ACTIVITY REPORT 2018

European Committee of Social Rights

European Social Charter | Charte sociale européenne

Activity Report 2018

European Committee of Social Rights

Council of Europe

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

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

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Introduction by Giuseppe Palmisano, President of the European Committee of Social Rights

2017 and 2018 have been years of intense activity for the European Committee of Social Rights ("the Committee"). They have also been difficult years, during which the need for changes and improvements in the monitoring system of the European Social Charter became more evident and urgent than in the past.

Let me start with the Committee's core activity, which consists in assessing States Parties' respect for the social rights guaranteed by the European Social Charter.

In 2017, under the **reporting procedure**, the Committee examined reports submitted by States Parties on the articles of the Charter relating to the thematic group "Health, social security and social protection". It examined the situation in 33 States and adopted 486 conclusions, including 175 conclusions of non-conformity to the Charter (36%) and 228 conclusions of conformity (47%). In 83 cases (17%), the Committee was unable to assess the situation due to lack of information ("deferrals"). Moreover, the Committee assessed the situation as regards follow-up to decisions in collective complaints in 7 States, which have accepted the collective complaints procedure under the Charter, namely the Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus and the Czech Republic. The other 8 States Parties having accepted the collective complaints procedure were exempted from submitting the "ordinary" report on the provisions examined, but submitted a "simplified" report on follow-up to collective complaints.

In 2018, the Committee examined state reports on the application of the provisions belonging to the thematic group "Labour rights". It adopted 580 conclusions, including 206 findings of non-conformity. This means that the overall average rate of non-conformity with the Charter, in the area of labour rights, in the reference period January 2013 - December 2016, was around 35%, which is approximately the same when the provisions relating to previously labour rights were last examined in 2014 (covering the reference period January 2009 - December 2012). As regards follow-up to decisions in collective complaints, the Committee examined the simplified reports of Belgium, Bulgaria, Finland, France, Greece, Ireland, Italy and Portugal.

The analysis carried out in 2018 revealed some positive developments, concerning mostly States' compliance with the obligations to ensure the right to just conditions of work and the right of workers to be informed and consulted within the undertaking, and to take part in the improvement of the working environment. But it also found continuing inadequate implementation by many States of the obligation to guarantee the fundamental right to fair remuneration, in its various aspects, as well as the right of workers to be protected from sexual and moral harassment, and the right to strike.

Moving to the **collective complaints procedure**, in 2017-2018 a significant number of decisions on the merits were adopted by the Committee, concerning a variety of issues. Let me just mention the decisions in some particularly complex and delicate complaints relating, for example, to: inclusive education and training for children with intellectual and mental disabilities in Belgium (Mental Disability Advocacy Centre (MDAC) v. Belgium, Complaint No. 109/2014, decision on the merits of 29 March 2018); law, policy and practices on social housing in Ireland (International Federation for Human Rights (FIDH) v. Ireland, Complaint No. 110/2014, decision on the merits of 12 May 2017); access of Roma children to education and vocational training in France (European Roma and Travellers Forum (ERTF) v. France, Complaint No. 119/2015, decision on the merits of 5 December 2017); treatment of Romani women in maternity care in Bulgaria (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 151/2017, decision on the merits of 19 April 2019); social side effects of so-called austerity measures in Greece (Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017); sterilisation imposed on transgender wishing to change gender identity in their personal documents in the Czech Republic (Transgender-Europe and ILGA-Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018); the rights of members of the armed forces to organise and to bargain collectively in Ireland (European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017) and Italy (*Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019); the right of certain providers of labour - such as voice over actors, freelance journalists, and some musicians - to collective bargaining in Ireland (Irish Congress of Trade Unions v. Ireland, Complaint No. 123/2016, decision on the merits of 12 September 2018).

The Committee also significantly progressed in the assessment of the fifteen complaints that were lodged simultaneously in August 2016 by University Women of Europe (UWE) against all States having accepted the collective complaints procedure, all concerning the same set of issues: gender pay gap and underrepresentation of women in decision-making positions within private companies.

Lastly, as regards the procedure on non-accepted provisions – under which the Committee is entrusted with periodical examination of the legal and practical situation in the States concerned from the standpoint of its compatibility with the non-accepted provisions -, in 2017-2018 the Committee adopted reports concerning the following countries: Norway, Ukraine, Finland, Hungary, Republic of Moldova, North Macedonia, Turkey, Ukraine, Latvia and Sweden. In many cases (Finland, Hungary, Republic of Moldova, North Macedonia, Latvia) the adoption of the report was preceded by a meeting between members of the Committee and representatives of the States concerned.

…

Apart from the above institutional activities, in the last two years the Committee also dedicated itself to developing close and fruitful relations with other international bodies and agencies operating in the field of human rights protection, with a view to improving and harmonising proper approaches to such protection and exploring ways of mutual cooperation.

In this regard, let me first of all refer to the exchange of views with the President of the European Court of Human Rights, Guido Raimondi, in May 2017.

The Committee also held, for the first time ever, an exchange of views with a delegation of the Inter-American Court of Human Rights, in November 2018 in Strasbourg. The meeting provided also an opportunity to plan an upcoming conference on the international protection of social and economic rights, to be organised jointly by the Committee and the Inter-American Court that should take place in Madrid in October 2019, with the participation of other human rights and social rights mechanisms.

Another "first" was the meeting held between the United Nations Committee on Economic, Social and Cultural Rights and the European Committee of Social Rights in Geneva in October 2018.

Lastly, significant cooperation was developed with the European Union Fundamental Rights Agency (FRA). In particular, the Committee and the Secretariat participated in the Fundamental Rights Forum, organised by the FRA on 25-27 September 2018 in Vienna. Later, in October 2018, the Committee held an exchange of views with Michael O'Flaherty, Director of the FRA.

…

As mentioned above, 2017 and 2018 were also difficult years, where the Committee and its Secretariat experienced difficulties in fully performing their institutional tasks.

Let me just mention a few examples of this.

In 2018, the Committee, very exceptionally, was not able to adopt its annual Conclusions in December according to the established deadlines under the reporting procedure. In fact, Conclusions 2018 on the thematic group "Labour rights" were adopted only in January 2019 and published two months later.

Second, regarding the collective complaints procedure, in the last two years the average lapse of time between the registration of a complaint and the decision on the merits has lengthened considerably. In a number of cases the decision on the merits was adopted more than two years after the registration of the complaint, while in the past this lapse of time was usually around 18 months.

Third, in 2018 the Committee was not able to produce and publish its traditional Activity Report relating to 2017 activities.

The reasons for these difficulties are many. They partly relate to the well-known budgetary restrictions the Council of Europe has been facing in recent years, which of course have a negative impact on the Department of the European Social Charter, in terms of financial constraints and reduction of staff devoted to Charter activities.

However, they are mainly the result of an increased workload for the Committee and the Secretariat.

In this respect, let me just recall that in 2016 around 20 new complaints were registered; in 2017, 18 new complaints were registered; and 15 new complaints were registered in 2018. If one compares such numbers with those of the preceding years (2013-2015), where we had an average of 9 complaints registered per year, it becomes clear not only that the collective complaints procedure is becoming increasingly used (and successful as a reliable mechanism for supervising the compliance of States with social rights obligations), but also that in the last years the workload related to collective complaints, for the Committee and the Secretariat, has roughly doubled.

But the substantial increase in workload also derives from the reporting procedure. In fact, following the changes adopted by the Committee of Ministers of the Council of Europe in 2014, the number of state reports to be annually assessed by the Committee has increased. This includes reports on conclusions of non-conformity for lack of information adopted by the Committee the preceding year, and simplified reports on follow-up to collective complaints. In addition, emerging areas of importance from the standpoint of an adequate implementation of many Charter provisions and full respect by States of the rights enshrined in the Charter, require more and more careful attention and analysis by the Committee (and the Secretariat) when dealing with "ordinary" thematic reports, submitted by States in the course of the supervision cycle.

The combination of the above mentioned critical factors is making it very difficult – for the Department of the European Social Charter and for the Committee – to continue performing their ordinary, institutional tasks and produce the outcomes foreseen by the Charter. Should this situation continue, there is a real risk that, in the near future, the principal tool for the protection of social rights at the European level will be seriously weakened and the fundamental normative framework for social rights in Europe will lose visibility and importance.

But, on the other hand, this difficult situation may also represent an opportunity to get to grips with the need to improve the Charter's treaty system, and take advantage of the growing conviction that in the near future changes in the supervision mechanism can be brought about, in order to make it more suited to timely identifying the most serious problems concerning the implementation of the Charter in each State and, by consequence, more useful in helping States improve the respect for social rights at national level.

In this regard, positive developments took place in 2018, at the level of the Committee of Ministers of the Council of Europe (especially within the Rapporteur Group on Social and Health Questions, GR-SOC) and within the Steering Committee for Human Rights (CDDH) and its Drafting Group on Social Rights (CDDH-SOC).

As for the GR-SOC, I refer more specifically to the positive reception given to certain proposals presented by the President of the European Committee of Social Rights in two exchanges of views (21 March 2018 and 17 January 2019), aimed at improving and simplifying the reporting procedure, as well as at facilitating the participation of

States Parties in the collective complaints procedure, also by means of a substantial alleviation of the reporting burden for the States that accept this procedure.

As for the CDDH-SOC, this body was entrusted by the Committee of Ministers with undertaking an analysis of the legal framework of the Council of Europe for the protection of social rights, and to make proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the various European instruments for the protection of social rights. In this remarkable effort, which has already produced interesting analyses and proposals, the CDDH-SOC actively involved the Committee, notably by means of a number of useful and fruitful exchanges with its President.

Let us hope that all these on-going developments may result in making the monitoring mechanism of the European Social Charter more efficient and effective, but also more feasible and realistic in terms of the "sustainable performance" of the European Committee of Social Rights and the Department of the European Social Charter.

…

Lastly, I cannot conclude this introduction without paying homage and wholeheartedly thanking the three friends and members of the Committee whose terms of office came to an end in December 2018, namely Monika Schlachter (Vice-President of the Committee for many years), Birgitta Nyström and Marcin Wujczyk. They all made valuable contributions to the Committee's case law and activity, with commitment, determination and intelligence.

But let me also pay a very special and personal tribute to Régis Brillat, who left the Department of the European Social Charter after many years of strong commitment to social rights in Europe. As Head of Department and Executive Secretary of the European Committee of Social Rights, he was, for decades, the driving force and the beating heart of the European Social Charter treaty system. There are not enough words to thank and congratulate him.

Finally, I wish here all success to Jan Malinowski in his new role as Head of Department of the European Social Charter and Executive Secretary of the European Committee of Social Rights.

Giuseppe Palmisano

1 – Overview and key figures

The European Committee of Social Rights was set up by Article 25 of the 1961 Charter and its function is to rule on the conformity of the law and practice of the States Parties under the 1996 revised European Social Charter, the 1988 Additional Protocol and the initial 1961 European Social Charter[1]. It is made up of 15 independent members elected by the Committee of Ministers[2].

The Committee conducts its supervision through two distinct but complementary procedures: the reporting procedure, in which it examines written reports submitted by States Parties at regular intervals, and the collective complaints procedure, which allows certain national and international organisations to lodge complaints against States Parties that have agreed to be bound by this procedure.[3]

The national reports and the collective complaints are examined during the Committee's sessions, seven in 2018:

- 303rd Session 3-7 December 2018
- 302nd Session 15-19 October 2018
- 301st Session 10-13 September 2018
- 300th Session 2-6 July 2018
- 299th Session 14-17 May 2018
- 298th Session 20-22 March 2018
- 297th Session 23-26 January 2018

In 2018, the Committee examined 35 national reports[4] presented by States Parties to the Charter describing how they implement the Charter in law and in practice as regards the provisions covered by the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of working conditions (Article 22),
- the right to dignity at work (Article 26),

1. Appendix 1: Signatures and ratifications
2. Appendix 2: Composition of the Committee in 2018
3. In response to national reports, the Committee adopts conclusions; in response to collective complaints, it adopts decisions.
4. One State Party (Albania) did not submit its report and the report of Hungary and part of the report of Luxembourg relating to Article 6 of the Charter could not be examined because they were not submitted in time.

- the right of workers' representatives to protection in the undertaking (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The reports cover the period from 1 January 2013 until 31 December 2016.

At its 304th session, held on 21-24 January 2019, the European Committee of Social Rights adopted its Conclusions 2018[5] (European Social Charter Revised) and 2018/XXI-3[6] (1961 Charter) with a total of 580 conclusions including 206 situations of non-conformity and 276 of conformity with the provisions of the Charter. In 98 cases the Committee was unable to assess the situation due to lack of information and postponed its conclusion.

The Conclusions 2018 were presented at a press conference on 25 March 2019 in Brussels, Belgium.

As to the collective complaints procedure, 15 new complaints were lodged in 2018. The Committee adopted 9 decisions on the merits and 14 on admissibility including 1 inadmissibility decision. Decisions on the merits related for example to the right of children with intellectual and mental disabilities to mainstream education and training in Belgium; the right of foreign unaccompanied minors to accommodation and care in France; the right of transgender persons to protection of health in the Czech Republic; the right of armed forces representative associations in Ireland to have full trade unions rights.

The 15 complaints registered in 2018 were lodged against 5 States Parties: Italy (6), France (4), Finland (2), Greece (2) and Ireland (1). They were submitted by national trade unions, and by international and national NGOs.

In addition, the Committee held several meetings and exchanges with other institutions and bodies, such as the Fundamental Rights Agency of the European Union, the UN Committee on Economic, Social and Cultural Rights, the Inter-American Court of Human Rights. Last, but not least, the Bureau of the Committee held an exchange of views with the Government Agents in the framework of the collective complaints procedure.

5. Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Latvia, Lithuania, Luxembourg (in part), Malta, Republic of Moldova, Montenegro, the Netherlands, the Netherlands in respect of Aruba, the Netherlands in respect of Curaçao, North Macedonia, Norway, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Sweden, Turkey and Ukraine
6. Denmark, Germany, Iceland, Poland, Spain and United Kingdom.

2 – Composition of the European Committee of Social Rights

The composition of the Committee is governed by Article 25 of the Charter. Its fifteen members are required to be "*independent experts of the highest integrity and of recognised competence in international social questions*". They are elected by the Committee of Ministers for a six-year period, renewable once.

Elections take place once every two years, with a third of the seats (five) to be filled at each election.

During their 1332nd meeting, held on 12 December 2018, the Ministers' Deputies elected two new members of the European Committee of Social Rights: Ekaterina Torkunova (Russian Federation) and Yusuf Balci (Turkey). Eliane Chemla (France) and József Hajdú (Hungary) were re-elected for a second 6-year term. The term of office for these members begins on 1 January 2019 and ends on 31 December 2024.

Tatiana Puiu (Republic of Moldova) was also elected as member of the Committee at the 1339th meeting of the Minister's Deputies, held on 6 March 2019 with a term of office that ends on 31 December 2024.

A new Bureau was elected from among the Committee members during the session held in January 2019: Giuseppe Palmisano was re-elected as President, Karin Lukas was re-elected as Vice-President, François Vandamme was elected as Vice-President and Eliane Chemla was re-elected as General Rapporteur.

3 – Collective complaints procedure

3.1. Overview

By 2018, the procedure established by the Additional Protocol of 1995 providing for a system of collective complaints, which came into force on 1 July 1998, had been accepted by 15 States Parties to the Charter: Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden.

Over the period from 1998 to 2018, 173 collective complaints were lodged with the European Committee of Social Rights. The Committee handed down 282 decisions as follows: 158 decisions on admissibility including 7 decisions on inadmissibility, 109 decisions on the merits, 9 decisions on both admissibility and the merits, 5 decisions on immediate measures including 1 decision on admissibility and immediate measures and 2 decisions to strike out a complaint.

15 new complaints were lodged in 2018. During the 7 sessions held in 2018, the European Committee of Social Rights adopted 9 decisions on the merits and 14 on admissibility including 1 inadmissibility decision.

The 15 complaints registered in 2018[7] were lodged against 5 States Parties: Italy (6), France (4), Finland (2), Greece (2), Ireland (1), 9 complaints were submitted by national trade unions, 4 by international NGOs and 2 by national NGOs.

The average processing time for 2018 was 5.7 months for the 14 admissibility decisions and 24.8 months for the 9 decisions on the merits. In comparison, the average times for the whole period from 1998 to 2018 were 5.4 months for admissibility decisions and 14.9 months for decisions on the merits.

Detailed information on the number of decisions handed down by the Committee between 1998 and 2018[8] and on the number of complaints adopted by State at the end of 2018[9] is presented in the appendices.

3.2. Decisions made public in 2018

In 2018, 9 decisions on the merits were made public:

- **The decision on admissibility and the merits in European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, became public on 12 February 2018.**

7. Appendix 3: Complaints registered in 2018
8. Appendix 4: Number of decisions adopted by the Committee between 1998 and 2018
9. Appendix 5: Number of complaints adopted by country at the end of 2018

The complainant organisation alleged that Ireland is in violation of Article 5 and Article 6 of the Charter on the grounds that defence force representative associations do not possess proper trade union rights.

In its decision on the merits, adopted on 12 September 2017, the Committee concluded:

- by 11 votes to 2 that there is a violation of Article 5 of the Charter;
- unanimously that there is a violation of Article 6§2 of the Charter;
- by 9 votes to 4 that there is no violation of Article 6§4 of the Charter.

The Committee of Ministers adopted Resolution CM/ResChS(2018)2[10] on 10 April 2018.

- **The decision on admissibility and the merits in Mental Disability Advocacy Centre (MDAC) v. Belgium, Complaint No. 109/2014, was adopted on 16 October 2017 became public on 29 March 2018.**

MDAC alleged that the Flemish Community of Belgium denies access to mainstream education to disabled children, in particular to children with intellectual disabilities and fails to provide the necessary accommodation to ensure such inclusion, in violation of Articles 15§1, 17§§1 and 2 taken alone and Article E read in conjunction with each of these provisions of the Charter.

In its decision on admissibility and the merits adopted on 16 October 2017, the Committee concluded:

- unanimously, that there is a violation of Article 15§1 of the Charter;
- by 10 votes to 2, that there is no violation of Article E read in conjunction with Article 15§1 of the Charter;
- by 11 votes to 1, that there is a violation of Article 17§2 of the Charter;
- by 10 votes to 2, that there is no violation of Article E read in conjunction with Article 17§2 of the Charter.

The Committee of Ministers adopted Resolution CM/ResChS(2018)3[11] on 4 July 2018.

- **The decision on the merits in European Roma and Travellers Forum (ERTF) v. France, Complaint No. 119/2014, became public on 16 April 2018.**

The ERTF alleges that the situation in France amounts to a violation of Articles 10§§3 and 5 and 17§2, as well as of Article E read in conjunction with Articles 10§§3 and 5, 16, 17§2, 30 and 31 of the Charter because of:

- the exclusion from compulsory schooling of Roma children and adolescents as a result of the permanent instability of the settlements and their living conditions;
- administrative, social and economic discrimination;
- housing conditions that do not respect the human dignity and the basic needs of children;
- successive evacuations preventing any inclusion in the social fabric and any staying in school.

10. CM/ResChS(2018)2: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807b7ba7
11. CM/ResChS(2018)3: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808b79f0

In its decision on the merits adopted on 5 December 2017, the Committee concluded:

- by 14 votes to 1, that there is a violation of Article 17§2 of the Charter;
- unanimously, that there is no violation of Article 10§3 of the Charter;
- unanimously, that there is no violation of Article 10§5 of the Charter;
- by 12 votes to 3, that there is a violation of Article E taken in conjunction with Article 10§§3 and 5 of the Charter;
- by 14 votes to 1, that there is a violation of Article E taken in conjunction with Article 17§2 of the Charter;
- unanimously, that there is no violation of Article E taken in conjunction with Article 16 of the Charter;
- by 11 votes to 4, that there is a violation of Article E taken in conjunction with Article 31 of the Charter;
- by 13 votes to 2, that there is a violation of Article E taken in conjunction with Article 30 of the Charter.

The Committee of Ministers adopted Resolution CM/ResChS(2018)4[12] on 4 July 2018.

▶ **The decision on the merits in *Unione Italiana del Lavoro U.I.L. Scuola-Sicilia* v. Italy, Complaint No. 113/2014 became public on 29 June 2018.**

U.I.L. Scuola-Sicilia alleges that the situation in Italy is in breach of Article 12, as well as Article E in conjunction with this provision of the Charter, for the following reasons:

- the statutory arrangements relating to "social shock absorbers" by derogation establishes that only legal entities that qualify as a company as defined by the Government are eligible for assistance paid in respect of unemployed workers by the Wage Guarantee Fund (*Cassa integrazione guadagni*), in order to avoid that these workers become totally or partially unemployed;
- the narrow interpretation given to this provision prevents training bodies established in the form of non-profit-making associations from claiming assistance, in a way that is discriminatory in comparison to providers established in the form of a company.

In its decision on the merits, adopted on 24 January 2018, the Committee concluded:

- unanimously that there is no violation of Article 12§1 of the Charter;
- by 9 votes to 5, that there is no violation of Article 12§3 of the Charter.

A Committee member expressed a separate dissenting opinion.

The Committee of Ministers adopted Resolution CM/ResChS(2018)5[13] on 4 July 2018.

▶ **The decision on admissibility and the merits in European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2014, became public on 15 June 2018.**

12. CM/ResChS(2018)4: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808b79f2
13. CM/ResChS(2018)5: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808b79f3

EUROCEF alleged that France fails to fulfil its obligations under the Charter with regard to the rights of unaccompanied foreign minors to appropriate legal, economic and social protection, in breach of Articles 7§10, 11, 13, 14, 17, 30 and 31§2 of the Charter, read alone or in conjunction with Article E, in particular due to:

- defective initial reception arrangements due to saturation of national arrangements for the provision of shelter, assessment of and guidance for unaccompanied foreign minors;
- detention of unaccompanied foreign minors in waiting areas;
- abusive age assessment;
- lack of access to education;
- lack of access to health and social protection.

In its decision on the merits, adopted on 24 January 2018, the Committee concluded unanimously:

- unanimously, that there is a violation of Article 17§1 of the Charter due to:
- shortcomings identified in the national shelter, assessment and allocation system of unaccompanied foreign minors; the delays in appointing an ad hoc guardian for unaccompanied foreign minors; the detention of unaccompanied foreign minors in waiting areas and in hotels; the use of bone testing to determine the age of unaccompanied foreign minors considered as inappropriate and unreliable; a lack of clarity to access an effective remedy for unaccompanied foreign minors;
- by 8 votes to 7, that there is a violation of Article 17§2 of the Charter due to lack of access to education for unaccompanied foreign minors aged between 16 and 18 years;
- unanimously, that there is a violation of Article 7§10 of the Charter due to the inappropriate accommodation of minors and their exposure to life on the street;
- unanimously, that there is a violation of Article 11§1 of the Charter due to lack of access to health of unaccompanied foreign minors;
- by 14 votes to 1, that there is a violation of Article 13§1 of the Charter due to lack of access to social and medical assistance of unaccompanied foreign minors;
- by 14 votes to 1, that there is a violation of Article 31§2 of the Charter due to lack of provision of a shelter to unaccompanied foreign minors;
- by 10 votes to 5, that there is no violation of Article 30 of the Charter;
- by 11 votes to 4, that Article E of the Charter is not applicable to the instant case.

A Committee member expressed a separate concurring opinion.

The Committee of Ministers adopted Resolution CM/ResChS(2018)8[14] on 22 September 2018.

14. CM/ResChS(2018)8:
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808de349

- **The decision on the merits in *Matica Hrvatskih Sindikata* v. Croatia, Complaint No. 116/2015, became public on 27 August 2018.**

Matica Hrvatskih Sindikata alleged that Croatia is in violation of Article 5 and 6 of the European Social Charter of 1961 on the grounds that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services, Official Gazette No. 143/2012, and other legislation enacted and implemented by the Government of Croatia on 20 December 2012 infringe the right to organise and the right to bargain collectively.

In its decision on the merits adopted on 21 March 2018, the Committee concluded:

- unanimously that there is no violation of Article 5 of the 1961 Charter;
- by 13 votes to 1 that there is a violation of Article 6§2 of the1961 Charter;
- by 13 votes to 1 that there is no violation of Article 6§1 of the 1961 Charter;
- by 13 votes to 1 that there is no violation of Article 6§3 of the 1961 Charter;
- by 12 votes to 2 that there is no violation of Article 6§4 of the 1961 Charter.

The Committee of Ministers adopted Resolution CM/ResChS(2018)10[15] on 24 October 2018.

- **The decision on the merits in Transgender Europe and ILGA-Europe v. Czech Republic, Complaint No. 117/2014, became public on 1 October 2018.**

Transgender Europe and ILGA-Europe alleged that the legal requirement of sterilisation imposed on transgender wishing to change their personal documents so that they reflect their gender identity in the Czech Republic, is in breach of Article 11 either alone or in light of the non-discrimination clause of the Preamble to the 1961 European Social Charter.

In its decision on the merits adopted on 15 May 2018, the Committee concluded, by 11 votes to 2, that there is a violation of Article 11§1 of the 1961 Charter.

The Committee of Ministers adopted Resolution CM/ResChS(2018)9[16] on 24 October 2018.

- **The decision on the merits in** Confédération Générale du Travail Force Ouvrière **(CGT-FO) v. France, Complaint No. 118/2015, became public on 26 November 2018.**

CGT-FO alleged a violation of Article 6§2 of the revised European Social Charter with respect to the conditions under the French legislation concerning complementary social protection of employees with regard to the choice of an insurer, in particular Article L. 912-1 of the Social Security Code as amended by Law No. 2013-1203 of 23 December 2013 on social security financing for 2014 and implementing decrees.

In its decision on the merits, adopted on 3 July 2018, the Committee concluded:

- Unanimously, that there is a violation of Article 6§2 of the Charter on the issue of prohibiting designation clauses;

15. CM/ResChS(2018)10:
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e85b2
16. CM/ResChS(2018)9:
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e85b0

- Unanimously, that there is no violation of Article 6§2 of the Charter on the issue of the number of collective social insurance agreements;
- Unanimously, that there is no violation of Article 6§2 of the Charter on the issue of the implementing decrees;
- Unanimously, that there is no violation of Articles 5 and 6§2 of the Charter on the issue of the rules of competition.

The Committee of Ministers adopted Resolution CM/ResChS(2019)4[17] on 10 May 2019.

- **The decision on the merits in Irish Congress of Trade Unions (ICTU) v. Ireland, Complaint No. 123/2015, became public on 12 December 2018.**

The complainant organisation alleged that the decision of the Irish Competition Authority prohibiting certain workers - deemed self-employed - such as voice over actors, free-lance journalists, and some musicians, from concluding collective agreements setting out minimum rates of pay and other working conditions, as this would amount to a breach of competition law, is in violation of Article 6 of the Charter.

In its decision on the merits, adopted on 12 September 2018, the Committee concluded by 11 votes to 2 that there is no violation of Article 6§2 of the Charter.

Two members of the Committee expressed a joint dissenting opinion.

The Committee of Ministers adopted Resolution CM/ResChS(2018)11[18] on 12 December 2018.

3.3. Complaint declared inadmissible

On 22 March 2018, the European Committee of Social Rights adopted its decision on admissibility in Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece, Complaint No. 156/2017.

PAP-OTE alleged that the situation in Greece is in violation of Articles 12§2 and 12§3 of the Charter of 1961, as well as of Article 4§1 of the 1988 Additional Protocol. PAP-OTE maintained that Greece has not addressed the situation resulting from the reform of pensions, in spite of the Committee's former decisions, which had declared the legislation aimed at reducing pensions to be contrary to the Charter and in spite of national case-law, which had declared this same legislation contrary to the Constitution.

In its decision on admissibility, the Committee, by 10 votes against 1, declared the complaint inadmissible on the ground that, that the complaint does not refer to instruments in force for Greece at the moment at which the complaint was lodged, i.e. on 23 August 2017. The complaint refers to the 1961 Charter and to the 1988 Additional Protocol, which are no longer in force for Greece. It has therefore not been introduced in accordance with the requirements of the Protocol and cannot be declared admissible.

17. CM/ResChS(2019)4: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809461f4
18. CM/ResChS(2018)11: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809026b2

3.4. Further decisions adopted in 2018

Furthermore, the following decisions adopted by the European Committee of Social Rights in 2018 became public in 2019:

- the decision on the merits in Equal Rights Trust v. Bulgaria, Complaint No. 121/2016 was adopted on 16 October 2018. The decision became public on 23 March 2019;
- the decision on the merits in *Confédération générale du travail (CGT)* v. France, Complaint No. 106/2014 was adopted on 18 October 2018. The decision became public on 15 March 2019;
- the decision on the merits in European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 151/2017 was adopted on 5 December 2018. The decision became public on 19 April 2019.

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

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

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

If the State in question does not indicate its intention to bring the situation into conformity, the Committee of Ministers may also adopt a recommendation to the State. In view of the importance of this decision, a two-thirds majority of those voting is required here. In the case of both resolutions and recommendations, only States Parties to the Charter may take part in the vote.

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

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

In 2018, the Committee of Ministers adopted 10 resolutions concerning 10 complaints:

- CM/ResChS(2018)1[19]

  Resolution – International Federation for Human Rights (FIDH) v. Ireland – Collective Complaint No. 110/2014 (Adopted by the Committee of Ministers on 31 January 2018 at the 1305th meeting of the Ministers' Deputies)

19. CM/ResChS(2018)1: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680784fa2

- CM/ResChS(2018)2[20]

  Resolution - European Organisation of Military Associations (EUROMIL) v. Ireland – Complaint No. 112/2014 (Adopted by the Committee of Ministers on 10 April 2018 at the 1313th meeting of the Ministers' Deputies)

- CM/ResChS(2018)3[21]

  Resolution – The Mental Disability Advocacy Centre (MDAC) v. Belgium – Complaint No. 109/2014 (Adopted by the Committee of Ministers on 4 July 2018 at the 1321st meeting of the Ministers' Deputies)

- CM/ResChS(2018)4[22]

  Resolution – European Roma and Travellers Forum (ERTF) v. France – Complaint No. 119/2015 (Adopted by the Committee of Ministers on 4 July 2018 at the 1321st meeting of the Ministers' Deputies)

- CM/ResChS(2018)5[23]

  Resolution – *Unione Italiana del Lavoro U.I.L. Scuola-Sicilia* v. Italy – Complaint No. 113/2014 (Adopted by the Committee of Ministers on 4 July 2018 at the 1321st meeting of the Ministers' Deputies)

- CM/ResChS(2018)8[24]

  Resolution on European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France – Complaint No. 114/2015 (Adopted by the Committee of Ministers on 26 September 2018 at the 1325th meeting of the Ministers' Deputies)

- CM/ResChS(2018)9[25]

  Resolution – Transgender Europe and ILGA-Europe v. the Czech Republic – Complaint No. 117/2015 (Adopted by the Committee of Ministers on 24 October 2018 at the 1328th meeting of the Ministers' Deputies

- CM/ResChS(2018)10[26]

  Resolution – *Matica Hrvatskih Sindikata* v. Croatia – Complaint No. 116/2015 (Adopted by the Committee of Ministers on 24 October 2018 at the 1328th meeting of the Ministers' Deputies)

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20. CM/ResChS(2018)2: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807b7ba7
21. CM/ResChS(2018)3: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808b79f0
22. CM/ResChS(2018)4: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808b79f2
23. CM/ResChS(2018)5: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808b79f3
24. CM/ResChS(2018)8: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808de349
25. CM/ResChS(2018)9: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e85b0
26. CM/ResChS(2018)10: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e85b2

- CM/ResChS(2018)11[27]

  Resolution – Irish Congress of Trade Unions (ICTU) v. Ireland – Complaint No. 123/2016 (Adopted by the Committee of Ministers on 12 December 2018 at the 1332rd meeting of the Ministers' Deputies)

- CM/ResChS(2018)12[28]

  Resolution – Greek General Confederation of Labour (GSEE) v. Greece – Complaint No. 111/2014 (Adopted by the Committee of Ministers on 12 December 2018 at the 1332nd meeting of the Ministers' Deputies)

3.6. Reform of the system for the follow-up of collective complaints

At the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the Committee of Ministers adopted new changes to the Charter's monitoring system. The most important aim of the changes was to simplify the reporting system for States Parties having accepted the Collective Complaints procedure. Following these modifications, the following countries: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland were exempted from reporting on the provisions under examination in Conclusions 2018. These States were instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

In 2018, in the framework of the follow-up to the decisions in collective complaints, the Committee examined the simplified national reports and noted that the following situations have been brought into conformity with the Charter:

- **European Trade Union Confederation (ETUC),** ***Centrale générale des syndicats libéraux de Belgique (CGSLB), Confédération des syndicats chrétiens de Belgique (CSC) and Fédération générale du travail de Belgique (FGTB)*** **v. Belgium, Complaint No. 59/2009, decision on the merits of 13 September 2011**

The Committee concluded that there was a violation of Article 6§4 of the Charter on the ground that the restrictions on the right to strike did not fall within the scope of Article G as they were neither prescribed by law nor in keeping with what was necessary to pursue one of the aims set out in Article G, and in particular because:

  - judicial decisions given after a unilateral application were not sufficiently precise and consistent enough to enable parties wishing to engage in a picketing activity to foresee whether their actions would be subject to legal restraint;
  - totally excluding trade unions from the proceedings following a unilateral application could lead to a situation where the courts' intervention could produce unfair or arbitrary results.

27. CM/ResChS(2018)11: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809026b2
28. CM/ResChS(2018)12: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809026b3

The Committee considers that the examples of case law given by the authorities show, on the one hand, that the Belgian case law on strikes is stable, consistent and predictable and, on the other hand, that the proceedings for unilateral applications guarantee procedural fairness.

The Committee holds that the situation has been brought into conformity with the Charter and decides to terminate the follow-up to the decision.

- **Defence for Children International (DEI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012**

In its decision, the Committee concluded that there was a violation of Article 17§1 on the following grounds:

- the Government had not taken the necessary and appropriate measures to guarantee illegally resident accompanied foreign minors the care and assistance they needed;
- the Government had not taken the necessary and appropriate measures to guarantee non-asylum seeking unaccompanied foreign minors the care and assistance they needed.

The Committee also concluded that there was a violation of Article 7§10 on the ground that the Government had not taken the necessary steps to ensure that unaccompanied foreign minors and illegally resident accompanied minors received special protection against physical and moral hazards, thereby posing a serious threat to the enjoyment of their most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity.

Lastly, the Committee concluded that there was a violation of Article 11§§1 and 3 on the ground that unaccompanied foreign minors and illegally resident accompanied minors were not guaranteed the right of access to health care.

In its 2015 findings, the Committee concluded that the situation had been brought into conformity with Articles 17§1 and 7§10 of the Charter. It found that the measures taken guaranteed accommodation for unaccompanied foreign minors and illegally resident accompanied minors in a reception centre.

In the assessment of the follow-up of the decision as to the claims under Article 11§§1 and 3, the Committee takes note of the information provided by the authorities and considers that the situation has been brought into conformity with Article 11 §§ 1 and 3 of the Charter and decides to terminate the follow-up to the decision.

- ***Syndicat national des Professions du tourisme* v. France, complaint No. 6/1999, decision on the merits of 10 October 2000**

In its 2015 findings, the Committee considered that the situation had been brought into conformity with regard to the following findings of violations:

- Article 1§2 because of the differences in treatment between the approved lecturer guides of the *Villes et Pays d'Art et d'Histoire* network and the interpreter guides and national lecturers with a state diploma as regards the freedom to conduct guided tours.

– Article 1§2 because of the differences in treatment between the approved lecturer guides of the CNMHS and national museums and the interpreter guides and national lecturers with a state diploma with regard to the freedom to conduct guided tours.

The Committee had also concluded that there was a violation of Article 1§2 because the differences in treatment between the approved lecturer guides of the CNMHS and national museums and the interpreter guides and national lecturers with a state diploma with regard to working conditions (differences in treatment in price terms) constituted discrimination. In the case of this violation, the Committee concluded that the situation had not been brought into conformity on the ground that different prices were still charged for "free" groups and invited the Government to state whether this difference in treatment was founded on an objective and proportionate justification.

The Committee considers from the last national report that there is no difference in prices between groups which employ outside guides (often referred to as 'free' tours) and those which use lecturer guides provided by museums. In the latter case, the price of the guided tours is displayed and is charged extra. The Committee notes that there is no discrimination in prices between self-employed lecturer guides and lecturer guides provided by museums run by the Ministry of Culture. Therefore, the Committee considers that the situation has been brought into conformity with Article 1§2 of the Charter and decides to terminate the follow-up to the decision.

- **World Organisation against Torture ("OMCT") v. Greece, Complaint No. 17/2003, decision on the merits of 7 December 2004**

The Committee concluded that there was a violation of Article 17 of the 1961 Charter on the ground that the Greek legislation did not prohibit all forms of corporal punishment on children within the family, in secondary schools and in other institutions and forms of care for children.

The Committee takes note of the positive developments and in particular of the Acts which explicitly prohibit all corporal punishment of children in all circumstances affecting the physical integrity, dignity, development or psychological well-being of a child, and therefore addressing the violation found by the Committee.

The Committee finds that the situation has been brought into conformity with the Charter and decides to terminate the examination of the decision.

- **Association for the Protection of All Children (APPROACH) Ltd v. Ireland, Complaint No. 93/2013, decision on the merits of 2 December 2014**

In the decision the Committee found a violation of Article 17 of the Charter on the ground that the domestic law does not prohibit and penalise all forms of violence against children within the family, in certain types of care or certain types of preschool settings, that is acts or behaviour likely to affect their physical integrity, dignity, development or psychological development or well-being.

The Committee takes note of the positive developments and in particular of the Acts which explicitly prohibit all corporal punishment of children in all circumstances

affecting the physical integrity, dignity, development or psychological well-being of a child, and therefore addressing the violation found by the Committee.

The Committee finds that the situation has been brought into conformity with the Charter and decides to terminate the examination of the decision.

- **Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits**

The Committee concluded that there was:

a) a violation of Article E read in conjunction with Article 31§1 on the ground that the situation with regard to the living conditions of Roma and Sinti in camps or similar settlements in Italy was inadequate;

b) an aggravated violation of Article E read in conjunction with Article 31§2 because of the practice of evicting Roma and Sinti and the violent acts often accompanying such evictions;

c) a violation of Article E read in conjunction with Article 31§3 because of the segregation of Roma and Sinti in camps;

d) a violation of Article E read in conjunction with Article 30 on the ground that there was discriminatory treatment with regard to the right to vote or other forms of citizen participation for Roma and Sinti and that this was a cause of marginalisation and social exclusion;

e) a violation of Article E read in conjunction with Article 16 on the following grounds:
   - Roma and Sinti families did not have access to adequate housing;
   - Roma and Sinti families were not protected against undue interference in family life.

f) an aggravated violation of Article E read in conjunction with Article 19§1 on the ground that xenophobic political rhetoric or discourse was used against Roma and Sinti in a situation which was the result of direct action by the authorities leading to stigmatisation;

g) a violation of Article E read in conjunction with Article 19§4 c) because of the violation of Article E read in conjunction with Article 31 ;

h) a violation of Article E read in conjunction with Article 19§8 because of the expulsion of Roma and Sinti.

Following its last examination, the Committee considers that the situation has not been brought into conformity with the Charter except with regard to Article E, read in conjunction with Article 19§8 of the Complaint.

The Committee takes note of the termination of the "security measures" linked with the state of emergency, which had given rise to the expulsion of a number of Roma from the country. It also notes that measures are being considered to limit or resolve cases of statelessness.

In the light of decision 9687/2013 of the Court of Cassation, it considers that the situation has been brought into conformity with the Charter with regard to this violation (Article E, read in conjunction with Article 19§8 of Complaint No. 58/2009).

3.7. Informal meeting between the Bureau of the European Committee of Social Rights and the Governments' agents

Article 25 of the Rules of the Committee provides in particular that "the State shall be represented before the Committee by the agents they appoint".

The 5th informal meeting between the Bureau of the European Committee of Social Rights and Government Agents before the Committee was held in Paris on 9 November 2018 in the presence of Giuseppe Palmisano, President of the Committee and Eliane Chemla, General Rapporteur. The meeting provided an opportunity for an exchange of views during which recent developments in the collective complaints procedure were presented, in particular with respect to admissibility criteria.

4 – Reporting procedure

4.1. Overview

In 2018, in the framework of the reporting procedure, the European Committee of Social Rights examined national reports[29] submitted by 35 States Parties on the Articles of the Charter relating to the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of working conditions (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The following 35 countries were examined:

Andorra, Armenia, Austria, Azerbaijan, Bosnia-Herzegovina, Croatia, Czech Republic, Denmark, Estonia, Georgia, Germany, Iceland, Latvia, Lithuania, Luxembourg (in part), Malta, Republic of Moldova, Montenegro, the Netherlands, the Netherlands in respect of Aruba, the Netherlands in respect of Curaçao, North Macedonia, Norway, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Spain, Sweden, Turkey, Ukraine and United Kingdom.

One State Party (Albania) did not submit its report and the report of Hungary and part of the report of Luxembourg relating to Article 6 of the Charter could not be examined because they were not submitted in time.

The Committee received comments from national trade unions and employers' organisations in respect of the Netherlands and Spain.

State reports were due on 31 October 2017. They covered the reference period from January 2013 until December 2016.

At its session in January 2019, the Committee adopted 580 conclusions[30] on labour rights in respect of the 35 States, including 206 conclusions of non-conformity to the

29. National reports submitted by State parties: https://www.coe.int/en/web/european-social-charter/national-reports
30. Conclusions 2018 of the European Committee of Social Rights: HUDOC Database https://hudoc.esc.coe.int/eng#{«ESCCycle»:[«year2018»,»XXI-3»,»2018»],»ESCDcType»:[«Conclusion»]}

Charter and 276 conclusions of conformity. In 98 cases, the Committee was unable to assess the situation due to lack of information ("deferrals").

The Committee thus identified certain recurrent problems, not least the fact that relatively few States are in compliance with the right to remuneration such as will give workers and their families a decent standard of living (Article 4§1 of the Charter). It is the Committee's case-law that, in order to ensure a decent standard of living, the lowest net wages paid must be above a minimum threshold, set at 50% of the net average wage. There is a presumed conformity when the net lowest wages paid are above 60% of the net average wage, whereas if these wages are between 50% and 60% of the net average wage, it is for the State Party to show that they ensure a decent standard of living. The Committee found that, whilst some States in Europe meet the minimum threshold in the sector (Luxembourg and Sweden) or in the industries covered by collective agreement (Austria and Iceland), most fail. Reasons are either that the statutory minimum wage (Andorra, Azerbaijan, Lithuania, Malta, the Netherlands, Romania, Serbia, Spain and the United Kingdom), or the lowest wages paid (Germany), are too low in comparison with the average wage. This is a fortiori the case where subsidised employment or reduced rates of the statutory minimum wage exist (the Netherlands and the United Kingdom). As for the public sector, the Committee found that the minimum threshold is mostly met for tenured civil servants, whereas problems remain concerning contractual staff (Spain).

Furthermore, the Committee found in several cases excessive restrictions on the personal scope of the right to organise (Article 5). For example, in certain countries (Armenia, Azerbaijan, the Czech Republic, Georgia and the Republic of Moldova) police personnel do not enjoy the right to join trade unions or restrictions on this right are excessive. In addition, an excessive restriction on the right to strike (Article 6§4) of certain categories of workers is a problem in many States.

With regard to the right to dignity at work (Article 26§§1 and 2), the Committee considered that in several countries the employees did not enjoy adequate protection from sexual harassment (Azerbaijan, Georgia, Lithuania, Ukraine) or moral harassment (Azerbaijan, Georgia, Lithuania, Malta, Ukraine). In most cases, however, this finding was based on the lack of relevant information in response to the questions previously raised. Under these provisions, States are required to protect workers respectively from sexual and moral harassment, by taking appropriate preventive and remedial measures. In particular, employers must be liable for harassment involving their employees or occurring on premises under their responsibility, even when third persons are involved. Victims of harassment must be able to seek reparation before an independent body and, under civil law, a shift in the burden of proof should apply. Effective judicial remedies must furthermore allow for adequate reparation for pecuniary and non-pecuniary damage and, where appropriate, reinstatement of the victims in their post, including when they resigned because of the harassment.

In the framework of the reporting procedure, the Committee posed a number of questions to states Parties.

Regarding the right of members of the armed forces to organise, the Committee recalled that Article 5, of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide

margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as through the imposition of a blanket prohibition of professional associations of a trade union nature and prohibition of the affiliation of such associations to national federations/confederations (military representative associations should under certain conditions be entitled to affiliate with national employees organisations). It requested all states to provide information on the right of members of the armed forces to organise.

As regards police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. However, the imposition of restrictions as to the mode and form of such strike action can be in conformity with the Charter.

The Committee asked states Parties to provide information on the right of members of the police to strike and any restrictions.

In light of the rapidly changing world of work and proliferation of contractual arrangements, often with the express aim of avoiding contracts of employment under labour law, which has resulted in an increasing number of workers falling outside the definition of a dependent employee, including low-paid workers or service providers who are de facto "dependent" on one or more labour engagers, the Committee posed a general question on Article 6§2 concerning self-employed workers and collective bargaining.

The Committee notes that in establishing the type of collective bargaining that is protected by the Charter, it is not sufficient to rely on distinctions between worker and self-employed, the decisive criterion is rather whether there is an imbalance of power between the providers and engagers of labour. Where providers of labour have no substantial influence on the content of contractual conditions, they must be given the possibility of improving the power imbalance through collective bargaining. The Committee considers that an outright ban on collective bargaining of all self-employed workers would be excessive as it would run counter to the object and purpose of Article 6§2 (see ICTU v. Ireland, Complaint No. 123/2016, decision on the merits of 12 September 2018, §§37-40).

The Committee therefore asked States Parties to provide information on measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

In addition, the Committee adopted a statement of interpretation on Article 4§4 (right to reasonable notice for termination of employment) where it indicated that the question of the reasonableness of notice periods will no longer be examined in detail on the main basis of criteria setting varied lengths according to specific circumstances. A reasonable notice period is one which takes account of the employees' length of service, the need not to deprive them abruptly of their means of subsistence and the need to inform them of the termination in good time to enable them to seek a new job, and during which employees are entitled to their regular remuneration. It is for governments to prove that these elements have been taken into account when devising and applying the basic rules on notice periods. The Committee is also concerned about the situation of workers in insecure employment relationships.

Nevertheless, the Committee also noted a number of positive developments in the application of the Charter, either through the adoption of new legislation or changes to practice in the States Parties or in some cases on the basis of new information clarifying the situation as regards issues raised in previous examinations (thereby reducing the number of conclusions deferred for lack of information). In particular, the Committee welcomed the decision of the Netherlands to revoke the restrictions with respect to the right to strike regarding civil servants; the increase of the minimum wage in Iceland; the adoption of new Labour Code in Bosnia and Herzegovina in 2016, which provides for a minimum of twenty working days of annual holiday with pay, which may be increased under the provisions of the collective agreement or the relevant internal company rules or employment contract. The Committee also welcomed the adoption of a law in Luxembourg, which allows trade unions to choose their candidates for joint works council elections freely, regardless of their nationality. Moreover, the Committee noted with satisfaction the progress concerning the Danish new strategy relating to the working environment up to 2020 aimed at reducing the number of serious accidents, the number of employees who are psychologically overloaded and the number of employees who experience musculoskeletal disorders and states the creation of a midterm study supporting the achievement of the goals. In Ukraine for example, a manual for employers "Adherence to the principle of equal treatment and non-discrimination in the work place in the public and private sectors of Ukraine" was developed and distributed. This manual contains in particular a section on "Sexual harassment" and covers a range of issues related to employer's policies and norms of conduct, as well as recommendations on how to act and respond to possible complaints.

	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Examined situations	580	486	576	824	724	568	608	950	569	572	425	839
Conformity	276	228	277	452	337	277	277	459	271	281	185	363
	48%	47%	48%	55%	46%	49%	45%	48%	48%	49%	43%	43%
Non-conformity	206	175	204	278	252	181	156	256	184	164	126	230
	35%	36%	35%	34%	35%	32%	26%	27%	32%	29%	30%	28%
Deferral	98	83	95	94	135	110	175	235	114	127	114	246
	17%	17%	16%	11%	19%	19%	29%	25%	20%	22%	27%	29%

Legend: Committee's assessments of conclusions 2007-2018

4.2. Provisions concerned

An overview of the Committee's main findings in 2018 is presented article by article below. A complete table of the Committee's conclusions for 2018 per country and per article can be found in Appendix[31].

- **The right to just conditions of work (Article 2)**

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

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

In certain states, more flexibility was introduced in the management of working time, allowing for longer working weeks in some periods to be offset by shorter working weeks in others. Flexibility arrangements as such are not contrary to the Charter. However, their impact on the overall observance of the rights guaranteed by Article 2§1 is assessed in the light of the criteria established by the Committee. In particular, it assesses whether under flexible working time regimes the maximum limits to daily and weekly working time are maintained, whether or not the employer may unilaterally impose flexibility measures and whether the reference periods for calculating the average working time are excessive. In line with this, in respect of Spain and Turkey, the Committee found that the situations was not in conformity as the maximum weekly working time may exceed 60 hours in flexible working time arrangements.

In Iceland, Poland, Serbia and Slovenia, on-call periods during which no effective work is undertaken are assimilated to rest periods. Periods of on-call duty ("*périodes d'astreinte*") during which the employee has not been required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period in the meaning of Article 2 of the Charter The absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The right to **public holidays with pay, guaranteed by Article 2§2**, is generally respected by the member states, with the notable exception of the United Kingdom, where there is no specific entitlement to leave on public holidays. Different approaches

31. Appendix 6: Summary of the Committee's Conclusions 2018

apply on the other hand in different countries as regards the forms and levels of compensation awarded for work performed on public holidays. In this respect, the Committee considered that compensation corresponding to the regular wage increased by 50%-75% was not adequate (Bosnia and Herzegovina, Malta, the Netherlands, Norway, the Slovak Republic).

As regards the right to **paid annual holidays (Article 2§3)**, the Committee found certain situations of non-conformity on the ground that not all employees have the right to take at least two weeks of uninterrupted holiday during the year (Cyprus, Luxembourg, the Netherlands, Spain).

The Committee noted the efforts made by many states to **eliminate risks in inherently dangerous or unhealthy occupation (Article 2§4)**. This is the case, for example, of Austria and the Russian Federation, for which the Committee has concluded conformity. The Committee considered however that Bosnia and Herzegovina and Armenia had no [adequate] prevention policy. Even where such a policy existed, the Committee found in certain cases that not all workers exposed to residual risks were entitled to adequate compensatory measures, such as reduced working hours or additional paid leave (Luxembourg, the Netherlands, and United Kingdom).

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

Workers' right to be provided, when starting employment, with written information covering the **essential aspects of the employment relationship or contract (Article 2§6)** appears to be in general well respected in the member states, with the notable exception of Bosnia and Herzegovina, where the Labour Code of the Republika Srpska does not require employers to inform employees in writing of the key aspects of the employment relationship or of the employment contract.

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

- **The right to a fair remuneration (Article 4)**

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

Relatively few States in Europe have ratified **Article 4§1** of the Charter on the **right to remuneration such as will give workers and their families a decent standard of living**. It is the Committee's case-law that, in order to ensure a decent standard of living, the lowest net wages paid must be above a minimum threshold, set at 50% of

the net average wage. There is a presumed conformity when the net lowest wages paid are above 60% of the net average wage, whereas if these wages are between 50% and 60% of the net average wage, it is for the State Party to show that they ensure a decent standard of living. The Committee found that, whilst some States in Europe meet the minimum threshold in the sector (Luxembourg and Sweden) or in the industries covered by collective agreement (Austria and Iceland), most fail.

Reasons are either that the statutory minimum wage (Andorra, Azerbaijan, Lithuania, Malta, the Netherlands, Romania, Serbia, Spain and the United Kingdom), or the lowest wages paid (Germany), are too low in comparison with the average wage. This is a fortiori the case where subsidised employment or reduced rates of the statutory minimum wage exist (the Netherlands and the United Kingdom). As for the public sector, the Committee found that the minimum threshold is mostly met for tenured civil servants, whereas problems remain concerning contractual staff (Spain).

While the situation as regards an increased remuneration for overtime work (**Article 4§2**) is in conformity in the majority of states, the Committee has observed that a number of states fail to guarantee the right to increased time off in lieu of overtime pay (Armenia, Czech Republic, Estonia, the Netherlands, North Macedonia, Poland, Slovak Republic, Spain, Turkey, United Kingdom).

As regards the **right to equal pay for work of equal work (Article 4§3)**, the Committee has examined the national situations of 25 States Parties. In respect of those States which are currently bound by the collective complaints procedure and against whom there is currently a complaint on equal pay pending, namely the Czech Republic, the Netherlands, Norway, Slovenia and Sweden, the Committee has deferred its conclusion, pending its decisions on the merits.

In assessing the compliance of national situations with the requirements of Article 4§3, the Committee has considered several issues:

- whether there is an express legal basis for equal pay (Georgia was found not to be in conformity for lack of statutory guarantee of equal pay in the private sector).
- whether there are adequate guarantees of enforcement of the right to equal pay and whether the domestic law of states provides for appropriate and effective remedies in the event of alleged wage discrimination. In this regard, the Committee found situations of non-conformity in Armenia, where there is an upper limit on the amount of compensation that may be awarded in gender discrimination cases, as well as in Iceland, where there is no possibility for reinstatement following unlawful dismissal in relating to equal pay claims, and in the Russian Federation and Ukraine, where there is no shift in the burden of proof in favour of the plaintiff in discrimination cases.
- whether States have sound job classification systems in place and whether they ensure pay transparency so that jobs can be compared with a view to facilitating the detection of the cases of unequal pay for equal work or work of equal value. In this regard, the Committee has found that Moldova fails to meet the requirements of this provision as long as it does not allow pay comparisons across companies in the private sector, even where these companies are part of the same holding.

- whether the enforcement of the right to equal pay is effective, as regards the measures taken to reduce the gender pay gap in practice. The Committee observed that in some States Parties (Armenia, Azerbaijan, Estonia) the gender pay gap is persistently high, above 25%, demonstrating that the enforcement of the right to equal pay is not effective.

▸ **The right to organise (Article 5)**

Article 5 guarantees workers' and employers' **freedom to organise** and includes the right to form trade unions and employers organisations, the right to join as well as not to join, protection against discrimination on grounds of trade union membership, and trade union autonomy.

Concerning the forming of trade unions and employers' organisations, the Committee found that the minimum membership requirements in order to form a trade union or employers' organisation to be too high and therefore to undermine the freedom to organise (Armenia, Latvia, Serbia).

One state was found not to be in conformity on the grounds that the right not to join a trade union was not adequately protected (Iceland).

The Committee found in several cases excessive restrictions on the personal scope of the right to organise for example police personnel do not enjoy the right to join trade unions or restrictions on the right to be excessive (Armenia, Azerbaijan, the Czech Republic, Georgia and the Republic of Moldova).

Interference in the autonomy of trade unions was also a problem in one state (United Kingdom)

▸ **The right to bargain collectively (Article 6)**

The exercise of the right to bargain collectively and the right to collective action laid down by Article 6 represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter.

Under **Article 6§2** of the Charter, the States Parties undertake to **promote machinery for voluntary negotiations** between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee found that the situation is not in conformity with Article 6§2 of the Charter in 7 countries on the ground that collective bargaining is sufficiently promoted machinery for voluntary negotiations is not adequately promoted. These countries are: Armenia Azerbaijan, the Czech Republic, Estonia, Georgia, Latvia and Lithuania.

In respect of Spain, the Committee concluded that the situation is not in conformity with Article 6§2 of the 1961 Charter as legislation allows employers unilaterally not to apply conditions agreed in collective agreements.

Under **Article 6§3** of the Charter, the States Parties undertake to **promote the establishment and use of appropriate machinery for conciliation** and voluntary arbitration for the settlement of labour disputes. In respect of other countries like Malta the republic of Moldova the Committee concluded that the situation is not in

conformity because compulsory recourse to arbitration is permitted in circumstances which go beyond the conditions set out in Article G of the Charter.

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

A high number of states are in breach of the right to strike.

Excessive restrictions on certain categories of persons from striking is a problem in many states; Armenia, the Czech Republic, Malta, the Republic of Moldova (police), the Czech Republic (prison service).

The situation is not in conformity with the Charter in Azerbaijan, Denmark, Germany and Ukraine on the ground civil servants are denied the right to strike.

Public servants exercising authority in the name of the state in Estonia are prohibited from striking.

The Committee considered that the restrictions on the right to strike of employees working in various sectors such as the energy supply services, telecommunication, nuclear facilities, transport, are not justified in 9 countries: Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova, the Russian Federation, Serbia, Slovak Republic and Ukraine.

As regards the entitlement to call a strike, the Committee concluded that the requirements for calling a strike are excessive in Armenia, Czech Republic, Germany, Romania and the Russian Federation. The Committee considered that the requirement to notify an employer of a ballot on strike action in addition to the strike notice that must be prior to strike action is excessive in the United Kingdom.

The Committee concluded that the situation in the United Kingdom is not in conformity with the Charter as workers are not adequately protected against dismissal in the event of participating in a strike.

In respect of Iceland the Committee concluded that the situation was not in conformity as the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter. Likewise the situation in Spain was found not to be in conformity as legislation authorises the Government to impose compulsory arbitration to end a strike in cases which go beyond the conditions permitted by Article 31 of the 1961 Charter.

- **The right to information and consultation (Article 21)**

Article 21 protects the right of workers to be regularly informed concerning the **economic and financial situation of the undertaking** employing them, and to be consulted in good time on proposed decisions which could substantially affect their interests, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

The Committee has examined 21 national situations as regards Article 21 and has found that 18 Countries are in conformity with the Charter. In 2 countries the decision has been deferred (North Macedonia and Serbia) because the countries failed to provide sufficient information concerning both the scope of national law and

its practical application and the legal remedies available when these rights are not respected. In 1 country the situation has been found in non-conformity (Bosnia and Herzegovina) which resulted from a repeated lack of information, in particular the Committee held that it had not been established that all workers enjoy the right to information and consultation and that legal remedies are available to workers in the event of infringements of their right to be informed and consulted.

- **The right to take part in the determination and improvement of working conditions (Article 22)**

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

The Committee has examined 20 national situations as regards Article 22 and found that 14 countries are in in conformity with the Charter. In 3 countries the decision has been deferred (Croatia, Latvia and Turkey) because of a failure to provide sufficient information on working conditions, work organization and working environment as well as on health and safety and on socio-cultural activities; there was also a lack of information concerning the legal remedies available when the measures put in place to ensure the abovementioned rights are violated. In 3 countries the situation have been found in non-conformity with the Charter (Azerbaijan, Bosnia and Herzegovina and Serbia) because employees are not granted an effective right to participate in the decision-making process within the undertaking with regard to working conditions, work organization and working environment, and legal remedies are not available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

- **The right to dignity at work (Article 26)**

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

On the basis of these criteria, the Committee considered that, in several countries, employees did not enjoy adequate protection from sexual harassment (Azerbaijan, Georgia, Lithuania, Ukraine) or from moral harassment (Azerbaijan, Georgia, Lithuania, Malta, Ukraine). In most cases, however, this finding was based on the lack of relevant information in response to the questions previously raised.

- **The right or workers' representatives to protection in the undertaking (Article 28)**

Article 28 protects **workers' representatives in undertakings from dismissal or other prejudicial acts** and requires that they are afforded appropriate facilities to carry out their functions. All forms of employee representation, not exclusively trade unions, should benefit from the rights guaranteed by this Article.

In order to ensure that such protection is effective, the Charter requires that it extends for a reasonable period (according to the case-law of the European Committee of Social Rights, for at least 6 months) after the expiry of the representative's mandate. The most frequent ground of non-conformity with the Charter under this provision was the absence of such extended protection (Austria, Azerbaijan, Bosnia and Herzegovina, Lithuania, North Macedonia, Norway, Romania, Russian Federation, Turkey).

In several cases the Committee found that workers representatives were not adequately protected from prejudicial acts, which may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts cut-down or any other taunts or abuse (Armenia, Azerbaijan, Republic of Moldova, North Macedonia, Turkey, Ukraine). In addition, in Ukraine, workers' representatives other than trade union members were also insufficiently protected against dismissal.

In its case-law, the Committee set examples of facilities which workers' representatives should be afforded and which entail, i.a. access to premises and office equipment, authorisation to distribute information or financial contributions. The Committee found that the situation was not in conformity in this respect in Armenia, Bosnia and Herzegovina, Moldova, Romania, North Macedonia and Russian Federation.

- **The right to information and consultation in collective redundancy procedures (Article 29)**

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

The Committee found that the situation in the majority of States Parties was in conformity with this requirement, an exception being Georgia, where the legislation does not guarantee the rights of workers and their representatives to be consulted in good time before the redundancies take place, and Azerbaijan, where it has not been established that there are measures that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled.

4.3. Examples of progress in the application of the European Social Charter with respect to labour rights

When preparing Conclusions 2018, the European Committee of Social Rights noted a number of positive developments in the application of the Charter, either through the adoption of new legislation or changes to practice in the States Parties or in some

cases on the basis of new information clarifying the situation as regards issues raised in previous examinations (thereby reducing the number of conclusions deferred for lack of information).

The Committee welcomes these developments which contribute to a better implementation of the Charter at national level and invites the States Parties to continue their efforts with a view to ensuring the concrete and effective implementation of all the rights of the Charter.

This chapter contains a non-exhaustive list of examples of progress by country and provision regarding countries bound by the 1961 Charter and countries bound by the Revised Charter of 1996.

4.3.1. Andorra

Article 26

- The Equality Unit, which was set up in January 2016 within the Department of Social Affairs (...) includes a Specialised Unit for the Care of Victims of Violence, which provides cross-sectoral assistance (social, psychological and legal) for women who are victims of sexual harassment in the workplace. (Article 26§1)
- Article 149bis of the Criminal Code, as amended by the Decree-Law of 29 April 2015, henceforth defines sexual harassment as "verbal, non-verbal or physical behaviour of a sexual nature towards another without their consent with the aim or effect of compromising their dignity, particularly when this behaviour creates an intimidating, hostile, degrading, humiliating or offensive environment (...)". (Article 26§1)

4.3.2. Austria

Article 4

Teaching and educational staff in private teaching and education institutions are also covered by a separate scheme, falling either under the Ordinance of 17 November 2016 (M 21/2016/XXIII/97/1, Federal Law Gazette III, no. 327/2016), or the collective agreement for employees of private educational institutions (S 5/2016/XXIII/97/1), as amended, depending on whether the employer belongs to the professional association of private education institution employers (BABE). Teaching staff who have worked overtime receive a 50% overtime supplement in addition to basic hourly remuneration. (Article 4§2)

4.3.3. Bosnia and Herzegovina

Article 2

- Federation of Bosnia and Herzegovina – The new Labour Code that came into force on 14 April 2016 provides for a minimum of twenty working days [of annual holiday with pay], which may be increased under the provisions of the collective agreement or the relevant internal company rules or employment contract. Employees may not waive their right to annual leave, or be denied

that right, and they may not be granted financial compensation instead of taking unused days of annual leave (Articles 47-52 of the Labour Code).

- In the Republika Srpska, the new Labour Code has been enacted and came into force on 20 January 2016. Articles 78-80 entitle employees to annual leave of at least 20 working days after six months of uninterrupted work. Employed minors are entitled to a minimum of 24 working days of holiday and persons working in certain specific conditions to a minimum of 30 working days. (Article 2§3)

4.3.4. Croatia

Article 21 of the Revised Charter / Article 2 of the Additional Protocol of the 1961 Charter

In 2014 entered in to force the Labour Act 93/2014 that regulates employment relationships in Croatia. The Labour Act 93/2014 contains provisions on the right to information and consultation and enables participation of workers in decision-making through three legal mechanisms: 1. works council, 2. workers' assemblies and 3. employers' bodies.

4.3.5. Denmark

Article 22 of the Revised Charter/ Article 3 of the Additional Protocol of the 1961 Charter

The report provides information on the progress concerning the new strategy relating to the working environment up to 2020 aimed at reducing the number of serious accidents, the number of employees who are psychologically overloaded and the number of employees who experience musculoskeletal disorders and states the creation of a midterm study supporting the achievement of the goals. It further states that an expert committee on how to enhance the undertaken efforts has been established.

4.3.6. Germany

Article 2

In the public service sector trainees are now entitled to leave with continued payment of their training allowance, with the provision that the entitlement to leave amounts to 29 days per calendar year if the weekly working time is spread over five days in the calendar week. (Article 2§3)

4.3.7. Iceland

Article 4

The level of the minimum wage improved in the reference period and is in the process of an ongoing reform which will further continue to raise it. The gradual raise of the minimum wage was agreed in the reference period in two rounds of collective negotiations facilitated by the government. The government committed, in exchange, to adopt measures that would benefit the citizens, i.a. review of the tax system, education reform, reforms in economic policy and the management of public finances, limits for tariffs charged by the state and further measures concerning welfare and housing systems. Moreover, a minimum earnings insurance shall cover the instances for those employees who do not attain the minimum income. (Article 4§1)

Article 5

Parliament passed an Act in 2010 to repeal the Act on the industry charge. Consequently, the industry charge has not been collected since Act No. 124/2010 entered into force in 2011.

4.3.8. Latvia

Article 5

On 6 March 2014 the Parliament of Latvia adopted the new "Law on Trade Unions" (hereinafter – the law) which entered into force on 1 November 2014 and accordingly the previous "Law on Trade Unions" of 13 December 1990, was repealed.

4.3.9. Lithuania

Article 26

A specific prohibition of moral (psychological) harassment has been introduced in the new Labour Code, adopted in September 2016, but entered into force in July 2017, out of the reference period. (Article 26§2)

4.3.10. Luxembourg

Article 5

The Committee previously found the situation not to be in conformity with Article 5 of the 1961 Charter, on the ground that the national legislation does not enable trade unions to choose their candidates for joint works council elections freely, regardless of nationality. i.e. candidates for joint works councils had to be an EU national. According to the report, the Law of 23 July 2015 amended the situation and candidates no longer have to be EU nationals.

4.3.11. Republic of Moldova

Article 26

Legislative amendments of 2016 (Law No. 71 of 14 April 2016) (…) have introduced the obligation for the employer to inform the employees that all acts of discrimination and sexual harassment are prohibited at work. Such an obligation is henceforth provided in the Law on equal opportunities (Law No. 5 of 9 February 2006, Article 10§2d) and the Labour Code: pursuant to Articles 10§2 and 199§1 of the Labour Code, as amended in 2016, the internal regulations of each employment unit shall provide for the respect of "the principle of non-discrimination, the elimination of sexual harassment and any form of denial of work". Under Article 48§2 of the same Code, employees shall be provided, for informational purposes, with a set of documents that are applicable to them, including the internal regulations of the unit. (…) (Article 26§1, 26§2) In addition, the State Labour Inspectorate shall monitor the observance of the legal provisions regarding the prevention and elimination of cases of discrimination and cases of sexual harassment at the work place (Article 1§113.k of Law No. 140 of 10 May 2001, as amended in 2016). (…) the Law on equal opportunities (Article 19§32), as amended

in 2016, provides henceforth that gender coordinating groups shall examine cases of discrimination based on sex, and cases of sexual harassment, at the branch level and in the decentralized structures; the law also provides that the materials accumulated in such cases be forwarded to the law enforcement bodies. (Article 26§1)

4.3.12. Montenegro

Article 4

In 2014, the Government and the social partners signed a general collective agreement (OG No. 14/14 of 22 March 2014), valid for two years. The contracting parties are responsible for overseeing its application. In 2016, an agreement was signed to extend it for two years (OG No. 39/16 of 29 June 2016). According to this new general collective agreement, employees' wages must be increased by at least 40% per hour of overtime worked. (Article 4§2)

4.3.13. The Netherlands

Article 6

The Netherlands revoked the restrictions with respect to the right to strike regarding civil servants. This means civil servants now have a right to strike (Kingdom Act of 3 December 2014, published in the Bulletin of Acts and Decrees on 15 January 2015, No. 11). (Article 6§4)

Article 21 of the Revised Charter / Article 2 of the Additional Protocol of the 1961 Charter

The report indicates that the Works Council Act was amended during the reference period and modified the provisions governing the right to information. The funding of the system for training works council members has been changed. The Act now provides that training must be of a proper standard and that training costs should be directly borne by the undertaking. Further the duty to provide information has been expanded. An undertaking that forms part of an international group of undertakings must in future provide all contact information so that workers' representatives in the Netherlands can contact the parent company abroad in good time about decisions that affect the Dutch undertaking. The rules for holding works council elections have been changed. The requirement that a list of independent candidates can be submitted only if accompanied by a given number of signatures has been scrapped. The dispute settlement rules have been changed. The statutory obligation to present workers' participation disputes for mediation to a joint sectorial committee (consisting of representatives of central employers' and employees' organisations) before taking legal action before the courts has been dropped. However, a joint sectorial committee can still be consulted on a voluntary basis. The Social and Economic Council is now explicitly responsible for promoting worker participation. The Committee for the Promotion of Worker Participation (CBM) has been established by the SER for this purpose. The key function of the CBM is broadly to promote worker participation and the standard of such participation in undertakings. It is also responsible for disseminating information in this regard.

4.3.14. North Macedonia

Article 2

Preventive measures aimed at eliminating or reducing the risks related to work feature in the Occupational Safety and Health Act, which was amended in 2014. Article 11 requires employers to prepare a risk assessment statement for each workplace, with appropriate instructions and measures to be introduced. They are required, in particular, to conduct risk assessments for the entire workplace and eliminate all the risks and hazards identified, in accordance with an official rulebook on the preparation of safety statements, their contents, and the data on which risk assessments should be based. (Article 2§4)

Article 26

Pursuant to Article 11 of the Law on Protection against Harassment at Workplace (PHW Law), adopted in 2013, the employer has the obligation to inform employees of their and the employer's rights and obligations as regards harassment and of the relevant protective measures and procedures available. The respect of this obligation is monitored by the Labour Inspectorate. (Article 26§1, 26§2)

4.3.15. Russian Federation

Article 2

- The federal laws Nos. 426-FZ of 28 December 2013 on special assessment of working conditions and 421-FZ on amendments to certain legislative acts of the Russian Federation entered into force on 1 January 2014. As a result, the procedure for certifying workplaces based on working conditions has been replaced by a procedure governing the special assessment of working conditions ("SOUT"). This procedure applies to all workers irrespective of their official occupation and position except for homeworkers, teleworkers and employees working for a private individual.
- Under Article 3 (1) and (2) of Federal Law No. 426-FZ, a SOUT is a set of sequentially implemented measures to identify harmful and dangerous factors related to the working environment and labour process, and the degree to which they affect the employees, taking into account the extent to which their actual values deviate from the norms established by the government regarding working conditions and the use of individual and collective protection for workers. Conditions in the workplace are divided into various classes and subclasses (optimal, acceptable, harmful – including 4 subclasses – and hazardous working conditions) according to the degree of harmfulness and hazard, based on the results of the SOUT (Article 14). The procedure for establishing which class working conditions fall into is determined by the Methodology for assessing working conditions approved by the Ministry of Labour (Order No. 33 of 24 January 2014).
- Federal Law No. 421-FZ amends certain Articles of the Labour Code in order to ensure the implementation of a differentiated approach when providing workers with guarantees for working in harmful and hazardous working

conditions, depending on how the conditions are classified following the special assessment. Workers employed in harmful and hazardous working conditions are entitled to a wage premium equivalent to at least 4% of the base wage rates established for various jobs with standard labour conditions (Article 147 of the Labour Code). Extra paid leave of at least 7 calendar days is granted to workers employed in working conditions classified as harmful (in at least the 2nd degree) or hazardous, based on the results of the SOUT (Article 117). The specific duration of this leave is determined in accordance with the industry agreement, collective agreement and labour contract, and there is no upper limit on the amount of additional paid leave which may be granted. A reduced working week (36 hours maximum) is granted to workers employed in working conditions which have been classified as harmful (in at least the 3rd degree) or hazardous (Article 92). (Article 2§4)

Article 21 of the Revised Charter / Article 2 of the Additional Protocol of the 1961 Charter

The report indicates that in 2013, under Federal Law No. 95-FZ of 7 May 2013 amending Article 22 of the Labour Code, a new system for the consultation of employees on productivity and efficiency was set up. The law establishes the right of employers to set up "production councils" – advisory bodies formed on a voluntary basis by their employees to draft proposals to improve production activities and processes, increase workforce productivity and improve employees' skills. The powers, membership and functioning of such councils and their interaction with employers are established by a local by-law.

4.3.16. Serbia

Article 2

- Under Article 68 of the amended Labour Code (came into force on 29 July 2014), employees are entitled to annual leave and cannot waive that right. Under Article 114, during annual leave employees are entitled to be paid at the rate of their average salary for the preceding twelve months. (Article 2§3)
- Under the amended Article 66 of the Labour Code, employees are entitled to a minimum of 12 hours of uninterrupted rest within each 24 hour period, unless otherwise specified in the Code. Employees who agree to flexible working time arrangements (Article 57) are entitled to a minimum of 11 hours' uninterrupted rest within each 24 hour period. Under Article 67, if employees are required to work on their weekly rest day their employer must grant them an uninterrupted rest period of at least 24 hours in the following week, before their next scheduled weekly rest period. (Article 2§5)

4.3.17. Slovenia

Article 2

Following the adoption of the new Labour Relations Law which came into force in 2014, the obligatory elements of an employment contract have been expanded to include, in addition to all the elements listed in the previous law (see Conclusions 2014) the reason for temporary employment in a fixed-term contract. (Article 2§6)

Article 22 of the Revised Charter/ Article 3 of the Additional Protocol of the 1961 Charter

The Employment Relationship Law (No. 21/2013) entered in to force in 2013. Under the new law, the employer is obliged to submit organisational general acts to the trade unions to obtain their opinion. If there is no trade union present, the workers may take part through their directly elected worker's representatives in the adoption of general acts governing workers' rights. Prior to the adoption of such a general act, an employer must submit the proposition to the works council and/or the worker's representative to obtain their opinion. The respective body then must submit its opinion within eight days and the employer must examine and take a relevant position on the submitted opinion prior to adopting the act in question. If no works council or worker's representative is organized, the employer must inform the workers directly about its content prior to adopting the act.

4.3.18. Spain

Article 2

The Royal Decree 299/2016 on the protection of health and safety for workers who face the risks of exposure to electromagnetic fields, further strengthened the specific protection, in addition to the general Law No. 31/1995 on the prevention of occupational risks. (Article 2§4)

Article 21 of the Revised Charter / Article 2 of the Additional Protocol of the 1961 Charter

In the field of public administrations, Spain signed on 21 December 2015 the "Framework Agreement on information and consultation rights for central governments administrations". The Sectorial Social Dialogue Committee for Central Government Administrations signed a social partner agreement on common minimum standards of information and consultation rights for central administration workers in matters of restructuring, work-life balance, working time and occupational health and safety.

Article 22 of the Revised Charter/ Article 3 of the Additional Protocol of the 1961 Charter

- The report indicates that the Royal Decree 1084/2014 of 19 December 2014 amending the Royal Decree 67/2010 of 29 January 2010 on the adaptation of the legislation on the prevention of occupational risks to the general administration of the State has intervened to amend the legislation on the participation of workers in the determination and improvement of working conditions. This amendment is essentially in response to the decision of the General Bargaining Committee of the General State Administration, adopted on October 29, 2012, regarding the allocation of resources to the bargaining and participation structures and the streamlining of these structures. The decision concerns on the one hand the election of the delegates to the prevention and the credits of hours which they benefit and, on the other hand, the committees of safety and health at work, which must adapt, except in the cases provided for in the said royal decree, to the new definition of "workplace" according to which it constitutes the new electoral unit.
- The agreement of the General Negotiating Committee of the General State Administration is also at the origin of the provisions contained in Royal

Decree-Law 20/2012 of 23 July 2012 adopting measures to guarantee budgetary stability and to encourage competitiveness. Specifically, Article 10 of this text designates the General Negotiating Committees as the responsible bodies for agreements in this area, in particular as regards the exercise of representational and negotiating functions.

4.3.19. Turkey

Article 26

- Pursuant to the Turkish Human Rights and Equality Authority Law (enacted in April 2016), harassment is considered as a type of discrimination and is defined as "Any painful, degrading, humiliating and disgraceful behaviour which intend to tarnish human dignity or lead to such consequence based on one of the grounds cited in this Law including psychological and sexual harassment". The Supreme Court has clarified that actions performed by workers outside their workplace and working hours may also be considered as harassment. (Article 26§1)
- In 2014, the Ministry of Labour and Social Security, jointly with the Human Rights Association, the State Personnel Department and trade unions issued the "Guideline on Psychological Harassment in Workplaces", which contains the definition of moral (psychological) harassment, as well as information on the relevant legislation and how to deal with moral (psychological) harassment. (Article 26§2)

4.3.20. Ukraine

Article 26

A publication-manual for employers "Adherence to the principle of equal treatment and non-discrimination in the work place in the public and private sectors of Ukraine" was developed and distributed. This manual contains in particular a section on "Sexual harassment" and covers a range of issues related to employer's policies and norms of conduct, as well as recommendations on how to act and respond to possible complaints, etc. (Article 26§1)

Article 29

The Law on Employment of Population, as amended, imposes on the employer an obligation to consult trade unions and to take measures to prevent collective redundancy or minimize the dismissals and / or their negative consequences. In this respect, the employer is required to submit information to the competent territorial bodies, two months in advance, about a planned redundancy of workers for reasons of economic, technological, structural or similar nature or because of liquidation, reorganisation, or change in the form of ownership of an enterprise, institution or organisation. (Article 50)

4.4. Follow-up of the conclusions by the Governmental Committee of the European Social Charter and the European Code of Social Security

In 2018, the Governmental Committee examined follow-up measures taken by the Governments with respect to conclusions of non-conformity issued by the European Committee of Social Rights on articles of the European Social Charter relating to "Health, social security and social protection" (Conclusions 2017).

In its examination, the Governmental Committee applied the procedures adopted by the Committee of Ministers at its 1196th meeting on 2 April 2014 and focused on certain conclusions of non-conformity as selected by the European Committee of Social Rights.

The Governmental Committee held two meetings in 2018 (137th Meeting on 23-27 April 2018, 138th Meeting on 24-28 September 2018) with Mr Joseph Faber (Luxembourg) in the Chair. The Representative of the European Trade Union Confederation (ETUC) attended the meetings of the Governmental Committee in a consultative capacity.

In this context, the Governmental Committee voted several warnings as follows:

- Article 3§2 (to issue safety and health regulations) in respect of Hungary;
- Article 3§3 (to provide for the enforcement of safety and health regulations by measures of supervision) in respect of Republic of Moldova;
- Article 11§1 (to remove as far as possible the causes of ill-health) in respect of Azerbaijan, Georgia, Republic of Moldova, Romania, Ukraine;
- 12§1 (to establish or maintain a system of social security) in respect of Georgia.

During its examination, the Governmental Committee took note of important positive developments in several States Parties.

The Governmental Committee asked Governments to continue their efforts with a view to ensuring compliance with the European Social Charter and urged them to take into consideration any previous Recommendations adopted by the Committee of Ministers.

Moreover, the Governmental Committee submitted a message to the Committee of Ministers on the occasion of the 70th Anniversary of the Council of Europe[32].

32. Appendix 7: Message from the Governmental Committee of the European Social Charter and the European Code of Social Security to the Committee of Ministers of the Council of Europe

5 – The procedure relating to non-accepted provisions

5.1. Introduction

Article A of the European Social Charter (Article 20 of the 1961 Charter) authorises states to ratify the treaty without accepting all of its substantive provisions. The same article also allows states, at any time subsequent to ratification of the treaty, to notify the Secretary General of their acceptance of additional articles or paragraphs[33]. This gradual acceptance principle is described in Article 22 of the 1961 Charter:

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

For the first years of the Charter's existence, this procedure took the form of a traditional reporting exercise, with states submitting reports describing the implementation, in both law and practice, of the provisions concerned. The Committee of Ministers launched these "exercises" on eight occasions between 1981 and 2002.

In December 2002, the Committee of Ministers decided that "States having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the States concerned" (Committee of Ministers Decision of 11 December 2002). Following this decision, it was agreed that the European Committee of Social Rights would examine – either in meetings or as part of a written procedure – the legal and practical situation in the states concerned from the standpoint of the situation's compatibility with the non-accepted provisions. The first examination would take place five years after ratification of the revised Social Charter and thereafter every five years, so that the situation could be assessed on a continuing basis and states would be encouraged to accept new provisions. In practice, experience has shown that states have tended to lose sight of the fact that the selective acceptance of Charter provisions must only be a temporary phenomenon.

A detailed table of the accepted provisions of the European Social Charter (revised) can be found in appendix[34].

33. Appendix 8: Number of accepted provisions by year since 1962
34. Appendix 9: Table of accepted provisions of the European Social Charter (revised)

5.2. Overview of the States Parties concerned in 2018

In 2018, the non-accepted provisions procedure concerned three States parties: Bosnia and Herzegovina, Latvia and Sweden.

Meetings were organised in Albania[35] (22 November 2018, 2017 procedure), Hungary[36] (6 March 2018, 2014 procedure), Latvia[37] (25 May 2018), Republic of Moldova[38] (29 May 2018, 2016 procedure).

Sweden and Turkey[39] (2017 procedure) submitted written reports which were examined and adopted by the Committee in 2018.

Bosnia and Herzegovina

Bosnia and Herzegovina ratified the Revised European Social Charter on 07/10/2008, accepting 51 of its 98 paragraphs. It has not accepted the system of collective complaints.

Following several requests of the authorities of Bosnia and Herzegovina to postpone the meeting on non-accepted provisions, the Committee decided to apply the written procedure with regard to Bosnia and Herzegovina. The Committee examined and adopted the second report on the non-accepted provisions of the European Social Charter in March 2019. The Committee's report can be consulted at: https://www.coe.int/en/web/european-social-charter/bosnia-and-herzegovina-and-the-european-social-charter

Latvia

Latvia ratified the European Social Charter on 31/01/2002. It has signed and ratified the Amending Protocol to the Charter on 09/12/2003. Latvia ratified the Revised European Social Charter on 26 March 2013, accepting 90 of the 98 paragraphs of the Revised Charter. Latvia has neither signed nor ratified the Protocol providing for a system of collective complaints.

The Committee organised a meeting on the non-accepted provisions by Latvia on 24 May 2018 in Riga. Following the meeting, the Committee adopted the first report on the non-accepted provisions of the European Social Charter in 2018. The Committee's report can be consulted at: https://www.coe.int/en/web/european-social-charter/latvia-and-the-european-social-charter

35. The Committee's reports on non-accepted provisions of the European Social Charter in respect of Albania can be consulted at: https://www.coe.int/en/web/european-social-charter/albania-and-the-european-social-charter
36. The Committee's reports on non-accepted provisions of the European Social Charter in respect of Hungary can be consulted at: https://www.coe.int/en/web/european-social-charter/hungary-and-the-european-social-charter
37. The Committee's reports on non-accepted provisions of the European Social Charter in respect of Latvia can be consulted at: https://www.coe.int/en/web/european-social-charter/latvia-and-the-european-social-charter
38. The Committee's reports on non-accepted provisions of the European Social Charter in respect of the Republic of Moldova can be consulted at: https://www.coe.int/en/web/european-social-charter/the-republic-of-moldova-and-the-european-social-charter
39. The Committee's reports on non-accepted provisions of the European Social Charter in respect of Turkey can be consulted at: https://www.coe.int/en/web/european-social-charter/turkey-and-the-european-social-charter

Sweden

Sweden ratified the European Social Charter on 17/12/1962: it accepted 62 of the Charter's 72 paragraphs. Sweden ratified the Additional Protocol to the European Social Charter on 05/05/89, the Amending Protocol to the European Social Charter on 18/03/1992 and the Additional Protocol providing for a system of collective complaints on 29/05/1998. It has not yet made a declaration enabling national NGOs to submit complaints. Sweden ratified the Revised European Social Charter on 29/05/1998: it accepted 83 of the Revised Charter's 98 paragraphs.

Sweden provided a written report on the non-accepted provision of the European Social Charter that was examined and adopted by the Committee in 2018. The Committee's report can be consulted at: https://www.coe.int/en/web/european-social-charter/sweden-and-the-european-social-charter

6 – Strengthening the European Social Charter under the "Turin Process"

The "Turin process", launched in 2014, aims at strengthening the treaty system of the European Social Charter within the Council of Europe and in its relationship with the law of the European Union. Based on the principles of indivisibility, interdependence and interrelation of fundamental rights, formally established by the United Nations, its purpose is to improve the implementation of social and economic rights at the continental level, in parallel to civil and political rights granted by the European Convention on Human Rights.

The Turin process promotes the idea that upholding social rights in Europe is an essential contribution to the principles of the rule of law, democracy and human rights, promoted by the Council of Europe. In this light, one of its objectives is the ratification of the 1996 European Social Charter (revised) and acceptance of the 1995 Additional Protocol providing for a system of collective complaints by all Council of Europe member States. Member states that have not done so should ratify the Revised Charter and accept additional provisions, preferably all, as well as the collective complaints system. Ratification of the Charter or acceptance of its provisions - which has also been encouraged by the European Union Fundamental Rights Agency and its Director, both for EU member states and the EU itself - is not constitutive of rights, it is the enabler for monitoring compliance, while social rights remain human rights, indivisible, universal and interrelated.

In 2018, the CDDH adopted the "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe" (first report) elaborated by its Drafting Group on Social Rights (CDDH-SOC). According to its mandate, the CDDH elaborated a second "Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe". The President of the European Committee of Social Rights, Giuseppe Palmisano, and the European Social Charter Secretariat have participated in CDDH-SOC meetings and contributed significantly to the drafting of the above-mentioned reports, the second of which was finalised in the first half of 2019.

In his annual exchange of views with the Ministers' Deputies on 21 March 2018, Giuseppe Palmisano, President of the European Committee of Social Rights, spoke about the prominence of social rights in the Council of Europe's mandate and to the crucial importance of the collective complaints procedure. He also put forward a number of concrete proposals pertaining to a simpler and less onerous reporting procedure, to the personal scope of the Charter, to training and awareness-raising activities and to the role and membership of the Committee[40].

40. Appendix 10: Intervention of Giuseppe Palmisano, President of the European Committee of Human Rights, before the Committee of Ministers of the Council of Europe, 21 March 2018

7 – Major events

The European Committee of Social Rights and the European Social Charter Secretariat participated in the **Fundamental Rights Forum**, organised by the European Union Fundamental Rights Agency on 25-27 September 2018 in Vienna, Austria. Karin Lukas, Vice President of the European Committee of Social Rights, pointed out at the Forum that one of the biggest challenges today is to safeguard social rights against the current political and economic pressure, especially for the most marginalised Europeans, such as young persons and people with disabilities, but also the effective implementation of social rights in Europe, mainly for two reasons. First, European Union Member States largely retain competency over social rights in key areas as far as they do not fall under EC anti-discrimination legislation. Second, the historic divide between the two sets of rights and their implementation, which dates back to the era of the Cold War, has not been overcome. While civil and political rights are in principle seen as 'fully-fledged' justiciable rights, the misconception of social rights as being merely programmatic persists.

The Forum provided a great opportunity for exchange and dialogue on various subjects. In his final Statement[41], Michael O'Flaherty, Director of the Fundamental Rights Agency, called on the EU to incorporate Council of Europe evaluation concerning the respect of Member States' obligations under the European Social Charter into their progress assessment of the implementation of the European Pillar of Social Rights. He pointed out that EU accession to the European Social Charter would facilitate the implementation of the European Pillar of Social Rights in Member States.

The European Committee of Social Rights held an **exchange of views with Michael O'Flaherty**, Director of the European Union Fundamental Rights Agency on 18 October 2018 in Strasbourg, France.

Michael O'Flaherty recalled the continued commitment of the Fundamental Rights Agency to human rights in Europe through collecting pertinent and timely data and providing expert advice to the EU institutions and member States on a variety of fundamental rights issues. He pointed out that the Fundamental Rights Agency pays very close attention to the Council of Europe legal standards and to the conclusions and decisions of the European Committee of Social Rights. Therefore, the Fundamental Rights Agency will continue to call for the accession of EU member States to the European Social Charter and the collective complaints procedure, and will continue supporting the Turin Process for the European Social Charter.

With regard to the European Pillar of Social Rights, proclaimed by the European Union institutions in November 2017, Michael O'Flaherty underlined that the Pillar is an important turning point for social rights in the EU and its implementation would be reinforced by the accession by the EU to the European Social Charter. Michael O'Flaherty also mentioned that the implementation of the UN Sustainable

41. See Chair's Statement of Michael O'Flaherty, Director of the European Union Fundamental Rights Agency, Fundamental Rights Forum, 25-27 September 2018, Vienna, https://fra.europa.eu/en/publication/2018/chairs-statement-2018

Development Goals in Europe would inevitably improve the situation of fundamental social rights. Last, but not least, Michael O'Flaherty also raised the issue of how the Fundamental Rights Agency data and analysis could be made available to the European Committee of Social Rights and proposed to develop further the cooperation between the Agency and the Council of Europe.

The European Committee of Social Rights also held an **exchange of views with the Inter-American Court of Human Rights** on 8 November 2018 in Strasbourg, France. Similarities and differences in the protection of economic, social and cultural rights in the human rights systems in Europe and Latin America was the main topic of the exchange. The meeting provided also an opportunity to exchange information on the case-law of the Court and the Committee, as well as on the implementation of the Court's judgements and the Committee's decisions. A framework agreement for the establishment of a better cooperation between the two institutions was also discussed. Moreover, the European Committee of Social Rights presented its most recent case law relating in particular to the right to health, the right to education, trade unions' rights, transgender rights and the protection of vulnerable groups.

The first **meeting between the United Nations Committee on Economic, Social and Cultural Rights and the European Committee of Social Rights of the Council of Europe** took place in Geneva, Switzerland on 8 October 2018. This exchange offered an opportunity to understand both Committees' procedures and the challenges they face and to explore ways of cooperation. The interpretation of the European Social Charter by the European Committee of Social Rights; the impact of the financial crisis and the austerity measures on our societies; the CESCR's general comments and statements; the impact of the decisions taken under the collective complaints procedure; the justiciability of social rights and the impact of this justiciability on national courts; as well as practical co-operation between the two Committees and other international mechanisms were discussed.

The right to housing under the European Social Charter was discussed during the two meetings of the **CoE-FRA-ENNHRI-Equinet Collaborative Platform on social and economic rights**[42] in 2018.

The objective of the 6th Platform meeting (16 May 2018, Belfast, United Kingdom) was to familiarise the participants with the conclusions and decisions of the European Committee of Social Rights related to the right to housing as guaranteed by Articles 16 and 31 of the European Social Charter and to consider indicators relating to housing. In line with this, Lauri Leppik, former General Rapporteur of the Committee pointed out that the European Social Charter (revised) is the only legally binding European standard-setting treaty that has a provision on the right to housing, Article 31 and, in a slightly more restricted scope, Article 16. Professor Leppik underlined that there is still a wide scope for promoting the acceptance of the right to housing (only 10 countries have accepted Article 31 in full and 4 have accepted only certain paragraphs), which is strongly connected to other fundamental social and civil rights. He also

42. The Collaborative Platform on Social and Economic Rights (COE-FRA-ENNHRI-Equinet) is a follow-up activity to the conference held jointly by the Council of Europe, the European Network of National Human Rights Institutions (ENNHRI), the European Network of Equality Bodies (EQUINET) and the European Union Agency for Fundamental Rights (FRA) in Vienna in October 2013.

stressed that most of the jurisprudence of the European Committee of Social Rights stems from the collective complaints procedure, which provides an opportunity to take a closer look at specific cases. In addition to the Committee's strict legal assessment, Lauri Leppik pointed out that the collective complaints themselves contain information on the housing situation in the given countries and can be treated as sources of information and case studies of specific features of the right to housing.

The objectives of the 7th Platform meeting (28 November 2018, Strasbourg, France) were to better understand the emerging challenges to the successful promotion and guarantee of the right to housing in Europe and to discuss possible responses; to improve the knowledge on the existing tools promoting and guaranteeing the right to housing in Europe by emphasizing the synergies between the legal and political frameworks of the Council of Europe and the European Union; to explore and develop concrete solutions to bridge the gaps in the implementation of the right to housing in Europe through a cross-sectoral and human rights-based approach with multi-stakeholder partnerships.

The Platform concluded, that the right to a decent housing is a core human right and it should be seen in a broader context of economic and social rights in general in order to find long-term solutions to the problems of respect for this right. The right to housing is linked to many other rights, such as the right to health, the right to life, the right to fair working conditions, the right to decent living standard, the right to equal treatment, etc., therefore housing cannot be seen as a commodity nor an investment. Housing has to be regulated by state authorities and communities should be protected from real estate markets speculations and the threat of commodification of rights and their morphing into services, which leads to the rights gradually disappearing. The right to housing is guaranteed in international human rights treaties, but it is not always reflected in national laws, which curtails its implementation at the national level and complicates the work of national human rights institutions, equality bodies and civil society. Furthermore, the existence of national antidiscrimination legislation and its implementation by member States is essential. In cases where a specific legislation does not exist, the idea of indirect activation of rights and how to assert rights in indirect mode has to be promoted. Rights holders need to be empowered and stigmas need to be eliminated so national authorities at first, but also National Human Rights Institutions and National Equality Bodies, should collaborate with rights holders and more specifically with persons belonging to vulnerable groups such as Roma, children, women, migrants. The notion of good democratic governance which requires that people are engaged has to be promoted - through outreach, empowerment and dialogue - in respect of policy-making on matters that concern people.

In order to celebrate the International Day for the Eradication of Poverty (17 October 2018), the Conference of International Non-governmental Organisations of the Council of Europe organised a seminar on the right to decent housing for all. The seminar was opened by Eliane Chemla, General Rapporteur of the European Committee of Social Rights. In her speech, she stressed that "living in quality and adequate housing is a central condition to preserve the lives of families and the future of children, to avoid weakening particularly vulnerable populations". She also quoted a report of the Organisation for economic cooperation and development which states that

“the social context still determines, in many countries, the chances of success in life. Thus, in low-income families, one in three children lives in overcrowded housing due to housing costs”. As a result, these children encounter more difficulties in school, and poor housing conditions are one of the factors in this outcome, which affects their future. The lack of respect for the right to housing has serious impact on the health of those concerned, on their access to the labour market, education, social protection, privacy, autonomy. In other words, it impedes them from living a dignified life. Article 31 is therefore a cornerstone, the respect of which guarantees the fundamental rights laid down in the European Social Charter.

8 – Appendices

Appendix 1. Signatures and ratifications of the 1961 European Social Charter and its Protocols and of the European Social Charter (revised) at 1 January 2019

Appendix 2. List of the members of the European Committee of Social Rights at 1 January 2019

Appendix 3. List of collective complaints registered in 2018

Appendix 4. Number of decisions adopted by the European Committee of Social Rights 1998 – 2018

Appendix 5. Number of decisions adopted by the European Committee of Social Rights by country 1998 – 2018

Appendix 6. Summary of the European Committee of Social Rights Conclusions for 2018

Appendix 7. Contribution of the Governmental Committee of the European Social Charter and the European Code of Social Security to the Committee of Ministers of the Council of Europe on the occasion of the 70th anniversary of the Council of Europe

Appendix 8. Number of accepted provisions by year since 1962

Appendix 9. Table of accepted provisions of the European Social Charter (revised)

Appendix 10. Intervention of Giuseppe Palmisano, President of the European Committee of Social Rights before the Committee of Ministers of the Council of Europe, 21 March 2018

Appendix 11. Selection of judicial decisions from 2018 referring to the European Social Charter

Appendix 12. Bibliography on the European Social Charter (recent publications)

Appendices

Appendix 1.

Signatures and ratifications of the 1961 European Social Charter, its Protocols and the European Social Charter (revised) as of 1st January 2019

Member States	European Social Charter 1961 STE 035		Additional Protocol 1988 TE 128		Amending Protocol 1991 STE 142		Collective complaints Protocol 1995 STE 158		Revised European Social Charter 1996 STE 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Albania	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	21/9/98	14/11/02
Andorra	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	4/11/00	12/11/04
Armenia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	18/10/01	21/1/04
Azerbaijan	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	18/10/01	2/9/04
Belgium	18/10/61	16/10/90	20/5/92	23/6/03	22/10/91	21/9/00	14/5/96	23/6/03	3/5/96	2/3/04
Bosnia and Herzegovina	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	11/5/04	7/10/08
Bulgaria	(2)	(2)	(3)	(3)	(2)	(2)	(4)	(4)	21/9/98	7/6/00
Croatia	8/3/99	26/2/03	8/3/99	26/2/03	8/3/99	26/2/03	8/3/99	26/2/03	6/11/09	—
Cyprus	22/5/67	7/3/68	5/5/88	(3)	21/10/91	1/6/93	9/11/95	6/8/96	3/5/96	27/9/00
Czech Republic	27/5/92*	3/11/99	27/5/92*	17/11/99	27/5/92*	17/11/99	26/2/02	4/4/12	4/11/00	—
Denmark	18/10/61	3/3/65	27/8/96	27/8/96	—	***	9/11/95	—	3/5/96	—

Member States	European Social Charter 1961 STE 035		Additional Protocol 1988 TE 128		Amending Protocol 1991 STE 142		Collective complaints Protocol 1995 STE 158		Revised European Social Charter 1996 STE 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Estonia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	4/5/98	11/9/00
Finland	9/2/90	29/4/91	9/2/90	29/4/91	16/3/92	18/8/94	9/11/95	17/7/98	3/5/96	21/6/02
France	18/10/61	9/3/73	22/6/89	(3)	21/10/91	24/5/95	9/11/95	7/5/99	3/5/96	7/5/99
Georgia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	30/6/00	22/8/05
Germany	18/10/61	27/1/65	5/5/88	—	—	***	(1)	—	29/6/07	—
Greece	18/10/61	6/6/84	5/5/88	18/6/98	29/11/91	12/9/96	18/6/98	18/6/98	3/5/96	18/03/16
Hungary	13/12/91	8/7/99	7/10/04	1/6/05	13/12/91	4/2/04	7/10/04	—	7/10/04	20/4/09
Island	15/1/76	15/1/76	5/5/88	—	12/12/01	21/2/02	(1)	—	4/11/98	—
Ireland	18/10/61	7/10/64	(3)	(3)	14/5/97	14/5/97	4/11/00	4/11/00	4/11/00	4/11/00
Italy	18/10/61	22/10/65	5/5/88	26/5/94	21/10/91	27/1/95	9/11/95	3/11/97	3/5/96	5/7/99
Latvia	29/5/97	31/1/02	29/5/97	—	29/5/97	9/12/03	(1)	—	29/5/07	26/03/13
Liechtenstein	9/10/91	—	—	—	—	—	—	—	—	—
Lithuania	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	8/9/97	29/6/01
Luxembourg	18/10/61	10/10/91	5/5/88	—	21/10/91	***	(1)	—	11/2/98	—
Malta	26/5/88	4/10/88	(3)	(3)	21/10/91	16/2/94	(2)	—	27/7/05	27/7/05
Republic of Moldova	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	3/11/98	8/11/01
Monaco	(1)		(1)		(1)		(1)		5/10/04	—
Montenegro	(2) (2)		(3)	(3)	(2)	(2)	(2)	—	22/3/05**	3/3/10
The Netherlands	18/10/61	22/4/80	14/6/90	5/8/92	21/10/91	1/6/93	23/1/04	3/5/06	23/1/04	3/5/06
North Macedonia	5/5/98	31/3/05	5/5/98	—	5/5/98	31/3/05	(2)	—	27/5/09	6/1/12
Norway	18/10/61	26/10/62	10/12/93	10/12/93	21/10/91	21/10/91	20/3/97	20/3/97	7/5/01	7/5/01
Poland	26/11/91	25/6/97	(1)	—	18/4/97	25/6/97	(1)	—	25/10/05	—

Member States	European Social Charter 1961 STE 035		Additional Protocol 1988 TE 128		Amending Protocol 1991 STE 142		Collective complaints Protocol 1995 STE 158		Revised European Social Charter 1996 STE 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Portugal	1/6/82	30/9/91	(3)	(3)	24/2/92	8/3/93	9/11/95	20/3/98	3/5/96	30/5/02
Romania	4/10/94	(2)	(3)	(3)	(2)	(2)	(2)	—	14/5/97	7/5/99
Russian Federation	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	14/9/00	16/10/09
San Marino	(1)	—	(1)	—	(1)	—	(1)	—	18/10/01	—
Serbia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	—	22/3/05*	14/9/09
Slovak Republic	27/5/92*	22/6/98	27/5/92*	22/6/98	27/5/92*	22/6/98	18/11/99	—	18/11/99	23/4/09
Slovenia	11/10/97	(2)	11/10/97	(3)	11/10/97	(2)	11/10/97	(4)	11/10/97	7/5/99
Spain	27/4/78	6/5/80	5/5/88	24/1/00	21/10/91	24/1/00	(1)	—	23/10/00	—
Sweden	18/10/61	17/12/62	5/5/88	5/5/89	21/10/91	18/3/92	9/11/95	29/5/98	3/5/96	29/5/98
Switzerland	6/5/76	—	—	—	—	—	—	—	—	—
Turkey	18/10/61	24/11/89	5/5/98	(3)	6/10/04	10/6/09	(2)	—	6/10/04	27/6/07
Ukraine	2/5/96	(2)	(3)	(3)	(2)	(2)	(2)	—	7/5/99	21/12/06
United Kingdom	18/10/61	11/7/62	(1)	—	21/10/91	***	(1)	—	7/11/97	—

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

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

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

Appendix 2.

European Committee of Social Rights

List of Members as of 6 March 2019 (in order of precedence[43])

	Term of Office
Giuseppe PALMISANO, President (Italian)	31/12/2022
Karin LUKAS, Vice-President (Austrian)	31/12/2022
François VANDAMME, Vice-President (Belgian)	31/12/2020
Eliane CHEMLA, General Rapporteur (French)	31/12/2024
Petros STANGOS (Greek)	31/12/2020
József HAJDÚ (Hungarian)	31/12/2024
Krassimira SREDKOVA (Bulgarian)	31/12/2020
Raul CANOSA USERA (Spanish)	31/12/2020
Barbara KRESAL (Slovenian)	31/12/2022
Kristine DUPATE (Latvian)	31/12/2022
Aoife NOLAN (Irish)	31/12/2022
Karin Møhl LARSEN (Danish)	31/12/2020
Yusuf BALCI (Turkish)	31/12/2024
Ekaterina TORKUNOVA (Russian)	31/12/2024
Tatiana PUIU (Moldovan)	31/12/2024

43. According to Article 7 of the Committee's Rules.

Appendix 3.

List of collective complaints registered in 2018

In 2018, the Committee registered the following 15 complaints:

***Associazione Professionale e Sindacale (ANIEF)* v. Italy**
Complaint No. 159/2018

***Confédération générale du Travail Force Ouvrière* v. France**
Complaint No. 160/2018

***Confederazione Generale Sindacale (CGS)* and *Federazione dei Lavoratori Pubblici e Funzioni pubbliche (FLP)* v. Italy**
Complaint No. 161/2018

International Federation of Associations of the Elderly (FIAPA) v. France
Complaint No. 162/2018

***ATTAC ry, Globaali sosiaalityö ry et Maan ystävät ry* v. Finland**
Complaint No. 163/2018

European Organisation of Military Associations (EUROMIL) v. Ireland
Complaint No. 164/2018

Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece
Complaint No. 165/2018

***Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE)* v. Italy**
Complaint No. 166/2018

***Sindacato autonomo Pensionati Or.S.A.* v. Italy**
Complaint No. 167/2018

European Disability Forum and Inclusion Europe v. France
Complaint No. 168/2018

Nursing Up v. Italy
Complaint No. 169/2018

***Unione sindacale di base* (USB) v. Italy**
Complaint No. 170/2018

***Confédération générale du travail* (CGT) v. France**
Complaint No. 171/2018

Finnish Society of Social Rights v. Finland
Complaint No. 172/2018

International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Grèce
Complaint No. 173/2018

Appendix 4.

Number of decisions adopted by the European Committee of Social Rights 1998 – 2018

Years	Registered complaints	Pending complaints on 1 January	Decisions on admissibility	Decisions on the merits	Decisions on admissibility and the merits	Decisions on immediate measures	Decisions on admissibility and immediate measures	striking off / inadmissibility	Total decisions by year
1998	1	0	0	0	0	0	0	0	**0**
1999	5	1	2	1	0	0	0	0/1	**3**
2000	4	4	7	5	0	0	0	0	**12**
2001	1	3	2	3	0	0	0	0	**5**
2002	2	1	2	1	0	0	0	0	**3**
2003	10	2	8	2	0	0	0	0	**10**
2004	5	10	6	10	0	0	0	0	**16**
2005	4	5	5	4	0	0	0	0/2	**9**
2006	7	3	5	4	0	0	0	0/1	**9**
2007	7	5	7	5	0	0	0	0	**12**
2008	8	7	8	5	0	0	0	1/0	**14**
2009	5	9	7	7	0	0	0	0	**14**
2010	4	7	3	6	0	0	0	0	**9**

Years	Registered complaints	Pending complaints on 1 January	Decisions on admissibility	Decisions on the merits	Decisions on admissibility and the merits	Decisions on immediate measures	Decisions on admissibility and immediate measures	striking off / inadmissibility	Total decisions by year
2011	12	5	11	4	0	0	0	0	**15**
2012	13	13	9	15	0	0	0	0	**24**
2013	15	11	18	9	4	4	0	0	**27**
2014	10	17	3	8	0	0	0	1/0	**12**
2015	6	18	11	5	1	0	1	0	**15**
2016	21	19	6	8	3	0	0	0/1	**11**
2017	18	31	31	6	1	0	0	0/1	**37**
2018	15	42	14	9	0	0	0	0/1	**23**
Total period	**173**		**165**	**117**	**9**	**4**	**1**	**2/7**	**280**

Appendix 5.

Number of decisions adopted the European Committee of Social Rights by country 1998 – 2018

	Registered complaints	Decisions on admissibility	Admissible	Inadmissible	Decisions on immediate measures	Decisions on admissibility and on the merits	Decisions on the merits	Volation	Non violation	Decision to strike out
Belgium	11	11	11	0	1	1	8	7	1	0
Bulgaria	9	9	9	0	0	0	7	7	0	1
Croatia	4	4	4	0	0	0	3	3	0	0
Cyprus	2	2	2	0	0	0	0	0	0	1
Czech Republic	6	6	6	0	0	0	3	3	0	0
Finland	12	10	10	0	0	3	8	6	2	0
France	44	43	41	2	0	2	33	25	8	0
Greece	21	20	18	2	0	0	16	15	1	0
Ireland	11	11	11	0	1	1	9	7	2	0
Italy	26	22 (1*)	21	1	(1*)	1	10	5	5	0
The Netherlands	4	4	4	0	2	0	3	3	0	0
Norway	4	4	3	1	0	0	2	1	1	0

	Registered complaints	Decisions on admissibility	Admissible	Inadmissible	Decisions on immediate measures	Decisions on admissibility and on the merits	Decisions on the merits	Volation	Non violation	Decision to strike out
Portugal	12	12	11	1	0	0	10	4	6	0
Slovenia	3	3	3	0	0	0	2	2	0	0
Sweden	4	4	4	0	0	1	3	2	1	0
Total	**173**	**165**	**158**	**7**	**5 (1*)**	**9**	**117**	**90**	**27**	**2**

* including a decision both on admissibility and immediate measures

Appendix 6.

Summary of the European Committee of Social Rights' Conclusions for 2018

European Social Charter Revised

Article	ALB	AND	ARM	AUT	AZE	BGR	BIH	CYP	EST	GEO	HUN	IRL	LTU	LVA	MDA	MKD	MLT	MNE	NLD	NOR	ROU	RUS	SRB	SVK	SVN	SWE	TUR	UKR
Article 2.1		+	-				0	-	-	-			-	+	+	0	-	0	-	-	+	+	-	-	-		-	+
Article 2.2		+	+	+			-	+	+	-			+	+	-	+	-	+	-	-	0		+	-	0		+	+
Article 2.3		+	+	+			-	-	+				+	+	-	+	+		-	+		-	+	+	+	+		
Article 2.4		0	-	+			-						+	+	0	+			-	+	+	+		+	+		+	0
Article 2.5		+	+	+			0	+	+	-			+	+	+	-	+		-	+	+	-	+	0	0	+	+	-
Article 2.6		+	+	+			-	+	+				+	+	+	+	+	0	+	+	+	+	0	+	+	+	+	0
Article 2.7		-		+			-	+	-	-			+	+	-	-			+		+	+	-	+	+		+	-
Article 4.1		-		+	-								-				-		-	0	-		-	0	0	+		
Article 4.2		0	-	+	+				-	0			-	+		-	0	+	-	+	+	+	+	-	+		-	+
Article 4.3		0	-	0	-		0		-	-			0	0	-	0	-	0	0	0	0	-	0	0	0	0	0	-
Article 4.4		-	-		-				-	-			-	-	-		-		-	-	-	-	-	-	-	+	-	-
Article 4.5		+	-	+	-			-	-				-	-	-	-	-	0	-	+	-	-	-	-	0		-	-
Article 5		+	-	+	-		0	+	+	-			+	-	-	+	0	+	+	+	+	+	-	+	+	+		-
Article 6.1			0	+	-		-	+	+	-			+	+	+	+	0	+	+	+	+	+	+	+	+	+		+

Article	ALB	AND	ARM	AUT	AZE	BGR	BIH	CYP	EST	GEO	HUN	IRL	LTU	LVA	MDA	MKD	MLT	MNE	NLD	NOR	ROU	RUS	SRB	SVK	SVN	SWE	TUR	UKR
Article 6.2			-	+	-		0	0	-	-			-	-	0	+	0	+	+	+	0	0	+	0	+	+		+
Article 6.3			+	+	+		0	+	+	+			+	+	-	+	-	+	+	+	+	0	+	+	+	+		+
Article 6.4			-		-		-	-	-	-			0	0	-	0	-	-	+	+	-	-	-	-	+	+		-
Article 21					+		-		+				+	+	+	0			+	+	+	+	0	+	+	+	+	+
Article 22			+		-		-	+	+				+	0					+	+		+	-	+	+	+	0	+
Article 26.1		+		+	-				+	-			-	+	+	+	0	0	0				0	+	0	+	0	-
Article 26.2		+			-				0	-			-	+	+	0	-		0				0	0	0	0	0	-
Article 28			-	-	-		-	+	+				-	0	-	-	+	0	+	-	-	-	+	0	+		-	-
Article 29					-			0	+	-			+	0	+	0	+	0	+		+	+	0	0	0	0	+	+

+ Conformity	- Non conformity	0 Deferral	Non accepted provision

- Albania did not submit its report for 2018, therefore no conclusions were adopted by the European Committee of Social Rights in respect of Albania in 2018.
- The report of Hungary and part of the report of Luxembourg relating to Article 6 of the European Social Charter could not be examined because they were not submitted in time.

European Social Charter of 1961 - Conclusions XXI-3 (2018)

Article	CZE	DEU	DNK	ESP	GBR	HRV	ISL	LUX	NLDABV	NLDBE	NLDCUV	NLDSXM	POL
Article 2.1	-	+		-		-	-	+					-
Article 2.2	+	-	-	+	-	+		+					
Article 2.3	0	+	+	-	+	+	+	-					+
Article 2.4	+	+		0	-	+		-					+
Article 2.5	-	0	+	+	-	+	+	0					+
Article 4.1		-	0	-	-		+	+					
Article 4.2	-	+	+	-	-		+	-					-
Article 4.3	0	-	0	+			-	-					0
Article 4.4	-			-	-		-						-
Article 4.5	0	0		+	-		+	+					-
Article 5	-	+	-	+	-	+	-	+	+		0		-
Article 6.1	+	+	+	+	+	+	+		+		+		+
Article 6.2	-	+	-	-	-	+	+		0		-		+
Article 6.3	+	+	+	0	+	+	+		+		0		+
Article 6.4	-	-	-	-	-	-	-		0		-		
P Article 2	+		+	+		+							
P Article 3	+		+	+		0							

+ Conformity	- Non conformity	0 Deferral	Non accepted provision

Reporting procedure: Committee assessments 2007-2018

	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Examined situations	580	486	576	824	724	568	608	950	569	572	425	839
Conformity	276	228	277	452	337	277	277	459	271	281	185	363
	48%	47%	48%	55%	46%	49%	45%	48%	48%	49%	43%	43%
Non-conformity	206	175	204	278	252	181	156	256	184	164	126	230
	35%	36%	35%	34%	35%	32%	26%	27%	32%	29%	30%	28%
Deferral	98	83	95	94	135	110	175	235	114	127	114	246
	17%	17%	16%	11%	19%	19%	29%	25%	20%	22%	27%	29%

Appendix 7.

Message from the Governmental Committee of the European Social Charter and the European Code of Social Security to the Committee of Ministers of the Council of Europe

Social rights still need protection and investment

A contribution to the reflection on priorities for the Council of Europe on the occasion of the 70th anniversary

The Governmental Committee is part of the Council of Europe monitoring procedures and bodies designed to supervise the respect of social rights in member states, as embodied in the European Social Charter (of 1961 and Revised Charter of 1996) and in the European Code of Social Security (1964 and Revised Code of 1990). In particular, the European Social Charter, a fundamental European human rights treaty that has been signed by all 47 member states of the Council of Europe and ratified by 43 of them, provides a basis for monitoring implementation in this area of human rights across the continent.

Council of Europe member states have repeatedly reaffirmed their commitment to the protection of all human rights, whether civil, political, social, economic or cultural. This commitment is fully shared by the Governmental Committee. The effective implementation in law and in practice of all social rights guaranteed by the Charter should be a priority for all member states.

The mechanisms in place to promote the respect of social rights must be supported and any new Council of Europe strategy should preserve and further develop them. The Governmental Committee supports the mandate given by the Committee of Ministers to the CDDH (and CDDH-SOC) to examine and make proposals for improving the implementation of social rights in member states. Although the process has advanced the Governmental Committee stands ready to contribute to the discussion and to that objective.

Social rights are closely linked to the UN 2030 Agenda for Sustainable Development and the Sustainable Development Goals. Leaving no one behind applies as much to Europe as it does elsewhere. It is a "social progress" objective and, as such, it is in the core of the mandate given to the Council of Europe by its member states through the Statute. Social rights are a major factor in ensuring social cohesion and promoting social justice, for sustainable development and in the sustainability of democracy.

The erosion of social rights is not alien to some troubling present-time developments. Social vulnerability can lead to lack of trust in the political system. This erosion can also undercut democracy's corrective mechanisms, such as collective bargaining between the social partners. The social contract has to adjust to new realities, including the changing world of work and ageing population.

At a time when the European Union Pillar of Social Rights is at an early stage of its implementation, the Council of Europe should continue to enhance its activities and to develop synergies with the European Union to promote the consolidation, implementation and further development of social rights. The Council of Europe has the

mandate and the tools to advance the discussion on the future of social rights and of their place in a democratic society that upholds the whole range of human rights.

The Governmental Committee therefore invites the Committee of Ministers to place social rights high on the Council of Europe agenda and ensure their prominence in the outcome document envisaged for the Ministerial Conference to be held in Helsinki in May 2019. The Governmental Committee would encourage the Council of Europe to be central to a process towards elaborating through multi-stakeholder dialogue a common understanding of the social contract fit for the 21st century.

We stand ready to play a role in the follow up decided by the Committee of Ministers, in close dialogue with relevant Council of Europe bodies and other entities.

Appendix 8.

Number of accepted provisions by year since 1962

Year of ratification	CHARTER 1961			REVISED CHARTER 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
1962	1. United Kingdom	60	**60**				**60**
	2. Norway	60	**120**				**120**
	3. Sweden	66	**186**				**186**
1963			**186**				**186**
1964	4. Ireland	63	**249**				**249**
1965	5. Germany	67	**316**				**316**
	6. Denmark	49	**365**				**365**
	7. Italy	76	**441**				**441**
1966			**441**				**441**
1967			**441**				**441**
1968	8. Cyprus	43	**484**				**484**
1969	9. Austria	62	**546**				**546**
1970			**546**				**546**
1971			**546**				**546**
1972			**546**				**546**
1973			**546**				**546**
1974	10. France	72	**618**				**618**
1975			**618**				**618**
1976	11. Island	41	**659**				**659**
1977			**659**				**659**

Year of ratification	CHARTER 1961			REVISED CHARTER 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
1978			**659**				**659**
1979			**659**				**659**
1980	12. Netherlands	75	**734**				**734**
	13. Spain	76	**810**				**810**
1981			**810**				**810**
1982			**810**				**810**
1983			**810**				**810**
1984	14. Greece	71	**881**				**881**
1985			**881**				**881**
1986			**881**				**881**
1987			**881**				**881**
1988	15. Malta	55	**936**				**936**
1989	16. Turkey	46	**982**				**982**
1990	17. Belgium	72	**1054**				**1054**
1991	18. Finland	66	**1120**				**1120**
	19. Portugal	72	**1192**				**1192**
	20. Luxembourg	69	**1261**				**1261**
1992			**1261**				**1261**
1993			**1261**				**1261**
1994			**1261**				**1261**
1995			**1261**				**1261**
1996			**1261**				**1261**
1997	21. Poland	58	**1319**				**1319**

Year of ratification	CHARTER 1961			REVISED CHARTER 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
1998		-66	**1253**	1. Sweden	83	83	**1336**
	22. Slovak Republic	64	**1317**			83	**1400**
1999		-72	**1245**	2. France	98	181	**1426**
		-76	**1169**	3. Italy	97	278	**1567**
	23. Hungry	44					
	24. Czech Republic	56	**1345**	4. Romania	65	343	**1688**
		-76	**1269**	5. Slovenia	95	438	**1707**
2000			**1269**	6. Bulgaria	61	499	**1768**
			1269	7. Estonia	79	578	**1847**
		-43	**1226**	8. Cyprus	63	641	**1867**
		-63	**1163**	9. Ireland	93	734	**1897**
2001		-60	**1103**	10. Norway	81	815	**1918**
			1103	11. Lithuania	86	901	**2004**
			1103	12. Republic of Moldova	63	964	**2067**
2002		-72	**1031**	13. Portugal	98	1062	**2093**
		-66	**965**	14. Finland	89	1151	**2116**
	25. Latvia	25	**990**			1151	**2141**
			990	15. Albania	64	1215	**2205**
2003	26. Croatia	43	**1033**				**1033**
2004			**1033**	16. Armenia	67	1282	**2315**
		-72	**961**	17. Belgium	87	1369	**2330**
				18. Azerbaijan	47	1416	**1416**
			961	19. Andorra	75	1491	**2452**

Year of ratification	CHARTER 1961			REVISED CHARTER 1996			Total of the accepted provisions
	States	Accepted provisions	Total	States	Accepted provisions	Total	
2005	27. North Macedonia	41	**1002**			1491	**2493**
		-55	**947**	20. Malta	72	1563	**2510**
				21. Georgia	63	1626	**1626**
2006		-75	**872**	22. Netherlands	97	1723	**2595**
				23. Ukraine	74	1714	**1714**
2007		-46	**826**	24. Turkey	91	1888	**2714**
		-44	**782**	25. Hungry	60	1948	**2730**
				Bulgaria	1	1949	**1949**
2008				26. Bosnia and Herzegovina	51	2000	**2000**
2009		-64	**718**	27. Slovak Republic	86	2086	**2804**
				28. Serbia	88	2174	**2174**
				29. Russian Federation	67	2241	**2241**
2010				30. Montenegro	66	2307	**2307**
2011		-62	**656**	31. Austria	76	2383	**3039**
				Cyprus	9	2392	**2392**
2012		-41	**615**	32. North Macedonia	63	2455	**3070**
				Estonia	8	2463	**3078**
2013		-25	**590**	33. Latvia	90	2553	**3143**
2015				Belgium	4	2557	**3147**
2016		-71	**519**	34. Greece	95	2652	**3171**
2017				Ukraine	76	2654	**3173**

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

Appendix 9.

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

Acceptation des dispositions de la Charte sociale européenne révisée (1996)

■ accepted/ accepté □ not accepted/ non accepté

Articles 1-4	Article 1				Article 2							Article 3				Article 4				
Para.	1	2	3	4	1	2	3	4	5	6	7	1	2	3	4	1	2	3	4	5
Albania/Albanie	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Andorra/Andorre	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Armenia/Arménie	■	■	■	■	■	■	■	■	■	■	□	■	□	□	□	□	■	■	■	■
Austria/Autriche	■	■	■	■	□	■	■	■	■	■	■	■	■	■	■	■	■	■	□	■
Azerbaijan/ Azerbaïdjan	■	■	■	■	□	□	□	□	□	□	□	□	□	□	□	■	■	■	■	■
Belgium/Belgique	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Bosnia and Herzegovina/ Bosnie-Herzégovine	■	■	■	■	■	■	■	■	■	■	■	□	□	□	□	□	□	■	□	□
Bulgaria/Bulgarie	■	■	■	■	□	■	■	■	■	■	■	■	■	■	■	□	■	■	■	■
Cyprus/Chypre	■	■	■	■	■	■	■	□	■	■	■	■	■	■	□	□	□	□	□	■
Estonia/Estonie	■	■	■	■	■	■	■	□	■	■	■	■	■	■	□	□	■	■	■	■
Finland/Finlande	■	■	■	■	■	■	■	■	■	■	■	■	□	□	■	□	■	■	□	■
France	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Georgia/Géorgie	■	■	■	■	■	■	□	□	■	□	■	□	□	□	□	□	■	■	■	□
Greece/Grèce	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	■	■	■	■	■
Hungary/Hongrie	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□	□	□	□
Ireland/Irlande	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Italy/Italie	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Latvia/Lettonie	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	■	■	■	■
Lithuania/Lituanie	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Malta/Malte	■	■	■	■	■	■	■	□	■	■	□	■	■	■	■	■	■	■	■	■
Republic of Moldova/ République de Moldova	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□	□	■	■	■
Montenegro/ Monténégro	■	■	■	■	■	■	□	□	□	■	□	■	■	■	■	□	■	■	□	■

Articles 1-4	Article 1				Article 2							Article 3				Article 4				
Para.	1	2	3	4	1	2	3	4	5	6	7	1	2	3	4	1	2	3	4	5
Netherlands/ Pays-Bas[44]																				
North Macedonia/ Macédoine du Nord																				
Norway/Norvège																				
Portugal																				
Romania/Roumanie																				
Russian Federation/ Fédération de Russie																				
Serbia/Serbie																				
Slovak Republic/ République Slovaque																				
Slovenia/Slovénie																				
Sweden/Suède																				
Turkey/Turquie																				
Ukraine																				

Articles 5-9	Art.	Article 6				Article 7										Article 8					Art.
Para.	5	1	2	3	4	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	9
Albania/Albanie																					
Andorra/Andorre																					
Armenia/Arménie																					
Austria/Autriche																					
Azerbaijan/ Azerbaïdjan																					
Belgium/Belgique																					
Bosnia and Herzegovina/ Bosnie-Herzégovine																					
Bulgaria/Bulgarie																					

44. Ratification by the Kingdom in Europe. Aruba, Curaçao and Sint Maarten, as well as the special municipalities of Bonaire, Saba and Sint Eustatius remain bound by Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the Additional Protocol/ Ratification par le Royaume en Europe. *Aruba, Curaçao et Saint-Martin, ainsi que les municipalités spéciales de Bonaire, Saba et Saint-Eustache restent liées par les articles 1, 5, 6 et 16 de la Charte de 1961 et de l'Article 1 du Protocole additionnel.*

Articles 5-9	Art.	Article 6				Article 7										Article 8					Art.
Para.	5	1	2	3	4	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	9
Cyprus/Chypre																					
Estonia/Estonie																					
Finland/Finlande																					
France																					
Georgia/Géorgie																					
Greece/Grèce[45]																					
Hungary/Hongrie																					
Ireland/Irlande																					
Italy/Italie																					
Latvia/Lettonie																					
Lithuania/Lituanie																					
Malta/Malte																					
Republic of Moldova/ République de Moldova																					
Montenegro/ Monténégro																					
Netherlands/ Pays-Bas[46]																					
North Macedonia/ Macédoine du Nord																					
Norway/Norvège																					
Portugal																					
Romania/ Roumanie																					

45. Ratification of Article 6 except for the right to establish and use arbitration mechanisms for the settlement of labour disputes, in particular as regards the right to unilateral access to arbitration in case of collective bargaining failure, as well as the employers' right to collective action, in particular the right to lockouts.
46. Ratification of Article 6 except for the right to establish and use arbitration mechanisms for the settlement of labour disputes, in particular as regards the right to unilateral access to arbitration in case of collective bargaining failure, as well as the employers' right to collective action, in particular the right to lockouts.

Articles 5-9	**Art.**	**Article 6**				**Article 7**										**Article 8**					**Art.**
Para.	5	1	2	3	4	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	9
Russian Federation / Fédération de Russie																					
Serbia/Serbie					[47]																
Slovak Republic/ République Slovaque																					
Slovenia/Slovénie																					
Sweden/Suède																					
Turkey/Turquie																					
Ukraine/Ukraine																					

Articles 10-15	**Article 10**					**Article 11**			**Article 12**				**Article 13**				**Art. 14**		**Article 15**		
Para.	1	2	3	4	5	1	2	3	1	2	3	4	1	2	3	4	1	2	1	2	3
Albania/Albanie																					
Andorra/Andorre																					
Armenia/Arménie																					
Austria/Autriche																					
Azerbaijan/ Azerbaïdjan																					
Belgium/Belgique																					
Bosnia and Herzegovina/ Bosnie-Herzégovine																					
Bulgaria/Bulgarie																					
Cyprus/Chypre																					
Estonia/Estonie																					
Finland/Finlande																					
France																					
Georgia/Géorgie																					

47. Ratification by the Kingdom in Europe. Aruba, Curaçao and Sint Maarten, as well as the special municipalities of Bonaire, Saba and Sint Eustatius remain bound by Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the Additional Protocol/ Ratification par le Royaume en Europe. *Aruba, Curaçao et Saint-Martin, ainsi que les municipalités spéciales de Bonaire, Saba et Saint-Eustache restent liés par les articles 1, 5, 6 et 16 de la Charte de 1961 et de l'Article 1 du Protocole additionnel.*

Articles 10-15	Article 10					Article 11			Article 12				Article 13				Art. 14		Article 15		
Para.	1	2	3	4	5	1	2	3	1	2	3	4	1	2	3	4	1	2	1	2	3
Greece/Grèce																					
Hungary/Hongrie																					
Ireland/Irlande																					
Italy/Italie																					
Latvia/Lettonie																					
Lithuania/ Lituanie																					
Malta/Malte					48							49									
Republic of Moldova/ République de Moldova																					
Montenegro/ Monténégro																					
Netherlands/ Pays-Bas																					
North Macedonia/ Macédoine du Nord																					
Norway/Norvège																					
Portugal																					
Romania/ Roumanie																					
Russian Federation / Fédération de Russie																					
Serbia/Serbie																					
Slovak Republic/ République Slovaque																					
Slovenia/Slovénie																					
Sweden/Suède																					
Turkey/Turquie																					
Ukraine																					

48. With the exception of professional military personnel of the Serbian Army / *A l'exception des militaires de carrière de l'Armée serbe.*
49. Sub-paragraphs a. and d. accepted / *Alinéas a. et d. acceptés.*

Articles 16-19	Art. 16	Art. 17		Article 18				Article 19											
Para		1	2	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12
Albania/Albanie																			
Andorra/ Andorre																			
Armenia/ Arménie																			
Austria/Autriche																			
Azerbaijan/ Azerbaïdjan																			
Belgium/ Belgique																			
Bosnia and Herzegovina/ Bosnie-Herzégovine																			
Bulgaria/ Bulgarie																			
Cyprus/Chypre																			
Estonia/Estonie																			
Finland/ Finlande																			
France																			
Georgia/ Géorgie																			
Greece/Grèce																			
Hungary/ Hongrie																			
Ireland/Irlande																			
Italy/Italie																			
Latvia/Lettonie																			
Lithuania/ Lituanie																			
Malta/Malte																			
Republic of Moldova/ République de Moldova																			
Montenegro/ Monténégro																			

Netherlands/ Pays-Bas																			
North Macedonia/ Macédoine du Nord																			
Norway/ Norvège																			
Portugal																			
Romania/ Roumanie																			
Russian Federation/ Fédération de Russie																			
Serbia/Serbie		[50]																	
Slovak Republic/ République Slovaque										[51]									
Slovenia/ Slovénie																			
Sweden/Suède																			
Turkey/Turquie																			
Ukraine																			

Articles 20-31	Art. 20	Art. 21	Art. 22	Art. 23	Art. 24	Art. 25	Art. 26		Art. 27			Art. 28	Art. 29	Art. 30	Article 31		
Para.							1	2	1	2	3				1	2	3
Albania/ Albanie																	
Andorra/ Andorre																	
Armenia/ Arménie																	
Austria/ Autriche																	
Azerbaijan/ Azerbaïdjan																	
Belgium/ Belgique																	

50. Sub-paragraph a. accepted / *Alinéa a. accepté.*
51. Sub-paragraphs 1b and 1c accepted / *Alinéas 1b et 1c acceptés*

Articles 20-31 *Para.*	Art. 20	Art. 21	Art. 22	Art. 23	Art. 24	Art. 25	Art. 26		Art. 27			Art. 28	Art. 29	Art. 30	Article 31		
							1	2	1	2	3				1	2	3
Bosnia and Herzegovina/ Bosnie-Herzégovine																	
Bulgaria/ Bulgarie																	
Cyprus/ Chypre			52														
Estonia/ Estonie																	
Finland/ Finlande																	
France																	
Georgia/ Géorgie																	
Greece/Grèce																	
Hungary/ Hongrie																	
Ireland/ Irlande									53								
Italy/Italie																	
Latvia/ Lettonie																	
Lithuania/ Lituanie																	
Malta/Malte																	
Republic of Moldova/ République de Moldova																	
Montenegro/ Monténégro									54								
Netherlands/ Pays-Bas																	

52. Sub-paragraphs a. and b. accepted / *Alinéas a. and b. acceptés*
53. Sub-paragraphs a. and b. accepted / *Alinéas a. et b. acceptés*
54. Sub-paragraph a. accepted /*Alinéa a. accepté*

Articles 20-31 Para.	Art. 20	Art. 21	Art. 22	Art. 23	Art. 24	Art. 25	Art. 26		Art. 27			Art. 28	Art. 29	Art. 30	Article 31		
							1	2	1	2	3				1	2	3
North Macedonia/ Macédoine du Nord																	
Norway/ Norvège									[55]								
Portugal																	
Romania/ Roumanie																	
Russian Federation/ Fédération de Russie																	
Serbia/Serbie																	
Slovak Republic/ République Slovaque																	
Slovenia/ Slovénie																	
Sweden/ Suède																	
Turkey/ Turquie																	
Ukraine																	

55. Sub-paragraph c. accepted / *Alinéa c. accepté*

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

Acceptation des dispositions de la Charte sociale européenne (1961) et du Protocole additionnel (1988)

■ accepted/ accepté   □ not accepted/ non accepté

Articles 1-7 Para.	Article 1				Article 2					Article 3			Article 4					Art. 5	Article 6				Article 7									
	1	2	3	4	1	2	3	4	5	1	2	3	1	2	3	4	5		1	2	3	4	1	2	3	4	5	6	7	8	9	10
Croatia/Croatie	■	■	■	■	■	■	■	■	■	□	□	□	□	□	□	□	□	□	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Czech Republic/ République tchèque	■	■	■	□	■	■	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Denmark/Danemark	■	■	■	■	□	■	■	□	■	■	■	■	■	■	■	□	□	□	■	■	■	■	■	□	□	□	□	□	□	□	□	□
Germany/Allemagne	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■
Iceland/Islande	■	■	■	■	■	□	■	□	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□	□	□	□	□	□	□	□
Luxembourg	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□	■	■	■	■	■	□	■	■	■	■	■	■	■	■	■
Poland/Pologne	■	■	■	■	■	□	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■	■	□	□	■	□	■	□	■	■	■	■
Spain/Espagne	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
United Kingdom/ Royaume-Uni	■	■	■	■	□	■	■	■	■	■	■	■	■	■	□	■	■	■	■	■	■	■	■	□	■	■	□	■	■	□	□	■

Articles 8-18	Article 8				Art. 9	Article 10				Article 11			Article 12				Article 13				Art. 14		Art. 15		Art. 16	Art. 17	Article 18			
Para.	1	2	3	4		1	2	3	4	1	2	3	1	2	3	4	1	2	3	4	1	2	1	2			1	2	3	4
Croatia/Croatie																														
Czech Republic/ République tchèque				[56]																										
Denmark/Danemark																														
Germany/Allemagne																														
Iceland/Islande																														
Luxembourg																														
Poland/Pologne				[57]																										
Spain/Espagne				[58]																										
United Kingdom/ Royaume-Uni																														

56. Czech Republic denounced paragraph 4 on 25 March 2008 / *La République tchèque a dénoncé l'alinéa 4 le 25 mars 2008*
57. Poland denounced paragraph 4 on 27 January 2011 / *La Pologne a dénoncé l'alinéa 4 le 27 janvier 2011*
58. Spain denounced sub-paragraph b with effect from 5 June 1991/ *L'Espagne a dénoncé l'alinéa b de cette disposition à partir du 5 juin 1991*

Articles 19	Article 19									
Para.	1	2	3	4	5	6	7	8	9	10
Croatia/Croatie										
Czech Republic/ République tchèque										
Denmark/Danemark										
Germany/Allemagne										
Iceland/Islande										
Luxembourg										
Poland/Pologne										
Spain/Espagne										
United Kingdom/ Royaume-Uni										

Additional Protocol	Additional Protocol/Protocole additionnel			
Para.	Art 1	Art 2	Art 3	Art 4
Croatia/Croatie				
Czech Republic/ République tchèque				
Denmark/Danemark				
Germany/Allemagne				
Iceland/Islande				
Luxembourg				
Poland/Pologne				
Spain/Espagne				
United Kingdom/ Royaume-Uni				

Appendix 10.

Exchange of views between the president of the european committee of social rights and the ministers' deputies

21 March 2018

Introductory speech by Professor Giuseppe Palmisano,

President of the European Committee of Social Rights (ECSR)

Mr Chairman,

Permanent Representatives,

Secretary General/Deputy Secretary General,

It is my honour and pleasure to address you for the fourth time in my capacity as President of the European Committee of Social Rights. Exchanging views with the Committee of Ministers is of the utmost importance for my Committee and I wish to express my gratitude to you for giving me this opportunity again.

Ladies and gentlemen, as you know in the last decade, the situation of social rights in Europe has become a major political and legal issue; and it is deserving of increased attention; even more – I would say – than the situation concerning other human rights.

Traditional and consolidated high standards in the protection of social rights, and some basic features of the welfare state – which are essential for the enjoyment of such rights, and of which European States should be proud – are indeed in crisis and under stress.

Increasing poverty and unemployment rate – in particular youth unemployment –; social and economic inequalities; lack or shortcomings in migrant integration; job insecurity for many categories of employees; regressive changes in social security schemes and benefits, notably with respect to old age benefits; increases in the cost of healthcare: these are among the most worrying signals about the state of health of social rights worldwide and in Europe.

But by consequence they also tell us that reinforced attention must be paid to the need for effectively protecting social rights at the European level, as well as to the need for ensuring access to remedies in case of violation of social rights.

With regard to such needs, which as you know underpin both the so-called Turin Process launched in 2014 by the Secretary General of the Council of Europe, and the more recent EU Pillar of Social Rights, let me recall that the European Social Charter still represents today the most important and widely accepted frame of reference for identifying what are social rights, and what their protection and progressive realization mean and require for European States. And it is also the only living legal instrument providing for a system, at the European level, of monitoring and remedies in case of violation of social rights, which is open to the beneficiaries and social stakeholders of these rights.

Some examples taken from the last year reveal how much the Charter and the Charter system are considered crucial, at various levels, when the protection and promotion of social rights are at stake.

One example is precisely the meaningful reference to the Social Charter made by the EU acts establishing the European Pillar of Social Rights: I refer namely to the explicit reference to the Charter in paragraph 16 of the Preamble to the European Pillar of Social Rights, as solemnly proclaimed by the European Parliament, the Council and the Commission, on 17 November 2017, in Gothenburg.

Another signal is the increasing application of the Charter by national judges and courts in many States, like Spain, Italy, Greece and France, particularly in areas such as labour relationships, workers' rights, and pensions; and I refer not only to ordinary judges but also to Constitutional Courts.

Moreover, I would like to refer to the consideration that, in 2017, the Charter received by the Ukrainian authorities and Constitutional Court, in assessing the implications, and adjusting the interpretation, of new Ukrainian legislation on social security; consideration which also had as a positive outcome the decision of Ukraine to accept Article 12 of the Charter.

Finally, let me point out that in the last year there has been a significant increase in the use of the Charter's collective complaints procedure by national trade unions: in fact, 13 out of the 19 complaints registered in the last 12 months have been lodged by national trade unions.

Within such a framework of growing consideration for the Charter, the European Committee of Social Rights is of course aware of its responsibility in monitoring respect for, interpreting and applying the rights enshrined in the Charter, seeking to do its best with a view to ensuring the widest and most complete possible protection of social rights in all the States Parties to the Charter, by means of its institutional functions and the mechanisms provided for by the Charter. I refer namely to the reporting procedure, the collective complaints procedure, and the procedure on non-accepted provisions.

As for the reporting procedure, in 2017 we examined 33 state reports on rights relating to the thematic group "health, social security and social protection". Our Conclusions show a number of positive developments in some areas, but unfortunately they reveal serious and widespread problems concerning, for example: insufficient measures to reduce the high number of fatal accidents at the workplace, inadequate level of social security benefits (notably unemployment and old age), inadequate measures taken against poverty and social exclusion.

Regarding the collective complaints procedure, let me point out that 20 new complaints were lodged from the beginning of 2017 up to now, taking the total number of registered complaints to 160. During the last 12 months, the Committee adopted 30 decisions on admissibility, and 8 decisions on the merits. The decisions on the merits related inter alia to such complex and sensitive issues as: workers' rights affected by the austerity measures in Greece; the situation with respect to social housing standards in Ireland; access to mainstream education for children with intellectual and mental disabilities in Belgium; the situation with respect to reception,

accommodation and care of foreign unaccompanied minors, and access for Roma children to education and vocational training in France.

I would like to highlight that the Committee in performing all its tasks, with a substantial help from the Secretariat, always and continuously seeks to improve its working methods and interpretative approaches, taking into particular account the comments and reactions by the governments, and in a continuing dialogue with all the others stakeholders and competent institutions.

In this respect, let me mention the exchange of views and meetings that we had, during the last year, not only with the Governmental Committee and the Government Agents before the Committee, but also with the Parliamentary Assembly, the Conference of the International Non-Governmental Organizations of the Council of Europe, and the President of the European Court of Human Rights. And I wish also to mention the meeting with the Constitutional Court of Ukraine and the President of the Inter-American Court of Human Rights.

Having said this, I have however to draw your attention on some problems that, notwithstanding the intense commitment of the Committee and the exceptional efforts of our Secretariat, risk jeopardizing the efficiency of the system of the European Social Charter and its capacity to meet the challenge of adequately monitoring State respect for social rights in Europe.

These problems are twofold: on the hand, they concern the scarcity of the human resources dedicated to the Charter system, in proportion to the growing workload of both the Committee and the Secretariat. On the other hand, they relate to the reporting procedure and the way in which it is organized and implemented.

As for the first kind of problems, we are all aware of the fact that the Council of Europe is currently facing serious budgetary restrictions. Such restrictions are inevitably having a negative impact on the number of the temporary and regular members of the Department of the Social Charter, which was already understaffed and overloaded with work, as well as on the organization of the working sessions of the Committee.

Let me say very frankly that, starting from the present year, such a situation will make it impossible for the Committee and the Secretariat to perform their tasks in the same thorough and scrupulous way that they are used to do. I know that the current situation makes it unlikely that additional resources will be allocated to the recruitment or assignment of additional qualified staff to the Department of the Social Charter. But, please, be aware that, without this – or, even worst, if the blatantly unfair cuts to the Charter system which have been proposed as an implication of the cessation of Turkey's major contributor status were approved and applied –, the system of the Charter will no more work efficiently, nor produce the outcomes that it is expected to do according to the Charter.

The principal tool for the protection of social rights at the European level will , by consequence, be seriously weakened and the fundamental normative frame of reference of social rights in Europe will lose visibility and importance. I wonder whether such a possible step backwards would be in line either with the priorities of the Secretary General, who – as you know – made the protection of social rights and the strengthening of the European Social Charter one of the imperatives of his second

term of office, or with the "Turin process", and with the growing trend of attention to social rights in the policies of many European States as well as in EU policies.

As regards the other kind of problems, let me briefly recall what I already pointed out last year in my exchange of views with the Committee of Ministers.

Considering the way in which it is organized and implemented, the reporting exercise – on the one hand – requires each year an excessive workload on the part of State authorities that have to present detailed reports on policies and practices, legislative and judicial activities, and national social trends, spanning across many different areas, such as work and employment, social security, social assistance, health care, housing, family protection, and so on. And, on the other hand, the reporting procedure entrusts the European Committee of Social Rights with the impossible task of examining carefully all the reports and to assess the situation in all member States relating to such wide and different areas, in the light of the Social Charter's provisions.

This way of proceeding cannot lead to a satisfactory outcome: in particular, it is not suited to timely identifying the real and most serious problems concerning the implementation of the Charter in each State and, by consequence, it is not sufficiently useful in helping European States to actually improve themselves in their respect for social rights.

In addition, let me say that the changes to the reporting system that were adopted by the Committee of Ministers on April 2014, also with the objective of simplifying the mechanism for those States Parties to the Charter that have accepted the collective complaints procedure, have not proved to reach the goal; on the contrary, they have aggravated the problems of the reporting exercise. As you know, following these changes, the system now comprises two new types of reports, in addition to the "ordinary" reports on a thematic group of Charter provisions. I refer, first, to the reports on follow-up to collective complaints for States bound by the collective complaints procedure, which do not have to submit in the same year the "ordinary" report on the thematic group of provisions under consideration. And the second new type of additional reports relate to the conclusions of non-conformity for repeated lack of information adopted by the Committee the preceding year.

I see therefore an urgent and crucial need to rethink and really simplify the reporting exercise, in order to make it more efficient, more meaningful and more useful for an effective protection of the rights enshrined in the Charter.

In this respect, I would say that the budgetary restrictions, which I referred to before, could and should represent not a challenge, but an opportunity to reorganize and improve the reporting procedure, and to ease its not entirely useful burden on both state authorities and the European Committee of Social Rights.

Let me share with you some initiatives and proposals about this.

First of all, I can inform you that, starting from the current year, the Committee in agreement with the Secretariat has decided to change the method for drafting its conclusions. We will no more elaborate long, analytical, text examining and discussing all the data and information provided for in each state report, but we will focus

only on the most problematic issues concerning the implementation by the State of the Charter provision under examination. This will lead us to the production of much shorter texts for each conclusion, with the advantage of better highlighting, for each examined State, the problems which deserve priority and careful attention, as well as the positive or negative measures required to bring the national situation in conformity with the Charter.

Then, speaking on the basis of my experience and reflections on the problem as President of the Committee, I would like to submit to your attention 4 very pragmatic proposals, aimed at simplifying the reporting obligations and burden for the States Parties to the Charter.

- First, when the Committee in its annual conclusions finds that the situation in a given State is in full conformity with a provision of the Charter, in the next cycle of supervision this State should be exempted, in my view, to report on the same provision; and in the following cycles it should just inform the Committee about possible relevant changes regarding its legislation or practice. In those cases where the Committee finds that, pending receipt of some kind of information, the situation seems to be in conformity with the Charter, in the next cycle of supervision the State should provide only the information requested, without submitting a complete report concerning the Charter provision in question.
- Second, the new reporting procedure, established by the Committee of Ministers in 2014, concerning the cases where the European Committee of Social Rights adopts conclusions of non-conformity for lack of information, in my view, should be abolished. This means that the Committee should no longer adopt "non-conformity" conclusions on the ground that is has not been established that the situation is in conformity with the Charter, and thus that States should no longer submit additional reports as a follow-up to this type of conclusions.
- Third, for those States Parties to the Charter that have accepted the collective complaints procedure, the reporting exercise should be further simplified. In my view, they should only submit every 4 years a synthetic and global report on the implementation of all the provisions of the Charter as a whole; and not – as the other States do – specific, analytical, reports on each of the thematic group of provisions of the Charter.
- In addition, and this is my fourth proposal, the obligation of such States – I mean, the States Parties to the collective complaints procedure – to submit every two years reports on follow-up to collective complaints, should be limited to only two cycles, and not ad infinitum as it is now. After this period of two cycles, should the Committee still find that the situation has not been brought into conformity with Charter, the case should be referred to the Committee of Ministers, which should adopt a final resolution or recommendation addressed to the State, thus closing once and for all the procedure.

I am convinced that these changes, that I have briefly outlined, could simplify considerably the reporting exercise and the bureaucratic reporting burden for the

States Parties to the Charter, while at the same time improving the efficacy of the reporting procedure, in terms of impact of the Committee's conclusions and findings.

Whatever may be the value and interest for you of my proposals, it is really necessary and urgent that we rethink and reorganize the reporting procedure, in order to ease the reporting burden on State authorities, but also to alleviate the workload for the Committee, making it feasible in light of the limited staff and resources of the Secretariat, the limited number of the Committee members, and the budget restraints that the Council of Europe is currently facing. And this, of course, seeking also to improve the efficacy and impact of the procedure.

But apart from the possible future improvements in the reporting procedure, let me point out once again that the most important step forward in the direction of improving and strengthening the Charter's system and the protection of social rights at the European level, would be enlarging the States' participation to the collective complaints procedure.

In fact, as you know, this procedure presents many advantages in comparison to the reporting exercise. In particular, and primarily, it has the advantage of putting the normative prescriptions of the Charter to the test of specific, concrete situations; it is able to identify – by way of a precise, objective assessment and a quasi-judicial procedure – what a State actually has to do, or must avoid to do, or has to prevent in order to guarantee, in specific situations, the social rights established by the Charter.

In addition, in comparison to the reporting procedure, it is also much more convenient for the State authorities in terms of domestic overall inter-ministerial preparatory workload.

Furthermore, the acceptance of the collective complaints procedure by a large majority, or all, the States Parties to the Charter would be of extremely important value from the standpoint of the equality of treatment of States and the uniform standard of monitoring of social rights in Europe. From such a standpoint, it is in fact hardly acceptable that only 15 States are concerned by this keen mechanism for monitoring State respect for social rights, in addition to the reporting procedure, and that national and European trade unions and international NGOs can trigger such a mechanism with respect to situations or cases concerning only certain States and not the others.

For all these reasons, and to conclude my intervention, I really hope that in the near future the Committee of Ministers could take concrete and effective initiatives to achieve the goal not only of simplifying and better reorganizing the reporting procedure, but also of considerably enlarging participation of States in the collective complaints mechanism.

All this would indeed be a substantial contribution to the Turin process, and would also be consistent with the position taken by the Committee of Ministers itself in 2011, on the occasion of the 50th anniversary of the European Social Charter.

Chairman, Ladies and Gentlemen, thank you very much for your attention.

Appendix 11.

Selection of judicial decisions from 2018 referring to the European Social Charter

BELGIUM

- **Constitutional Court, 26-07-2017, 101/2017**, 26.09.2017 – Violation of Article 6§4 of the Charter and reference to the Digest of the case law of the European Committee of Social Rights, 2008, p. 58.

GERMANY

- **Constitutional Court, 06.06.2018** – 1 BvL 7/14, 1 BvL 1375/14 – *Leitsätze zum Beschluss des Ersten Senats* - Mention of Article 1§1 of the Charter and reference to the European Committee of Social Rights, General Federation of employees of the national electric power corporation [GENOP-DEI] and Confederation of Greek Civil Servants Trade Unions [ADEDY] v. Greece, Decision on the Merits of 23. Mai 2012, Nr. 66/2011, § 20). The Court did not apply Article 1§1 of the Charter.

GREECE

- **First Instance Court of Piraeus**, **n. 3220/2017** – direct effect of Article 24 of the Charter.

ITALY

- **Constitutional Court n. 232/2018** – Mentioned Article 15 of the Charter as in conformity with the Italian Constitution.
- **Constitutional Court n. 120/2018 –** Applied indirectly Article 24 of the Charter and recognised the role and the authoritativeness of the decisions of the European Committee of Social Rights. It nonetheless specified that the European Committee of Social Rights decisions are not binding for national courts.
- **Constitutional Court n. 194/2018 –** Applied indirectly Article 24 of the Charter and referred to collective complaint n. 106/2014, Finnish Society of Social Rights v. Finland.
- **Council of State, section III, (ud. 21/06/2018) 06-09-2018, n. 5265** – mentioned Article 11 of the Charter.

SPAIN

- **Tribunal Superior de Justicia - Sala de lo Social –** ***Las Palmas de Gran Canaria*** **– 547/2017 -** ECLI:ES:TSJICAN:2017:547 - applied Article 4§4 of the Charter.
- **Social Court of Barcelona 1483/2018** – ECLI:ES:JSO:2018:1483 – Applied Article 4§4 of the Charter and referred to the European Committee of Social Rights Conclusions XX-3 (2014).
- **Social Court of Barcelona 4856/2018** – applied Article 4§4 – Referred to Conclusions 2014 and to GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011.

EUROPEAN COURT OF HUMAN RIGHTS

Case Lopes De Sousa Fernandes v. Portugal, application n. 56080/13, decision of the Grand Chamber of 19/12/2017 - Reference to Article 11 of the European Social Charter – right to protection of health. Reference to the Digest of the case-law of the European Committee of Social Rights, 2008, pp. 81-89 and to European Roma and Travellers Forum (ERTF) v. the Czech Republic, collective complaint No. 104/2014, on inadequate access to health care by the Roma; Conference of European Churches (CEC) v. the Netherlands, collective complaint No. 90/2013, 10 November 2014, on the need to provide all persons staying in the Netherlands in an irregular manner with necessary medical care; Defence for Children International (DCI) v. Belgium, collective complaint No. 69/2011, 23 October 2012, on illhealth among accompanied foreign minors; European Roma Rights Centre (ERRC) v Bulgaria, collective complaint No. 46/2007, 3 December 2008, on the problems encountered by many Roma in accessing health-care services; and International Federation of Human Rights League (FIDH) v. France, collective complaint no. 14/2003, 3 November 2004, on denial of immediate medical assistance to children of illegal immigrants.

Case Tibet Menteş and others v. Turkey, applications nos. 57818/10, 57822/10, 57825/10, 57827/10 and 57829/10,decision of the Second Section of 24 October 2017, Concerning working time - Reference to Article 2 and Article 4 of the Charter of 1961 and of the Revised European Social Charter. Reference to the EUROPEAN COMMITTEE OF SOCIAL RIGHTS Conclusions 2010 and 2014 concerning Turkey, where it noted that the working time regulations in force were not in conformity with Article 2§1 of the Charter on the grounds that the legislation in force (Law no. 4857) allowed weekly working time of up to sixty-six hours. **Concurring opinion of judge Lemmens** – He observed that that the Court does not seem to be the most appropriate forum for addressing the applicants' complaints: it is a matter that might better be raised with the European Committee of Social Rights.

Case Adyan and Others v. Armenia, application no. 75604/11, decision of the First Section of 12 October 2017, concerning military service and the duration of periods of alternative service. Reference to EUROPEAN COMMITTEE OF SOCIAL RIGHTS Conclusions XIX-1 of 24 October 2008.

Case Ognevenko v. Russia, application no. 44873/09, decision of the Third Section of 20 November 2018, concerning the dismissal of a locomotive driver for participation in a strike – Reference to Article 6 of the European Social Charter – right to bargain collectively – and to Appendix 6 Article 6§4. Reference to the Digest 2008 concerning Article 6§4 and to EUROPEAN COMMITTEE OF SOCIAL RIGHTS Conclusions (2014) concerning Russia as regards collective action.

Case Garib v. The Netherlands, application no. 43494/09, Grand Chamber, 6 November 2017 – Reference to Article 30 of the European Social Charter - right to protection against poverty and social exclusion.

Case J. and others v. Austria, application no. 58216/12, 17 January 2017- Reference to Article 1 (2) of the European Social Charter – prohibition of forced labour.

Case D.M.D. v Romania, application no. 23022/13, 3 October 2017 – Reference to Article 7 (the right of children and young persons to protection) and Article 17 (the

right of children and young persons to social, legal and economic protection) of the European Social Charter – Reference to the European Committee of Social Rights - Decision on the merits: Association for the Protection of All Children (APPROACH) Ltd. v. France, Complaint No. 92/2013, 12 September 2014.

Case Wetjen and others v. Germany - applications nos. 68125/14 and 72204/14 – Fifth section - 22 March 2018 - Reference to Article 17 of the European Social Charter

Case Tlapak and others v. Germany - applications nos. 11308/16 and 11344/16 – Fifth section - Reference to Article 17 of the European Social Charter.

Case Ljatifi v. the Former Yugoslav Republic of Macedonia, application no. 19017/16, 17 May 2018 – First section - **Concurring opinion of judge Sicilianos** – Reference to Article 19§8 of the European Social Charter.

Case Enver Şahin v. Turkey, application no. 23065/12, Second section, 30 January 2018 - Reference to the European Social Charter.

Case Vlase v. Romania, application no. 80784/13, Fourth Section, 24 July 2018, Reference to the European Social Charter.

Case B. Dupin v. France, application no. 2282/17, Fifth section, Reference to Article 15 of the European Social Charter and to the collective complaint n. 81/2012, decision on the merits of 11 September 2013, *Action Européenne des Handicapés c. France*.

Appendix 12.

Publications on the European Social Charter referenced in 2018

Books

Hommage à Jean-Michel Belorgey/*Tribute to Jean-Michel Belorgey* – Parcours en Europe sociale, à bord du Comité européen des droits sociaux / *Journeys in Social Europe, on board of the European Committee of Social Rights*

Christina Deliyanni-Dimitrakou & Petros Stangos (éditeurs/editors), Sakkoulas Publications, 2018, 196 p.

Periodicals and Reports

Déclaration urgente de la Commission nationale grecque des droits de l'homme sur les droits du travail et de la sécurité sociale en Grèce

Bilan de la Délégation interministérielle à l'hébergement et à l'accès au logement (Dihal). Actions de résorption des bidonvilles soutenues par la DIHAL Bilan 2016 et panorama 2017

"International and Community Social Law", Journal of the Ministry of Labour, Migration and Social Security, Spain, n°137, 2018 *(« Derecho social Internacional y Comunitario », Revista del Ministerio de Trabajo, Migraciones y Seguridad Social, España, nº 137, 2018*)

Articles and communications

Alkiviadou N.

"Sustainable enjoyment of economic and social rights in times of crisis: obstacles to overcome and bridges to cross"

European Journal of Law Reform, 2018

Guiglia G.

"Alcune proposte per favorire le relazioni e le sinergie tra il diritto dell'Unione europea e la Carta sociale europea"

Studi sull'integrazione europea, 2018 [in corso di stampa].

"Il contributo della giurisprudenza e degli studi giuridici all'effettività della Carta Sociale Europea nell'ordinamento italiano: cenni ricostruttivi"

Lex Social. Revista jurídica de los derechos sociales, vol. 8, N° 1, 2018, p. 45-58.

"Il contributo della giurisprudenza e degli studi giuridici all'effettività della Carta Sociale Europea nell'ordinamento italiano: cenni ricostruttivi"

Lex Social. Revista jurídica de los derechos sociales, vol. 8, N° 1, 2018, p. 45-58.

Proietti F.

"The relevance of article 24 of the European Social Charter as «interposed standard" in the Italian legal system. Food for thought on the margins of the constitutional relevance question raised by the labour court judge of Rome (Tribunale di Roma – sezione lavoro, ordinanza July 27, 2017

Lex social, Revista de derechos sociales, Vol. 8, N° 1 (2018), p. 223-283

https://rio.upo.es/xmlui/handle/10433/5338

Vandamme F.

"L'emploi des jeunes : points d'appui et protection dans la Charte sociale européenne"

Hommage à Jean-Michel Belorgey/*Tribute to Jean-Michel Belorgey* – Parcours en Europe sociale, à bord du Comité européen des droits sociaux / *Journeys in Social Europe, on board of the European Committee of Social Rights*, Sakkoulas, 2018, p. 157-181

Web site

- www.coe.int/socialcharter.

The European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

No other legal instrument at pan-European level provides such an extensive and complete protection of social rights as that provided by the Charter.

The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

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www.coe.int/socialcharter
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www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.