22376 of 30 September 2013 (reference to the Article 4§2 of the Charter).

Judgment of the Corte Suprema di Cassazione No. 22385 of 1October 2013 (reference to the Article 4§1 of the Charter).

Judgment of the Corte Suprema di Cassazione No. 24310 of 28 October (reference to the Article 4§2 of the Charter).

Judgment of the Corte Suprema di Cassazione No. 24543 of 30 October 2013 (reference to the Article 4§2 of the Charter).

Judgment of the Corte Suprema di Cassazione (rec. 8652-2012) of 14 November 2013 (reference to the Article 4§2 of the Charter).

THE NETHERLANDS

Judgment of the Supreme Court, LJN; BY5352, Hoge Raad, 11/04612, 23 April 2013 (reference to the Article 6§4 of the Social Charter – right to bargain collectively – collective action).

RUSSIAN FEDERATION

Decision Russian Federation Supreme Court No. APL13-102 of 28 March 2013 (reference to the Article 2§4 of the Charter).

Judgment of the Russian Federation Constitutional Court No. 22-P of 24 October 2013 (reference to the Article 5 of the Charter).

Judgment of the Russian Federation Constitutional Court No. 31-P du 6 December 2013.

SPAIN

Judgment of the Social Tribunal No. 2 of Barcelona, Despido No. 412/13 of 19 November 2013 (reference to the Articles 4§3 and 4§4 of the European Social Charter)

European Union

Order of the Civil Service Tribunal (Second Chamber) of 21 February 2013. Chiara Avogadro and Others v European Commission. Public service - Directive 1999/70/EC. Case F-58/08 (mention of the Articles 30 and 31 of the Charter).

Order of the Civil Service Tribunal (Second Chamber) of 14 March 2013. Eugen Christoph and Others v European Commission. Case F-63/08 (mention of the Articles 30 and 31 of the Charter).

Judgment of the Court (Fourth Chamber) of 13 June 2013. Office national d'allocations familiales pour travailleurs salariés (ONAFTS) v Radia Hadj Ahmed. Case C-45/12 (reference to the Article 20 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination and the Article 21 of the Charter).

Judgment of the General Court (Appeal Chamber) of 18 June 2013. Michael Heath v European Central Bank (ECB). Case T-645/11 P. (mention to the Article 21§1, b) of the Charter).

Judgment of the Court (Fourth Chamber) of 19 September 2013. European Commission v Guido Starck. Review of the judgment of the General Court in Case T-268/11 P - Civil Service – Commission. C-579/12 RX-II (reference to the Article 2 of the Charter).

Judgment of the General Court (Appeal Chamber) of 4 December 2013. European Training Foundation (ETF) v Gisela Schuerings. Case T-107/11 P. (reference to the Article 24, a) of the Charter).

European Court of Human Rights

Case of Vallianatos and Others v. Greece, Applications nos. 29381/09 and 32684/09, judgment of 7 November 2013, Athens Administrative Court of Appeal judgment no. 748/2011, finding Article 64 of Legislative Decree 1400/1973 contrary to the European Social Charter and the ban on forced labour.

Appendix 10

Main meetings on the Charter

Meetings organised by the Department of the European Social Charter in co-operation with national authorities

Budapest (Hungary), 30 January

Seminar on the European Social Charter procedures (reporting and complaints)

Helsinki (Finland), 7 March

Seminar on the European Social Charter and its collective complaints mechanism,
organized in co-operation with the Human Rights Centre of Finland

Baku (Azerbaijan), 9 July

Meeting on the collective complaints procedure

Ufa (Russian Federation), 3-4 September

Meeting on the implementation of the Charter

Riga (Latvia), 17 September

Meeting on the reporting system following the ratification of the Revised Social Charter

Kyiv (Ukraine), 19 September

Meeting on non-conformity situations identified in Conclusions

Belfast (Northern Ireland), 20 September

NICEM (Northern Ireland Council for Ethnic Minorities) 15th Annual Human Rights
and Equality Conference

Madrid (Spain), 10-11 December

Conference on "Preventing sexual abuse of children" organized by the Spanish government and the Council of Europe, Directorate of Justice and Human dignity – Division of Children's Rights, as well as 7th meeting of "Lanzarote Committee"

Chisinau (Republic of Moldova), 10 December

Seminar on Social Rights (Confidence Measures Building Programme)

Ankara (Turkey), 6 May 2013

Meeting on non-accepted provisions

Sarajevo (Bosnia and Herzegovina), 26 June

Meeting on non-accepted provisions, on the preparation of national reports, on the collective complaints procedure and on the European Code of Social Security

Meetings organised by the Parliamentary Assembly

Paris, 18 October

Seminar on employment conditions of workers below 18

Strasbourg, 24 April

Hearing with the Sub-Committee on Education, Youth and Sport on vocational training

Strasbourg, 25 June

Sub-committee on the European Social Charter

Meetings organised by other Council of Europe Departments

Strasbourg, 30-31 May

Protecting whistleblowers – Meeting to consult key stakeholders, organized by the Division for Legal Co-operation, Justice and Legal Co-operation Department, Justice and Human Dignity Directorate (Directorate General of Human Rights and Rule of Law)

Strasbourg, 12-13 June

2nd meeting of the Committee of Experts on the rights of people with disabilities (CS-RPD), organized by the Social Cohesion and Integration Division, Diversity and Social Cohesion Department, Directorate of Human Rights and Antidiscrimination, DG II

Vadul-Iui-Voda, 18-19 June

Meeting on “social security systems”, organized by the Confidence-building measures Division, Directorate of Political Advice

Grozny (Chechen Republic of the Russian Federation), 11-12 December

Seminar on Social Human Rights in a Post-conflict Environment, organized by the Directorate of Political Advice

Appendix 11

Selection of other meetings and training sessions, seminars, conferences and colloquies

1. Meeting organised jointly by or with another international governmental organisation

Istanbul (Turkey), 28-30 May

Regional Social Security Forum for Europe, organized by the International Social Security Association

Geneva (Switzerland), 29-30 May

“Vienna at 20: Renewing strategies for economic and social justice”, organised by the Center for Economic and Social Rights (CESR) and co-hosted by the UN Special Rapporteur on Extreme Poverty and Human Rights and the Geneva Academy of International Humanitarian Law and Human Rights

Yerevan (Armenia), 18 June

Seminar on Refugee Integration, organized by UNHCR

Vienna (Austria), 21 June

Meeting of the OSCE Human Dimension Committee, organized by the Serbian Chairmanship of the OSCE

Geneva (Switzerland), 25-26 July

Expert meeting on the development of a System-Wide Action Plan on Youth (Youth-SWAP), organized by the Office of the United Nations High Commissioner for Human Rights

Geneva (Switzerland), 1 October

First meeting of Regional Human Rights Mechanisms on Women’s Rights, organized by the Office of the United Nations High Commissioner for Human Rights

Geneva (Switzerland), 16 October

Training on the European Committee of Social Rights, organized by the Office of the United Nations High Commissioner for Human Rights

Copenhagen (Denmark), 4-5 November

Seminar on “Selected Issues concerning the Protection of Refugees, Asylum-Seekers and Stateless Persons under National Law, European Human Rights Law and International Law”, organized jointly by UNHCR and the Council of Europe

Zagreb (Croatia), 20 November

Seminar on the European Social Charter

Strasbourg, 21 November

7th coordination meeting between the Council of Europe and the Office of the High Commissioner for Human Rights (OHCHR)

2. Event organised by an International Organisation

Vienna (Austria), 25-28 June

Conference on current challenges for human rights, organized by the International Coordinating Committee currently consisting of Boltzmann Institute of Human Rights, Center for Economic and Social Rights, InterAmerican Platform for Human Rights, Democracy and Development, International Union of Food Workers, International Indian Treaty Council, Transnational Institute, World Forum of Fish Harvesters and Fish Workers

3. Conferences organised by the European Union

Vienna (Austria), 25-26 April

Meeting of the Annual Fundamental Rights Platform of the European Union Fundamental Rights Agency (FRA)

Bad Hofgastein (Austria), 2-5 October

16th European Health Forum Gastein, organized by the European Commission, participation in the workshop "Anti-discrimination in Health" (3 October)

Brussels (Belgium), 16 October

Meeting on "Poverty reduction: Bridging the gap", organized by the European Parliament

4. Seminars organised by or with social partners

Dublin (Ireland), 14 February

Conference on family reunion organized by the European Commission and the Immigrant Council of Ireland

Strasbourg, 21-22 February

Conference "Poverty and Inequality in Societies of Human Rights – the paradox of democracies", organized in partnership with the European Commission

Brussels (Belgium), 15 March

Conference "Immigration – a source of wealth and duties for Europe", organized by the Council of Europe, the European Economic and Social Committee and the Economic, Social and Environmental Council of France

Madrid (Spain), 20 September

Study day on the reform of the labour market, social rights and the European Social Charter, organized by Spanish trade unions

5. Events organised by non-governmental organisations

Budapest (Hungary), 12 April

Seminar on right to housing, organized by FEANTSA

Istanbul (Turkey), 16-19 April

3rd Enact European Conference "Social Action in Europe: Towards inclusive policies and practices" organized by the "Turkish Association of Social Workers" (TASW)

Vienna (Austria), 24-28 June

In addition to the international expert conference “Vienna + 20”, an “Action week” was organized by Austrian and international civil society (FIAN International, German Institute for Human Rights, InterAmerican Platform for Human Rights, Democracy and Development, International Union of Food Workers, International Indian Treaty Council, Transnational Institute, World Forum of Fish Harvesters and Fish Workers,)

Strasbourg, 26 June

Meeting of the working group on “Extreme Poverty and Human Rights” of the Conference of INGOs, on the follow-up to the Conference “Building Europe through Human Rights: Acting Together against Extreme Poverty”

Madrid (Spain), 22-23 July

Summer course on “Economic crisis = crisis of human rights ?”, organized by Amnesty International

Strasbourg, 5-6 September

2013 Plenary Assembly of the European Roma and Travellers Forum (ERTF)

Strasbourg, 17 October

Workshop against poverty, organized by the Conference of INGOs of the Council of Europe

Brussels (Belgium), 14 November

“A child is a child. How can the European Union ensure the Rights of Undocumented Migrant Children and Families?”, organized by PICUM (Platform for International Cooperation with undocumented migrants) with the support of Group of the Alliance of Liberals and Democrats for Europe (ALDE)

Paris, 29 November

Meeting of the Academic Network on the European Social Charter (ANESC)

6. Colloquies organised by Universities

Strasbourg, 8 February

Colloquy: “*Conseil de l’Europe et OIT, deux institutions au service de la justice sociale. Mise en œuvre et influence des normes en Europe et en France*” organized by the *Laboratoire de Droit social* of Strasbourg University in co-operation with the French Association for the International Labour Organisation

Turin (Italy), 6 April

Lecture on the European Social Charter, organized by the Istituto Sociale di Torino

Berlin (Germany) 15-16 April

Conference in the framework of the celebration of the 20th anniversary of the Vienna Conference on Human Rights, organized by the Berlin-Brandenburgische Akademie der Wissenschaften

Events organized by Non-Governmental Organisations

Istanbul (Turkey), 16-19 April

3rd ENSACT European Conference “Social Action in Europe: Towards inclusive policies and practices” organized by the “Turkish Association of Social Workers” (TASW).

Berlin (Germany) 23-24 May

Conference on "the Role of Collective Actors in Enforcing European Law" organized by the Hertie School of Governance and the Maastricht Centre for European Law

Maastricht (the Netherlands), 19-20 September

"Citizens' Rights and Economic Crisis", Conference organized by the Faculty of Law of Maastricht University

Tangiers (Morocco), 1- 4 October

VIIth Andalusian Forum on Social Rights, international Congress on "Les politiques européennes d'austérité", organized by Pablo Olavide University of Sevilla

Bursa (Turkey), 30 October-1 November

Vth International Symposium on social rights, organized by the Department of Labour Economics and industrial relations of Uludağ University

Quebec (Canada), 30 October–4 November

International autumn course – European integration and human rights, 2nd edition, organized by Laval University

Camerino (Italy), 7-8 November

International Days on Democracy and Protection of Vulnerable Persons, organized by Camerino University

Verona (Italy), 22 November

Seminar on the collective complaints, organized by Verona University

Lyon (France), 25-26 November

Conference "Which securities for workers in time of crisis?", organized by INLACRIS (Independent Network for Labour Law and Crisis Studies), Catholic University of Leuven (Belgium), Faculty of Law, CRIDES - Atelier de Droit Social

Cycle of French-Turkish colloquia «*La dynamisation des droits sociaux par le Comité européen des Droits sociaux*» organised by the Universities of Limoges (France), Marmara and Galatasaray (Turkey):

- ▶ Izmir (Turkey), 20 September 2013
Colloquium on the right to housing
- ▶ Istanbul (Turkey), 23 September 2013
Colloquium on the right to a healthy environment
- ▶ Istanbul (Turkey), 25 September 2013
Colloquium on children's rights

7. Miscellaneous

Athens (Greece), 6 June

Press conference on the decision on the merits of the Committee in the complaint International Federation for Human Rights (FIDH) v. Greece (No. 72/2011) on pollution of the water of the River Asopos.

Luxembourg, 14 June

Round Table «*Légalité devant la loi*», organized on the occasion of the 90th anniversary of the Conférence du Jeune Barreau de Luxembourg

Vienna (Austria) 27-28 June

"Vienna+20: Advancing the Protection of Human Rights - Achievements, Challenges and Perspectives 20 Years after the World Conference"

International expert conference on the occasion of the 20th anniversary of the World Conference on Human Rights, organized by the Austrian Federal Ministry for European and International Affairs, in cooperation with the Office of the UN High Commissioner for Human Rights (OHCHR), the Ludwig Boltzmann Institute of Human Rights (BIM), the European Training and Research Centre for Democracy and Human Rights of the University of Graz (UNI-ETC)

Strasbourg (European Youth Centre), 28 October

Round Table on the promotion of Youth Rights in Europe, organized by the European Youth Forum

Moscow (Russian Federation), 29 October

Training on anti-discrimination under ESC and ECHR "Strengthening the capacity of lawyers and human rights defenders for domestic application of the ECHR and RESC

Strasbourg, 30 October

Seminar for National Youth Council on Access to Social Rights for Young People (ENTER)

Republic of Moldova, 5-6 November

Seminar on Social Rights for judges and lawyers (Conference Measures Building Programme in Republic of Moldova/Transnistria)

Athens (Greece), 12-13 November

Symposium on the occasion of the 15th Anniversary of the Greek Ombudsman Office

Brussels (Belgium), 21-22 November

"Full inclusion of children and young people with disabilities in society", Conference organized by the Council of Europe (DG "Democracy", Social Cohesion and Diversity Department) and Belgium

Tbilisi (Georgia), 25 November

Training for lawyers and human rights defenders on anti-discrimination under ESC and ECHR

Appendix 12

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