



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**
**COMITÉ EUROPÉEN DES DROITS SOCIAUX**

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# FIRST REPORT

# ON THE NON-ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER

# MONTENEGRO

Meeting on 5 May 2015

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## I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers decided in December 2002 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 had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

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

As Montenegro ratified the Revised Charter on 3 March 2010, the European Committee of Social Rights contacted the authorities in Montenegro in January 2015 with a view to applying, for the first time, the procedure provided by Article 22 of the 1961 Charter. It was agreed to hold a meeting between members of the European Committee of Social Rights and representatives of various institutions of Montenegro in Podgorica on 5 May 2015. As Montenegro has accepted 68 of the 98 paragraphs of the Revised Charter, the meeting covered the remaining 30 paragraphs. The factsheet on the situation of Montenegro with respect to the Charter appears in Appendix I. The programme of the meeting appears in Appendix II and the list of participants in Appendix III.

The meeting consisted of an exchange of views and information on the following non-accepted provisions of the Charter:

- The right to just conditions of work (Article 2 §§ 3, 4, 5, 7)
- The right to a fair remuneration (Article 4 §§1, 4)
- The right of children and young persons to protection (Article 7 § 10)
- The right to vocational training (Article 10 § 5)
- The right to engage in a gainful occupation in the territory of other Parties (Article 18 §§ 1, 2, 3, 4)
- The right of migrant workers and their families to protection and assistance (Article 19 §§ 1, 2, 3, 4, 5, 6, 7, 8, 9, 10)
- The right to information and consultation (Article 21)
- The right to take part in the determination and improvement of the working conditions and working environment (Article 22)
- The right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25)
- The right to dignity at work (Article 26 § 2)
- The right to protection against poverty and social exclusion (Article 30)
- The right to housing (Article. 31 §§ 1, 2 and 3)

The European Committee of Social Rights delegation considered that there were no legal obstacles to the acceptance of Article 2 §§ 4, 5 and 7; Article 7§10, Article 10 § 5; Article 18 §§ 1, 2, 3 and 4; Article 19§§1, 2, 3, 5, 7, 9 and 10; Article 21, Article 22 and Article 26§2 of the

Charter. A possible problem regarding conformity with Article 2§3 and Article 4§§1 and 4 was identified. With respect to Article 19§4, 6 and 8, and Articles 25, 30 and 31, further clarification of the situation in law and practice would be required.

An exchange of views also took place concerning:

- the preparation of national reports with a view to improving the quality of reports submitted on the application of the Charter to the European Committee of Social Rights; and

- the Additional Protocol to the European Social Charter providing for a system of collective complaints, with a view to encouraging Montenegro to accept the procedure.

The European Committee of Social Rights remains at the disposal of the authorities of Montenegro and encourages them to take the necessary steps towards acceptance of the collective complaints procedure.

The next examination of the provisions not yet accepted by Montenegro will take place in 2020.

The meeting also provided the opportunity for an exchange of views on the European Code of Social Security (the "Code") to assess the possible ratification by Montenegro. Such a ratification seemed possible given that Montenegro had ratified ILO Convention 102 on Minimum Standards of Social Security and had accepted Article 12§2 of the European Social Charter ("to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security").

## II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

The meeting was chaired by Ms Vjera Soc, Senior Advisor for International Cooperation, Ministry of Labour and Social Welfare. The opening address was made by Ms Tijana Prelevič, Head of Direction for Labour Relations, Labour Directorate, Ministry of Labour and Social Welfare, who underlined the importance of strengthening social rights in Montenegro and the objective of the authorities to harmonise legislation with European standards.

The authorities of Montenegro were invited to present the situation in law and in practice in Montenegro concerning the non-accepted provisions, following which the members of the European Committee on Social Rights presented an opinion on possible acceptance and some aspects of the case law. Full information concerning interpretation of Articles is available in the Digest of the Case-Law of the European Committee of Social Rights.

**Provisions relating to Employment, training and equal opportunities:**

**Article 10: The right to vocational training**

*Paragraph 5 - Full use of facilities available*

**Situation in Montenegro**

The legal basis to this right was provided for under the Law on Employment and rights arising from unemployment insurance ("Official Gazette of Montenegro", Nos. 14-10, 45-12, and 61-13), the Rulebook on conditions, methods and criteria and the extent of the implementation of the

active employment policy. Adult education and training was carried out through active employment policy measures which included activities providing the employment seeker with the opportunity, through programmes of education and training, to acquire qualifications for a first occupation, to improve knowledge within the same occupation and level of education as well as to retrain and acquire key skills. These programmes could be carried out with an organiser of education, taking into account the needs of the employer and the labour market.

The role of the Employment Agency of Montenegro for adult education and training consisted of the preparation and selection of unemployed persons, choosing the organisers of education, guiding candidates into education and training programmes, monitoring and evaluation, financing or co-financing of education and training programmes.

**Opinion of the European Committee of Social Rights**

The Committee gave a positive assessment, indicating that the general framework for vocational training seemed to be in conformity. The requirements of the provisions appeared to be fulfilled and there were no apparent obstacles to ratification.

The Committee provided some information on interpretation and case law, underlining that Article 10§5 concerned complementary measures to make access to vocational training effective in practice. These concerned (a) reducing or abolishing any fees or charges, ensuring that equal treatment was guaranteed for non-nationals (b) granting financial assistance in appropriate cases, in particular for vulnerable groups for whom, without such aid, the vocational training could not take place; (c) including time spent on supplementary training taken by the worker, at the request of the employer, in the normal working hours during the employment period; (d) ensuring adequate supervision of vocational training, in consultation with the employers' and workers' organisations, including evaluation of programmes.

**Article 18: The right to engage in a gainful occupation in the territory of other Parties**

*Paragraph 1: Applying existing regulations in a spirit of liberality;*
*Paragraph 2: Simplifying existing formalities and reducing dues and taxes;*
*Paragraph 3: Liberalising regulations;*
*Paragraph 4: Right of nationals to leave the country.*

**Situation in Montenegro**

The relevant legal basis existed under the Law on Protection of Montenegrin citizens working abroad ("Official Gazette of Montenegro", Nos. 11-04 and 35-13). Protection of citizens employed by foreign employers included the following aspects: equal treatment with regard to working conditions, safety at work, salaries and labour rights with nationals of the country of employment, the provision of work and residence permits, health insurance and health care, pension and disability insurance, the right under the insurance to the protection of the family, unemployment insurance and information on possibilities and ways of ensuring other economic, social, cultural, civil and political rights. Employment with a foreign employer covered mediation in employment of citizens of Montenegro working with foreign employers, workers designated to work temporarily abroad by domestic employers for carrying out economic and other activities, vocational training, advanced training and carrying out other forms of business and technical

cooperation as well as referring citizens abroad on the basis of international scientific, technical, educational and cultural cooperation.

Mediation with a foreign employer was carried out by the Employment Agency of Montenegro and private employment agencies. Mediation was conducted in cooperation with the competent authorities of the State for employment. It involved introducing citizens to the conditions of life and work in the foreign countries of employment, in addition to their rights and protection based on their work abroad, providing costs of premature return of citizens for illegal mediation, informing citizens about the opportunities and conditions of employment upon return from work abroad, signing a contract of employment before leaving to work abroad, provision of necessary permits for entry, stay and work in the country of employment. Moreover, citizens could be designated to work abroad as individuals or as part of a professional team in order to achieve scientific, technical, educational and cultural cooperation between Montenegro and other countries, as well as with international organisations. Data presented during the meeting showed that the number of work permits issued had risen between 2012 and 2014. The authorities underlined that Montenegro adopted a liberal approach and legal migrant workers had the same rights as Montenegrins.

**Opinion of the European Committee of Social Rights**

The Committee gave a generally positive assessment as Montenegro appeared to comply with the provisions of Article 18. With regard to paragraph 1, the authorities apparently applied a liberal approach towards foreign workers and the number of successful applications for work permits seemed to be high. There were signs of progress with regard to the improvement of equal access of foreigners to the labour market, which constituted an important aspect of the requirements under paragraphs 2 and 3. Montenegro also appeared to be in conformity with the requirements of paragraph 4, which concerned the right of Montenegrin nationals to leave their country to work in the territories of other Parties.

The Committee provided information concerning interpretation and case law. It pointed out that there was a relatively high level of conformity of States Parties with Article 18. Concerning Article 18, paragraph 1, the Committee assessed whether, under the existing regulations, the authorities adopted a liberal approach. The figures relating to the refusal of work permits was an important aspect, taking into account the distinction between first-time applications or renewals. Paragraph 2 required the effective exercise of the right to engage in a gainful occupation, through a simplification of formalities. Moreover, chancery dues and other charges for the permits in question must not be excessive and costs should be reduced as far as possible. Paragraph 3 required liberalising the regulations for the employment of foreign workers, taking into account three aspects: firstly, the conditions for access to the national labour market must not be excessively restrictive; secondly, the right of foreign workers to engage in an occupation was to be provided for through the gradual lifting of restrictions which may initially apply; and thirdly, rights in the event of loss of employment applied, to ensure that such a situation did not lead to the cancellation of the residence permit to provide sufficient time for a new job to be found. Paragraph 4 provided for the right of nationals to leave their country to engage in a gainful occupation in the territories of other Parties. The only permitted restrictions were those provided for in Article G of the Charter, i.e. those which are “prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals”.

## Article 25: The right of workers to the protection of their claims in the event of the insolvency of their employer

### Situation in Montenegro

The relevant legal basis concerned the Labour Law ("Official Gazette of Montenegro", Nos. 49/08, 59/11, 66/12, 31/14)**.** In accordance with the Labour Law, the right to payment of unsatisfied claims against the employer who is subject to a bankruptcy procedure shall be granted to the employee who has been employed on the date of initiation of the bankruptcy procedure for the period necessary to attain the rights stipulated by this Law. These rights shall be determined in accordance with Labour Law, unless they are paid in accordance with the Law on Company Insolvency.

If the rights to payment of claims are partially paid in accordance with the special law, the employee shall be entitled to the difference up to the level of rights determined in accordance by Labour Law. The employee shall be entitled to the payment of the following:

1) wage and wage compensation for the period of absence from work due to temporary inability to work in accordance with the regulations on health insurance, which the employer was obliged to pay in accordance with this Law;
2) compensation of damage for unused annual leave due to the employer's fault, for the calendar year when the bankruptcy procedure is initiated, if he had that right prior to initiation of the bankruptcy procedure;
3) severance pay due to retirement in the calendar year when the bankruptcy procedure is initiated, if the right to retirement is achieved prior to initiation of the bankruptcy procedure;
4) compensation of damage on the basis of the court decision adopted in the calendar year when the bankruptcy procedure is initiated, due to injury at work or professional illness, if that decision has become effective prior to initiation of the bankruptcy procedure.

Wage and wage compensation shall be paid in the amount of the minimum wage, i.e. compensation of damage for unused annual leave. Severance pay due to retirement shall be paid in the amount of three average wages in the economy of Montenegro. Compensation of damage shall be paid in the amount of compensation determined by the decision of a competent court.

### Opinion of the European Committee of Social Rights

The Committee gave a positive assessment, as the legislation and the situation in practice with regard to many aspects of claims, such as the prescribed periods, the amounts paid and the categories of workers covered, appeared to be in compliance with the provisions of Article 25. Further clarifications were required, however, in particular with regard to the procedure for payment of claims in cases where the employer had no assets and there were no formal proceedings for bankruptcy. The Committee would also require further information, including data, concerning the average times, in practice, for the settlement of claims.

The Committee provided information on aspects of interpretation and case law in respect of Article 25. The right of workers to claims in the event of insolvency of their employer did not require the existence of a specific guarantee institution, enabling states to benefit from a margin of discretion as to the form of protection of workers' claims. The protection afforded, whatever

its form, must be adequate and effective. A privilege system, on its own, was not regarded by the Committee as an effective form of protection in situations where there was no alternative. Important aspects which would be taken into consideration by the Committee was the length of period, which should not be excessive, between a claim being lodged and the actual payment and the overall proportion of workers' claims which was satisfied by the guarantee institution and/or privilege system. Under case law, four months for payment was considered acceptable whilst 11 months was deemed as excessive. States may limit the protection of workers' claims to a prescribed amount which should appear in the legislation and be of a socially acceptable level, and should also include holiday pay for work performed during the year in which the insolvency occurred.

**Provision relating to Health, social security and social protection:**

**Article 30: The right to protection against poverty and social exclusion**

**Situation in Montenegro**

Under Article 67 of the Constitution of Montenegro, a person who is in social need, i.e. who is not capable of work and is without income, has special protection from the state which provides him/her with material security.

With regard to **health care** of persons who are in social need, the Law on health care (Official Gazette of Montenegro, No 39/04 of 09.04.2004, 14/10 of 17.03.2010**)** provides, under Article 4, that all citizens shall be equal concerning entitlement to health care regardless of nationality, race, gender, age, language, religion, education, social background, income status, and any other personal characteristic. Article 9, paragraph 4, prescribes that the area of public health applies the scientific-research approach to the development of the health system and health policy. It also provides for the organisation of health promotion, illness prevention and the creation of conditions for equal accessibility to health care among different social categories, as well as for the alignment of the population's health condition within sustainable development criteria on the national level. Under Article 13, **i**n the area of health care, Montenegro shall provide funds from the budget for the health care for individuals who are registered as unemployed, if the funds for health insurance of such persons are not otherwise provided, in line with the specific law. The health care of beneficiaries of social-protection rights and their family members is provided for, if they are not otherwise insured.

Regarding **employment** of those persons who are in social need, the legislation does not recognise them as a special group with particular treatment and protection, and makes no distinction from other unemployment persons. Nevertheless, based on the Law on social and child care, the Ministry of Labour and Social Welfare adopted in 2013 a Rulebook on the content and form of individual plans of activation and the manner of implementation of social inclusion measures for working-age beneficiaries of social assistance. Forms of individual plans of activation include education and training, adult education and participating in other types of social engagement that leads to employment. The Centre for social care and the Employment Agency of Montenegro exchange information and data on beneficiaries, particularly those who have concluded an agreement with the Center for social work on actively overcoming his/her unfavourable social situation.

Concerning **education,** under **t**he General Law on Education **(**published in the Official Gazette of Montenegro, Nos. 4/2008, 21/09, 45/10, 40/11, 45/11, 36/13, 39/13, 44/13), education is an

activity of public interest. Montenegrin citizens are equal in exercising their rights to education, regardless of nationality, race, sex, language, religion, social origin or other personal characteristics. Foreign nationals who have temporary or permanent residence in Montenegro are equal in exercising their right to education with the citizens of Montenegro, in accordance with the law. Physical, psychological and social violence, abuse and neglect of children and students, physical punishment and personal insults, or sexual abuse of children and students or employees or any other form of discrimination are prohibited.

**Opinion of the European Committee of Social Rights**

The Committee indicated that further information on the situation in practice was needed in order to make an assessment and underlined the importance of the effective exercise of the right to protection against poverty and social exclusion. It asked for further clarification of the situation in practice in a range of fields in order to demonstrate that a clear strategy was in place to guarantee effective access to assistance. Given the multidimensional nature of the provisions, the Committee encouraged the authorities to consult all the relevant institutions. The Committee also highlighted the close link between Article 30 and other provisions of the Charter which had been accepted by Montenegro, in particular Articles 1, 9, 10, 12, 13 and 14.

The Committee provided information concerning interpretation and case law, drawing attention to two important aspects of Article 30 which concerned, firstly, a coordinated approach to promote effective access of vulnerable persons to social rights and, secondly, the review of such measures with a view to adapting them, where necessary. The Committee would not only examine the legislation but also require that coordinated policy measures were in place to protect against poverty and social exclusion. These should strengthen access to social rights, their monitoring and enforcement, improve procedures and management of benefits and services, in particular in the fields of employment, housing, training, education, culture and social and medical assistance although this was not an exhaustive list of the areas. As long as poverty and social exclusion persist, alongside the measures there should also be an increase in the resources deployed to make social rights possible. The Committee would review poverty data, examine the evolution of the situation and ensure that adequate funding was allocated to attain the objectives of the strategy. The at-risk-of-poverty rate before and after social transfers (Eurostat) was used by the Committee as a basis for assessing national situations. The economic crisis should not have, as a consequence, a reduction in the protection of vulnerable persons.

**Provisions relating to Labour rights**

**Article 2: The right to just conditions of work**

*Paragraph 3: Annual holiday with pay;*
*Paragraph 4: Elimination of risks in dangerous or unhealthy occupations;*
*Paragraph 5: Weekly rest period;*
*Paragraph 7: Night work.*

**Situation in Montenegro**

The relevant legal basis was the Labour Law ("Official Gazette of Montenegro", Nos. 49/08, 59/11, 66/12, 31/14), General Collective Agreement ("Official Gazette of Montenegro", no. 14/14) and the Law on Safety and Health at Work ("Official Gazette of Montenegro" no. 34/14).

With regard to paragraph 3, duration of annual leave, for each calendar year an employee shall have the right to annual leave for a duration determined by a collective agreement or a contract of employment but for not less than 20 working days. An employee under 18 years of age shall be entitled to annual leave of at least 24 working days. Duration of annual leave shall be determined by increasing the number of working days based on the criteria determined by the collective agreement and the contract of employment.

In addition to the minimum prescribed by the Law, the annual leave shall be increased:

a) according to the length of service:
- from 5 to 15 years, by 1 working day;
- from 15 to 25 years, by two working days;
- from 25 to 35 years, by three working days;

b) according to health condition:
- for a disabled person – three working days;
- for a parent of a child with physical and mental problems – three working days;
- for a single parent of a child under the age of 15 - two working days.

Annual leave can be also extended on the basis of working conditions, performance at work and other criteria established by branch-level or employer's collective agreements.

The authorities also said that the law provided that an employee could be remunerated accordingly if he/she was unable to take his/her paid leave, in line with relevant EU and ILO treaties.

With regard to paragraph 4 and the elimination of risks in dangerous or unhealthy occupations, the employer shall take protective measures by preventing, controlling and eliminating risks at work, informing and training employees, as well as by providing the necessary organisation and means. The employer was obliged, when assigning an employee to a workplace with special conditions of work or increased risk, to take into consideration the employee's capabilities, which may affect the safety and health of the employee. The employer was obliged to issue a risk assessment act for all workplaces, to determine the methods and measures to eliminate risk and ensure their implementation. Through the risk assessment act, the employer shall determine workplaces at increased risk, the health requirements for specific work to be met by an employee in the work process, or the use of certain work equipment based on the expert assessment of the authorised institution for the health protection of employees. An employee working on a position that is extremely difficult, arduous and detrimental to health shall have shorter working hours proportionally to the detrimental effect to employee's health or working ability, but not shorter than 36 hours in a week. Such work positions shall be defined by a systematisation act in accordance with the collective agreement. An employee with shorter working hours shall have the same rights based on employment as an employee with full-time engagement. An employee working on positions deemed as extremely difficult, arduous and detrimental to health shall not work over time on such tasks, or conclude a contract of employment for such jobs with another employer.

Concerning the weekly rest period under paragraph 5, an employee shall have the right to a weekly rest of not less than 24 successive hours. The weekly rest shall be taken on Sundays. An employer shall provide another day for an employee to use his/her weekly rest if the nature of work and work organisation requires so. In case an employee has to work during his/her weekly recess, the employer shall allow him/her one day of leave during the following week for at least 24 successive hours. An employee under 18 years of age shall be entitled to a weekly rest of at least two consecutive days, one of which is Sunday (Article 62 of the Labour Law).

With regard to paragraph 7, "Night work", work between ten o'clock in the evening and six o'clock in the morning the following day shall be considered as night-time work. Night-time work shall constitute special work conditions. An employee who works for at least three hours of his/her working hours during the night, or an employee who works at least a third of his/her full annual working hours during the night, shall be entitled to special protection, in accordance with regulations regarding protection at work. If, according to an opinion of a relevant health authority, an employee's health condition could be aggravated due to work during the night, the employer shall deploy the employee to an adequate day-time work (Article 56 of the Labour Law). Earnings of employees shall be increased per hour by at least 40% for night shifts (between 22:00 and 06:00 the following day) (Article 21 of the General Collective Agreement).

**Opinion of the European Committee of Social Rights**

The Committee gave a generally positive assessment of the situation in Montenegro. With regard to Article 2§3, the coverage appeared to be largely appropriate as it provided for an appropriate minimum number of days of paid leave. A problem was identified, however, with regard to financial compensation for a worker instead of leave during the employment period, as this would not be in conformity with Article 2§3. The Committee may, however, take into account in its assessment that the legislation was in line with the other relevant international treaties. Concerning Article 2§4, the Committee said that the legislation appeared to fulfill the requirements of the provisions and it pointed out that its assessment under Articles 3 and 11 would also be taken into consideration, given the link to those Articles. The weekly rest period seemed to be in line with the provisions of Article 2§5. With regard to Article 2§7, the situation appeared to be in conformity with the three main aspects of the paragraph, which concerned regular medical examinations, possibilities for transfer to daytime work and continuous dialogue with the workers' representatives.

The Committee provided information on aspects of interpretation and case law. Article 2§3 guaranteed the right to a minimum of four weeks (or 20 working days) annual holiday with pay. Annual leave may not be replaced by financial compensation and employees must not have the option of giving up their annual leave. This principle does not prevent, however, the payment of a lump sum to an employee at the end of his/her employment in compensation for the paid holiday which he/she had not taken. The first part of Article 2§4 concerned the elimination or reduction of risks in inherently dangerous or unhealthy occupations and was closely linked to Article 3. The second part of Article 2§4, which concerned measures in response to residual risks, required states to ensure some form of compensation for workers exposed to risks that cannot be or have not yet been eliminated. States have a certain discretion to determine the activities and risks concerned but the Committee would monitor their decisions. Two forms of compensation were accepted, namely reduced working hours and additional paid holidays. Under no circumstances could financial compensation be considered an appropriate measure under Article 2§4, nor is early retirement or the provision of food supplements. Article 2§5

provided for a weekly rest period, which insofar as possible, shall coincide with the day traditionally or normally recognised as a day of rest in the country or region concerned. Under Article 2§7, which provided for the right to just conditions for night work, three aspects of measures were of importance: firstly, regular medical examinations; secondly, possibilities for transfer to daytime work and thirdly, continuous dialogue with the workers' representatives on the introduction of night work, on conditions and on measures to reconcile the needs of workers with the special nature of the night work.

**Article 21: The right to information and consultation**

**Situation in Montenegro**

The relevant legal basis was the Labour Law ("Official Gazette of Montenegro", No. 49/08, 59/11, 66/12, 31/14). Under the legislation, an employer shall inform a trade union organisation at least once a year of the results of operations, development plans and their influence on the position of employees, developments and changes in the salary policy, measures for improvement of conditions of work, safety and protection at work and other matters relevant for the financial and social status of employees.

An employer shall inform a trade union organisation of:

- measures of safety and protection at work;
- introduction of new technology and changes in organisation;
- schedule of working hours, night-time work and overtime work;
- passing of a programme of introduction of technological, economic and restructural changes and a programme for the exercise of the rights of redundant employees;
- time and method of payment of salaries.(Article 158 of the Labour Law)

Once a year, the employer shall inform the trade union at an appropriate level of:

- the business and financial results of operations achieved on an annual basis;
- development plans, their impact on the status of employees and planned changes in the salary policy;
- the planned introduction of technological, economic and structural changes, and the programme of realisation of the rights of employees whose work is no longer needed;
- the list of employees, their employment status and qualification structure;
- the total calculated gross and net salaries paid out, including contributions for mandatory social insurance and the amount of the average salary with the employer;
- recorded injuries at work and measures taken for security and safety at work;
- overtime work carried out (Article 55 of the General Collective Agreement).

**Opinion of the European Committee of Social Rights**

The Committee gave a positive assessment concerning the various aspects of the right to information and consultation. These appeared to be covered by the legislation and the situation in practice also appeared to be mainly in compliance with the Charter. An arbitration procedure was in place to reach amicable agreements between parties to resolve disputes and the possibility of legal proceedings was also available. The Committee emphasised the importance of the situation in practice to ensure the effective enjoyment by all workers of their rights, which

included the possibility of legal proceedings and sanctions in case of failure of compliance by an employer.

The Committee provided information on aspects of interpretation and case law. With regard to personal scope under Article 21, it applied to all undertakings, whether private or public, whereby an "undertaking" was understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy. The Article did not therefore apply to public servants. All categories of employees must be taken into account when calculating the number of employees covered by the right to information and consultation. States may exclude from the scope of the provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. It was important for workers or their representatives to be informed of matters relevant to their working environment and that they were consulted in good time with respect to proposed decisions that could substantially affect the workers' interests, in particular those which may have an impact on employment status. Such rights must be effectively guaranteed and workers must have legal remedies when the rights are not respected. There must also be sanctions for employers which fail to comply with their obligations.

**Article 22: The right to take part in the determination and improvement of the working conditions and working environment**

**Situation in Montenegro**

The relevant legal basis was the Law on Safety and Health at Work ("Official Gazette of Montenegro" no. 34/14). Under the legislation, the employer was obliged to inform employees or employees' representatives in writing about risks related to the safety and health at work, protective measures and activities in relation to each type of workstation and/or job. The employer was obliged to adequately inform other employers whose employees he hired to work for him on any grounds, about those issues, and the persons responsible for their implementation. The employer was obliged to inform the employees' representative on rights and obligations relating to the safety and health at work, and also allow him access to:

- risk assessment and protective measures, including the risks faced by a group of employees who are exposed to particular risks;
- decisions on protective measures to be taken, and if necessary, on personal protective equipment to be used;
- records and reports on occupational injuries resulting in the employee's absence from work for more than three working days;
- reports on accidents at work of its employees;
- data arising from the measures and actions of inspection and other bodies responsible for the protection and health at work.

The employees' representative is a person designated by the employees to represent them in the issues of safety and health at work (Article 23). The employer, employee, representative of employees and trade union shall cooperate in determining their rights, obligations and responsibilities pertaining to the safety and health at work in accordance with the Law on Safety and Health at Work, particularly in relation to any measure that could significantly affect the safety and health at work; listing qualified persons for safety and health at work, by assigning the person responsible for the implementation of first aid, firefighting and evacuation of

employees and activities in relation to safety and health at work; data on the risk assessment and protective measures, including risks faced by a group of employees who are exposed to particular risks; decisions on protective measures to be taken, and if necessary, on the personal protective equipment to be used; records and reports on occupational injuries resulting in the absence of an employee from work for more than three working days; reports on accidents at work of its employees; measures and actions of inspections and other authorities responsible for the safety and health at work (Article 24).

The employer shall implement the protective measures by respecting the following principles: avoiding risk; evaluating the risk; eliminating the risk at its source; adapting the work and workplace to the employee; adapting to technical progress; replacing the dangerous elements by non-dangerous or less dangerous; developing a comprehensive policy for the safety and health at work, which included technology, organisation of work, working conditions, interpersonal relations, and working environment factors; giving advantage to collective protective measures over individual protective measures; giving appropriate instructions and information to employees (Article 15).

The employer was obliged to organise and carry out professional activities depending on the organisation, the nature and extent of the work process, the number of employees involved in the process, number of shifts, the estimated risks and number of separate units. The employer may designate a qualified person; organise professional service for the safety and health at work (hereinafter referred to as the professional service); hire a legal person or entrepreneur who is authorised to perform professional activities. A professional service may not perform professional services for other employers. The employer was responsible for the safety and health at work of employees regardless of the manner of organising and carrying out these tasks (Article 38).

The supervision of the implementation of the Law on Safety and Health at Work, regulations adopted thereunder, and technical and other measures relating to the safety and health at work shall be performed by the Labour inspection, through inspectors working in the field of safety and health at work, unless the law stipulates that supervision in the implementation of these regulations in certain activities shall be carried out by other bodies (Article 53).

**Opinion of the European Committee of Social Rights**

The Committee gave a positive assessment as most aspects of the situation in law and in practice appeared to be in conformity with Article 22. With regard to the health and safety aspect of the provisions, the Committee pointed out the link to Article 3.

The Committee provided information on aspects of interpretation and case law. With regard to personal scope under Article 22, it applied to all undertakings, whether private or public, whereby an “undertaking” was understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy. The Article did not therefore apply to public servants. All categories of employees must be taken into account when calculating the number of employees covered by the right to take part in the determination and improvement of the working conditions and working environment. States may exclude from the scope of the provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. Workers and/or their representatives must be granted an effective right to participate in the decision-making process and the supervision of

the observance of regulations in all matters referred to in this provision, such as the determination and improvement of working conditions, work organisation and working environment as well as the protection of health and safety within the undertaking. Article 22 did not require that employers offer social and socio-cultural services and facilities but it did require that workers may participate in their organisation, where such services and facilities have been established.

**Article 26: The Right to dignity at work**

*Paragraph 2-Moral harassment*

**Situation in Montenegro**

The authorities presented the law on harassment. The legal basis for the realization of this right is the Labor Law ("Official Gazette of Montenegro", No. 49/08, 59/11, 66/12 i 31/14) and Law on Prohibition of harassment at work("Official Gazette of Montenegro", No. 30/2012).

Harassment and sexual harassment at work and in relation to work shall be prohibited. Harassment shall represent any unwanted behavior which causes violation of dignity, reputation and professional integrity, as well as harassment which causes fear or creates a hostile, humiliating or insulting environment (Article 8 of the Labour Law).

Mobbing shall include any active or passive conduct at work or related to work against an employee or group of employees, which recurs, and which is intended to or actually undermines the dignity, reputation, personal and professional integrity of the employee and which causes fear or creates an intimidating, humiliating or offensive environment, aggravates working conditions or leads to the isolation of the employee or leads the employee to terminate contract of employment or another type of contract upon his own initiative.

A perpetrator of mobbing shall be considered an employer in the capacity of natural person, responsible person engaged by the employer in the capacity of legal entity, an employee or group of employees engaged by the employer or a third person with whom the employee or the employer have contact during the performance of tasks at the workplace. (Article 2 of the Law on Prohibition of harassment at work).

All forms of mobbing shall be prohibited, as well as the abuse of the right to protection against mobbing.

An employer shall be liable to provide an employee to work at the work place and working environment under conditions that ensure respect of his dignity, integrity and health, as well as to take the necessary measures to protect an employee from mobbing. (Article 6 of the Law on Prohibition of Harassment at Work).

An employer shall be liable to inform an employee in writing, before starting to work, about the rights, duties and responsibilities in relation to the mobbing, in accordance with the Law on Prohibition of Harassment at Work.

An employer shall be liable to, in order to identify, prevent and prohibit the mobbing, implement measures to inform and train employees and their representatives about the causes, forms and

consequences of performing mobbing (Article 7 of the Law on Prohibition of Harassment at Work).

An employer who has 30 or more employees shall be liable to designate one or more persons to mediate between the parties in the case of mobbing, after obtaining the opinion of a representative trade union or representative of employees.

At the employer who has fewer than 30 employees, mediator shall be agreeably designated by the employee who is exposed to mobbing, the employee charged for mobbing and the employee designated by the employer, and in the case when an employer is charged for mobbing the mediator shall be agreeably designated by the employee who is exposed to mobbing and the employee designated by the employer. (Article 9 of the Law on Prohibition of harassment at work).

An employer shall be liable for the damage that a responsible person, an employee or group of employees causes to another employee by exercising mobbing, in accordance with the Law hereof. (Article 10 of the Law on Prohibition of harassment at work).

If the prosecutor in the proceedings, and/or submitter of the proposal for peaceful settlement of the labor dispute makes the case in the course of proceedings that mobbing referred to in Article 2 of the Law hereof occurred, the burden of proof that such conduct which represents mobbing did not occur shall fall upon the defendant, or upon other party to the dispute.

**Opinion of the European Committee of Social Rights**

The Committee gave a positive assessment, indicating that the legal framework seemed to be in conformity and there were no apparent obstacles to ratification. It pointed out that Montenegro had accepted paragraph 1 of Article 26 on sexual harassment, and that the requirements of paragraph 2 were in essence identical to those in paragraph 1 only paragraph 2 concerned moral harassment and not sexual. Montenegro had been found to be in conformity with Article 26§1 in Conclusions 2014.

The Committee provided some information on the interpretation and case law of the provision. It recalled that Workers must be afforded effective protection against harassment. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights.

It must be possible for employers to be held liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves, as a perpetrator or a victim, a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.

Under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges. Victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim’s pecuniary and non-pecuniary damage and act as a deterrent to the employer.

**Provisions relating to Children, Family and Migrants**

**Article 7-The Right of Children and Young Persons to Protection**

*Paragraph 10- Special Protection against physical and moral dangers*

**Situation in Montenegro**

The Authorities provided information on the Criminal Code on criminal offences against sexual freedom-Chapter XVIII:

*Pimping and Enabling Sexual Intercourse*

Article 209

(1) Anyone who procures a juvenile for sexual intercourse, an act equal to it or some other sexual act, shall be punished by an imprisonment sentence of three months to five years.

(2) Anyone who provides for performing sexual intercourse, an act equal to it or some other sexual act to a juvenile, shall be punished by an imprisonment sentence not exceeding three years.

*Mediation in Prostitution*

Article 210

(1) Anyone who instigates or incites another person to prostitution or participates in handing over a person to another person in view of prostitution or who by means of media and other similar means promotes or advertises prostitution, shall be punished by a fine or an imprisonment sentence not exceeding one year.

(2) Where an offence referred to in paragraph 1 of this Article was committed against a juvenile, the offender shall be punished by an imprisonment sentence of one to ten years.

(3) Person who uses sexual services of a minor shall be punished by punishment referred to in paragraph 2 of this Article.

*Child Pornography*

Article 211

(1) Anyone who sells, donates, shows or public exposure, through information and communication technologies, or otherwise makes available pictures, texts, audio-visual or other objects of pornographic content or shows a pornographic performance to a child, shall be punished by imprisonment sentence for a term of six months to five years.

(2) Anyone who uses a minor to produce pictures, audio-visual or other objects of pornographic content (child pornography) or for a pornographic show, shall be punished by an imprisonment sentence for a term of one to eight years.

(3) Anyone who captures, products, offers, makes available, distributes, imports, exports, obtains for himself or another, sells, gives, shows, publicly exhibits or possesses pictures, audiovisual or other items of pornographic content (child pornography) shall be punished by the punishment referred to in paragraph 2 of this Article.

(4) If the offence referred to in paragraph 2 and 3 of this Article has been committed against a minor, the offender shall be punished for an imprisonment sentence of three months to three years.

(5) If the offence referred to in paragraph 2 of this Article was committed by use of force or threat, the offender shall be sentenced by an imprisonment sentence for a term of two to ten years.

(6) The points referred to in paragraph 1 and 3 of this Article shall be confiscated and destroyed. In addition, Criminal Code also stipulates that an adult person who, within intention of commiting criminal offence under Article 209, 210 paragraph 1, 211 paragraphs 1 and 4 of this Law, using the means of information and communication technologies, or otherwise arranges a meeting with a child and undertakes the actions that this meeting comes, shall be punished for an imprisonment sentence from six months to five years.

The authorities also provided information on legislation on child abuse, domestic violence, social care of children as well as the the new draft family law.

**Opinion of the European Committee of Social Rights**

The Committee gave a positive assessment, there were no apparent obstacles to ratification subject to further information.

The Committee provided some information on the interpretation and case law of the provision. It recalled that Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment. This covers, in particular, the protection of children against all forms of exploitation, sexual, labour and economic exploitation.

An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children. Minimum obligations include the criminalisation of all acts of sexual exploitation and a national action plan combating the sexual exploitation of children should be adopted.

With a view to combating sexual exploitation of children through the use of internet technologies States parties must adopt measures in law and in practice to protect children from the misuse of information technologies.

States must prohibit the use of children in other forms of exploitation such as domestic/labour exploitation, including trafficking for the purposes of labour exploitation and begging. States must also take measures to prevent and assist street children.

**Article 19: The right of migrant workers and their families to protection and assistance**

*Paragraph 1-Assistance and information on migration*
*Paragraph 2 - Departure, journey and reception*
*Paragraph 3 - Co-operation between social services of emigration and immigration states*

*Paragraph 4- Equality regarding employment, right to organise and accommodation*
*Paragraph 5 - Equality regarding taxes and contributions*
*Paragraph 6 - Family reunion*
*Paragraph 7 - Equality regarding legal proceedings*
*Paragraph 8 - Guarantees concerning deportation*
*Paragraph 9 - Transfer of earnings and savings*
*Paragraph 10 - Equal treatment for the self-employed*

**Situation in Montenegro**

The right of migrant workers and their families to protection and assistance is regulated by the Law on Foreigners ("Official Gazette of Montenegro", No. 56-14) and the Decision on determining the number of work permits for foreigners for 2015 ("Official Gazette» No. 53-14). The new Law on Foreigners is in force since April 1, 2015.

An employer is obliged to conclude with a foreigner a labour contract and to register for mandatory social insurance. A legally employed foreigner has the same labour rights and employment benefits as Montenegrin citizen employees.

The new law introduced a unique procedure for issuing permits for temporary residence and work of foreigners, which will be implemented by the Ministry of the Interior, several types of temporary residence permits and work permits are available.

Permission for temporary residence and work permits for employment and seasonal employment of foreigners may be issued only if the records of the Employment Agency of Montenegro show no unemployed persons eligible for employment in certain jobs or persons with these records, refused employment on these jobs.

Unemployed foreigners may be registered as unemployed with the Employment Agency of Montenegro if they possess a permanent residence permit, have been granted refugee status or subsidiary protection.

Foreigners exercise their rights on the basis of unemployment under the same conditions as unemployed Montenegrin citizens. The rights arising from unemployment are: information about employment opportunities and requirements, free use of employment services, participation in programs and measures of active employment policy, in accordance with individual employment plans, which are determined with the Bureau, obtaining financial compensation during unemployment.

Permission for temporary residence for family reunification shall be issued to a foreigner who is an immediate family member of a Montenegrin citizen or a close family member of a foreigner who has been granted permanent residence or temporary residence in Montenegro. Immediate family are considered to be spouses, their children born in marriage or out of marriage, children of one of the spouses and adopted children, until the age of 18.

Exceptionally, other relatives may avail of family reunification if there are special, personal or humanitarian reasons.

Family reunification is subject to a range of conditions such as means, accommodation etc.

A foreigner can permanently reside in Montenegro based on a work permit.

A permanent residence permit can be issued to a foreigner who has, until submitting the application for a license, legally resided in Montenegro five years continuously on the basis of temporary residence or was approved additional protection in accordance with the law regulating asylum.

A request for a permit for permanent residence shall be decided within six months from the date of submission of a proper application.

The law on foreigners has been hamonised in conformity with the relevant EU Directives however it is not yet fully compliant additional legislation will be adopted in 2016 in order to bring the situation fully into conformity with EU law.

**Opinion of the European Committee of Social Rights**

The Committee gave a positive assessment, to the acceptance of paragraphs 1, 2, 3, 5 7, 9 and 10, there should be no obstacles to ratification subject to further information. These paragraphs did not on the whole give rise to many difficulties for states.

Paragraphs 4, 6 and 8 posed more problems in general and therefore the Committee required further information in order to make an assessment.

The Committee provided some information on the interpretation and case law of the provisions. Under paragraph1 states are obliged to provide to migrants reliable information on living conditions, services etc. States must also take measures to take steps to prevent misleading propaganda and paragraph 2 addresses the reception of migrant workers, health care etc. during their journey. Paragraph 3 concerns situations where for example families maybe split between countries and cooperation between social services is necessary, the paragraph does not need formal agreements rather a needs base cooperation.

Paragraph 4 guarantees the right of migrant workers to a treatment not less favourable than that of the nationals in the areas of: (i) remuneration and other employment and working conditions, (ii) trade union membership and the enjoyment of benefits of collective bargaining, and (iii) accommodation. States are required to prove the absence of discrimination, direct or indirect, in terms of law and practice. The requirement to eliminate all legal and de facto discrimination concerning trade union membership and as regards the enjoyment of the benefits of collective bargaining, includes the right to be a founding member of a trade union and access to administrative and managerial posts in trade unions.

As regards accommodation, the undertaking of States under this sub-heading is to eliminate all legal and *de facto* discrimination concerning access to public and private housing. There must be no legal or *de facto* restrictions on home–buying, access to subsidised housing or housing aids, such as loans or other allowances.

Paragraph 5 recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions

Paragraph 6 obliges States to allow the families of migrants legally established in their territory to join them. The worker’s children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age-limit in the receiving state (under the Charter the

age limit for admission under family reunion is set at the age of majority, which in most countries is 18 years). There may be conditions and restrictions place on family reunion:

a) Refusal on Health grounds
A state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health

b) Length of residence
States may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive. Thus, for example, a period of three years is not in conformity with this provision of the Charter.

c) Housing condition
The requirement of having sufficient or suitable accommodation to house the family or certain family members should not be so restrictive as to prevent any family reunion.

d) Means requirement
The level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion. Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion.

e) Language and/or integration tests
The requirement that members of the migrant worker's family sit language and/or integration tests to be allowed to enter the country, or pass these tests once they are in the country to be granted leave to remain, because of its particularly stringent nature, discourages applications for family reunion and therefore constitutes a condition likely to prevent family reunion rather than facilitate it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is not in conformity with the Charter.

Once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right to stay in that territory.

The Committee pointed out that the issue is now covered but an EU Directive, but the Charter in some respects goes beyond the Directive. It is a provision which has posed a problem for certain states.

States must ensure under paragraph 7 that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals. This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes) and must take into account any linguistic needs a migrant may have.

Paragraph 8 obliges States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality.

Expulsion for offences against public order or morality can only be in conformity with the Charter if they constitute a penalty for a criminal act, imposed by a court or a judicial authority, and are not solely based on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State. Other circumstances include his/her personal, economic and other ties with the country, the consequences of the expulsion for the alien and his/her family members, the age and state of health of the foreigner, etc.

Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment.

The fact that a migrant worker is dependent on social assistance cannot be regarded as a threat against public order and cannot constitute a ground for expulsion.

States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake.

Migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory.

Paragraph 9 obliges States not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country. The Committee stated that regulations to combat money laundering were not incompatible with this paragraph.

Under paragraph 10, States must ensure that the rights provided for in paragraphs 1 to 9, 11 and 12 are extended to self-employed migrant workers and their families.

A finding of non-conformity under paragraphs 1 to 9, 11 and/or 12 of Article 19 may lead to a finding of non-conformity under paragraph 10

**Article 31: the Right to Housing**

Paragraph 1- *Adequate housing*
Paragraph 2- *Reduction of homelessness*
Paragraph 3- *Affordable housing*

**Situation in Montenegro**

In Montenegro, the right of residential accommodation is not defined by the Constitution; however Montenegro, as a signatory to certain international treaties and conventions, is committed in approaching this issue in line with its obligations.

A National Housing Strategy for the period 2011-2002 was adopted defining directions for the further development of the housing sector in Montenegro.

Socially vulnerable and socially excluded groups represent specific target groups in the area of social housing.

Given the commitment of Montenegro to normatively regulate social housing, the Ministry of Sustainable Development and Tourism, in order to determine the legal framework for ensuring adequate standards of housing for all households that from the standpoint of earnings have problems in gaining access to decent housing on the market, prepared an Act on social housing, which was adopted by the Montenegro's Parliament and came into force in July 2013 ("Official Gazette of Montenegro", No. 35-13).

Lack of funding represents one of the main challenges for the establishment of a sustainable system of social housing. That is why the Act adopted regulations that will elaborate system of social housing through special programs, which will be formulated by the Government of Montenegro or the local self-government, which will allow flexibility in planning and implementation of activities.

The official acts in Montenegro regulating social housing are:

a. Law on social housing of 2013
b. National housing strategy for the period 2011-2020 with
c. National framework plan for the period 2011-2015 and for the period 2016-2020
d. The program of social housing in 2014

Article 5 of the Law stipulates outlines the responsibility of adoption of the Program of social housing for a three-year period. The program determines aims of development of social housing. The program particularly contains the approximate amount of funds and the criteria under which the funds established by the program can be used, as well as a group of persons, whose housing needs will be given priority in the next triennium.

Priority in exercise of rights to social security have single parents or legal guardians, persons with disabilities, persons over 67 years of age, young people who were children without parental care, families with children, families with children with disabilities, members of Roams Egyptians (RE population), displaced persons, internally displaced persons from Kosovo residing in Montenegro, foreigners with permanent or temporary residence who had a recognized status of displaced persons or internally displaced persons and victims of domestic violence.

By adopting the Law on social housing Montenegro has established a system that will ensure that the realization of this right is not left exclusively to the laws of the market, but also to the measures prescribed by the intervention of the state and local governments that will support citizens in solving the housing problem.

**Opinion of the European Committee of Social Rights**

The Committee noted that Montenegro seemed to be making good progress in the field. However further clarification in law and practice would be required in order to make its assessment.

It underlined the fundamental nature of the right to housing, without effective access to housing, access to other rights can be difficult. It also recalled that Montenegro had accepted Article 16 of the Charter which guarantees the right of the family to housing therefore there was an overlap with Article 31 of the Charter.

Paragraph 1 of Article 31 guarantees a universal right to adequate housing. They should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.

The notion of adequate housing must be defined in law. “Adequate housing” means:

1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and where specific dangers such as the presence of lead or asbestos are under control;
2. a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence;
3. a dwelling with secure tenure supported by the law. This issue is covered by Article 31§2.

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to housing owner occupied housing.

The Committee holds that positive measures in the field of housing must be adopted in respect of vulnerable persons, paying particular attention to the situation of Roma and Travellers.

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies.

States must take action to prevent categories of vulnerable people from becoming homeless under Article 31§2.

Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. States must set up procedures to limit the risk of eviction.

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide.

The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.

Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction.

When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. The law must prohibit evictions carried out at night or during

the winter period. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Domestic law must provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Compensation for illegal evictions must also be provided.

According to Article 31§2, homeless persons must be offered shelter as an emergency solution. Moreover, to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings.

Since the right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity, under Article 31§2 of the Charter, States Parties are required to provide adequate shelter also to children and adults unlawfully present in their territory for as long as they are in their jurisdiction.

Under Paragraph 3 an adequate supply of affordable housing must be ensured for persons with limited resources.

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located. In order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income.

States must:

- adopt appropriate measures for the provision of housing, in particular social housing;
- adopt measures to ensure that waiting periods for the allocation of housing are not excessive; judicial or other remedies must be available when waiting periods are excessive;
- introduce housing benefits at least for low-income and disadvantaged sections of the population. Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.

All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or travellers.

## III. WRITTEN INFORMATION PROVIDED BY THE AUTHORITIES OF MONTENEGRO (ARTICLE 4)

### Provision relating to labour rights

### Article 4: The right to a fair remuneration

*Paragraph 1: Decent remuneration*

As agreed prior to the meeting, Article 4 was not discussed and the authorities of Montenegro provided the following written information.

**Situation in Montenegro**

The legal basis for the right to a fair remuneration was the Labour Law ("Official Gazette of Montenegro", No. 49/08, 59/11, 66/12 i 31/14) and General Collective Agreement ("Official Gazette of Montenegro", no. 14/14)

With regard to Paragraph 1, an employee shall be entitled to an adequate salary, determined in accordance with the law, collective agreement and contract of employment. Work of the same value shall include work for which the same level of professional education, or the level of their education, or professional qualification, responsibility, skills, working conditions and work results are required (Article 77 of the Labour Law). Salary for the work performed and time spent at work shall consist of the basic salary, portion of the salary for work performance and increased salary, in accordance with collective agreement and contract of employment. The contracted salary shall be the salary determined by contract of employment and it may not be lower than the minimum wage. According to Article 80 of the Labour Law, an employee shall be entitled to the minimum wage for the standard performance and full working hours, or working hours equivalent to full working hours in accordance with this law, collective agreement and contract of employment. The minimum wage may not be lower than 30% of the average wage in Montenegro in the previous six months according to the official data determined by the administration body in charge of the statistics. The amount of the minimum wage shall be determined by the Government upon a proposal from the Social Council of Montenegro, every six months.

An employee shall be entitled to a wage compensation in the amount determined by collective agreement and contract of employment during: public and religious holidays which are non-working days; annual leave; paid leave; responding to a summon from public authorities; professional improvement upon an order from the employer, temporary incapacity during inability to work in accordance with the health insurance regulations and during maternity, or parental leave and leave for the purpose of providing care to a child, in accordance with this Law; termination of work occurring not due to the employee's fault; refusal to work if prescribed measures of protection at work are not implemented; absence from work based on previously agreed participation in work of an employer's body or trade union body; during retraining, additional training and training for work on other positions and in other cases determined by the law, collective agreement and contract of employment. The average earnings in Montenegro in March 2015 were 721€, while the average earnings without taxes and contributions were 476€, according to the Statistical Office of Montenegro data. The national absolute poverty line in 2013 was 186,45€.

**Opinion of the European Committee of Social Rights**

Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. It applies to all workers, including to civil servants and contractual staff in the state, regional and municipal public sectors, to branches or jobs not covered by collective agreement, to atypical jobs (assisted employment), and to special regimes or statuses (minimum wage for immigrant workers).

The concept of “decent standard of living” goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.

“Remuneration” relates to the compensation – either monetary or in kind – paid by an employer to a worker for time worked or work done. It covers, where applicable, special bonuses and gratuities. Social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

To be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the States Parties concerned to conduct the needed enquiries or to provide estimates.

The net national average wage of a full-time worker is calculated with reference to the labour market as a whole, or, in such cases where this is not possible, with reference to a representative sector, such as the manufacturing industry. When a statutory national minimum wage exists, its net value is used as a basis for comparison with the net average wage. Otherwise regard is had to the lowest wage determined by collective agreement or the lowest wage actually paid.

If the lowest wage in a given State Party does not satisfy the 60% threshold, but does not fall very far below (in practice between 50% and 60%), the Government in question will be invited to provide detailed evidence that the lowest wage is sufficient to give the worker a decent living standard even if it is below the established threshold. In particular, consideration will be given to the costs of having health care, education, transport, etc. In extreme cases, for instance where the lowest wage is less than half the average wage the situation is held to be in breach of Charter independently of such evidence. In this respect, it is recalled that a wage does not meet the requirements of the Charter, irrespective of the percentage, if it does not ensure a decent living standard in real terms for a worker (see above), ie. it must be clearly above the poverty line as defined for a given country.

It should be noted that providing for the payment of a lower minimum wage to younger workers who are less than 25 years old is not contrary to the Charter if, and only if it furthers a legitimate aim of employment policy and is proportionate to achieve that aim. The Committee has considered a reduction of the minimum wage below the poverty level and applied to all workers under the age of 25 to be disproportionate.

*Paragraph 4: Reasonable notice of termination of employment*

**Situation in Montenegro**

With regard to paragraph 4, employment shall terminate by virtue of law, by mutual agreement between the employer and employee or by notice of cancellation of employment contract by an employer or an employee.

Employment shall terminate by virtue of law:

1) when the employee reaches the age of 67 and minimum 15 years of pension insurance, unless otherwise agreed between an employer and an employee – as of the day of delivering a final decision to the employee;
2) if it is determined in a manner set out by the law that an employee has suffered a loss of working ability – as of the date of delivery of the final decision determining a loss of working ability;
3) if, pursuant to provisions of the law, i.e. a final court decision or a decision of another body, an employee is forbidden to perform particular jobs and he/she cannot be deployed to other jobs – as of the date of delivery of the final decision;
4) if an employee is absent from work for more than six months due to serving a prison sentence – as of the date of commencement of serving the prison sentence;
5) if a security, correctional or protective measure of more than six months has been pronounced to an employee and consequently he/she would be absent from work – as of the date of commencement of application of such measure;
6) in case of bankruptcy or liquidation, or in all other cases when an employer ceases to work, in accordance with the law.

Employment shall terminate by mutual agreement between an employer and an employee, and in that case the employer may provide severance pay to the employee. Employment, i.e. the contract of employment may be terminated by a notice of termination from the employee. An employee shall deliver notice of termination of the contract of employment to the employer in written form, at least 15 days prior to the day stated as the day of termination of employment.
An employer may terminate a contract of employment of an employee if there is justified reason for such action, as follows:

1) if an employee fails to meet the results of work defined by collective agreement, employer's act or contract of employment, in a period of not less than 30 days;
2) if an employee fails to comply with obligations prescribed by the law, collective agreement and contract of employment, which shall be harmonised with the law and the collective agreement;
3) if an employee's behaviour is such that he/she cannot continue employment with the employer, in cases prescribed by the law and the collective agreement or employer's act, which shall be harmonised with the law and the collective agreement;
4) if an employee refuses to conclude an annex to the contract of employment referred to in Article 40 paragraph 1 items 1 and 2 of this Law;
5) if an employee refuses to conclude an annex to the contract of employment referred to in Article 40 paragraph 1 item 3 of this Law;
6) if an employee abuses the right to temporary inability to work;
7) due to economic problems in operations;
8) in case of technical and technological or restructural changes causing cessation of the need for work of an employee.

An employee referred to in paragraph 1 items 5, 7 and 8 of this Article shall be entitled to a severance pay. An employer may pass a decision on termination of a contract of employment after giving a previous warning notice to the employee who fails to meet the results of work in a period of not less than 30 days, fails to comply with the obligation prescribed by Law or if an employee's behaviour is such that he/she cannot continue employment with the employer, in cases prescribed by the law and the collective agreement or employer's act, which shall be harmonised with the law and the collective agreement. The warning notice shall be given in written form and shall contain the grounds for termination of employment, evidence pointing to realised conditions for termination and the time period to reply to the warning notice. Such a time period may not be less than five working days. An employer shall deliver the warning notice to the trade union the employee is a member of, for the purpose of obtaining its opinion, and the trade union shall provide statement of the warning notice in writing within five working days.

A decision on termination of a contract of employment shall be passed by the relevant body of the employer, in the form of a decision, and it shall deliver it to the employee. That decision shall contain: the grounds for termination of employment, explanation and note of legal remedy and shall be final. An employee that finds a decision on termination unsatisfactory shall be entitled to begin litigation with the competent court with the purpose of seeking protection of defined rights, not later than 15 days from the date of the receipt of the decision, and he/she may also begin litigation before the Agency for Amicable Settlement of Labour Disputes. In case of a dispute concerning termination of employment, the burden of proving justifiability and legality of the grounds for termination shall belong to the employer. If a procedure determines that there were no legal or justifiable grounds for termination of a contract of employment, whether prescribed by an act of the employer or agreed by the employer in the contract of employment, the employee shall be entitled to return to work, as well as to a compensation of financial and non-financial damage in a procedure prescribed by the law. If a procedure determines that an employee's contract of employment was terminated without legal or justifiable grounds, he/she shall be entitled to a compensation of financial damage in the amount of the lost salary and other earnings he/she would earn at work, in accordance with the law, collective agreement and contract of employment, and payment of contributions for mandatory social insurance. Compensation of damage shall be reduced by the amount of earnings realised by the employer based on the contract of employment, upon termination of employment. If a procedure determines that the termination of employment resulted in violation of the rights of personality, honour, reputation and dignity, the employee shall be entitled to compensation of non-financial damage within the procedure prescribed by the law.

An employee shall have the right and duty to remain working for at least 30 days as of the day of receipt of termination of the contract of employment, i.e. decision on termination of employment (termination notice), in cases determined by collective agreement and contract of employment. An employee may, upon agreement with the relevant body of the employer, cease to work even prior to expiry of the time period during which he/she has the duty to remain working, and he/she will be provided with wage compensation during that time period in the amount determined by collective agreement and contract of employment. If an employee ceases to work prior to the expiry of the notice period upon a request from the employer, he/she shall be entitled to wage compensation and other rights arising from and based on employment, as if he/she has worked until expiry of the notice period. During the notice period, an employee shall be entitled to be absent from work for at least four hours a week for the purpose of seeking new employment. If an employee has become temporarily unable to work during the period when he/she has the duty to remaining working shall be suspended upon his/her request and shall continue upon termination of the temporary inability to work.

According to Article 51 of the General Collective Agreement:

In addition to the reasons determined by law, the employer may terminate the employee's contract of employment in the following cases:

1) if, on the occasion of commencing employment or assignment to another position (job), the employee gave false information relating to the conditions of employment, or the performance of other tasks;
2) if the employee, without the knowledge of the employer, and contrary to the concluded contract of employment, violated the rights and obligations of the prohibition of competition;
3) if there is unexcused absence from work for more than two working days in a row, or five working days intermittently during a calendar year;
4) coming to work intoxicated, drinking during work or use of narcotic drugs, with the refusal to take appropriate test to determine these facts by a trained person, in accordance with separate regulations;
5) the use and disposal of official car, machine and tool for work contrary to the act of the employer with which the employee has previously been familiarised;
6) if he/she abused the right to leave for temporary inability to work, especially if, during the period of temporary inability for work, he/she worked for another employer or if the employer has not submitted a report on temporary inability to work, either personally or through another person, within five days of the issuance of the report;
7) if he/she violated the regulations on safety at work thereby causing a danger to his/her own or other employees' health, or severe injuries at work, occupational disease or work-related illness;
8) violent, indecent or insulting behaviour towards clients or employees;
9) if the employee fails to return to work within two working days after the end of unpaid leave, or within 30 days of termination of the reason why his/her rights and obligations arising from work were inactive, without reasonable cause;
10) if the employee commits a criminal offence at work or in relation to work; and
11) in other cases determined by branch collective agreement or collective agreement with the employer.

In the cases referred to in paragraph 1, item 1, 3, 5, 6 and 7 of this Article, the employer shall previously warn the employee in writing about the existence of reasons for termination of the contract of employment, leaving him/her a period of five working days to declare about it, in writing. The employer shall submit for opinion the warning referred to in paragraph 2 of this Article in writing to the trade union whose member is the employee who is required to declare in writing within five working days of receipt of the warning. In the cases referred to in paragraph 1, item 3, 5, 6, 8, 9 and 10 of this Article, the employer may terminate the contract of employment without observing the notice period of 30 days from the day of submission of the decision on termination of employment., the employer may terminate the contract of employment without observing the notice period of 30 days from the day of submission of the decision on termination of employment.

**Opinion of the European Committee of Social Rights**

Reasonable character of the period of notice

The Committee has not defined *in abstracto* the concept of "reasonable" notice nor ruled on the function of the period of notice or the compensation in lieu thereof. It assesses the situations on a case by case basis. The major criterion for the assessment of reasonableness is length of

service. It has concluded, for example, that the following periods of notice and/or compensation in lieu thereof were not in conformity to the Charter:

- five days' notice after less than three months of service;
- one week's notice after less than six months of service;
- two weeks' notice after more than six months of service;
- less than one month's notice after one year of service;
- eight weeks' notice after at least ten years of service;
- twelve weeks' notice for workers dismissed for long-term working incapacity who have five or more years of service.

Receipt of wages in lieu of notice is admitted, provided that the sum paid is equivalent to that which the worker would have earned during the corresponding period of notice. Periods of notice and/or compensation in lieu thereof may, however, not be left at the sole disposal of the parties to the employment contract.

Cases of application of the notice period

Article 4§4 does not apply solely to dismissals, but to all cases of termination of employment, such as termination due to bankruptcy, invalidity or death of the employer who is a natural person.

The right to reasonable notice of termination of employment applies to all categories of workers independently of their status. It also applies during the probationary period and upon early termination of fixed-term contracts. National law must be broad enough to ensure that no workers are left unprotected.

When a decision to terminate employment on grounds other than disciplinary is subject to certain procedures being followed, the period of notice starts only after the decision has been taken. The period of notice for part-time workers is calculated on the basis of length of service and not of the effective weekly working time. That of consecutive fixed-term contracts is calculated on the basis of length of service accrued on all consecutive contracts. Any reduction of the legal period of notice by collective agreement is allowed only insofar as a reasonable period of notice is maintained. The period of notice applied in the probationary period may be shorter as long as it remains reasonable in relation to the authorised maximum length of the probationary period.

Cases of exclusion of the notice period

The only exception to the right of all workers to a reasonable period of notice concerns immediate dismissal for serious offences set out in the Annex to the Charter. It may be the result of the accumulation of several less serious breaches, if there have been prior written warnings from the employer.

The Committee considers that further information on the situation in Montenegro is required before it could make a final assessment. However a possible problem identified is that in certain cases 30 days' notice is given irrespective of length of service.

## IV. EXCHANGE OF VIEWS ON THE PREPARATION OF NATIONAL REPORTS

Preparation of reports by Montenegro

The Montenegrin authorities presented information on the preparation of the national report, which was carried out in four stages. Firstly, the official request was dealt with, the relevant national institutions were identified, and contacted requesting information and data and initial contributions received. Secondly an analysis of received contributions was made and if necessary there was a follow up in respect of missing information. The third stage consisted in the drafting of report. Following this the report was approved and translated and communicated to the social partners and then submitted to the Council of Europe.

Information on examination of reports by the European Committee of Social Rights

**New simplified procedure**

A new simplified procedure of reporting has been introduced as from 2014 for states having accepted the collective complaints procedure, states submit a simplified report, a report on the follow up given to complaints where violations of Charter were found and conclusions of non-conformity. This new procedure meant that every second year, there was a reduced obligation for these States. This had been introduced in order to encourage States to accept the collective complaints procedure with the aim that it would become the main reporting procedure to replace the current system.

The provisions of the Charter are divided into the following four thematic groups:

**Group 1: Employment, training and equal opportunities**
(reports to be submitted by 31 October 2015)

Article 1: The right to work

Article 9: The right to vocational guidance

Article 10: The right to vocational training

Article 15: The right of persons with disabilities to independence, social integration and participation in the life of the community

Article 18: The right to engage in a gainful occupation in the territory of other Parties

Article 20: The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

Article 24: The right to protection in cases of termination of employment

Article 25: The right of workers to the protection of their claims in the event of the insolvency of their employer

**Group 2: Health, social security and social protection**
(reports to be submitted by 31 October 2016)

Article 3: The right to safe and healthy working conditions

Article 11: The right to protection of health

Article 12: The right to social security

Article 13: The right to social and medical assistance

Article 14: The right to benefit from social welfare services

Article 23: The right of elderly persons to social protection

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

**Group 3: Labour rights**
(reports to be submitted by 31 October 2017)

Article 2: The right to just conditions of work

Article 4: The right to a fair remuneration

Article 5: The right to organise

Article 6: The right to bargain collectively

Article 21: The right to information and consultation

Article 22: The right to take part in the determination and improvement of the working conditions and working environment
Article 26: The right to dignity at work

Article 28: The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

Article 29: The right to information and consultation in collective redundancy procedures

**Group 4: Children, family, migrants**
(reports to be submitted by 31 October 2018)

Article 7: The right of children and young persons to protection

Article 8: The right of employed women to protection of maternity

Article 16: The right of the family to social, legal and economic protection

Article 17: The right of children and young persons to social, legal and economic protection

Article 19: The right of migrant workers and their families to protection and assistance

Article 27: The right of workers with family responsibilities to equal opportunities and equal treatment

Article 31: The right to housing

States Parties present a report on the accepted provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years. As from 2014, States Parties having accepted the collective complaints procedure only have to submit a full national report every two years (see above). The Conclusions for Group 4: Children, Migrants and Families, to be adopted in December 2015, will be published in January 2016. Following the first report by Montenegro for each thematic group, there were a relatively high number of deferrals and this allows time for dialogue between the national authorities and the Committee.

The following important aspects of the reporting procedure were highlighted:

**1. The Form**

The Form is a guide for States in the preparation of their reports and it contains the interpretation of provisions by the Committee (a summary of the information contained in the Digest).

**2. Replies to questions put by the Committee**

There are two sets of questions put by the Committee:

a. General Questions addressed to all States Parties, which appear in the Introduction to the volume of Conclusions published each year. It was important for the national authorities, when drafting the report, to consult the relevant volume of Conclusions for each provision.

The report by Montenegro, to be submitted in October 2015, on Group 1: Employment, training and equal opportunities should reply to the General Questions from the Committee which appear in the General Introduction to Conclusions 2012 (Revised Charter).

b. Questions addressed to individual countries, which appear in the relevant chapter for the country concerned in the volume of Conclusions.

The Montenegrin authorities would be required to reply in future to questions put by the Committee in the relevant Conclusions. The report to be submitted in October 2015 should reply to the questions put to Montenegro in the volume of Conclusions 2012 (Revised Charter).

**3. Content of the report**

a. Information on legislation in force is necessary relating to the provisions in question. In the first report, detailed information on the legal framework must be provided. In the following reports, information should concentrate on legislative amendments since the previous reporting cycle.

b. The practical application of legislation in all of the State's territory is of importance. This may contain information on measures underway and strategies for implementation of legislation

in practice. Reports should mention policies which applied during the reference period, provide explanations when changes in policies have occurred and specify objectives as well as results.

c. The monitoring of the implementation of texts and policies is required. The report should indicate how the public authorities ensure that the laws and policies are effectively implemented.

### 4. Statistics

The Committee requires figures, for example, the number of homeless, unemployed persons, regional variations or sectors of activities, to provide a picture of the situation in practice. Reports can refer to data which has already been gathered by other national or international organisations. The Committee systematically studies the data published by Eurostat, the OECD and the EU. It is, however, important that figures provided by the national office for statistics appear in the report.

### 5. Practical information

a. Deadline: the report must be submitted to the Council of Europe by 31 October each year.

b. Language, the report must be submitted in English or French. It is important to ensure a high quality of translation to avoid misunderstandings.

The reports are published on the website of the European Social Charter. Governments are encouraged to publish their report at national level.

c. Consultation of social partners

Under the Charter, States Parties are required to consult the social partners concerning the content of the report. The approach for such consultation is variable, depending on the country. In some cases, social partners may be included in the drafting process whilst in other cases, they are consulted for possible amendments once the report has been put together. In some States, the report is addressed to the social partners who can send their comments directly to the Council of Europe.

Trade Unions and INGOs can make comments on reports which are sent to national authorities to allow a state to make comments in reply before consideration by the Committee.

d. Reports to other bodies

Reports submitted to other international organisations under other treaties, which may overlap with the content of the Charter, for example reports submitted to the International Labour Organisation (ILO), may be referred to.

## V. EXCHANGE OF VIEWS ON THE COLLECTIVE COMPLAINTS PROCEDURE

The Secretariat provided an overview of the collective complaints procedure. She underlined that the collective complaints procedure, which came into force in 1998 under an Additional Protocol to the European Social Charter was not a system of individual applications, as under

the European Convention on Human Rights (ECHR), but enabled certain organisations to lodge collective complaints alleging a breach of the Charter. The aim of the procedure was to strengthen the monitoring procedure and give NGO's and trade unions a more prominent role.

The admissibility criteria were more formal than substantive and less onerous than those under the ECHR for example there was no time limit for lodging a complaint, as under the ECHR. A complaint could be lodged at any time, indicating that the complainant organisation fulfils the conditions provided for by the Protocol. Further there was no victim requirement. It was mainly a written procedure with an exchange of submissions by applicants and national authorities. A particular advantage was the rapidity of the procedure as the Committee came to a decision within 24 months. Experience has shown that, since the introduction of the procedure, the number of complaints over time had been relatively limited and has not created an undue burden on governments.

Since the High-Level Conference in Turin, reinforcement of the collective complaints procedure was a priority of the Secretary General of the Council of Europe and all member States had been called on to ratify the Protocol. It provided a legal tool for guaranteeing the full enjoyment of fundamental social and economic rights and had important implications for improving democracy through the involvement of civil society as actors.

Mr Leppik added that the procedure was useful in particular in enabling those who otherwise find it difficult to access justice to do so. It was effective in that the procedure could have the effect of reducing the number of individual applications before the European Court of Human Rights ("the Court"). He also pointed out it was complementary to the ECHR and in fact the Committee referred to the case law of the Court, and the Court refer to the decisions of the Committee.

There had only been 115 complaints to date, and for example the number of complaints brought against countries of the Former Yugoslavia such Slovenia and Croatia were very low.

A number of representatives of social partners present at the meeting took the floor to express their support of acceptance by Montenegro of the collective complaints procedure.

## VI. EXCHANGE OF VIEWS ON THE EUROPEAN CODE OF SOCIAL SECURITY

The Secretariat presented the monitoring mechanism with respect to the European Code of Social Security (the "Code"). Under Article 12§2 of the European Social Charter, with a view to ensuring the effective exercise of the right to social security, "the Parties undertake to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security". The Code, which entered into force on 17 March 1968, was a minimum standards instrument, drawn up on the basis of the International Labour Organisation (ILO) Convention N° 102. It set out the minimum level of protection required in traditional social security branches: Medical care, Sickness benefit, Unemployment benefit, Old-age benefit, Employment injury benefit, Family benefit, Maternity benefit, Invalidity benefit and Survivors' benefit. At the time of ratification, the State Party has to sign up to six contingencies, bearing in mind that "medical care" counts for two and "old age" counts for three contingencies. Supervision of compliance with the Code was carried out on the basis of annual national reports which were assessed by the relevant ILO Committee of Experts. The reports were to be submitted in English or French on the basis of a standard form and a detailed report was to be submitted once every 5 years. The Governmental Committee of the European Social Charter and the European Code of Social Security (GC) adopted draft Resolutions on

application of the Code, drawn up on the basis of the ILO Conclusions, which were subsequently adopted by the Committee of Ministers of the Council of Europe.

As Montenegro was already bound by ILO Convention 102 and by Article 12§2 of the European Social Charter, ratification of the Code seemed possible. The authorities of Montenegro took note of the information provided with a view to further consideration of the situation.

## APPENDIX I: Situation of Montenegro with respect to the European Social Charter

**Ratifications**

Montenegro ratified the Revised European Social Charter on 03 March 2010, accepting 68 of its 98 paragraphs.

It has not signed the Additional Protocol Providing for a System of Collective Complaints

*Table of Accepted Provisions*

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1.1 | 1.2 | 1.3 | 1.4 | 2.1 | 2.2 | 2.3 | 2.4 | 2.5 | 2.6 | 2.7 | 3.1 |
| 3.2 | 3.3 | 3.4 | 4.1 | 4.2 | 4.3 | 4.4 | 4.5 | 5 | 6.1 | 6.2 | 6.3 |
| 6.4 | 7.1 | 7.2 | 7.3 | 7.4 | 7.5 | 7.6 | 7.7 | 7.8 | 7.9 | 7.10 | 8.1 |
| 8.2 | 8.3 | 8.4 | 8.5 | 9 | 10.1 | 10.2 | 10.3 | 10.4 | 10.5 | 11.1 | 11.2 |
| 11.3 | 12.1 | 12.2 | 12.3 | 12.4 | 13.1 | 13.2 | 13.3 | 13.4 | 14.1 | 14.2 | 15.1 |
| 15.2 | 15.3 | 16 | 17.1 | 17.2 | 18.1 | 18.2 | 18.3 | 18.4 | 19.1 | 19.2 | 19.3 |
| 19.4 | 19.5 | 19.6 | 19.7 | 19.8 | 19.9 | 19.10 | 19.11 | 19.12 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26.1 | 26.2 | 27.1* | 27.2 | 27.3 | 28 | 29 | 30 | 31.1 |
| 31.2 | 31.3 | | | | | | | Grey = Accepted provisions | | | |

* only subparagraph (a) of Article 27.1 was accepted

**The Charter in domestic law**
Automatic incorporation into domestic law.

**Reports ***
Between 2010 and 2013, Montenegro has submitted 5 reports on the application of the Revised Charter.

The 3rd report, submitted on 19 December 2013, covers the accepted provisions relating to Thematic Group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29).
The conclusions in respect of these provisions were published in January 2015.

The 4th report, submitted on 05/12/2014, concerns the accepted provisions relating to Thematic Group 4 "Children, family, migrants", namely:

- The right of children and young persons to protection (Article 7)
- The right of employed women to protection (Article 8)
- The right of the family to social, legal and economic protection (Article 16)
- The right of mothers and children to social and economic protection (Article 17)
- The right of migrant workers and their families to protection and assistance (Article 19)
- The right of workers with family responsibilities to equal opportunities and equal treatment (Article 27)
- The right to housing (Article 31)

In addition, the report concerns the information required by the European Committee of Social Rights in the framework of the Conclusions 2013 (Articles 3, 11, 12, 13, 14, 23 and 30, relating to Thematic group "Health, social security and social protection"), in the event of non-conformity for lack of information. Conclusions with respect to these provisions will be published in January 2016.

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis.

## Situation of Montenegro with respect to the application of the Charter

### Examples of progress achieved in the implementation of social rights under the Social Charter [1]

### Employment

►Section 155 of the Labour Law (Official Journal of Montenegro, Nos. 49/2008, 26/2009 and 59/ 2011 and 66/2012) provides that employees are guaranteed the freedom of trade unions to organise and take action, without prior approval.
►Section 12 of the Labour Law (Official Journal of Montenegro, Nos. 49/2008, 26/2009 and 59/ 2011 and 66/2012) provides that employees, directly or through their representatives, have inter alia the right to take part in negotiations for the conclusion of collective agreements.

### Harassment

►The Law on prohibition of harassment at work (Official Journal No. 30/12), adopted in June 2012, sets the obligation for the employer to inform the employees in writing of the rights, obligations and responsibilities related to harassment in the workplace in order to identify and prevent harassment, including sexual harassment.

### Cases of non-compliance

### Thematic Group 1 “Employment, training and equal opportunities”

-
(Conclusions 2012)

### Thematic Group 2 “Health, social security and social protection”

► Article 12§1 – Right to social security – Existence of a social security system
The duration of the unemployment benefit is too short.
(Conclusions 2013)

► Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need
The level of social assistance is manifestly inadequate.
(Conclusions 2013)

► Article 13§4 – Right to social and medical assistance - Specific emergency assistance for non-residents
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.
(Conclusions 2013)

[1] « 1. The [European Committee of Social Rights] rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

► Article 23 – Right of elderly persons to social protection
The minimum level of old-age pension is inadequate.
(Conclusions 2013)

### Thematic Group 3 “Labour rights”

There were no conclusions of non-conformity during the 2014 cycle (Conclusions 2014).

### Thematic Group 4 “Children, families, migrants”

Not yet examined

## The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Government to provide more information in the next report:

### Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§1-Conclusions 2012
► Article 1§2-Conclusions 2012
► Article 1§3-Conclusions 2012
► Article 1§4-Conclusions 2012
► Article 9-Conclusions 2012
► Article 10§1-Conclusions 2012
► Article 10§2-Conclusions 2012
► Article 10§3-Conclusions 2012
► Article 10§4-Conclusions 2012
► Article 15§-Conclusions 2012
► Article 15§2-Conclusions 2012
► Article 15§3-Conclusions 2012
► Article 18§1-Conclusions 2012
► Article 18§2-Conclusions 2012
► Article 18§3-Conclusions 2012
► Article 18§4-Conclusions 2012
► Article 20-Conclusions 2012
► Article 24-Conclusions 2012
► Article 25-Conclusions 2012

### Thematic Group 2 “Health, social security and social protection”

► Article 3§1-Conclusions 2013
► Article 3§2-Conclusions 2013
► Article 3§3-Conclusions 2013
► Article 3§4-Conclusions 2013
► Article 11§1-Conclusions 2013
► Article 11§2-Conclusions 2013
► Article 11§3-Conclusions 2013

► Article 12§2-Conclusions 2013
► Article 12§3-Conclusions 2013
► Article 12§4-Conclusions 2013
► Article 13§3-Conclusions 2013
► Article 14§1-Conclusions 2013
► Article 14§2-Conclusions 2013

## Thematic Group 3 “Labour rights”

► Article 2§2 - Conclusions 2014
► Article 4§2 - Conclusions 2014
► Article 4§3 - Conclusions 2014
► Article 4§5 - Conclusions 2014
► Article 5 - Conclusions 2014
► Article 6§1 - Conclusions 2014
► Article 6§2 - Conclusions 2014
► Article 6§3 - Conclusions 2014
► Article 6§4 - Conclusions 2014
► Article 28 - Conclusions 2014

## Thematic Group 4 “Children, families, migrants”

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## APPENDIX II: Meeting on the Non-Accepted Provisions of the European Social Charter

organised by

the Department of
the European Social Charter (Council of Europe)

and

the Ministry of Labour and Social Welfare, Montenegro

### PROGRAMME

Venue: Premier Congress Center, Kruševac, Podgorica, Montenegro

Working languages: English / Montenegrin

The meeting is organised in the framework of the procedure provided for by Article 22 of the 1961 Charter on "non-accepted provisions". It will consist of an exchange of views and information on the provisions not yet accepted by Montenegro. The Additional Protocol to the European Social Charter providing for a system of collective complaints will also be presented as well as the European Code of Social Security.

The overall objective is to ensure the effectiveness of fundamental social rights in Montenegro.

*9.15 am* **Opening of the meeting**

Ms Tijana Prelević, Head of Direction for Labour Relations,
Labour Directorate, Ministry of Labour and Social Welfare

*9.30 am* **Exchange of views on the provisions of the European Social Charter not yet accepted by Montenegro**

**Provisions relating to Employment, training and equal opportunities:**

**Article 10: The right to vocational training**

*Paragraph 5 - Full use of facilities available.*

Situation in law and in practice in Montenegro – presentation by Ms Ana Leković, Directorate for Labour Market and Employment, Ministry of Labour and Social Welfare

Presentation by Mr Marcin WUJCZYK, member of the European Committee of Social Rights

**Article 18: The right to engage in a gainful occupation in the territory of other Parties**

*Paragraph 1: Applying existing regulations in a spirit of liberality;*
*Paragraph 2: Simplifying existing formalities and reducing dues and taxes;*
*Paragraph 3: Liberalising regulations;*
*Paragraph 4: Right of nationals to leave the country.*

Situation in law and in practice in Montenegro – presentation by Ms Ana Leković, Directorate for Labour Market and Employment, Ministry of Labour and Social Welfare

Presentation by Mr Marcin WUJCZYK, member of the European Committee of Social Rights

**Article 25: The right of workers to the protection of their claims in the event of the insolvency of their employer**

Situation in law and in practice in Montenegro – presentation by Ms Irena Joksimović, Labour Directorate, Ministry of Labour and Social Welfare

Presentation by Mr Lauri LEPPIK, member of the European Committee of Social Rights

**Provision relating to Health, social security and social protection**

**Article 30: The right to protection against poverty and social exclusion**

Situation in law and in practice in Montenegro – Mr Igor Vučinić, Directorate for Social Welfare and Child Care, Ministry of Labour and Social Welfare

Presentation by Mr Lauri LEPPIK, member of the European Committee of Social Rights

*11 am* *coffee break*

*11.15 am* **Provisions relating to Labour rights**[1]

**Article 2: The right to just conditions of work**

*Paragraph 3: Annual holiday with pay;*
*Paragraph 4: Elimination of risks in dangerous or unhealthy occupations;*
*Paragraph 5: Weekly rest period;*
*Paragraph 7: Night work.*

Situation in law and in practice in Montenegro – presentation by Ms Larisa Zoronjić, Labour Directorate, Ministry of Labour and Social Welfare

Presentation by Mr Marcin WUJCZYK, member of the European Committee of Social Rights

**Article 21: The right to information and consultation**

Situation in law and in practice in Montenegro – presentation by Mr Stefan Šaponjić, Labour Directorate, Ministry of Labour and Social Welfare

Presentation by Mr Marcin WUJCZYK, member of the European Committee of Social Rights

**Article 22: The right to take part in the determination and improvement of the working conditions and working environment**

Situation in law and in practice in Montenegro – presentation by Ms Jovana Bošković, Labour Directorate, Ministry of Labour and Social Welfare

Presentation by Mr Marcin WUJCZYK, member of the European Committee of Social Rights

*1 pm* *lunch*

*2 pm* **Article 26: The right to dignity at work**

*Paragraph 2: Moral harassment*

Situation in law and in practice in Montenegro – presentation by Ms Irena Joksimović, Labour Directorate, Ministry of Labour and Social Welfare

Presentation by Ms Niamh CASEY, member of the Secretariat, Department of the European Social Charter

**Provisions relating to Children, family, migrants**

**Article 7: The right of children and young persons to protection**

*Paragraph 10: Special protection against physical and moral dangers*

Situation in law and in practice in Montenegro – Mr Igor Vučinić, Directorate for Social Welfare and Child Care, Ministry of Labour and Social Welfare

Presentation by Ms Niamh CASEY, member of the Secretariat, Department of the European Social Charter

**Article 19: The right of migrant workers and their families to protection and assistance**

*Paragraph 1: Assistance and information on migration;*
*Paragraph 2: Departure, journey and reception;*
*Paragraph 3: Co-operation between social services of emigration and immigration States;*
*Paragraph 4: Equality regarding employment, right to organise and accommodation;*
*Paragraph 5: Equality regarding taxes and contributions;*
*Paragraph 6: Family reunion;*
*Paragraph 7: Equality regarding legal proceedings;*
*Paragraph 8: Guarantees concerning deportation;*
*Paragraph 9: Transfer of earnings and savings;*
*Paragraph 10: Equal treatment for the self-employed.*

Situation in law and in practice in Montenegro – presentation by Ms Ana Leković, Directorate for Labour Market and Employment, Ministry of Labour and Social Welfare
Mr Dragan Dašić, Ministry of Internal Affairs

Presentation by Mr Lauri LEPPIK, member of the European Committee of Social Rights

**Article 31: The right to housing**

*Paragraph 1: Adequate housing;*
*Paragraph 2: Reduction of homelessness;*
*Paragraph 3: Affordable housing.*

Situation in law and in practice in Montenegro – presentation by Ms Stanislavka Nikčević, Ministry of Sustainable Development and Tourism

Presentation by Mr Lauri LEPPIK, member of the European Committee of Social Rights

*3.30 pm* *coffee break*

*3.45 pm* **Exchange of views on the preparation of national reports**

States Parties regularly submit a report indicating how they implement the provision of the Charter in law and in practice. Each report covers some of the accepted provisions of the Charter. This exchange of views focuses on the preparation of reports: collection of relevant information, interagency co-ordination, analysis and synthesis of data, structure and drafting of the report, with the aim to improve the quality of reports which are examined by the European Committee of Social Rights.

**Preparation of reports of Montenegro**

Presentation by Ms Vjera Šoc, Labour Directorate, Ministry of Labour and Social Welfare

**The information needed for the examination of national situations by the European Committee of Social Rights**

Presentation by Ms Niamh CASEY, member of the Secretariat, Department of the European Social Charter

*4.00 pm* **The exchange of views on the collective complaints procedure**

Under an Additional Protocol to the Charter, which came into force in 1998, national trade unions and employers' organisations as well as certain European trade unions and employers' organisations, and certain international NGOs are entitled to lodge complaints of violations of the Charter. This exchange of views aims to encourage Montenegro to accept the collective complaints procedure in order to ensure a wider application of the Charter in the country.

Presentation by Ms Niamh CASEY, member of the Secretariat, Department of the European Social Charter

Discussion

*4.40 pm* **The exchange of views on the European Code of Social Security**

Presentation by Ms Sheila HIRSCHINGER, member of the Secretariat, Department of the European Social Charter

Discussion

*5.00 pm* **Concluding remarks**

*5.15 pm* **Closing of the meeting**

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[1] Concerning Article 4: The right to a fair remuneration, paragraphs 1 and 4, written information on the situation in law and in practice will be provided by the authorities of Montenegro

## APPENDIX III: List of Participants

| | Name | Entity | Contact |
|---|---|---|---|
| 1. | Tijana Prelević, Head of Direction for Labour Relations, Labour Directorate | Ministry of Labour and Social Welfare | tijana.prelevic@mrs.gov.me |
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| 15. | Nataša Vukašinović, secretary | Social Council of | scmne@mrs.gov.me |

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| 16. | Ana Stijepović, direktor | Center for Social Work | ana.stijepovic@mrs.gov.me |
| 17. | Damir Numanović | Center for Social Work | |
| 18. | Katarina Bijelić | Center for Social Work | |
| 19. | Stanislavka Nikčević, Directorate for housing development | Ministry of Sustainable Development and Tourism | stanislavka.nikcevic@mrt.gov.me |
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| 22. | Irma Dacić | Ministry for Human and Minority Rights | irma.dacic@mmp.gov.me |
| 23. | Jelena Milačić | Ministry of Foreign Affairs and European Integration | jelena.milacic@mfa.gov.me |
| 24. | Angelina Međedović, Head Labour Inspector | The Inspection Directorate | angelina.medjedovic@uip.gov.me |
| 25. | Vlastimir Knežević, Labor Inspector | The Inspection Directorate | vlastimir.knezevic@uip.gov.me |
| 26. | Mirela Korać, Assosiation of people and friends of Vuča village (Berane) | Council for Development of NGOs | mirelakorac90@gmail.com |
| 27. | Dragan Dašić, Direction for foreigners, migrations and readmission | Ministry of Interior | dragan.dasic@mup.gov.me |
| 28. | Branislav Begović | Montenegrin Employers Federation | office@poslodavci.org |
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| | | Trade Unions of Montenegro | |
| 33. | Mr Marcin Wujczyk | Member of the European Committee of Social Rights | |
| 34. | Mr Lauri Leppik | Member of the European Committee of Social Rights | |
| 35. | Ms Niamh Casey | Member of the Secretariat, Department of the European Social Charter | niamh.casey@coe.int |
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## APPENDIX IV: 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 at the 1123rd meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;

2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;

3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;

4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;

5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.