DIGEST OF THE CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

APPENDIX :

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PART I: Collective Complaints Procedure

1. World Organisation against Torture (OMCT) v. Greece, Complaint No. 17/2003, decision on admissibility of 9 December 2003, §2 and 5. The Government does challenge the admissibility on the grounds that the complaint has not been addressed to the Secretary General of the Council of Europe, as required by Article 5 of the Protocol and Rule 19 of the Rules of the Committee. (…)

2. Furthermore, the complaint was addressed to the Executive Secretary of the Social Charter, who, under Rule 19 of the Rules, is entitled to receive collective complaints.”

2. European Group of women graduates of Universities v. Belgium, claim No. 124/2016; Decision on the admissibility of 4 July 2017, §§ 6-9 et al. “6. The Government raises several objections concerning the grounds of the complaint, notably, that the complaint does not identify with sufficient precision the alleged violations of the Charter and that it does not adequately address the specifics of the national situation (see §§2 and 4 above).

7. As regards the first ground, concerning the wage gap for equal, similar or comparable work, the Committee notes that UWE alleges specifically the violation by Belgium, of Article 4§3 and Article 20 of the Charter. Article 4§3 guarantees the right of men and women workers to equal pay for work of equal value. Article 20 of the Charter also concerns matters of employment and occupation without discrimination on grounds of sex, including pay. According to UWE, statistical data and factual elements show that in Belgium unequal pay is a reality, despite the international obligations entered into and the legislation enacted by Belgium in this area. Concerning the practice of national bodies, UWE also alleges that the national equality bodies and the labour inspectorate are not able to fight efficiently against wage discrimination between men and women. These bodies have not removed existing obstacles to lodging complaints relating to discrimination on grounds of unequal pay for equal, similar or comparable work between men and women.

8. As regards the second ground, concerning the representation of women in decision-making posts in private companies, UWE invokes national provisions concerning the representation of women in decision-making posts in private companies and, in support of the allegation that these provisions are not applied in practice, also refers to statistical data reported by European and national sources concerning the performance of Belgium in this area. The Committee recalls that the right to equal opportunities is guaranteed by Article 20 of the Charter.

9. Consequently, in light of the above, the Committee holds that the complaint relates to provisions of the Charter accepted by Belgium and UWE has indicated in what respect it considers that Belgium has not ensured the satisfactory application of these provisions. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility. The Committee further recalls that consideration of any alleged lack of substance in the complaint is a matter for the examination of the merits of the complaint, not its admissibility (see, among others, European Federation of Employees in Public Services (EUROFEDOP) v. Italy, Complaint No. 4/1999, decision on admissibility of 10 February 2000, §12). The Committee therefore rejects the objections of the Government on this issue.

3. European Federation of Employees in Public Services (EUROFEDOP) v. Portugal, Complaint No. 5/1999, decision on admissibility of 10 February 2000 2003, §4, 9 and 10. “4. However, the Portuguese Government holds the view that the complaint is inadmissible as it does not fulfil the conditions of Article 4 of the Protocol that the complaint shall indicate the provisions of which violation is alleged and in what respect the said provisions have not been satisfactorily applied. According to the Portuguese Government, EUROFEDOP restricts itself to invoking violation of Articles 5 and 6. The government considers that the complaint is contradictory since in reality a question of principle is at issue, namely the harmonisation of national systems which are too differentiated. It does not concern a violation by Portugal of Articles 5 and 6, because, as admitted by EUROFEDOP, Portugal may as other States provide for restrictions on the right to organise for the armed forces.
As regards the civilian personnel in the armed forces, the complaint indicates neither the scope nor the nature of the non-conformity. On the basis of Article 4 of the Protocol the Portuguese Government concludes that the complaint should be declared inadmissible.

9. The Committee observes that the complaint concerns violation of Articles 5 and 6 of the European Social Charter. The alleged violation concerns norms of the Portuguese legal system. The complaint aims expressly at the provision of the Portuguese Constitution and the Act on National Defence which are alleged to contravene two provisions of the Charter by prohibiting military personnel of the armed forces and the “Guarda Nacional Republicana” from organising, except in respect of professional associations which are concerned solely with the professional code of ethics.

10. The Committee thus considers that Article 4 of the Protocol and its different conditions are fulfilled and that the reasons given in the complaint, although succinct, are sufficiently indicative of the extent to which the Portuguese Government is alleged not to have ensured the satisfactory application of the provisions concerned.”

3. The Committee notes that, in conformity with Article 4 of the Protocol, which was ratified by Belgium on 23 June 2003 and has entered into force for this State on 1st August 2003, the complaint is presented in writing. It further notes that in substance the text of the complaint only refers to Article 17 of the Charter of 1961, a provision accepted by Belgium on 16 October 1990 at the time of ratification. It considers that the mere reference in the text of the complaint to the “the European Social Charter of 1996” is a material mistake which has been rectified by OMCT in its additional information.”

5. Syndicat national des dermato-vénérologues (SNDV) c. France, Complaint No 28/2004, decision on admissability of 13 June 2005 §§ 7 and 8. “7. (…) The Committee is asked to determine whether the difference in treatment between categories of specialist medical practitioners in private practice regarding the fees they can charge for items of service, and thus their remuneration, amounts to discrimination against one particular category of these practitioners.
8. The Committee finds that the facts adduced are not of such a nature as to allow it to conclude that there has been a violation of the right guaranteed by the combination of Article E (non-discrimination) with Article 1§2 (right to earn one’s living in an occupation freely entered upon) and Article 4§1 (right to a remuneration which is sufficient to ensure a decent standard of living) of the Revised Charter.”

6. Syndicat des hauts fonctionnaires (SAIGI) c. France, Complaint No 29/2005, decision on admissability of 14 June 2005 §§ 6, 7 and 8. “6. The complaint refers to a series of alleged infringements of the rights of the President and the Secretary General of the union arising from penalties imposed on them and breaches of their rights to a fair trial and to an effective remedy and of their freedom of assembly and association, as laid down in, respectively, Articles 6, 13 and 11 of the European Convention on Human Rights (“the Convention”).
7. The notion of a human rights continuum is undoubtedly particularly marked in the case of the freedom to organise, an area in which the scope of Article 11 of the Convention overlaps with that of Article 5 of the Revised Charter. Infringements of trade union leaders’ freedom to organise may breach Article 5 of the Revised Charter either directly or because they impinge on the freedom of the union itself. However, the allegations, in the present case, have been put forward with reference to individual cases brought before the European Court of Human Rights in the context of the Convention.”
The Committee notes that the complaint does not pertain to the rules applicable in a country but rather to the manner in which those rules are being applied to a particular case by way of procedures that were brought over a period of 8 years before administrative and criminal courts as well as disciplinary bodies. This, in the present case, does not fall within the remit of the Committee.”


   “31. Article G provides for the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted. This provision corresponds to the second paragraph of Articles 8 to 11 of the European Convention on Human Rights. It cannot lead to a violation as such.”

8. **Federation of pensioners IKA-ETAM v. Greece, Complaint No 76/2012, decision on admissibility of 23 May 2012, §§5-7;**

   “5. Regarding the allegation of the complainant organisation under Article 31§1 of the 1961 Charter, the Committee wishes to make the following observations:

   6. The Committee recalls that Article 31 of the Charter of 1961 “provides for the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted. This Article corresponds to the second paragraph of Articles 8 to 11 of the European Convention on Human Rights. It therefore cannot lead to a violation as such” (Syndicat des Agrégés de l’Enseignement Supérieur (SAGES) v. France, complaint No. 26/2004, decision on the merits of 15 June 2005, § 31).

   7. Therefore, the Committee considers that the complaint alleges, in substance, a violation of Article 12.”

9. **Equal Rights Trust (ERT) c. Bulgarie, Complaint No 121/2016, decision on admissibility of 5 July 2016 § 11.**

   “11. As to the violation of Article G of the Charter alleged by ERT, the Committee recalls that this provision sets out the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted and cannot lead to a violation as such (Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on admissibility of 19 May 2015, §9). Article G of the Charter may, however, provide a reference for the interpretation of the substantive rights provisions of the Charter which are at stake in a given complaint (Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, complaint No. 76/2012, decision on the merits of 7 December 2012, §48)."

10. **Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No 76/2012, decision on the merits of 7 December 2012, §48;**

    “48. In its complaint, the complainant trade union expressly invokes Article 12§3 of the 1961 Charter. It also originally invoked Article 31§1 insofar as that Article recognises that any restrictions or limitations to the rights guaranteed in the Charter must be prescribed by law. However, the Committee recalls that Article 31 of the Charter cannot be directly invoked as such, but only provides a reference for the interpretation of the substantive rights provisions of the Charter, which are at stake in a given complaint (Syndicat des Agrégés de l’Enseignement Supérieur (SAGES) v. France, Complaint No. 26/2004, decision on the merits of 15 June 2005, § 31; see also the decision on the admissibility of 23 May 2012 in the current complaint, §§ 6-7). This is why the Committee concluded that the complaint was admissible only with regard to the elements of the complaint that related to Article 12§3.”

11. **Equal Rights Trust (ERT) v. Bulgaria, Complaint No 121/2016, decision on admissibility of 5 July 2016 § 11.**

    “11. As to the violation of Article G of the Charter alleged by ERT, the Committee recalls that this provision sets out the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted and cannot lead to a violation as such (Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on admissibility of 19 May 2015, §9). Article G of the Charter may, however, provide a reference for the interpretation of the substantive rights provisions of the Charter which are at
stake in a given complaint (Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, complaint No. 76/2012, decision on the merits of 7 December 2012, §48)."

12. **Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014**
   
   **Complaint No 111/2014**, decision on the admissibility of 19 May 2015, §10.  “10. The Committee considers that, in view of the functional similarities between Article 31 of the 1961 Charter and Article 30 on derogations in time of war or public emergency, the above rules apply mutatis mutandis to Article 30 of the 1961 Charter.”

13. **Confédération Générale du Travail (CGT) v. France, Complaint n° 55/2009**, decision on the admissibility of 30 March 2009, §4.  “4. Moreover, the grounds for the complaint are indicated as far as they concern Article 2§1 and 5 and Article 4§2. On the contrary no ground is presented in respect of the allegations of violation of Articles 11§§ 1 and 3 and Article 4§1.”

14. **Confédération française démocratique du travail (CFDT) v. France, Complaint n° 50/2008**, decision on the merits of 9 September 2009, § 18.  “18. Firstly, the parties to the complaint are bound by the Committee’s decision on admissibility, particularly as regards the provisions of the Charter to which the complaint relates.”

15. **Confédération française démocratique du travail (CFDT) v. France, Complaint n° 50/2008**, decision on the merits of 9 September 2009, §3.  “3. With respect to the allegations in this case, the Committee will decide, as part of the assessment of the merits of the claim, to what extent they fall under the provisions invoked by the CFDT or other provisions of the revised Charter.”

16. **European Federation of Employees in Public Services (EUROFEDOP) v. Greece**, Complaint n° 3/1999, decision on the admissibility of 13 October 1999.  “The Committee notes that the Protocol was ratified by Greece on 18 June 1998 and entered into force on 1 July 1998. Pursuant to Article 4 of the Protocol, a complaint shall relate to a provision of the Charter accepted by the Contracting Party concerned. The Committee notes that Greece has not accepted to be bound by Articles 5 and 6 of the Charter. For these reasons, the Committee, on the basis of the report presented by Mr Stein EVJU, declares the complaint inadmissible.”

17. **International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece**, Complaint n° 49/2008 decision on the admissibility of 23 September 2008, §§ 2 and 8.  “2. the Government alleges that INTERIGHTS files the complaint in collaboration with the Greek Helsinki Monitor which is a national non-governmental organization however Greece has not recognized the right of national non-governmental organizations to lodge complaints. (…) Lastly, the Committee notes the current complaint has been lodged by INTERIGHTS alone, although INTERIGHTS relies on material collected by the Greek Helsinki Monitor. It is for the Committee to decide what weight to give this material, independently of its origin as long as it has been endorsed by the complainant organisation. Pursuant to Rule 25 (2) of the rules complainant organizations are entitled to be assisted by advisers. The fact that Greece has not accepted the right of national non governmental organizations to submit complaints is therefore irrelevant.”

18. **Defence for Children International v. the Netherlands**, Complaint n° 47/2008 decision on the admissibility of 23 September 2008, §§ 6-11.  “6. Whilst the Government does not contest that DCI itself has the right to submit complaints under Article 1 of the Protocol, it highlights that the complaint was signed by DCI-NL and that the relationship between the two organisations is not clear. In addition, it recalls that the Netherlands has not made the declaration provided for in Article 2 of the Protocol, recognising the right of representative national non-governmental organisations to lodge complaints against it. The Government submits that by allowing complaints from such organisations by mandate or delegation, Article 2 of the Protocol might become futile. 7. In its response to this observation, the complainant highlights that the President of DCI represents the organisation at the political and legal levels (Article 32 DCI Statute). Nothing
prohibits him/her from mandating such power to the national sections, which are the institutional representatives of DCI in a determined country (Article 8 DCI Statute).

8. The Committee observes that the complaint was indeed signed by the Chairman and Executive Director of DCI-NL, Mr Vianen and Mr Kleijburg. However, the Committee also notes that a letter authorising DCI-NL to lodge a complaint on behalf of DCI was attached to the complaint. To assess whether the complaint was signed by the person(s) with the competence to represent the complainant organisation (Rule 23 of the Rules), the Committee must therefore determine whether the delegation of legal representation was made by the entity entitled thereto.

9. Having examined the Statute of DCI, the Committee observes that the competence of political and legal representation of DCI belongs to its Presidency which is composed of the President and the International Executive Council (IEC) (Article 32 DCI Statute), which at present comprises eight senior members from different national sections. The Committee further notes that the decisions of the IEC are taken by simple majority of at least 50% of its present or represented members (Article 30 DCI Statute).

10. On the basis of the information in the file, the Committee first notes that the above mentioned letter mandating DCI-NL to lodge the complaint on behalf of DCI was signed only by the President of DCI, Mr Kassis. The Committee however also notes from further letters received in September 2008 and signed by IEC members Mr Van Keirsbilck (DCI-Belgium), Mr Guillén (DCI-Argentina), Mrs Murillo, (DCI-Costa Rica) and Mr Kleijburg (DCI-NL), that a majority of the IEC also mandated DCI-NL to lodge the complaint on behalf of DCI. The Committee therefore considers that DCI-NL was duly authorised to represent DCI in the complaint procedure. The conditions stipulated in Rule 23 of the Committee’s Rules are thus fulfilled. The fact that the letters of the members of the IEC were received after the initial lodging of the complaint does not lead the Committee to take another view in this regard (SUD Affaires Sociales, SUD ANPE and SUD Collectivités Territoriales v. France, Complaint No. 24/2004, decision on admissibility of 7 December 2004).

11. As to the Government’s additional argument that allowing national non-governmental organisations to lodge complaints by mandate or delegation, might render Article 2 of the Protocol futile, the Committee observes that it is not in its powers to decide about the sharing of competencies within the international non-governmental organisations entitled to lodge complaints. Whether it decides to lodge a complaint through delegation of legal representation or not, the entitled international non governmental organisation concerned - and not the entity acting on its behalf - remains the complainant in the proceedings before the Committee.

19. Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, decision on the admissibility of 10 September 2013, § 6. “6. With regard to KLM’s and Pro Vita’s involvement in the complaint, the Committee notes that “… Pursuant to Rule 25 (2) of the rules complainant organisations are entitled to be assisted by advisers” and that “it is for the Committee to decide what weight to give this material, independently of its origin as long as it has been endorsed by the complainant organisation” (cf. International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, complaint No. 49/2008, decision on admissibility of 23 September 2008).”

20. Associazione Nazionale Giudici di Pace v. Italy, Complaint No. 102/2013, Decision on admissibility of 2 December 2014, §5-10. “5. The Committee must consider whether in accordance with Article 1§c of the Protocol, ANGdP is a national trade union and, if so, whether it is representative for the purposes of the complaint.

6. As to whether the ANGdP can be considered as a trade union, the Committee recalls that there is no registration requirement for trade unions in Italy, and that formally trade unions do not possess legal personality; they have the status of "non-recognised associations" subject to ordinary law (Articles 36, 37 and 38 of the Civil Code).

7. The Committee notes that, according to the statute of the ANGdP, the scope of the ANGdP is "to define the functions and prerogatives of Giudici di Pace in the judicial system, to protect the reputation and the interests of the category of Giudici di Pace, to promote professional training and to formulate proposals to ensure the resources and facilities necessary for the better functioning of the Office of Giudici di Pace".
8. The Committee notes from the information before it that the ANGdP has made representations, inter alia, to the Ministry for Justice and Superior Council of Judges regarding its members’ working conditions, including their lack of social protection, and has in fact also called for strikes. 
9. The fact there is no contractual relationship between those represented by the association and the employer – the Government – as their terms and conditions are laid down by law, is not decisive for the Committee, often civil servants terms and conditions of employment are laid down in law however this does not prevent them from forming and joining trade unions. The Committee recalls that Article 5 of the Charter guarantees workers’ and employers’ freedom to organise. This covers not only workers in activity but also persons who exercise rights resulting from work such as pensioners, unemployed persons (Conclusions XVII-1 (2004), Poland). 
10. The Committee finds that the ANGdP exercises functions which can be considered as trade union prerogatives, and therefore it can be considered as a trade union for the purposes of the current complaint.” 

21. *Bedriftsforbundet v. Norway, Complaint No. 103/2013, decision on the admissibility of 14 May 2014, §§7-17.* “7. The Committee observes that the Government contests Bedriftsforbundet’s status as a representative organisation within the meaning of Article 1§c of the Protocol and maintains that the complainant organisation has failed to submit sufficient evidence on its representativeness. 
8. Furthermore, the Committee observes that in its submissions of 7 May 2014, the Government alleges that Bedriftsforbundet is not an organisation of employers within the meaning of the Protocol. According to the Government, Bedriftsforbundet is an organisation with a membership of only 2.3 % of the small and medium-sized enterprises in Norway. 
9. The Government further maintains that pursuant to the Statutes of Bedriftsforbundet, it is an interest organisation purporting to improve the conditions for small and medium-size enterprises. It does not take part in collective bargaining and is not a party to collective agreements. Bedriftsforbundet is moreover not classified as an employers’ organisation by Statistics Norway. 
10. Bedriftsforbundet maintains that it is a business and employer’s organisation for small and medium-sized businesses in Norway. In January 2014, it represented a total of 3,996 members from all over the country. Bedriftsforbundet assists its members on a variety of issues, “the majority of which being employment relations, employment contracts, collective agreements within the businesses, lay-offs, notices, salaries, etc.” It submits having been an alternative to the larger employers’ organisations for 20 years. 
11. It is furthermore consulted by the Government in questions relating to small and medium-sized businesses and represents its members in relations with the authorities, employees and trade unions. As evidence of this, it presents a request issued by the Government to Bedriftsforbundet as an employer’s organisation for the purpose of nominating a member to a national advisory board. 
12. Bedriftsforbundet further submits that the collective complaints procedure is of more importance to smaller organisations than to larger ones when promoting human rights and observes that a complaint from a Norwegian trade union with less than 1,700 members has been declared admissible by the Committee (Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, decision on admissibility of 23 May 2012). 
13. The Committee considers that its previous findings concerning trade unions equally apply to employers’ organisations and recalls that, for the purposes of the collective complaints procedure, representativeness is an autonomous concept and as such not necessarily identical to the national notion of representativeness (Confédération Française de l’Encadrement (CFE-CGC) v. France, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6). 
14. In order to qualify as representative, an employers’ organisation or a trade union must be real, active and independent (FFFS v. Norway, cited above, §22). Representativeness is furthermore examined in particular with regard to the aim of the complainant organisation and the activities it
carries out (Syndicat de Défense des Fonctionnaires v. France, Complaint No. 73/2011, decision on admissibility of 7 December 2011, §6).

15. The Committee consider that the number of members and the role performed at the national negotiations are not conditions of an exclusive nature (see Explanatory Report to the Additional Protocol to the Charter). It accordingly makes an overall assessment to establish whether or not an employers' organisation or a trade union is representative within the meaning of Article 1§c of the Protocol (FFFS v. Norway, cited above, §20).

16. It further recalls that the application of criteria of representativeness should not lead to an automatic exclusion of small organisations to the advantage of larger and longer-established organisations, thereby prejudging the effectiveness of the right of all employers' organisations to bring a complaint before the Committee (FFFS v. Norway, cited above, §21).

17. As concerns the position of Bedriftsforbundet in the official statistics on employers' organisations maintained by Statistics Norway, the Committee considers in this regard that it is not bound by national definitions of a complainant organisation.

22. Associazione sindacale « La Voce dei Giusti » v. Italy Complaint No. 105/2014, decision on the admissibility of 17 March 2015, § 6-11. “6. The Committee examines whether the Associazione sindacale « La Voce dei Giusti » is a trade union within Italy's jurisdiction and whether it is representative within the meaning of Article 1§c of the Protocol.

7. As to whether it can be considered a trade union, the Committee notes that the Government's observations raise no objection on this point. It notes in any event that Italian law recognises freedom of association and imposes no organisational model for trade unions, non-recognised associations, governed by Articles 36 to 38 of the Civil Code, being allowed to negotiate and conclude collective agreements, to take collective action and to bring legal proceedings.

8. The Committee also notes that under Article 2 of its Statutes, the purpose of the Associazione sindacale « La Voce dei Giusti » is to defend workers' rights, in particular those of teachers and especially of teachers of the third category, and to safeguard dignity and economic and social interests by promoting all necessary measures including trade union activities to this end*. The deed of tax registration of 3 December 2014, as appended to the complaint, confirms that the complainant organisation has been registered by the Pescara Tax Office as carrying on trade union activities for dependent employees. According to information released by the complainant organisation, it has taken action at the Ministry of Education, Universities and Research (MIUR) relating to teachers' working conditions; lobbied to have parliamentary questions put to the MIUR (No. 3-00829 published on 20 March 2014) and the Ministry of Justice (No. 3-00992 published on 28 March 2014); called a national strike of school teachers on 31 May 2014, for which the MIUR laid down arrangements (MIUR circular No. 0013074 of 19 May 2014 to the Directors General of the Regional Education Offices); supported an appeal against the updating of the classification of teaching and educational staff (Consiglio di Stato, 6th Division, Order No. 735/2014 of 19 February 2014).

9. The Committee therefore concludes that the activities carried out by the complainant organisation involve trade union prerogatives.

10. The fact that there is no contractual relationship between the workers whose interests are defended by the complainant organisation and the MIUR does not prevent this conclusion, since the employment conditions for those workers appointed to essential public services are principally laid down in the law and regulations, and they are permitted to form and join trade unions (see Associazione Nazionale Giudici di Pace v. Italy, complaint No. 102/2014, decision on admissibility of 2 December 2014, §9).

11. The Committee considers that the complainant organisation is a trade union within Italy's jurisdiction within the meaning of Article 1§c of the Protocol.”

8. As to whether it can be considered a representative trade union, for the purposes of the collective complaints procedure, the Committee is called upon to examine firstly whether the Movement is a trade union within Italy's national legal order and if so, secondly, whether it is representative within the meaning of Article 1§c of the Protocol.

9. The Committee notes that Italian law recognises freedom of association and imposes no particular organisational model for trade unions, non-recognised associations, governed by Articles 36 to 38 of the Civil Code, being allowed to negotiate and conclude collective agreements, to take collective action and to bring legal proceedings.

10. The Committee also notes that under Article 2 of the complainant's Statutes, the aim of the Movement “...is to promote, disseminate and defend the practice of psychoanalysis as a speech-based practice, ongoing intellectual research and practical experience, using the instruments that may be deemed appropriate, such as for example the promotion of conventions, seminars and conferences etc., awareness-raising initiatives within political and judicial circles, media and cultural campaigns, initiatives to secure legal protection, support and assistance including in relation to any proceedings to uphold the freedom to practise psychoanalysis and the freedom of the psychoanalyst. “

11. The Committee further notes that according to the Movement, it was established in order to ensure that non-registered psychoanalysts have the freedom to practice.

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6. It further notes that the Syndicat national des Professions du tourisme is a trade union within the French jurisdiction in the meaning of Article 1 para. c of the Protocol. As regards the representative character of the trade union as referred to in Article 1 para. c, the Committee underlines that the representativity of national trade unions is an autonomous concept, beyond the ambit of national considerations as well the domestic collective labour relations context.

7. Having made an overall assessment of the documents in the file, the Committee considers that the Syndicat national des Professions du tourisme is a representative trade union for the purposes of the Protocol. It notes, moreover, that its representative character has not been contested by the Government.

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3. In respect of Article 1§c of the Protocol, the Government highlights that in a judgment of 29 September 2002, the Administrative Court of Appeal of Paris held that the SOE did not fulfil the conditions of representativity as laid down by the above-mentioned law no. 84-16. As a result, the SOE is not a national organisation of workers within the meaning of Article 1§c of the Protocol.

4. The Committee recalls that for the purpose of the collective complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (Complaint no. 9/1999, Confédération Française d’Encadrement “CFE-CGC” v. France, decision on admissibility, para 6). The fact that the complainant trade union is not considered in French law as representative for the purposes of collective bargaining, is not in itself decisive for the requirements of Article 1§c of the Protocol.

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13. The Committee considers that its previous findings concerning trade unions equally apply to employers’ organisations and recalls that, for the purposes of the collective complaints procedure, representativeness is an autonomous concept and as such not necessarily identical to the national notion of representativeness (Confédération Française de l’Encadrement (CFE-CGC) v. France, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6).”

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27. *Associazione Professionale e Sindacale (ANIEF)* v Italy, Complaint No 146/2017, decision on admissibility of 12 September 2017, §6

6. As regards the union’s representativeness within the meaning of Article 1 (c) of the Protocol, the Committee points out that its representative nature is an autonomous concept, not necessarily identical to the national notion of...
representativeness (see Confédération Française d’Encadrement “CFE-CGC” v. France, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6). A trade union may be considered representative for the purposes of the collective complaints procedure whenever it exercises, in the geographical area in which it is based, activities in defence of the material and moral interests of personnel in a given sector, of which it represents a considerable number, and this in total independence from the employing authorities (see Syndicat occitan de l’Education v. France, Complaint No. 23/2003, decision on admissibility of 13 February 2004, §5). Even a trade union which is not considered representative at the national level for collective bargaining may be considered representative for the purposes of the collective complaints procedure.”

28. Associazione Professionale e Sindacale (ANIEF) v Italy, Complaint No 146/2017, decision on admissibility of 12 September 2017, §6. Op cit

29. Confédération française de l’Encadrement CFE-CGC v. France, Collective Complaint No. 9/2000, decision on admissibility of 7 November 2000 §§ 6-7. “6. Exercising its activities in France, the Confédération française de l’Encadrement CFE-CGC is a trade union within the jurisdiction of this country as required by Article 1 para. c of the Protocol. Furthermore, the CFE-CGC is considered by French law as being nationally representative. The Committee recalls that, for the purposes of the collective complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (Complaint no 6/1999, Syndicat national des professions du tourisme v. France, decision on admissibility, para. 6). 7. Having made an overall assessment of the documents in the file, the Committee considers that the CFE-CGC is a representative trade union for the purposes of the collective complaints procedure. It also notes that this is not contested by the Government.”

30. STTK ry and Tehy ry v. Finland, Collective Complaint No.10/2000, decision on admissibility of 12 February 2001 § 6. “6. The Committee recalls that, for the purposes of the collective complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (Complaint No. 9/2000, Confédération française de l’Encadrement CFE-CGC v. France, decision on admissibility, paragraph 6). It notes that Tehy ry is a Finnish trade union representing the great majority of healthcare professionals (95%) and that it participates in the collective bargaining process in the sector relevant to the present complaint. It also notes that STTK ry is a national organisation of trade unions within the jurisdiction of Finland and that Tehy ry is one of its affiliates. Therefore, the Committee finds that both organisations are representative trade unions in accordance with Article 1 para. c of the Protocol.”


32. Confederation of Swedish Enterprise v. Sweden, Collective Complaint No. 12/2002, decision on admissibility of 19 June 2002 § 5. “5...the Confederation of Swedish Enterprise is a national organisation of employers’ organisations within the jurisdiction of Sweden. It is the largest such organisation in Sweden having 47 member organisations in the private sector representing more than 47,000 companies. The total number of employees in the member companies is about 1,450,000. The Confederation of Swedish Enterprise and its member organisations have concluded several central level collective agreements in the private sector. In addition, it seeks to promote the general understanding of the needs of enterprise and the contribution it makes to the well-being of society and its citizens. On the basis of this information, the Committee finds that the organisation is a representative employers’ organisation in accordance with Article 1 para. c of the Protocol.”

33. Syndicat national des Dermato-Vénérologues v. France, Collective Complaint No. 28/2004, decision on admissibility of 13 June 2005 § 5. “5. (…)the Committee is unable to determine whether the complainant organisation is representative for the purposes of the collective complaints procedure, and in particular for that of presenting complaints on behalf of all specialist practitioners. However, given the conclusion it reaches in §8, it does not find it necessary to consider these matters.”
34. Syndicat des Hauts Fonctionnaires v. France, Collective Complaint No. 29/2005, decision on admissibility of 14 June 2005 § 3. “3. …given the conclusion it reaches in paragraphs 8 and 9, the Committee does not consider it necessary to determine whether the trade union is representative for the purposes of the collective complaints procedure.”

35. SUD Travail Affaires Sociales, SUD ANPE and SUD Collectivité Territoriales v. France, Collective Complaint No. 24/2004, decision on admissibility of 7 December 2004 §§ 10 et 11. “10. The Government argues that SUD Travail Affaires Sociales pursuant to Article 1 of its own statutes has no authority to act on behalf of the staff of local and regional authorities and of the public hospital service, and that it is not entitled to recruit members from the national employment agency (ANPE). Further, with respect to porters and caretakers of residential buildings, domestic employees and mother’s helps working in the home, the Government argues that these three categories of employees are covered by their own specific provisions of the Labour Code and for this reason alone fall totally outside the scope of the statutes of SUD Travail Affaires Sociales. The Government submits that hence, the complaint should be declared inadmissible inasmuch as it pertains to categories of employees on whose behalf the complainant trade union has no authority to act.
11. The Committee notes that a trade union deemed to be representative for the purposes of the collective complaints procedure in accordance with Article 1§c of the Protocol, thereby has the right to lodge a complaint against the Party concerned on any point, within the bounds of Article 4 of the Protocol, on which it alleges unsatisfactory application of the Charter. This right of complaint is independent of which categories of employees the union according to its statutes is unionising, or which categories of employees it is authorised to represent or unionise in the framework of domestic law. The Government’s objection on this point hence must be dismissed.”

36. The Central Association of Carers in Finland v. Finland, Collective Complaint No. 70/2011, decision on admissibility of 7 December 2011 § 6: “6. As regard the requirement of “representativity” laid down by Article 2§1 of the Protocol, the Committee refers, mutatis mutandis, to its interpretation of the same word in the context of Article 1 c) of the Protocol. It recalls that, for the purposes of the collective complaints procedure, representativity of trade unions is an autonomous concept, which does not have the same significance as the notion of representativity at national level. This is all the more relevant in the case of associations. It is therefore up to the Committee to progressively define a range of criteria allowing it to determine the representativity of national organisations, taking into consideration, inter alia, their social purpose, as well as their scope of activities. Moreover, in this instant case, it is not contested by the Government. Having made an overall assessment, the Committee considers that the Association of Care Giving Relatives and Friends is representative within the context of the collective complaint procedure.”

37. Finnish Society of Social Rights v Finland, Complaint No 107/2014, decision on admissibility and on the merits of 6 September 2016, §§28-30. “28. The Committee also observes that the Finnish Society of Social Rights is a national non-governmental organisation, founded on 16 March 1999 and registered the same year at the Register of Associations in Finland. It notes that, in a declaration dated 21 August 1998 and entered into force on 1 September 1998 for an indefinite period, Finland recognised the right of any representative national non-governmental organisation within its jurisdiction which has particular competence in the matters governed by the Charter to lodge complaints against it.
29. As regards the requirement of “representativity” laid down by Article 2§1 of the Protocol, the Committee recalls that it has previously found the Finnish Society of Social Rights to be representative within the meaning of the Protocol (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on admissibility of 14 May 2013, §§6-11)
30. As regards the particular competence of the Finnish Society of Social Rights, the Government questions whether it can be regarded as having particular competence in the issue. The Committee notes from the Finnish Society of Social Rights’ rules and from their webpage that its sphere of activity concerns the protection of social rights, including labour law rights. Consequently, the Committee finds that the Finnish Society of Social Rights has particular
competence within the meaning of Article 3 of the Protocol, in respect of the instant complaint. (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on admissibility of 14 May 2013, §12).”

38. **Frente Comum de Sindicatos de Administração Publica v. Portugal, Collective Complaint No. 36/2006**, 5 December 2006 § 4. “4. Ms Ana AVOILA, representing the complainant organisation in the capacity of co-ordinator for the FCSAP/CGTP-IN, has not submitted to the Committee any document showing that the by-laws of the FCSAP/CGTP-IN, or that a mandate from this body, or from its member organisations, have authorised her to act on its behalf, despite having been invited to do so.”

39. **Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v France, Collective Complaint No. 26/2004**, decision on admissibility of 7 December 2004 § 5. “5. The Committee notes that the complaint dated 21 April 2004 and registered on 27 April 2004 at the Secretariat is signed by Mr Denis ROYNARD, President of SAGES, and carries the stamp of SAGES. Furthermore, in view of documents appended to the complaint, in particular the statutes of SAGES, the Committee considers that Mr ROYNARD has been duly authorised to represent the complainant organisation for the purposes of the collective complaints procedure. Pursuant to Article 21 of the statutes the President of SAGES is empowered to take legal action on behalf of SAGES and he may even delegate this power to any member of the union. Consequently, on these points the objections of the Government must be dismissed.”

40. **World Organisation against Torture (OMCT) v. Greece, Collective Complaint No. 17/2003**, decision on admissibility of 9 December 2003 § 5. “5. ..the complaint is signed by Mr Eric SOTTAS, Director of the organization, who, pursuant to the statutes of the organization, is entitled to act in all matters relating to the organisation’s aims. The signature appears on the bottom page of the cover letter submitting the complaint, whose original was received by the Secretariat of the European Social Charter on 28 July 2003 and which has been forwarded to the Permanent Representation of Greece at the Council of Europe on 3 October 2003. The admissibility of the complaint, under Rule 20 of the Rules of the Committee, is not affected by the fact that the signature of the representative of the OMCT only appears on the cover letter and not on the text presenting the arguments of the complaint nor by the fact that the copy of the cover letter that was forwarded to the Permanent Representation on 25 July 2003 was not signed. Furthermore, the complaint was addressed to the Executive Secretary of the Social Charter, who, under Rule 19 of the Rules, is entitled to receive collective complaints.”

41. **European Roma Rights Centre (ERRC) v. Bulgaria, Collective Complaint No. 31/2005**, decision on admissibility of 10 October 2005, § 7. “The Committee notes that the complaint is signed by its programmes Director Mr Claude CAHN. The Government contests that there is nothing to establish whether Mr. Claude CAHN has been empowered in a proper way to represent the ERRC. The Committee notes that by letter of 20 September 2005, the ERRC submitted a power of attorney dated 25 January 2005, in which, in accordance with Article 6 of the deed of foundation, Mr CAHN was authorized by two members of the board and on its behalf, to represent the organisation as of latter date. The Committee considers therefore that the formal requirement of Rule 23 of its Rules of Procedure has been met.”

42. **Centrale générale des services publics (CGSP) v. Belgium, Complaint no 25/2004**, decision on admissibility of 6 September 2004 §§ 2 et 8. “2. The Government alleges inadmissibility on the grounds that the decision to lodge the complaint was not taken by the competent C.G.S.P. bodies: it was taken, on 6 February 2004, by the Permanent Secretariat of the C.G.S.P., whereas under Article 20 (e) of the C.G.S.P.’s Articles of Association, the decision “to take legal proceedings” must be taken by the Permanent Secretariat and the Federal Executive Bureau. 8. The Committee considers that the Belgian Government’s objection is not supported by the facts in so far as the Permanent Secretariat’s decision to lodge the complaint was confirmed by the Executive Bureau according to the C.G.S.P.’s Articles of Association.”

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43. European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No.112/2014, decision on admissibility of 30 June 2015, § 8. “As regards the signature of the complaint, the Committee notes that the complaint has been signed by Emmanuel Jacob, President of EUROMIL. In addition with its response to the Government’s observations on admissibility, EUROMIL appended a letter dated 11 February 2015 signed by both Emmanuel Jacob, President, and Ton de Zeeuw, Treasurer and Board member, permitted under Section 12 of the Charter of EUROMIL to represent the organisation, in which they ratify and confirm the complaint as lodged by EUROMIL. On this basis and noting that the Government did not oppose the admissibility of the complaint, the Committee considers that the issue of the signature of the complaint has now been clarified. Therefore the Committee holds that the complaint satisfies the requirements of Rule 23 of the Rules.”

44. Syndicat des Agrégés de l’Enseignement Supérieur (SAGES) v. France, Complaint n° 26/2004, decision on admissibility of 7 December 2004 §§ 4 et 5. “4. The Government in its observations submits firstly that complaint was not duly signed and secondly, that it has not been established that the author of the complaint has been authorised to represent SAGES as required by Article 23 of the Committee’s Rules.

5. The Committee notes that the complaint dated 21 April 2004 and registered on 27 April 2004 at the Secretariat is signed by Mr Denis ROYNARD, President of SAGES, and carries the stamp of SAGES. Furthermore, in view of documents appended to the complaint, in particular the statutes of SAGES, the Committee considers that Mr ROYNARD has been duly authorised to represent the complainant organisation for the purposes of the collective complaints procedure. Pursuant to Article 21 of the statutes the President of SAGES is empowered to take legal action on behalf of SAGES and he may even delegate this power to any member of the union. Consequently, on these points the objections of the Government must be dismissed.”

45. Syndicat national des Professions du Tourisme v. France, Complaint n° 6/1999, decision on admissibility of 10 February 2000 §§ 9 et 10. “9. The Committee observes, upon examination of its statutes, that the Syndicat national des Professions du tourisme is an interprofessional trade union organised into four sections, each comprising certain tourism professions. The purpose of this structure is to share responsibility for the defence of the particular interests of the different professions between the sections. Each section is represented by the Vice-President appointed for the professions concerned. The Committee notes that in the present case, the complaint lodged on behalf of the Syndicat national des Professions du tourisme is signed by the Vice-President appointed for the professions of interpreter guides and lecturers, who, in accordance with its statutes, is responsible for representing these professions. 10. The Committee concludes that in view of the particular structure of the trade union, the Vice-President for interpreter guides and lecturers is, within the meaning of Rule 20 of its Rules of Procedure, a person empowered to represent the trade union for the said professions, whose interests they defend. This capacity is confirmed in a certificate issued by the trade union’s president.”

46. Syndicat occitan de l’éducation v. France Complaint n° 23/2003, decision on admissibility of 13 February 2004 § 8. “8. As regards of the plea of inadmissibility relating to Rule 20 of the Rules of Procedure, the Committee notes that the complaint lodged in the name of the SOE is signed by its Treasurer and member of its national bureau, Ives RAUZIER, duly authorised to do so by a mandate signed by the Secretary General of the SOE, in the name of the bureau which is, by virtue of Article 9 of the statute of the complainant trade union, entitled to represent it before the courts. The Committee therefore considers that the conditions provided for by Article 20 of its Rules of Procedure are fulfilled.”

47. Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint n° 52/2008, decision on admissibility of 30 March 2009 §14. “14. The complaint is signed by Mr Claude Cahn, Head of Advocacy Unit. The Committee notes that Mr Booker, Executive Director of COHRE, confirmed in a letter of 8 January 2009 that Mr Cahn was delegated to represent the organization in respect of the complaint in 2008. The Committee considers that Mr Cahn was duly authorized to represent COHRE when submitting the complaint. Therefore the formal requirement
of Rule 23 of the Rules of Procedure has been met. Mr Booker has also informed the Committee that Mr Bret Thiele is delegated to represent the organization in this matter as of 2009.

- (...) it has not been shown that the signatory to the complaint is mandated to represent SUD ANPE and SUD Collectivités Territoriales;
- (...) 7. As regards the second objection, the Committee notes that on the basis of the information in the file there is no evidence to support that the signatory to the complaint was actually mandated by either SUD ANPE or SUD Collectivités Territoriales to act on their behalf (cf. also above at para. 2). Hence, the Committee finds that Article 20 of its Rules of Procedure is not complied with in respect of these two unions and that accordingly, the complaint must be dismissed as inadmissible in regard to SUD ANPE and SUD Collectivités Territoriales acting as complainants.”

49. Transgender Europe and ILGA-Europe v. Czech Republic, Complaint No.117/2015, decision on admissibility of 9 September 2015, § 8. “8. As regards the signature of the complaint, the Committee notes that the complaint has been signed by Julia Ehrt Executive Director of Transgender Europe and Evelyne Paradis, Executive Director ILGA-Europe, entitled to represent their respective organisations in conformity with Article 14 and F of their respective statutes. Transgender Europe has furthermore produced an extract from the minutes of the meeting of its Board, held in Zurich on 27 March 2015, during which it granted a power of attorney to Julia Ehrt to represent the organisation for the purposes of the instant complaint. Therefore the Committee holds that the complaint satisfies the requirements of Rule 23.”

50. World Organisation against Torture (OMCT) v. Greece, Collective Complaint No. 17/2003, decision on admissibility of 9 December 2003 § 5. “5. Moreover, the complaint is signed by Mr Eric SOTTAS, Director of the organization, who, pursuant to the statutes of the organization, is entitled to act in all matters relating to the organisation’s aims. The signature appears on the bottom page of the cover letter submitting the complaint, whose original was received by the Secretariat of the European Social Charter on 28 July 2003 and which has been forwarded to the Permanent Representation of Greece at the Council of Europe on 3 October 2003. The admissibility of the complaint, under Rule 20 of the Rules of the Committee, is not affected by the fact that the signature of the representative of the OMCT only appears on the cover letter and not on the text presenting the arguments of the complaint nor by the fact that the copy of the cover letter that was forwarded to the Permanent Representation on 25 July 2003 was not signed. Furthermore, the complaint was addressed to the Executive Secretary of the Social Charter, who, under Rule 19 of the Rules, is entitled to receive collective complaints.”

51. International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia Complaint n° 45/2007, decision on admissibility of 1 April 2008 § 5. “5. As regards the Government’s objection that INTERIGHTS does not satisfy the conditions of Article 3 of the Protocol, the Committee observes that according to INTERIGHTS’ statutes the objects of the organisation “are to promote human rights (as set out in the Universal Declaration of Human Rights (“UDHR”) and subsequent United Nations Conventions and Declarations and in regional codes of human rights which incorporate the rights contained in the UDHR and those subsequent conventions and declarations) as well as through international customary law throughout the world....”. It follows that INTERIGHTS is a general human rights organisation whose remit spans widely, including, inter alia, the right to health, the rights of the family and the rights of children and on this basis the Committee considers that INTERIGHTS submitted a complaint in a field in which it has particular competence within the meaning of Article 3 of the Protocol.”
52. European Council of Police Trade Unions (CESP) v. Portugal, Collective Complaint No. 11/2001, decision on admissibility of 17 October 2001, § 5. “5. The Committee observes that the European Council of Police Trade Unions is an international non-governmental organisation with consultative status with the Council of Europe. It further observes from the statute of the organisation, which is appended to the complaint, that the European Council of Police Trade Union has particular competence in respect of the complaint.”

53. International Association Autism-Europe v. France, Collective Complaint No. 13/2002, decision on admissibility of 17 October 2001, § 7. “7. The Committee (…) observes from the statute of the organisation, which is appended to the complaint, that Autism-Europe has particular competence in respect of the complaint.”

54. International Federation of Human Rights Leagues (FIDH) v. France, Collective Complaint No. 14/2003, decision on admissibility of 16 May 2003, § 5. “5. The Committee considers that the IFHR submitted a complaint in a field in which it has particular competence within the meaning of Article 3 of the Protocol. It is a non-governmental organisation which aims to promote the implementation of the Universal Declaration of Human Rights as well as of other instruments of human rights protection, including the European Social Charter and to contribute to the enforcement of the rights guaranteed by these instruments.”

55. World Organisation against Torture (OMCT) v. Greece, Collective Complaint No. 17/2003, decision on admissibility of 9 December 2003 § 6. “6. Finally, the Committee considers that the OMCT is a non-governmental organization whose aim is to contribute to the struggle against torture, summary executions, disappearances, arbitrary detention, psychiatric internment for political reasons, and other cruel, inhuman and degrading treatment, regardless of the age of the persons against whom such treatments are directed, has filed a complaint for which it is particularly qualified according to Article 3 of the Protocol.”

56. Quaker Council for European Affairs v. Greece, Collective Complaint No. 8/2000, decision on admissibility of 28 June 2000 § 8. “8. The Committee finds confirmation in the statute of the QCEA that it is an international non-governmental organisation whose objective is to promote the traditions of the Religious Society of Friends (Quakers). To this end, its task is to bring to the attention of the European institutions the concerns of the members of this society, which relate to peace, human rights and economic justice.”

57. European Roma Rights Centre v. Greece, Collective Complaint No. 15/2003, decision on admissibility of 16 June 2003 § 5. “5. The Committee considers that the ERRC submitted a complaint in a field in which it has particular competence within the meaning of Article 3 of the Protocol. It is a non-governmental organisation which monitors the human rights situation of Roma in Europe and provides legal defence in cases of abuse.”

58. Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Collective Complaint No. 30/2005, decision on admissibility of 10 October 2005, §§ 3, 7 et 12. “3. It argues firstly that the complainant organisation has no particular competence, within the meaning of Article 3 of the Protocol. It acknowledges the MFHR’s important contribution in the field of human rights. However, it claims that the two activities to which the complainant organisation refers, the 1988 round table on “Ptolemaida: a case of heavy environmental pollution” and publication of a book entitled “The Right to Environment: Infringements and Protection”, are not sufficient for the complainant to be regarded as having particular competence in the fields of environmental pollution, its impact on workers’ health and health and safety at work. (…) 7. Firstly, it produces a detailed list of its activities specifically related to social rights (colloquies, conferences, seminars, publications and press conferences). Eight of these activities concern environmental protection, seven concern health protection and seventeen concern rights relating to working conditions. (…) 12. As regards the particular competence of the MFHR in the matters of the complaint, the Committee has examined the statute of the organisation and the detailed list of its various activities relating to the articles of the Charter covered by this complaint (see above, §7), which
shows that the complainant has long been involved in and particularly concerned with the relevant areas, and considers that the organisation has particular competence within the meaning of Article 3 of the Protocol.”

59. **Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Collective Complaint No. 41/2007, decision on admissibility of 16 June 2007, § 6.** “6. The Committee notes that the MDAC’s sphere of activity concerns in a general way the protection of rights of people with mental disabilities including questions linked to the education of children with disabilities. Consequently, the Committee finds that the MDAC has particular competence in the areas of the complaint.”

60. **International Federation of Human Rights Leagues (FIDH) v. Ireland, Collective Complaint No. 42/2007, decision on admissibility of 16 October 2007 § 7-9.** “7. While recognising that the IFHR is included on the list of organisations established by the Governmental Committee pursuant to Article 1, item b, of the Protocol the Government argues that the IFHR does not have a recognised “particular competence” in respect of the rights of the elderly, the subject-matter of its complaint, such as is required under Article 3 of the Protocol for lodging a complaint.

8. The IFHR in response states that it is an organisation promoting the effective implementation of the principles laid down in major international human rights conventions and instruments, including the Revised Charter, which constitutes the particular competence required to lodge this complaint. It submits that for the purposes of the present complaint there is no need for a specialist expertise in relation to the care of the elderly.

9. The Committee notes that the IFHR is a general human rights organisation whose remit spans widely, including, i.a., the rights of the elderly. This being the case, the IFHR must be deemed to have “particular competence” within the meaning of Article 3 of the Protocol in the field to which the present complaint pertains.”

61. **Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, décision sur la recevabilité du 10 septembre 2013, § 8.** “8. The Committee considers that family policies and rights of the family cover motherhood, procreation and the development of human life. The Committee further notes that, within the Council of Europe Conference of INGOs, the FAFCE is recognised for its particular competence in the field of human rights, including social rights and, consequently, the right to health.”

62. **Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint n° 89/2013, decision on admissibility of 2 July 2013, § 14.** “14. With regard to the Government’s objection that the Irish organisation affiliated to the FAFCE does not appear to be active in the field of child trafficking in Ireland, the Committee notes that Ireland has not granted national non-governmental organisations the right to submit complaints and that the current complaint was submitted by the FAFCE alone. As a result, the area of competence of the Irish association is not relevant for the admissibility of this complaint.”

63. **Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint n° 89/2013, decision on admissibility of 2 July 2013, § 11.** “11. The Committee also notes that the FAFCE is active at European level in the human rights field. It focuses in particular on any issues relating to families, taking the view that the family is the source and the ideal setting for the growth of human beings and that this includes protecting children, which the FAFCE sees as the key to the well-being of all societies. The Committee notes that as child trafficking has gained growing attention at European level recently, the FAFCE has started to direct its attention toward this issue. Consequently, the Committee considers that the FAFCE has particular competence within the meaning of Article 3 of the Protocol for the purposes of this complaint.”

64. **Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint n° 89/2013, decision on admissibility of 2 July 2013, § 13.** “13. As to the Government’s objection that the FAFCE failed to establish its competence in the complaint itself, the Committee considers that, as the Protocol does not set any time limit for filing a complaint, the Committee must take into account any document or information in its possession on the day of its decision. Furthermore, under Rule 29§3, the President may ask the complainant organisation to respond,
within a time limit he or she may set, to the defending state’s observations on admissibility. Even if the Government’s argument were founded in fact, it would not affect the admissibility.”

65. **Syndicat des Agrégés de l’Enseignement Supérieur (SAGES) v. France, Complaint n° 26/2004, decision on admissibility of 7 December 2004, §§ 11 et 12.** “11. The Government finally observes that the matter complained of was the subject of a challenge by SAGES in the Paris Administrative Court which was dismissed by the Court on 20 June 2003 and that an appeal to the Paris Administrative Appeal Court was dismissed on 9 March 2004. However, it points out that the complainant organisation has not exhausted the domestic remedies available indicating more specifically that the possibility of an appeal on points of law with the Conseil d’Etat was not used. The Government considers this to be a ground for declaring the complaint inadmissible.

12. The Committee recalls that neither the Protocol nor the Rules lay down a requirement that domestic remedies be exhausted. Naturally, the Committee takes full account of the interpretation put on national law by the domestic courts. Nevertheless, the Protocol does not require the invocation or exhaustion of domestic remedies as a prerequisite to maintaining a collective complaint. For this reason the Committee dismisses the Government’s objection to admissibility on this ground.”

66. **European Roma Rights Centre (ERRC) v. Bulgaria, Collective Complaint No. 31/2005, décision sur la recevabilité du 10 octobre 2005, § 10.** “10. Regarding the argument submitted by the Government that domestic remedies have not been exhausted, the Committee recalls that neither the Protocol nor the Rules lay down a requirement that domestic remedies be exhausted. For this reason, the Committee dismisses the Government’s objection to admissibility on this ground.”

67. **Conférence des Eglises européennes (CEC) c. Pays Bas, réclamation n° 90/2013, decision on the merits of 1 July 2013, §13.** “90. Finally, with regard to the information emanating from the complaint on that the substance-matter of the current complaint is in two instances being dealt with by another national or international body, namely by the Human Rights Committee of the United Nations and the Committee for the Elimination of Discrimination Against Women, the Committee refers to the Explanatory Report on the Protocol and in particular to paragraph 31 thereof, providing that a complaint may be declared admissible even if a similar case has been submitted to another national or international body. Pursuant to this provision, the Committee considers itself mandated to examine the current complaint also in the light of these examples.”

68. **International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, Complaint n° 49/2008, decision on admissibility of 23 September 2008, § 7.** “7. With respect to the first and second objection raised by the Government the Committee firstly notes that the fact that the same provision of the Charter was the subject of a previous complaint does not in itself render another complaint inadmissible. Further the Committee observes that the complaint concerns alleged violations of the Charter that have taken place since the case of European Roma Rights Center v. Greece complaint No 15/2003 decision on the merits 8 December 2004 or concerns alleged ongoing violations of the Charter. The above mentioned case will be followed up through the reporting system. The Committee recalls that it has previously held that “neither the fact that the Committee has already examined this situation in the framework of the reporting system, nor the fact that it will examine it again during subsequent cycles do not in themselves imply the inadmissibility of a collective complaint concerning the same provision of the Charter and the same Contracting Party” (International Commission of Jurists v. Portugal Collective complaint No. 1/1998 decision on admissibility 10 March 1999 paragraph 10).”
International Commission of Jurists v. Portugal, Collective Complaint No.1/1998, decision on admissibility of 10 March 1999 § 10-13. “10. The Committee recalls that according to the wording of the Preamble to the Additional Protocol of 1995 the collective complaints procedure was established to improve the effective implementation of the social rights guaranteed by the Charter and to consolidate the participation of the social partners and non-governmental organisations. The object of this procedure, which is different in nature from the procedure of examining national reports, is to allow the Committee to make a legal assessment of the situation of a state in the light of the information supplied by the complaint and the adversarial procedure to which it gives rise. Neither the fact that the Committee has already examined this situation in the framework of the reporting system, nor the fact that it will examine it again during subsequent supervision cycles do not in themselves imply the inadmissibility of a collective complaint concerning the same provision of the Charter and the same Contracting Party. 11. Furthermore, in the present case the Committee observes that Article 7 is only examined every four years. It is not part of the “hard core” provisions of the Charter, i.e. provisions that, in accordance with the system of submission of reports decided by the Contracting Parties, are examined every two years. As the Portuguese Government has rightly observed, there will be a considerable time-lapse between the Committee’s assessment of Portugal’s application of Article 7 para. 1 in Conclusions XIII-5, published in December 1997, and its subsequent assessment of this provision in Conclusions XV-2, which will be adopted and published in December 2000. The present complaint therefore allows the Committee to assess the situation in Portugal before 2000 in an area as important as the prohibition of child labour. 12. Moreover, the Committee recalls that the Recommendation adopted by the Committee of Ministers on 2 July 1998 referred to the situation in Portugal vis-à-vis Article 7 para. 1 during the reference period 1994-1995, whereas the complaint refers to texts and circumstances subsequent to that reference period. This procedure also provides the Portuguese Government with an opportunity to furnish information and evidence pertaining to the action it has taken subsequent to the reference period of its last report. 13. The legal principles res judicata and non bis in idem relied on by the Portuguese Government do not apply to the relation between the two supervisory procedures.”

Association for the Protection of all Children (APPROACH) Ltd. v. France Complaint No. 92/2013, decision on admissibility of 2 July 2013, §10. “10. As to the objection raised by the Government in relation to the fact that the Committee has already ruled on the subject of the complaint in the context of the reporting procedure, the Committee would point out that it has stated previously that the object of the collective complaints procedure “which is different in nature from the procedure of examining national reports, is to allow the Committee to make a legal assessment of the situation of a state in the light of the information supplied by the complaint and the adversarial procedure to which it gives rise,” and that “Neither the fact that the Committee has already examined this situation in the framework of the reporting system, nor the fact that it will examine it again during subsequent supervision cycles do not in themselves imply the inadmissibility of a collective complaint concerning the same provision of the Charter and the same Contracting Party.” (International Commission of Jurists v. Portugal, Complaint No 1/1998, decision on admissibility of 10 March 1999, § 10).”

European Roma and Travellers Forum (ERTF) v. Czech Republic, Complaint No.104/2014, decision on admissibility of 30 June 2014, § 9. “9. As concerns the Government’s first objection (a) on the admissibility the Committee recalls that the object of the complaints procedure, which is different in nature from the procedure of examining national reports, is to allow the Committee to make a legal assessment of the situation of a state in the light of the information supplied by the complaint and the adversarial procedure to which it gives rise. Neither the fact that the Committee has already examined this situation in the framework of the reporting system, nor the fact that it will examine it again during subsequent supervision cycles do not in themselves imply the inadmissibility of a complaint (International Commission of Jurists v. Portugal, Complaint No. 1/1998 decision on admissibility of 10 March 1999).”
(a) the fact that a complaint relates to a claim it has already examined in the context of a previous complaint is not in itself a reason to find it inadmissible;
(b) the submission of new evidence during the examination of a complaint may prompt the Committee to re-assess a situation it has already examined in the context of previous complaints and, where appropriate, take decisions which may differ from the conclusions it adopted previously.”

73. University Women of Europe v Finland, complaint n° 129/2016, decision on the admissibility of 04 July 2017, §9. “9. Consequently, in light of the above, the Committee holds that the complaint relates to provisions of the Charter accepted by Finland. The Committee further observes that UWE has indicated in what respect it considers that Finland has not ensured the satisfactory application of such provisions. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility. The Committee further recalls that consideration of any alleged lack of substance in the complaint is a matter for the examination of the merits of the complaints, not its admissibility (see, among others, European Federation of Employees in Public Services (EUROFEDOP) v. Italy, Complaint No. 4/1999, decision on admissibility of 10 February 2000, §12). The Committee therefore rejects the objections of the Government on this issue.”

74. Association for the Protection of all Children (APPROACH) Ltd. v. France Complaint No. 92/2013, decision on admissibility of 2 July 2013, §11. “11. With regard to the Government’s objection that the complaint does not contain any new elements relating to the matter at issue, the Committee considers that the complaint contains allegations concerning the situation in law and in fact, which are stated to have continuing effect up to the moment of the complaint’s introduction. The said objection cannot therefore be sustained.”

75. Association for the Protection of all Children (APPROACH) Ltd v. Czech Republic, Complaint No. 96/2013, decision on admissibility of 2 July 2013, §10. Op cit

76. International Federation of Human Rights Leagues (FIDH) v. Ireland, Collective Complaint No. 42/2007, decision on admissibility of 16 October 2007 § 11. “11. The Committee observes that it is abundantly clear from the complaint that it is of a general nature, addressing the application in general by Ireland of the Charter provisions concerned. Exemplifying issues at stake by way of individual cases in no way alters this.”

77. European Federation of Employees in Public Services (EUROFEDOP) v.Italy, Collective Complaint No. 4/1999, decision on admissibility of 10 February 2000 § 12. “12. The Committee considers that in the present case, the Italian Government’s allegation that the complaint is manifestly ill-founded, relates to the substance of the complaint and should not be considered at the stage of admissibility.”

78. University Women of Europe v Belgium, complaint n° 124/2016, decision on the admissibility of 4 July 2017 §§6-9 et al. “6. The Government raises several objections concerning the grounds of the complaint, notably, that the complaint does not identify with sufficient precision the alleged violations of the Charter and that it does not adequately address the specifics of the national situation (see §§2 and 4 above).
7. As regards the first ground, concerning the wage gap for equal, similar or comparable work, the Committee notes that UWE alleges specifically the violation by Belgium, of Article 4§3 and Article 20 of the Charter. Article 4§3 guarantees the right of men and women workers to equal pay for work of equal value. Article 20 of the Charter also concerns matters of employment and occupation without discrimination on grounds of sex, including pay. According to UWE, statistical data and factual elements show that in Belgium unequal pay is a reality, despite the international obligations entered into and the legislation enacted by Belgium in this area. Concerning the practice of national bodies, UWE also alleges that the national equality bodies and the labour inspectorate are not able to fight efficiently against wage discrimination between men and
women. These bodies have not removed existing obstacles to lodging complaints relating to
discrimination on grounds of unequal pay for equal, similar or comparable work between men and
women.
8. As regards the second ground, concerning the representation of women in decision-making
posts in private companies, UWE invokes national provisions concerning the representation of
women in decision-making posts in private companies and, in support of the allegation that these
provisions are not applied in practice, also refers to statistical data reported by European and
national sources concerning the performance of Belgium in this area. The Committee recalls that
the right to equal opportunities is guaranteed by Article 20 of the Charter.
9. Consequently, in light of the above, the Committee holds that the complaint relates to
provisions of the Charter accepted by Belgium and UWE has indicated in what respect it
considers that Belgium has not ensured the satisfactory application of these provisions. The
complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility. The
Committee further recalls that consideration of any alleged lack of substance in the complaint is a
matter for the examination of the merits of the complaint, not its admissibility (see, among others,
European Federation of Employees in Public Services (EUROFEDOP) v. Italy, Complaint No.
4/1999, decision on admissibility of 10 February 2000, §12). The Committee therefore rejects the
objections of the Government on this issue.”

79. Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No.
89/2013, decision on admissibility of 2 July 2013, §15. “15. As to the Government’s objections
relating to the use and citation by the complainant organisation of out-of-date sources and the
fact that it has referred to Article 17 of the Charter instead of Article 7§10, the Committee
considers that it will only be possible to assess these matters properly when examining the merits
of the complaint.”

80. Quaker Council for European Affairs v. Greece, Collective Complaint No. 8/2000, decision
on admissibility of 28 June 2000 § 10. “10. The Committee further considers that the
arguments relied on by the Greek Government according to which the complaint does not come
within the scope of Article 1 para. 2 and that it is without foundation in this case pertain to the
merits of the complaint.”

81. European Roma Rights Centre (ERRC) v. Bulgaria, Collective Complaint No. 31/2005,
decision on admissibility of 10 October 2005 §§ 8 et 9. “8. The Government argues that the
matter complained of, the right to housing, falls outside the scope of Article 16 of the Revised
Charter, read independently or in conjunction with Article E of the Revised Charter. It considers in
this respect that the right to housing is explicitly stipulated in Article 31 and not in Article 16, which
deals with the right of the family to social, legal and economic protection and the respective
obligation of the Parties to undertake to promote this right by several non-exhaustively listed
means, which include provision of family housing.
9. The Committee considers that the fact that the right to housing is stipulated under Article 31 of
the Revised Charter, does not preclude a consideration of relevant housing issues arising under
Article 16 which addresses housing in the context of securing the right of families to social, legal
and economic protection. In this context and with respect to families, Article 16 focuses on the
right of families to an adequate supply of housing, on the need to take into account their needs in
framing and implementing housing policies and ensuring that existing housing be of an adequate
standard and include essential services. The Committee considers that the exact delineation
between Articles 16 and 31, in as much as this is relevant to the allegations made is to be
considered when dealing with the merits. Hence, the Government’s objection on this point to the
admissibility of the complaint must be dismissed.”
2. In its observations, the Government challenges the admissibility of the complaint:
- Firstly, after noting that the FAFCE lodged the complaint “along with the Swedish organisations KLM and Pro Vita”, the Government maintains that, on the one hand, neither KLM nor Pro Vita is on the list of organisations entitled to file such complaints and, on the other, Sweden has not yet made a declaration enabling national non-governmental organisations to submit collective complaints.
- Secondly, the Government considers that the FAFCE cannot be regarded as having particular competence in the matters about which it is complaining. In support of this objection, the Government states that the responsibilities of the FAFCE, as set out in its statutes, and in particular those mentioned in Articles 4 and 5, do not include the area addressed in the complaint.
- Thirdly, the Government considers that the allegations made by the FAFCE, as mentioned in points a) and b) in paragraph 1 above, do not concern the protection of health guaranteed under Article 11 of the Charter. The Government takes the view that any complaint which falls outside the scope of the Charter should be declared inadmissible as being incompatible with the Charter ratione materiae. With regard to the other allegations, as mentioned in points c) to h) in paragraph 1 above, the Government does not contest that the complaint meets the conditions for admissibility. This is without prejudice to its views as to the merits.

10. With regard to the Government’s third objection, the Committee notes that the complaint refers to Article 11, taken alone or in conjunction with Article E, and that it provides information designed to show that Sweden has not ensured the satisfactory application of these Articles. It follows from the information provided by the complainant organisation that the grounds set out in paragraph 1 above are not without relevance to the protection of health guaranteed under Article 11 of the Charter. The Committee therefore considers that the grounds for the complaint are indicated, the complaint meets the requirements of Article 4 of the Protocol and that the plea of inadmissibility raised in this respect by the Government cannot be sustained. The Committee will, in any case, at the merits stage, examine the various arguments put forward and the observations made by the Government insofar as they relate to the merits of the case and, in particular, to the interpretation of Article 11 of the Charter.”

2. The Government contests the admissibility of the complaint on the ground that it is manifestly ill-founded. The Government considers that Roma people are not covered by the scope rationae personae of the Revised Charter since they do not meet the conditions laid down in Article 1 of the Appendix to the Revised Charter, namely be nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. It alleges that the majority of Roma present on the Italian territory are either nationals of third countries or illegally present. Regarding the Roma who are Italian citizens or nationals of other Parties to the Charter, the Government considers it impossible to distinguish them the Roma population for the purposes of the application of Article 31.

7. The Committee considers that the arguments raised by the Government on the admissibility of the complaint do not entirely render the complaint ill-founded and that they can only be properly assessed when examining the merits of the complaint.”
84. **Conference of European Churches (CEC) v. the Netherlands**, Complaint No. 90/2013, decision on admissibility of 1 July 2013, §§ 10 et 12. “10. As concerns the Government’s first argument of inadmissibility, the Committee recalls having held that when human dignity is at stake, the restriction of the personal scope included into the Appendix of the Charter should not be read in such a way as to deprive foreigners within the category of unlawfully present migrants of the protection of their most basic rights enshrined in the Charter, nor to impair their fundamental rights, such as the right to life or to physical integrity or human dignity (Defence for Children International v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §28).

12. The Committee holds that the matters of the personal scope of the Charter, as well as of the substantial rights guaranteed under Articles 13 and 31 cannot be addressed at this stage of the proceedings. It accordingly considers the application of the Charter with regard to these issues to fall within the merits of the complaint.”


86. **Mental Disability Advocacy Centre (MDAC) v. Bulgaria**, Collective Complaint No. 41/2007, decision on admissibility of 26 June 2007, §§ 8-10. “8. In its observations on admissibility, the Government argues that the case relates to Article 15§1 of the Revised Charter since it covers the right of persons with disabilities, an article that Bulgaria has not accepted, but not the right of children and young people to social, legal and economic protection provided for by Article 17§2, as MDAC maintains.

9. The Charter was conceived as a whole and all its provisions complement each other and overlap in part. It is impossible to draw watertight divisions between the material scope of each article or paragraph. It therefore falls to the Committee to ensure at the same time that obligations are not imposed on States stemming from provisions they did not intend to accept and that the essential core of accepted provisions is not amputated as a result of the fact it may contain obligations which may also result from unaccepted provisions.

10. This is the case with education. The Committee considers that the fact that the right of persons with disabilities is guaranteed by Article 15§1 of the Revised Charter does not exclude that relevant issues relating to the right of children and young persons with disabilities may be examined in the framework of Article 17§2 (see Conclusions 2003, Bulgaria, p. 66). The complaint is therefore as regards its subject matter admissible with Article 17§2. As for the allegations in this case, the Committee will decide the extent to which they concern Article 17§2 during its assessment of the merits.”

87. **European Roma and Travellers Forum (ERTF) v. Czech Republic**, Complaint No. 104/2014, decision on admissibility of 30 June 2014, § 10. “10. With regard to the Government’s second objection (b), the Committee recalls that the Charter was conceived as a whole and all its provisions complement each other and overlap in part (Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on admissibility of 26 June 2007). Article 31 of the Charter partly overlaps with Article 16 of the 1961 Charter. In particular Article 16 covers the right of families to housing, this includes Roma families who must enjoy the right in practice (Conclusions XVIII-1, 2006, Statement of Interpretation, European Roma Rights Center v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004).”

88. **European Council of Police Trade Unions (CESP) v. Portugal**, Collective Complaint No. 11/2001, decision on admissibility of 17 October 2001 §§ 3 et 7. “3. The Portuguese Government submits a plea of inadmissibility of the complaint on two grounds. Firstly, the Portuguese Government considers that the European Council of Police Trade Unions relies on a flawed interpretation of Act No. 6/90. According to the Government, Section 5 of the Act provides for rights that are “clearly of a trade union nature”. Secondly, it maintains that the purpose of the complaint is to bring political pressure to bear on the legislative and constitutional procedure currently under way, thus exceeding the objectives of the European Social Charter.

(…)

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7. Regarding the first argument submitted by the Portuguese Government, the Committee considers that the interpretation of the 1990 Act pertains to the examination of the merits of the complaint and may not be decided at the admissibility stage."

89. International Federation of Human Rights Leagues (FIDH) v. Greece, Collective Complaint No.7/2000, decision on admissibility of 28 June 2000 § 9. “9.(...) The Greek Government argues that the complaint should be declared inadmissible because it not only intends to amend the provisions cited above so as to fully comply with Article 1 para. 2 of the Charter, but has already initiated the relevant procedures. The Committee takes the view that these considerations relate to the merits of the complaint, and not its admissibility. “


91. European Council of Police Trade Unions (CESP) v. Portugal, Collective Complaint No. 11/2001, decision on admissibility of 17 October 2001 §§ 3 et 8. “3. The Portuguese Government submits a plea of inadmissibility of the complaint on two grounds. (…)Secondly, it maintains that the purpose of the complaint is to bring political pressure to bear on the legislative and constitutional procedure currently under way, thus exceeding the objectives of the European Social Charter. 
8.Regarding the second argument, it is invalid, not being one which may be properly relied on to establish the inadmissibility or ill-foundedness of a complaint. It is clear from the file, moreover, that the complaint seeks to establish the non-conformity of the 1990 Act with Articles 5 and 6 para. 2 of the Charter, a fact acknowledged by the Portuguese Government in its observations.”

92. International Centre for the Legal Protection of Human Rights (INTERIGHTS) c. Croatia Complaint n° 45/2007, decision on admissibility of 1 April 2008 § 7 “7. With respect to the objections relating to the measures taken by the Government since the complaint was lodged and to the complainant’s use and citation of sources and to its reporting of facts, the Committee considers that these arguments can only be properly assessed when examining the merits of the complaint. “

93. Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Collective Complaint No. 30/2005, decision on admissibility of 10 October 2005, § 14. “14. In response to the Government's objection concerning its responsibility for the acts and omissions of the DEI, the Committee emphasises that the state is responsible for enforcing the rights embodied in the Charter within its jurisdiction. The Committee is therefore competent to consider the complainant's allegations of violations, even if the State has not acted as an operator but has simply failed to put an end to the alleged violations in its capacity as regulator. The extent of the Government's responsibilities, whether in the capacity of operator or in that of regulator will, if necessary, be examined in the proceedings on the merits of the complaint. “

94. Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Collective Complaint No. 30/2005, decision on admissibility of 10 October 2005, § 15 and 16. “15. As regards the Government's objection in connection with the Committee's competence ratione temporis, in accordance with the principle of non-retroactivity of treaties as codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties, the starting point for application is the date on which a treaty came into force in a country and not the date of its signature as the Government points out. However there are exceptions to this rule when events occurring before the entry into force of a treaty continue to occur after this date, thus potentially constituting a continuing violation (see, for example, European Court of Human Rights, Papamichalopoulos and others v. Greece, judgment of 24 June 1993, Series A. 260B, §40).
16. The Committee notes that several allegations of violations in the complaint registered on 4 April 2005 refer to the period after 1 August 1998, the date on which the Protocol came into force in Greece. As regards events that occurred before this date, the question of whether these are linked to a continuing violation or not will be considered in the proceedings on the merits of the complaint.

95. European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Collective Complaint No. 53/2008, decision on admissibility of 2 December 2008 § 8. "The Committee notes that some of the alleged violations invoked by the complaint have their origin in decisions or situations that took place or existed prior to 1 July 1999, the date on which the Revised Charter and the collective complaint procedure came into force in Slovenia, but that these decisions or situations have had continuing effects after this date."

96. Centre on Housing Rights and Evictions v. Croatia (COHRE), Collective Complaint No. 52/2008, decision on admissibility of 30 March 2009 § 18. "As regards the Government’s objection that the complaint is inadmissible ratione temporis, the Committee notes that even if several allegations of violations in the complaint (namely, the cancellation of occupancy rights or specially protected rights of ethnic Serbs) have their origin in decisions taken before – or situations that existed prior to – 1 April 2003, the date on which the Protocol entered into force for Croatia, at the heart of the complaint is an alleged violation which has had continuing and persistent effects even at the time it was lodged. The Committee concludes that it is irrelevant to speculate on the date when the violation first occurred and the date of the entry into force of the Protocol."

B- THE MERITS

97. The Central Association of Carers in Finland v. Finland, Complaint No. 71/2011, decision on the merits of 4 December 2012, §18: "The Committee notes that the complainant organisation alleges violation of Articles 13, 14, 16 and 23 of the Charter using the same argument. The Committee decides to examine the present case, in the order of the most relevant provisions for the purpose of the complaint, namely Articles 23, 14, 13 and 16."

98. General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012, §6: "In assessing the complainants’ allegations, the Committee considered that the substance of the arguments made in respect of Article 12§2 concerned instead the provisions of Article 12§3 (see § 45 below). On that basis, in accordance with its Rules of Procedure, the Committee reclassified the complaint. By a letter dated 6 February 2012, it invited the Government to make submissions on the said allegations in respect of the provisions of Article 12§3, and to provide further clarifications."

99. Syndicat de défense des fonctionnaires v. France, Complaint No. 73/2011, decision on the merits of 12 September 2012, §45: "Bearing this in mind, the complaints under Articles 20 and E (relating to the discriminatory arrangements for the management of the careers, including the promotion, of civil servants who have remained in the redeployed corps) should be reclassified so that they can both be examined under Article 1§2 of the Charter."

100. International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §34: "However, the Committee observes from the evidence contained in the file that in Portugal, children under the age of fifteen actually perform work. It notes that the Government does not dispute this. In order to seek to establish the exact dimensions of this problem and its characteristics, it may take account of all information submitted by the parties, whatever the period it relates to. In the present case, it considers it sufficient to rely on the results of the 1998 survey which provides the most recent evidence and the validity of which is not disputed by the International Commission of Jurists, even if its interpretation of the results differs from that given by the Government."
101. International Commission of Jurists against Portugal, decision on the merits of 9 September 1999, Complaint No 1/1998, § 42. As regards the allegation of the ICJ that the Labour Inspectorate is corrupt, which is vigorously disputed by the Government, it is not supported by evidence.

102. Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §52: “52. The Committee recalls its case law regarding disputes about discrimination in matters covered by the Revised Charter, adopted in the framework of reporting procedure, that the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. It also applies to the collective complaints procedure. The Committee therefore relies on the specific data sent to it by the complainant organisation, such as its statistics which show unexplained differences. It is then for the Government to demonstrate that there is no ground for this allegation of discrimination.”

103. Conseil européen des syndicats de police (CESP), v. France, Complaint No. 57/2009, decision on the merits of 1r December 2010, §52: “52. The Committee recalls that within the scope of the collective complaints procedure it bases its assessment of conformity with the Charter on the domestic law and practice applicable on the date of the decision on the merits of the complaint (European Council of Police Trade Unions v. Portugal, Complaint No. 11/2001, decision on the merits of 21 May 2001). Although before 15 April 2008 there has been a violation of Article 4§2 of the Revised Charter, there is no need to rule for this period.”

104. Conference of European Churches (CEC) v. The Netherlands, Complaint No 90/2013, decision on the immediate measures of 25 October 2013, §5. “For these reasons, the Committee, INVITES THE RESPONDENT GOVERNMENT TO TAKE THE IMMEDIATE MEASURES INDICATED BELOW:
- Adopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of persons at immediate risk of destitution, through the implementation of a co-ordinated approach at national and municipal levels with a view to ensuring that their basic needs (shelter, clothes and food) are met; and
- Ensure that all the relevant public authorities are made aware of this decision.
Requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision and to publish the decision on the Internet site of the Council of Europe.”

105. European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on immediate measures of 25 October 2013, § 1: “The Committee underlines the exceptional character of immediate measures, the adoption of which must appear “necessary with a view to avoiding the risk of a serious and irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter” (Rule 36§1), insofar as “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact”. 

106. Decision on immediate measures: Association for the Protection of all children (APPROACH) Ltd v; Ireland, complaint No 93/2013 “ The European Committee of Social Rights (“the Committee”), committee of independent experts established under Article 25 of the European Social Charter (“the Charter”), during its 268th session, Having regard to the request for immediate measures registered on 4 February 2013 and submitted by the Association for the Protection of all Children (APPROACH), asking the Committee to seek appropriate immediate measures, namely Ireland’s immediate commitment to bring forward legislation to remove the “reasonable chastisement” defence and to ensure explicit and effective prohibition of corporal punishment and other cruel or degrading punishment of children, in their homes and in all forms of alternative care, and to work with due diligence towards the elimination of such punishment”; Having regard to the submissions of the Government of Ireland (“the Government”), registered on 27 September 2013, in which the latter considers that this request should be rejected, arguing firstly that the Association has failed to demonstrate that there is a risk of serious irreparable
injury as required by Rule 36 of the Committee’s Rules (“the Rules”), secondly that there is no
danger, if such measures are not taken, that the application will not be fully considered, and,
lastly, that the imposition of immediate measures would be to accept the merits of the complaint
without sufficiently considering the issues;
Having regard to APPROACH’s response to the Government’s submissions in reply to the
request for immediate measures, registered on 25 November 2013;
Having regard to the decision on admissibility of the complaint adopted by the Committee on 2
July 2013;
Having regard to the Charter and to the Rules of the Committee (“the Rules”), in particular to Rule
36, which reads as follows:
“Rule 36 – Immediate measures
1. Since the adoption of the decision on the admissibility of a collective complaint or at any
subsequent time during the proceedings before or after the adoption of the decision on the merits
the Committee may, at the request of a party, or on its own initiative, indicate to the parties any
immediate measure the adoption of which seems necessary with a view to avoiding the risk of a
serious irreparable injury and to ensuring the effective respect for the rights recognised in the
European Social Charter.
2. In case of a request of immediate measures made by a complainant organisation, the request
shall specify the reasons therefore, the possible consequences if it is not granted, and the
measures requested. A copy of the request shall forthwith be transmitted to the respondent State.
The President shall fix a date for the respondent State to make written submissions on the
request of immediate measures.
3. The Committee’s decision on immediate measures shall be accompanied by reasons and be
signed by the President, the Rapporteur and the Executive Secretary. It shall be notified to the
parties. The Committee may request information from the respondent State on the
implementation of the indicated measures.”
Having deliberated on 2 December 2013;
Delivers the following decision, adopted on this date:
The Committee underlines that immediate measures can only be ordered exceptionally, when
they are necessary to avoid the risk of a serious irreparable injury and to ensure effective respect
for the rights recognised in the European Social Charter (Rule 36§1), insofar as the aim and
purpose of the Charter, being a human rights protection instrument, is to protect rights not merely
theoretically, but also in fact (European Federation of National Organisations working with the
Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on immediate
measures of 25 October 2013, para. 1).
It considers, in the light of Article 36, that while it is established that the administration of corporal
punishment may cause serious irreparable injury to the victims, the complaint relates to the
amendment of national regulations and legislation which date back over 18 years and not to
tangible situations in which the persons concerned clearly face a risk of a serious irreparable
injury. Therefore, it is not necessary to indicate to the Government any immediate measures
which should be adopted.
3. Moreover, the Committee considers that the request for measures calling for an immediate
undertaking of Ireland to amend the legislation to make the prohibition of corporal punishment of
children more explicit is inappropriate at this stage of the procedure and within the meaning of
Article 36.
4. For these reasons, the Committee considers that it is not necessary to indicate to the
government any immediate measures which should be adopted

on admissibility and immediate measures of 9 September 2015
108. Centre on Housing Rights and Evictions (COHRE) v. Italy, complaint No. 58/2009, decision on the merits of 25 June 2010, §76 : “The Committee considers that an aggravated violation is constituted when the following criteria are met: on the one hand, measures violating human rights specifically targeting and affecting vulnerable groups are taken; on the other, public authorities not only are passive and do not take appropriate action against the perpetrators of these violations, but they also contribute to such violence.”

109. Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, § 54 : “These aggravated violations do not simply concern their victims or their relationship with the respondent State. They also pose a challenge to the interests of the wider community and to the shared fundamental standards of all the Council of Europe’s member States, namely those of human rights, democracy and the rule of law. The situation therefore requires urgent attention from all the Council of Europe member States. The Committee invites them to publish its decision on the merits, once it has been notified to the parties and to the Committee of Ministers. Turning more specifically to the respondent Government, the finding of aggravated violations implies not only the adoption of adequate measures of reparation but also the obligation to offer appropriate assurances and guarantees of non-repetition and to ensure that such violations cease and do not recur.”


111. Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, § 53 : “53. Having regard to the adoption of measures, which are incompatible with human dignity and specifically aimed at vulnerable groups, and taking into account the active role of the public authorities in framing and implementing this discriminatory approach to security, the Committee considers that the relevant criteria (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 76) have been met and that there was an aggravated violation of human rights from the standpoint of Article 31§2 of the Revised Charter. In reaching this conclusion, the Committee also takes into consideration the fact that it has already found violations in its decision of 19 October 2009 on the merits of Complaint No. 51/2008, European Roma Rights Centre (ERRC) v. France.”
Part II Fundamental principles of interpretation

112. Addendum to Conclusions VI (1982), Iceland: “To avoid expressing an opinion on outdated legal or factual situations, the Committee took into account, every time that was possible, all developments which had taken place subsequent to the period of reference of the first Icelandic report. In this respect, information was in fact communicated to the Committee by the Icelandic Government through the good offices of the Secretary General of the Council of Europe.”

113. Conclusions XV-1 (2000), Denmark: “The Committee notes that Articles 198 and 199 of the Criminal Code, which lay down penalties for idleness or insufficient means of subsistence for which the persons concerned is held responsible were repealed by Act no. 141 of 17 March 1999, outside the reference period. (…) the Committee considers that the situation in Denmark was not in conformity with Article 1 para 2 of the Charter during the reference period with respect to the prohibition of forced labour, as Article 198 and 199 of the Danish Criminal Code were still in force during the reference period”


In this perspective, while respecting the diversity of national traditions of the Council of Europe’s member states, which constitute common European social values and which should not be undermined by the Charter nor by its application; it is important to:
- consolidate adhesion to the shared values of solidarity, non-discrimination and participation;
- identify the principles that ensure that the rights embodied in the Charter are applied equally effectively in all the Council of Europe member states.

The primary responsibility for implementing the European Social Charter naturally rests with national authorities. Having regard to their constitutional arrangements and their welfare and industrial relations systems, these authorities may in turn delegate certain powers to local authorities or the social partners. However, these implementation strategies, if not accompanied by appropriate safeguards, may put at risk the actual implementation of the undertakings under the Charter.”

116. International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32: “32. The Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact”.

117. European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, Decision on the merits of 8 September 2009 §28: “28. The Committee has consistently held that it is clear from the actual wording of Article 31 that it cannot be interpreted as imposing on states an obligation to achieve “results”. However, it notes that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).”

118. International Association Autism-Europe v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §53: “53. The Committee recalls, as stated in its decision relative to Complaint No. 1/1998 (International Commission of Jurist v. Portugal, §32), that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter.”
119. International Movement ATD Fourth World v. France, Complaint No. 33/2006, Decision on the merits of 5 December 2007, §61: “61. In connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.”

120. Marangopoulos Foundation for Human Rights v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §194: “194. The Committee highlights that the Charter is a living instrument, whose purpose is to protect rights not merely theoretically but also in fact (International Commission of Jurists v. Portugal (Complaint No. 1/1998), decision on the merits of 9 September 1999, §32). It therefore interprets the rights and freedoms set out in the Charter in the light of current conditions.”

121. European Federation of National Organisations working with the Homeless (FEANTSA), Complaint No. 39/2006, decision on the merits of 5 December 2007, §64: “64. Further, the United Nations Covenant on Economic, Social and Cultural Rights is a key source of interpretation. Article 11 recognises the right to housing as one element of the right to an adequate standard of living:

“Article 11
1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

122. ILGA v. Czech Republic decision on the merits of 15 May 2018, §75: “75. In light of the issues raised in the complaint the Committee reiterates that it interprets the rights and freedoms set out in the Charter in the light of current conditions (Marangopoulos Foundation for Human Rights v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §194) and in the light of relevant international instruments (European Federation of National Organisations working with the Homeless (FEANTSA), Complaint No. 39/2006, decision on the merits of 5 December 2007, §64), as well as in light of new emerging issues and situations, in other words, the 1961 Charter is a living instrument. The current complaint raises a new issue relating to the health of transgender persons in the Czech Republic, under Article 11 of the 1961 Charter.”

123. International Association Autism-Europe v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §53: “53. The Committee recalls, as stated in its decision relative to Complaint No. 1/1998 (International Commission of Jurist v. Portugal, §32), that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.”

124. International Movement ATD Fourth World v. France, Complaint No. 33/2006, Decision on the merits of 5 December 2007, §§65-66: “65 The Committee notes that in several areas the Government fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks do not appear to be carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights specified in the Charter are likely to remain ineffective.”
66. In connection with timetabling – with which other regulatory bodies of international instruments are also very concerned – it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely.”

125. **Action Européenne des Handicapés (AEH) c. France, Réclamation n° 81/2012, Décision sur le bien-fondé du 11/09/2013, §95-100.** “The Committee notes that France has undoubtedly made a noteworthy effort to rationalise its policy for the schooling of children and adolescents with autism through the two successive plans covering the periods 2005-2007 (1st Autism Plan) and 2008-2010 (2nd Autism Plan).”

96. The Committee considers that the overall timeframe of five years, resulting from the two successive plans, is not too long, bearing in mind the margin of appreciation enjoyed by States Parties.

97. However, the Committee notes that only half of the measures provided for in the 2nd Autism Plan have been more or less completed and that some measures were not even initiated, while a 3rd Autism Plan has been launched in 2013 following a three-year break between plans, meaning that the deadline for achieving the newly assigned objectives is prolonged to 2017.

98. The Committee regards this prolongation as unreasonable and exceeding the margin of appreciation allowed to States Parties.

99. Concerning the criterion of maximum use of available resources, the Committee scrupulously heeds the margin of appreciation that States Parties enjoy in allocating financial resources. However, in the present case, it cannot consider that maximum use is being made of resources for the schooling of children with autism while France subsidises travel to Belgium by children and adolescents with autism of French nationality, who are then accommodated and educated in specialised institutions functioning according to appropriate educational standards, rather than financing the implementation of these standards within specialised institutions active in French territory (see §46 above).

100. The Committee holds therefore that there is a violation of Article 15§1 of the Charter with regard to the right of children and adolescents with autism to be educated primarily in mainstream schools.”

126. **Fédération internationale des Ligues des Droits de l'Homme (FIDH) c. Belgique, Réclamation collective n° 75/2012, Décision sur le bien-fondé du 18/03/2013, §140 -151.** “On the justifications given by the Government for the limited number of care and accommodation places for highly dependent adults with disabilities

140. The Government refers to the increase over a five-year period in the budgets of Belgium’s federated entities which are allocated to care for persons with disabilities by the community. In addition to the fact that these figures are not broken down according to particular disabilities, the FIDH contests them because they do not take account of the average inflation rate recorded over the same reference period (14%), which means that in approximate terms, the average increases in the budget for social services for people with disabilities was 10% instead of the 24% claimed by the Government in Flanders, 2.2% instead of 16.2% in Wallonia and 1.9% instead of 15.9% in Brussels-Capital.

141. The Government also mentions the fact that any planned increase in the budgets allocated to social services for people with disabilities over and above the one that has already been made is prevented by the economic crisis which is currently affecting the country.

142. The Government also provides practical justifications for the fact that the care and accommodation places on offer for persons with severe disabilities do not satisfy the demand. Among other things, it argues that increasing life expectancies mean that people with disabilities remain in care and accommodation centres for a longer time and therefore places are unavailable despite the fact that they have been approved (see §129 above). It also asserts that the growing demand for places in the Brussels-Capital Region is due to the fact that half of highly dependent
persons with disabilities are of foreign origin and were born before their family members arrived in Belgium and applied for family reunification in order to take advantage of forms of medical and social assistance which are still underdeveloped in their country of origin.

143. The Government, echoing its argument that it is pursuing a policy to progressively improve the provision of care and accommodation places for persons with severe disabilities, emphasises the fact that under the articles of the Charter relied on by the FIDH in its complaint, such as Articles 15§3, 16 and 30, states are under an obligation to muster the necessary resources to comply with the Charter but not to achieve the objectives set by these articles.

144. The Committee holds that the practical justifications given by the Government result in a denial of the social service needs of the persons concerned and cannot therefore be accepted.

145. The Committee also holds that because of its wording, Article 14§1 of the Charter forms part of the articles of the Charter which require States Parties to devise and implement appropriate measures in order to ensure, gradually and in due course, the effective exercise of the right in question. The fact that this provision does not require the States Parties to guarantee immediate results or to adopt conduct which may be capable in the absolute of guaranteeing the right immediately (immediate due diligence) does not mean that the conduct of a State Party such as that which is contested in the complaint, which fails to comply with the legal obligation to offer a particular social service to the extent that it denies access to this service to the persons concerned and excludes them from any solution of this type, can be deemed to comply with this provision of the Charter.

146. The Committee does, however, take into account the high cost for the national budget that creating a large number of places in care and accommodation centres for highly dependent persons with disabilities would entail. In view of the demanding and complex treatment which such people require, the Committee does not consider the figure of €100 000 for the creation of a new place referred to by the representative of the authorities at the hearing on persons with severe disabilities held by the Social Affairs Committee of the Brussels French-speaking Parliament (minutes of 25 September 2012) to be excessive.

147. When the implementation of one of the rights guaranteed by the Charter is exceptionally complex and expensive, the measures taken by the state to achieve the Charter's aims must fulfil the following three criteria: (i) a reasonable timeframe, (ii) measurable progress and (iii) financing consistent with the maximum use of available resources (Autism-Europe v. France, op. cit., §53; Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §39). It would also point out that “States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities” and that they must take “practical action to give full effect to the rights recognised in the Charter” (Autism-Europe v. France, ibid., §53). Similarly, “States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources” (European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §35).

148. In the light of the foregoing, the Committee notes that the Government’s realisation of the specific problems of highly dependent persons with disabilities dates back to the 1990s or, at the latest, 2000 and the years just after, when the first legislation or regulations were introduced, directly or indirectly, with regard to these persons.

149. Over a period which the Committee considers to have lasted long enough, the authorities have failed to make any progress on organising the available financial resources in order to prevent the many genuine cases of highly dependent persons with disabilities being denied access to any care or accommodation solution.
150. Despite the length of this period, the Committee, having compared the information provided by the Government with the data and information provided by the FIDH, notes that projects to build new care and accommodation centres, which could have increased the number of places available for persons with severe disabilities, have either been dragging on for years (as is the case with four projects launched by non-profit-making associations in the French Community of the Brussels-Capital Region) or are being run by the parents of persons with disabilities, who are desperately seeking funds and grants to complete them. Deadlines have also been put back in other areas. For example in Flanders, a census of people with disabilities, including persons with severe disabilities, which was decided on in 2003 and scheduled to take place in 2010, has been put back to 2020, and in the Brussels-Capital Region, a decree on the integration of people with disabilities, which is supposed to show due regard for the issue of care for highly dependent persons with disabilities and was originally supposed to have been adopted a year ago, has been put back to 2014 or 2015. Ultimately, the Committee would point out that the lack of objective and reliable figures on the number of persons for whom appropriate solutions have been found or who are awaiting such solutions, whose conformity with the Charter will be assessed subsequently in the context of the complaint, prevents it from judging, even approximately, if there are areas in which progress has been made in the community care provided for these persons despite the generally gloomy picture which has already been painted.

151. None of the justifications given by the Belgian Government for its failure to provide enough places in care and accommodation centres for highly dependent adults with disabilities to ensure that these people are not denied access this form of social service, may legitimately be accepted. The Committee holds therefore that this failure constitutes a violation of Article 14§1 of the Charter.

127. Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on admissibility of 10 October 2005, §15: “15. As regards the Government’s objection in connection with the Committee’s competence ratione temporis, in accordance with the principle of non-retroactivity of treaties as codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties, the starting point for application is the date on which a treaty came into force in a country and not the date of its signature as the Government points out. However there are exceptions to this rule when events occurring before the entry into force of a treaty continue to occur after this date, thus potentially constituting a continuing violation (see, for example, European Court of Human Rights, Papamichalopoulos and others v. Greece, judgment of 24 June 1993, Series A. 260B, §40).”

128. Centre on Housing rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2008, Decision on the merits of 22 June 2010, §§22-26: “22. The Committee refers to the case-law of the European Court of Human Rights on the issue of ratione temporis, which has established clear principles which the Committee considers are suitable for application in interpreting the Social Charter. In particular, the Committee refers to the judgments of the Grand Chamber of the European Court of Human Rights in the cases of Blečić v. Croatia (Application N. 59532/00, Strasbourg, Judgement of 8 March 2006) and Šilih v. Slovenia (Application No. 71463/01, Strasbourg, Judgment of 9 April 2009). In the latter judgment, the Grand Chamber of the European Court of Human Rights commented as follows:

146. The problem of determining the limits of its jurisdiction ratione temporis in situations where the facts relied on in the application fell partly within and partly outside the relevant period has been most exhaustively addressed by the Court in the case of Blečić v. Croatia. In that case the Court confirmed that its temporal jurisdiction was to be determined in relation to the facts constitutive of the alleged interference (§77). In so doing, it endorsed the time of interference principle as a crucial criterion for assessing the Court’s temporal jurisdiction. It found in this respect that “[i]n order to establish the Court’s temporal jurisdiction it is ... essential to identify, in each specific case, the exact time of the alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of the Convention right
alleged to have been violated” (§82). The Court also indicated that if the interference fell outside the Court’s jurisdiction, the subsequent failure of remedies aimed at redressing that interference could not bring it within the Court’s temporal jurisdiction (§77).

23. The Grand Chamber of the European Court of Human Rights in Šilih at §106-118 also made reference to Article 28 of the Vienna Convention of 1969 on the Law of Treaties, Articles 13 and 14 of the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts (adopted by the International Law Commission on 9 August 2001), and other relevant international law and practice, including the jurisprudence of other international courts and committees charged with interpreting international treaty instruments. The Committee considers that this material is also of assistance in considering the issue of *ratione temporis* and in delineating the limits of its temporal jurisdiction.

24. The Committee also considers that the special nature of the rights at issue can be relevant in assessing whether a situation can be said to be ongoing, as accepted by the Grand Chamber of the European Court of Human Rights in Šilih (§147). In this context, the nature of the protection conferred by Article 16 of the Charter, the right at issue, is relevant, in particular its focus on securing effective and continuing protection of family life.

25. Turning to the application of these principles to the issues at stake in the present complaint, the Committee recalls that, in its decision on admissibility, it held that the heart of the complaint concerned alleged violations of the Charter which has continuing and persistent effects at the time it was lodged, which post-dated the ratification by Croatia of the Charter in 2003.

26. The Committee further observes that certain of the factual issues at stake, such as the cancellation of occupancy rights which have allegedly disproportionately affected ethnic Serb communities in Croatia and have allegedly deprived them in a discriminatory manner of the possibility of purchasing their flats under favourable conditions, occurred in the mid-1990s, i.e. the date before the Charter entered into force in respect of Croatia. As such, in line with the approach adopted by the Grand Chamber of the European Court of Human Rights in Blečić and Šilih, the Committee considers that these alleged specific violations fall outside of its temporal jurisdiction.

129. *Syndicat des Agrégés de l’Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, Decision on the merits of 15 June 2005, §34: “34. Article E is of a different nature. Its role is comparable to Article 14 of the European Convention on Human Rights. It has no independent existence and has to be combined with a substantial provision of the Charter. Nevertheless, a measure which in itself is in conformity with the substantial provision concerned may infringe this provision when read in conjunction with Article E for the reason that it is of a discriminatory nature (see, mutatis mutandis, ECourtHR, Belgian Linguistics judgment of 23 July 1968, Series A no. 6, para. 9).”

130. *Confédération française démocratique du Travail (CFDT) v. France*, Complaint No. 50/2008, Decision on the merits of 9 September 2009, §§37-39 and 42 : “37. Article E complements the other substantive clauses of the revised Charter. It has no independent existence as it applies only to “the enjoyment of the rights” safeguarded by these clauses. Although the application of Article E does not necessarily presuppose a breach of these clauses – and to this extent it has an autonomous meaning – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, mutatis mutandis, European Court of Human Rights, Rasmussen judgment of 28 November 1984, Series A No. 87, p. 12, §29).

38. Under Article E, a difference of treatment is discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised” (see, mutatis mutandis, European Court of Human Rights, judgments on the Belgian language case, Marckx and Rasmussen, Series A No. 6, p. 34, §30, No. 31, p. 16, §33, and No. 87, p. 14, §38; see also European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §40).

39. The states party enjoy a certain “margin of appreciation” in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see the
Rasmussen judgment cited above, ibid., p. 15, §40), but it is ultimately for the Committee to decide whether the difference lies within this margin.

42. Article E attempts to prevent discrimination in the enjoyment of the rights enshrined by the Charter where there are different ways of complying with the requirements deriving from it. The notion of discrimination within the meaning of Article E includes, in general, cases where a person or group is treated, without proper justification, less favourably than another, (see, mutatis mutandis, European Court of Human Rights, Abdulaziz, Cabales and Balkandali judgment of 28 November 1984, Series A No. 87, p. 12, §82)."

131. **International Association Autism v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §52:** “52. The Committee observes further that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court of Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the Thlimmenos case [*Thlimmenos c. Grèce* [GC], no 34369/97, CEDH 2000-IV, §44]), the principle of equality that is reflected therein means treating equals equally and unequals unequally. In particular it is said in the above mentioned case: “The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”

In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality. In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.”

132. **Mental disability Advocacy Centre (MDAC) v. Bulgarie, Complaint No. 41/2007, Decision on the merits of 3 June 2008, §§50-51:** “50. The Committee has previously observed that: “The wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court of Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the Thlimmenos case [*Thlimmenos v. Greece* [GC], no 34369/97, ECHR 2000-IV, §44]), the principle of equality that is reflected therein means treating equals equally and unequals unequally. In particular it is said in the above mentioned case: ‘The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different’. In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality.” (Autism-Europe v. France, Collective Complaint No. 13/2002, decision on the merits of 4 November 2003, §52).

51. Therefore, the Committee notes that failure to take appropriate measures to take account of existing differences may amount to discrimination.”

133. **Confédération française démocratique du travail (CFDT) v. France, Complaint No. 50/2008, Decision on the merits of 9 September 2009, §§39 and 41:** “39. The states party enjoy a certain “margin of appreciation” in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see the Rasmussen judgment cited above, ibid., p. 15, §40), but it is ultimately for the Committee to decide whether the difference lies within this margin.

[...]
41. The complainants were not integrated into the C or D category of public officials as the period of service in Germany was not taken into consideration as a period of employment of persons having the civil servants status. The Committee is asked therefore to decide whether in essence the applicants belong to the category of public officials and have only been formally excluded from it because of discrimination or, alternatively, the grounds for the differing treatment that has been applied are justified and proportionate.

134. **Confédération française démocratique du travail (CFDT) v. France, Complaint No. 50/2008, Decision on the merits of 9 September 2009, §§37- 39 and 41.** Article E complements the other substantive clauses of the revised Charter. It has no independent existence as it applies only to “the enjoyment of the rights” safeguarded by these clauses. Although the application of Article E does not necessarily presuppose a breach of these clauses – and to this extent it has an autonomous meaning – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, mutatis mutandis, European Court of Human Rights, Rasmussen judgment of 28 November 1984, Series A No. 87, p. 12, §29).

38. Under Article E, a difference of treatment is discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised” (see, mutatis mutandis, European Court of Human Rights, judgments on the Belgian language case, Marckx and Rasmussen, Series A No. 6, p. 34, §10, No. 31, p. 16, §33, and No. 87, p. 14, §38; see also European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §40).

39. The states party enjoy a certain “margin of appreciation” in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see the Rasmussen judgment cited above, ibid., p. 15, §40), but it is ultimately for the Committee to decide whether the difference lies within this margin.

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135. **European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, Decision on the merits of 19 October 2009, §82.** “82. Under the first category, a difference of treatment between persons or groups being in the same situation is discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised” (CFDT v. France, Complaint No. 50/2008, decision on the merits of 9 September 2009, §38; see also European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §40). The States Parties enjoy a certain “margin of appreciation” in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see mutatis mutandis European Court of Human Rights, Rasmussen judgment of 28 November 1984, Series A No. 87, p. 12, §40), but it is ultimately for the Committee to decide whether the difference lies within this margin.”

136. **Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the merits of 25 June 2010, §§37-40, 106, 117, 120-121, 129, 131, 138, 155-156.** “With regard to racial discrimination, the Committee points out that the European Court of Human Rights held that: “Discrimination on account of one’s actual or perceived ethnicity is a form of racial discrimination (…). Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of enrichment. (…) no difference in treatment which is based exclusively or
to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a
contemporary democratic society built on the principles of pluralism and respect for different
cultures (Timishev v. Russia, judgment of 13 December 2005, §§56 and 58).”
38. The Committee considers that the same interpretation is valid for the Charter.
39. Furthermore, with regard to the Roma in particular, the European Court of Human Rights
takes into account the fact that: “(…) as a result of their history, the Roma have become a specific
type of disadvantaged group and vulnerable minority (…) They therefore require special
protection. (…) special consideration should be given to their needs and their different lifestyle
both in the relevant regulatory framework and in reaching decisions in particular cases (…) not
only for the purpose of safeguarding the interests of the minorities themselves but to preserve
cultural diversity of value to the whole community” (Orsus v. Croatia, judgment of 16 March 2010,
§§147-148).
40. The Committee will also bear in mind these important features.
[…]
106. Civil and political participation of the Roma and Sinti population not only requires strategies
for empowerment from public authorities but also respect for ethnic identity and cultural choices.
In this connection, the Committee refers to the judgment in Chapman v. the United Kingdom
where the European Court of Human Rights observed that: “there is an emerging international
consensus amongst the Contracting States of the Council of Europe recognising the special
needs of minorities and an obligation to protect their security, identity and lifestyle (…), not only
for the purpose of safeguarding the interests of the minorities themselves but to preserve a
cultural diversity that is of value to the whole community” (European Court of Human Rights,
Chapman v. the United Kingdom [GC], judgment of 18 January 2001, no. 27238/95, §93 and
more recently, Muñoz Díaz v. Spain, judgment of 8 December 2009, no. 49151/07, §60).
[…]
117. The Committee observes that the Italian authorities have carried out interventions focusing
on the monitoring of Roma and Sinti camps by means of identification and census of the people
present in such camps, including through fingerprinting of inhabitants or the compilation and
storage of photometric and other personal information in databases, as well as in some cases a
specific identity card allowing access to the camp.
[…]
120. In this context, if discretion must be left to the competent national authorities, the margin will
tend to be narrower where the right at stake is crucial to the individual’s effective enjoyment of
intimate or key rights (see, mutatis mutandis, European Court of Human Rights, Connors v. the
United Kingdom, judgment of 27 May 2004, §82). Where a particularly important facet of an
individual’s existence or identity is at stake, the discretion allowed to the State will be restricted
(see, mutatis mutandis, European Court of Human Rights, Evans v. the United Kingdom [GC],
judgment of 10 April 2007, §77). Similarly, by interpreting Article 7 of Directive 95/46/EC of the
European Parliament and of the Council of 24 October 1995 on the protection of individuals with
regard to the processing of personal data and on the free movement of such data, the Court of
Justice of the European Union (see, mutatis mutandis, case C-524/, Huber v. Bundesrepublik
Deutschland [GC], judgment of 16 December 2008, §§63-65) has stated that, while Community
Law has not excluded the power of Member States to adopt measures enabling the national
authorities to have an exact knowledge of population movements affecting their territory, the
exercise of that power does not, of itself, mean that the collection and storage of individualised
personal information is necessary.
121. The Committee considers that these principles of interpretation are also valid in the context
of Article 16 of the Revised Charter.
[...]
129. The Committee considers that in parallel with Article 8 of the European Convention on Human Rights ("the Convention"), Article 16 of the Revised Charter protects a right to personal development and the right to establish and develop relationships with other human beings and the outside world (see, mutatis mutandis, European Court of Human Rights, P.G. and J.H. v. the United Kingdom, judgment of 25 September 2001, §56).

[...]

131. It also considers, on the other hand, that the conditions in which the operations were carried out, particularly due to the emergency legislation in place, constituted an obstacle to real protection against arbitrariness (see, mutatis mutandis, European Court of Human Rights, Malone v. the United Kingdom, judgment of 2 August 1984, §§66-68; Rotaru v. Romania [GC], judgment of 4 May 2000, §55; Amann v. Switzerland [GC], judgment of 16 February 2000, §56).

[...]

138. During the public hearing and in the written responses provided by the Government, reference was made to the agreement (12 June 2008) by the Italian Council of Journalists' Association of a Code of Conduct ("Rome Charter") on reporting, in a balanced and accurate manner, on asylum and migration issues. The Committee takes note of this new instrument, drafted by the Journalists' Association and the Italian National Press Federation in collaboration with the UNCHR. Even admitting the difficulty of striking the right balance between the freedom of the press and the protection of others in cases of dissemination of racist remarks (see, mutatis mutandis, European Court of Human Rights, Jersild v. Denmark, judgment of 23 September 1994), the Committee finds that the Government has not taken all appropriate steps against misleading propaganda by means of legal and practical measures to tackle racism and xenophobia affecting Roma and Sinti.

[...]

155. According to the European Court of Human Rights: "collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group. That does not mean, however, that where the latter condition is satisfied the background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with Article 4 of Protocol No. 4". (...) in those circumstances and in view of the large number of persons of the same origin who suffered the same fate as the applicants, the Court considers that the procedure followed does not enable it to eliminate all doubt that the expulsion might have been collective." (Conka v. Belgium, no. 51564/99, judgment of 5 February 2002, §§59 and 61)

156. The Committee considers that the same interpretation is valid for the Revised Charter.

137. **International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§50 and 61**: "50. The Committee wishes to emphasise that the obligation under Article 11§2 as defined above does not in it is view affect the rights of parents to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents own religious or philosophical convictions (see European Court of Human Rights, Case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, Judgment of 7 December 1976).

[...]

61. In effect, by officially approving or allowing the use of the textbooks that contain these anti-homosexual statements, the Croatian authorities have failed in their positive obligation to ensure the effective exercise of the right to protection of health by means of non-discriminatory sexual and reproductive health education which does not perpetuate or reinforce social exclusion and the denial of human dignity. As the European Court of Human Rights has stated in the field of the right to education, the public authorities have a duty which "is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the 'functions' assumed by the State. [...] In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State" (see Case of Folgerø and Others v. Norway, Judgment of 29 June 2007, §84). In the context of the right to protection of health through the provision of sexual and reproductive health education as set out in Article 11§2, this positive obligation extends to ensuring that educational materials do not reinforce demeaning stereotypes
and perpetuate forms of prejudice which contribute to the social exclusion, embedded
discrimination and denial of human dignity often experienced by historically marginalised groups
such as persons of non-heterosexual orientation. The reproduction of such state-sanctioned
material in educational materials not alone has a discriminatory and demeaning impact upon
persons of non-heterosexual orientation throughout Croatian society, but also presents a distorted
picture of human sexuality to the children exposed to this material. By permitting sexual and
reproductive health education to become a tool for reinforcing demeaning stereotypes, the
authorities have failed to discharge their positive obligation not to discriminate in the provision of
such education, and have also failed to take steps to ensure the provision of objective and non-
exclusionary health education.”

138. European Roma Rights Centre v. Greece, Complaint No. 15/2003, Decision on the merits of
8 December 2004, §19-21 and 25: “19. The Committee emphasises that one of the underlying
purposes of the social rights protected by the Charter is to express solidarity and promote social
inclusion. It follows that States must respect difference and ensure that social arrangements are
not such as would effectively lead to or reinforce social exclusion. This requirement is exemplified
in the proscription against discrimination in the Preamble and in its interaction with the
substantive rights of the Charter.
20. This imperative to respect difference, avoid discrimination and social exclusion, was recently
the subject of an important judgment given by the European Court of Human Rights, (Connors v
United Kingdom of 27 May 2004 at para 84) where it stated that: “The vulnerable position of
gypsies as a minority means that some special consideration should be given to their needs and
their different lifestyle both in the relevant regulatory framework and in reaching decisions in
particular cases (Buckley judgment cited above, pp. 1292-95, §§76, 80 and 84). To this extent,
there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to
facilitate the gypsy way of life (see Chapman, cited above, §96 and the authorities cited, mutatis
mutandis, therein)” (at para 84).
21. The Committee’s case law has responded in a like manner on the question of how human
difference should be appropriately accommodated. In its decision in Collective Complaint No. 13
which involved the interaction between Article E and Articles 15 (The right of persons with
disabilities to social integration and participation in the life of the community) and 17 (The right of
children and young persons to social, legal and economic protection) it stated: “The Committee
recalls, as stated in its decision Complaint No 1/1998 (International Commission of Jurists v.
Portugal, §32), that the implementation of the Charter requires the State Parties to take not
merely legal action but also practical action to give full effect to the rights recognised in the
Charter. When the achievement of one of the rights in question is exceptionally complex and
particularly expensive to resolve, a State Party must take measures that allow it to achieve the
objectives of the Charter within a reasonable time, with measurable progress and to an extent
consistent with the maximum use of available resources. States Parties must be particularly
mindful of the impact their choices will have for groups with heightened vulnerabilities ……”
[...]
25. The implementation of Article 16 as regards nomadic groups including itinerant Roma, implies
that adequate stopping places be provided, in this respect Article 16 contains similar obligations
to Article 8 of the European Convention of Human Rights.”

139. European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, Decision on the merits
of 18 October 2006, §§35, 37 and 54: “35. The Committee considers that the effective
enjoyment of certain fundamental rights requires a positive intervention by the state: the state
must take the legal and practical measures which are necessary and adequate to the goal of the
effective protection of the right in question. States enjoy a margin of appreciation in determining
the steps to be taken to ensure compliance with the Charter, in particular as regards to the
balance to be struck between the general interest and the interest of a specific group and the
choices which must be made in terms of priorities and resources (mutatis mutandis most recently
European Court of Human Rights, Ilascu and others v. Moldova and Russia, judgment of 8 July
2004, §332). Nonetheless, “when the achievement of one of the rights in question is exceptionally
complex and particularly expensive to resolve, a State Party must take measures that allows it to
achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources” (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

37. As regards the adequacy of the measures taken by the Government, the Committee firstly considers that the national authorities are better placed to evaluate the needs of their country (mutatis mutandis European Court of Human Rights, Hatton and others v. the United Kingdom, judgment of 2 October 2001, Appl. No. 36022/97, §96), and that it is not the task of the Committee to substitute itself in determining the policy best adapted to the situation. Nonetheless, as stated in the Autism-Europe decision (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53), the measures taken must meet the following three criteria: (i) a reasonable timeframe, (ii) a measurable progress and (iii) a financing consistent with the maximum use of available resources.”

54. The Committee finds that the legislation allowing, inter alia, the legalisation of illegal constructions did exist (2001 Territorial Planning Law), but that it set conditions too stringent to be useful in redressing the particularly urgent situation of the housing of Roma families (respect of constructions' safety and hygiene rules, official documents attesting property, residence in the district for more than five years), situation which is also recognised by the Government. Moreover, the Committee considers that it follows from the fact that illegal Roma settlements have been existing for many years and that, though not uniform, provision of public services, as electricity, was ensured and inhabitants charged for it, that state authorities acknowledged and tolerated de facto the actions of Roma (mutatis mutandis European Court of Human Rights, Oneryildiz v. Turkey, judgment of 30 November 2004, Appl. No. 48939/99, §105 and §§127-128). Accordingly, though state authorities enjoy a wide margin of appreciation as to the taking of measures concerning town planning, they must strike the balance between the general interest and the fundamental rights of the individuals, in the particular case the right to housing and its corollary of not making individual becoming homeless.”


143. International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, Complaint No. 49/2008, Decision on the merits of 11 December 2009, §§37 and 58: “37. Furthermore: “One of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion. This requirement is exemplified in the proscription against discrimination in the Preamble and in its interaction with the substantive rights of the Charter.” This imperative to respect difference, avoid discrimination and social exclusion, was (…) the subject of an important judgment given by the European Court of Human Rights, (Connors v United Kingdom of 27 May 2004 at para 84) where it stated that: “The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (Buckley judgment cited above, pp. 1292-95, §§76, 80 and 84). To this extent, there is thus a positive obligation
imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see Chapman, (...) §96 and the authorities cited, mutatis mutandis, therein)” (European Roma Rights Center v. Greece, Complaint No 15/2003 decision on the merits of 8 December 2004 §§19-20).

58. The Committee refers in this respect to the judgment of the European Court of Human Rights in Connors v. The United Kingdom, judgment of 27 May 2004, where the court stated “The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see Buckley, cited above, pp. 1292-93, §76, Chapman v. the United Kingdom [GC], no. 27138/95, ECHR 2001-I, §92)” (§83). It also refers to the judgment of the European Court of Human Rights in McCann v. The United Kingdom 13 May 2008, (§50).”


145. International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, Complaint No. 49/2008, Decision on the merits of 11 December 2009, §§37 and 38: “37. Furthermore: “One of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion. This requirement is exemplified in the proscription against discrimination in the Preamble and in its interaction with the substantive rights of the Charter. This imperative to respect difference, avoid discrimination and social exclusion, was (...) the subject of an important judgment given by the European Court of Human Rights, (Connors v United Kingdom of 27 May 2004 at para 84) where it stated that: “The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (Buckley judgment cited above, pp. 1292-95, §§76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see Chapman, (...) §96 and the authorities cited, mutatis mutandis, therein)” (European Roma Rights Center v. Greece complaint No 15/2003 decision on the merits of 8 December 2004 §§19-20).

38. The Committee notes from the information provided by the Government that certain progress has been achieved in ameliorating the living conditions of Roma. It notes in this respect the housing loans programme was extended in that both the number of loans available and the amount of each loan was increased and that to date over 9,000 loans have been approved and over 5,000 disbursed, it also notes the construction of a permanent settlement in Messinia, the establishment of both fixed and mobile medico social centres as well as general developments in non-discrimination legislation which covers access to goods and services including housing.”

146. Confédération Française de l’Encadrement (CFE-CGC) v. France, Complaint No. 16/2003, Decision on the merits of 12 October 2014, §30: “30. In response to the Government’s argument that compliance with Community law automatically implies that a situation is in conformity with the Charter, the Committee states that the fact that the provision at stake is based on a Community Directive does not remove it from the ambit of Article 2 of the Charter (see, mutatis mutandis, European Court of Human Rights, case Cantoni v. France, judgment of 22 October 1996, §30.)”


32. The Committee notes that the European Court of Human Rights has already found that in certain circumstances there may be a presumption of conformity of European Union Law with the
European Convention on Human Rights ("the Convention") by reason of a certain number of indicators resulting from the place given in European Union law to civil and political rights guaranteed by the Convention.

33. The Committee considers that neither the situation of social rights in the European Union legal order nor the process of elaboration of secondary legislation would justify a similar presumption – even rebuttable – of conformity of legal texts of the European Union with the European Social Charter.

[...]
87. The Committee has already stated that, whilst the Protocol does not regulate the issue of compensation for expenses incurred in connection with complaints, it considers that as a consequence of the quasi-judicial nature of the proceedings under the Protocol in case of a finding of a violation of the Charter, the respondent State should meet at least some of the costs incurred. Furthermore, the Committee of Ministers accepted the principle of such a form of compensation (CFE-CGC v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §§75-76).

88. Consequently, when such a claim is made, the Committee will examine it and submit its opinion regarding it to the Committee of Ministers, leaving it to the latter to decide how it might invite the Government to meet all or part of these expenses (CFE-CGC v. France, ibid., §77). For costs to be taken into consideration by the Committee, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see, mutatis mutandis, judgment of the European Court of Human Rights, Nikolova v. Bulgaria, 25 March 1999, paragraph 79)."

148. **Confédération générale du Travail** (CGT) v. France, Complaint No. 55/2009, Decision on the merits of 23 June 2010, §§32 and 34-35: "32. In reply to this argument, the Committee reiterates that the fact that the provisions at stake are based on a European Union directive does not remove them from the ambit of the Charter (CFE-CGC v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §30; see also, mutatis mutandis, Cantoni v. France, judgment of the European Court of Human Rights of 15 November 1996, §30).

[...]
34. The Committee notes that the European Court of Human Rights has already found that in certain circumstances there may be a presumption of conformity of European Union Law with the European Convention on Human Rights ("the Convention") by reason of a certain number of indicators resulting from the place given in European Union law to civil and political rights guaranteed by the Convention.

35. The Committee considers that neither the situation of social rights in the European Union legal order nor the process of elaboration of secondary legislation would justify a similar presumption – even rebuttable – of conformity of legal texts of the European Union with the European Social Charter."

149. **European Roma Rights Centre v. Bulgaria**, Complaint No. 31/2005, Decision on the merits of 18 October 2006, §§35, 37 and 54: "35. The Committee considers that the effective enjoyment of certain fundamental rights requires a positive intervention by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources (mutatis mutandis most recently European Court of Human Rights, Ilascu and others v. Moldova and Russia, judgment of 8 July 2004, §332). Nonetheless, "when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Autism-Europe v. France, Complaint N° 13/2002, decision on the merits of 4 November 2003, §53).

[...]
37. As regards the adequacy of the measures taken by the Government, the Committee firstly considers that the national authorities are better placed to evaluate the needs of their country
(mutatis mutandis European Court of Human Rights, Hatton and others v. the United Kingdom, judgment of 2 October 2001, Appl. No. 36022/97, §96), and that it is not the task of the Committee to substitute itself in determining the policy best adapted to the situation. Nonetheless, as stated in the Autism-Europe decision (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53), the measures taken must meet the following three criteria: (i) a reasonable timeframe, (ii) a measurable progress and (iii) a financing consistent with the maximum use of available resources.

54. The Committee finds that the legislation allowing, inter alia, the legalisation of illegal constructions did exist (2001 Territorial Planning Law), but that it set conditions too stringent to be useful in redressing the particularly urgent situation of the housing of Roma families (respect of constructions’ safety and hygiene rules, official documents attesting property, residence in the district for more than five years), situation which is also recognised by the Government. Moreover, the Committee considers that it follows from the fact that illegal Roma settlements have been existing for many years and that, though not uniform, provision of public services, as electricity, was ensured and inhabitants charged for it, that state authorities acknowledged and tolerated de facto the actions of Roma (mutatis mutandis European Court of Human Rights, Oneryildiz v. Turkey, judgment of 30 November 2004, Appl.No. 48939/99, §105 and §§127-128). Accordingly, though state authorities enjoy a wide margin of appreciation as to the taking of measures concerning town planning, they must strike the balance between the general interest and the fundamental rights of the individuals, in the particular case the right to housing and its corollary of not making individual becoming homeless.”

150. International Movement ATD Fourth World v. France, Complaint No. 33/2006, Decision on the merits of 5 December 2007, §§68-69: “68. The Committee considers that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied.
69. This applies above all to the European Convention on Human Rights. The Committee is particularly concerned that its interpretation of Article 31 is fully in line with the European Court of Human Rights’ interpretation of the relevant provisions of the Convention.”

151. European Federation of national Organisations working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, Decision on the merits of 5 December 2007, §§64-65: “64. The Committee considers that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied.
65. This applies above all to the European Convention on Human Rights. The Committee is particularly concerned that its interpretation of Article 31 is fully in line with the European Court of Human Rights’ interpretation of the relevant provisions of the Convention.”

152. European Federation of national Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, Decision on the merits of 8 September 2009, §§32-35: “32. The Committee considers that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied.
33. This applies above all to the European Convention on Human Rights. The Committee is particularly concerned that its interpretation of Article 31 is fully in line with the European Court of Human Rights’ interpretation of the relevant provisions of the Convention.
34. In this respect, it is clear from several Court judgments that not all interference by a state in the relationship between landlord and tenant can be regarded as contrary to the Convention. For example, in the case Mellacher and Others v. Austria, the Court held that the amendments made to Austrian legislation on housing, which provided for a number of restrictions on the rights of private landlords with regard to existing leases (rents had been strictly controlled and it had been prohibited to terminate existing leases) did not, contrary to what the applicants maintained, amount to a de facto expropriation but amounted merely to a control of the use of the property with a view to finding a solution to the housing problems of a significant number of citizens, in the
public interest, the interference being proportionate in terms of the balance to be struck between the public aim pursued and the interests of the owners concerned.

35. Likewise, in the case of Thörs v. Iceland, the Court, when assessing on the right of pre-
emption conferred on tenants by existing Icelandic law, at a purchase price that was, moreover, regulated by statute, dismissed the owner’s application as being manifestly ill-founded.”

153. **World Organisation against Torture (OMCT) v. Greece, Complaint No. 17/2003, Decision on the merits of 7 December 2004, §31:** “31. The Committee furthermore recalls that the Charter is a living instrument which must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments. In its interpretation of Article 17 the Committee refers, in particular to,
a. Article 19 of the United Nations Convention on the Rights of the Child and case-law as interpreted by the Committee on the Rights of the Child;
b. Article 3 of the European Convention on Human Rights as interpreted by the European Court of Human Rights (inter alia Tyrer v. the United Kingdom, 1978, as regards judicial birching of children, Campbell and Cosans v. the United Kingdom, 1982 as regards corporal punishment inflicted at school and A v. the United Kingdom, 1998, as regards parental corporal punishment);
c. Recommendation No. R (93) 2 on the medico-social aspects of child abuse adopted by the Committee of Ministers on 22 March 1993; Recommendation No. R (90) 2 on social measures concerning violence within the family adopted by the Committee of Ministers on 15 January 1990; Recommendation No. R(85)4 on violence within the Family adopted by the Committee of Ministers on 26 March 1985;

154. **World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, Decision on the merits of 7 December 2004, §§60 and 63:** “60. As to Article 17 of the Revised Charter, the wording of Article 17§1 b, inter alia specifically mentions protection from “violence”. The Committee therefore has to interpret the meaning of this provision and define its scope and the precise rights it guarantees to individuals. The Committee also considers as the European Court of Human Rights has done in respect of the European Convention on Human Rights, that a teleological approach should be adopted when interpreting the Revised Charter, i.e. it is necessary to seek the interpretation of the treaty that is most appropriate in order to realise the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties.

63. The Committee furthermore recalls that the Charter is a living instrument which must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments. In its interpretation of Article 17 the Committee refers, in particular to,
a. Article 19 of the United Nations Convention on the Rights of the Child as interpreted by the Committee on the Rights of the Child;
b. Article 3 of the European Convention on Human Rights as interpreted by the European Court of Human Rights (inter alia Tyrer v. the United Kingdom, 1978, as regards judicial birching of children, Campbell and Cosans v. the United Kingdom, 1982 as regards corporal punishment inflicted at school and A v. the United Kingdom, 1998, as regards parental corporal punishment);
c. Recommendation No. R (93) 2 on the medico-social aspects of child abuse adopted by the Committee of Ministers on 22 March 1993; Recommendation No. R (90) 2 on social measures concerning violence within the family adopted by the Committee of Ministers on
d. 15 January 1990; Recommendation No. R(85)4 on violence within the Family adopted by the Committee of Ministers on 26 March 1985;

155. World Organisation against Torture (OMCT) v. Italy, Complaint No. 19/2003, Decision on the merits of 7 December 2004, §41: “41. The Committee furthermore recalls that the Charter is a living instrument which must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments. In its interpretation of Article 17 the Committee refers, in particular to,
a. Article 19 of the United Nations Convention on the Rights of the Child as interpreted by the Committee on the Rights of the Child;
b. Article 3 of the European Convention of Human Rights as interpreted by the European Court of Human Rights (inter alia Tyrer v. the United Kingdom, 1978, as regards judicial birching of children, Campbell and Cosans v. the United Kingdom, 1982 as regards corporal punishment inflicted at school and A v. the United Kingdom, 1998, as regards parental corporal punishment);
c. Recommendation No. R (93) 2 on the medico-social aspects of child abuse adopted by the Committee of Ministers on 22 March 1993; Recommendation No. R (90) 2 on social measures concerning violence within the family adopted by the Committee of Ministers on 15 January 1990; Recommendation No. R(85)4 on violence within the Family adopted by the Committee of Ministers on 26 March 1985;

156. World Organisation against Torture (OMCT) v. Portugal, Complaint No. 20/2003, Decision on the merits of 7 December 2004, §34: “34. The Committee furthermore recalls that the Charter is a living instrument which must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments. In its interpretation of Article 17 the Committee refers, in particular to:
a. Article 19 of the United Nations Convention on the Rights of the Child as interpreted by the Committee on the Rights of the Child;
b. Article 3 of the European Convention of Human Rights as interpreted by the European Court of Human Rights (inter alia Tyrer v. the United Kingdom, 1978, as regards judicial birching of children, Campbell and Cosans v. the United Kingdom, 1982 as regards corporal punishment inflicted at school and A v. the United Kingdom, 1998, as regards parental corporal punishment);
c. Recommendation No. R (93) 2 on the medico-social aspects of child abuse adopted by the Committee of Ministers on 22 March 1993; Recommendation No. R (90) 2 on social measures concerning violence within the family adopted by the Committee of Ministers on 15 January 1990; Recommendation No. R(85)4 on violence within the Family adopted by the Committee of Ministers on 26 March 1985;

157. World Organisation against Torture (OMCT) v. Belgium, Complaint No. 21/2003, Decision on the merits of 7 December 2004, §38: “38. The Committee furthermore recalls that the Charter is a living instrument which must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments. In its interpretation of Article 17 the Committee refers, in particular to:
a. Article 19 of the United Nations Convention on the Rights of the Child as interpreted by the Committee on the Rights of the Child;
b. Article 3 of the European Convention of Human Rights as interpreted by the European Court of Human Rights (inter alia Tyrer v. the United Kingdom, 1978, as regards judicial birching of children, Campbell and Cosans v. the United Kingdom, 1982 as regards corporal punishment inflicted at school and A v. the United Kingdom, 1998, as regards parental corporal punishment);
c. Recommendation No. R (93) 2 on the medico-social aspects of child abuse adopted by the Committee of Ministers on 22 March 1993; Recommendation No. R (90) 2 on social measures concerning violence within the family adopted by the Committee of Ministers on 15 January 1990; Recommendation No. R(85)4 on violence within the Family adopted by the Committee of Ministers on 26 March 1985;


158. **Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §§196 and 202:** “196. The Committee would like to take the opportunity presented by this complaint to clarify its interpretation of the right to a healthy environment. In doing so, it takes account of the principles established in the case-law of other human rights supervisory bodies, namely the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples’ Rights at the regional level, and the UN Committee on Economic, Social and Cultural Rights at the global level. In view of the scale and level of detail of the European Union’s body of law governing matters covered by the complaint, it has also taken account of several judgments of the Court of Justice of the European Communities. […]

202. Under Article 11 of the Charter, everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable. The Committee sees a clear complementarity between Article 11 of the Charter and Article 2 (right to life) of the European Convention on Human Rights, as interpreted by the European Court of Human Rights (General Introduction to Conclusions XVII-2 and 2005, Statement of Interpretation on Article 11, §5). Measures required under Article 11 should be designed, in the light of current knowledge, to remove the causes of ill-health resulting from environmental threats such as pollution (this link was established in Conclusions XV-2, Poland, Article 11§1).”

159. **Federation of Finnish Enterprises v. Finland, Complaint No. 35/2006, Decision on the merits of 16 October 2007, §§28-29:** “28. In order to determine whether the rules relating to the effects of collective agreements are compatible with Article 5 of the Charter it is essential to interpret the provisions of Article 5 taking into account Article 6 of the Charter. It follows from this that it is legitimate in principle that the legal rules applicable to working conditions be the result of collective bargaining. Such a system implies that employers may be treated differently depending on whether or not they are members of an organisation.

29. Such a conclusion may of course lead to an incompatibility with Article 5 but only if it were to affect the very substance of the freedom of association (see judgment of the European Court of Human Rights in Gustafsson v Sweden of 25 April 1998).”

160. **Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, Decision on the merits of 20 October 2009, §§41-42:** “41. Like the European Court of Human Rights (“the Court”), the Committee acknowledges that States have the right under international law to control the entry, residence and expulsion of aliens from their territories (see mutatis mutandis European Court of Human Rights, Moustaquim v. Belgium, judgment of 18 February 1991, Series A no. 193, p. 19, §43 and European Court of Human Rights, Beldjoudi v. France, judgment of 26 March 1992, Series A no. 234-A, p. 27, §74). The Netherlands is thus justified in treating children lawfully residing and children unlawfully present in its territory differently.

42. Like the Court, the Committee however highlights that States’ interest in foiling attempts to circumvent immigration rules must not deprive foreign minors, especially if unaccompanied, of the protection their status warrants. The protection of fundamental rights and the constraints imposed by a State’s immigration policy must therefore be reconciled (see mutatis mutandis European Court of Human Rights, Mubilanzila Mayeka and Kaniki Mitunga v Belgium, judgment of 12 October 2006 §81).”
**161.** *Mouvement international ATD Quart Monde v. France, Complaint No. 33/2006, Decision on the merits of 5 December 2007, §§68-71*: “68. The Committee considers that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied.

69. This applies above all to the European Convention on Human Rights. The Committee is particularly concerned that its interpretation of Article 31 is fully in line with the European Court of Human Rights’ interpretation of the relevant provisions of the Convention.

70. Further, the United Nations Covenant on Economic, Social and Cultural Rights is a key source of interpretation. Article 11 recognises the right to housing as one element of the right to an adequate standard of living:

“Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

[...]

71. The Committee also attaches great importance to General Comments 4 and 7 of the UN Committee on Economic, Social and Cultural Rights. The Committee has also paid close attention to and greatly benefited from the work of the United Nations Special Rapporteur on the Right to Adequate Housing, Miloon Kothari.”


“The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.”

21. The United Nations Committee on Economic, Social and Cultural Rights made the following comments as to adequate housing and forced evictions:

**General Comment 4**

“8. (...) notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States Parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups. (…)

“18. (...) instances of forced eviction are prima facie incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.” (Doc. E/1992/23: “The right to adequate housing”)

**General Comment 7**

“13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.”

“16. Appropriate procedural protection and due process are essential aspects of all human rights but it is especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of rights recognized in both International Human Rights Covenants [the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights]. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons
carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”

“17. Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.” (Doc. E/1998/22: “Forced evictions, and the right to adequate housing”)

163. **Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, Decision on the merits, 3 June 2008, §37:** “37. The Committee considers that all education provided by states must fulfil the criteria of availability, accessibility, acceptability and adaptability. It notes in this respect General Comment No. 13 of the Committee on Economic, Social and Cultural Rights of the United Nations International Covenant on Economic, Social and Cultural Rights on the right to education (document E/C.12/1999/10 of 8 December 1999, §6). In the present case, the criteria of accessibility and adaptability are at stake, i.e. educational institutions and curricula have to be accessible to everyone, without discrimination and teaching has to be designed to respond to children with special needs.”


“Article 8
1. The States Parties to the present Covenant undertake to ensure:
(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. [...].”


“Article 22
1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. [...]."

166. **Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, Decision on the merits, 20 October 2009, §29**: “29. In particular, when ruling on situations where the interpretation of the Charter concerns the rights of a child, the Committee considers itself bound by the internationally recognised requirement to apply the best interests of the child principle. It is indeed mindful that in General Comment No. 5 (document CRC/GC/2003/5, §§45-47), the Committee on the Rights of the Child stated that “Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions – by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children”.

167. **World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, Decision on the merits, 7 December 2004, §61**: “61. The Committee sets out its reasoning on the substance of the issue below, but by way of preliminary remarks the Committee recalls that when it stated the interpretation to be given to Article 17 in 2001 (see below), it was influenced by an emerging international consensus on the issue and notes that since this consensus is stronger. As regards its reference to the UN Convention on the Rights of the Child, the Committee recalls that this treaty is one of the most ratified treaties, and has been ratified by all member states of the Council of Europe including Ireland, and therefore it was entirely appropriate for it to have regard to it as well as the case law of the UN Committee on the Rights of the Child.”

168. **Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits, 6 December 2006, §§196 and 202**: “196. The Committee would like to take the opportunity presented by this complaint to clarify its interpretation of the right to a healthy environment. In doing so, it takes account of the principles established in the case-law of other human rights supervisory bodies, namely the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples’ Rights at the regional level, and the UN Committee on Economic, Social and Cultural Rights at the global level. In view of the scale and level of detail of the European Union's body of law governing matters covered by the complaint, it has also taken account of several judgments of the Court of Justice of the European Communities. [...] 202. Under Article 11 of the Charter, everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable. The Committee sees a clear complementarity between Article 11 of the Charter and Article 2 (right to life) of the European Convention on Human Rights, as interpreted by the European Court of Human Rights (General Introduction to Conclusions XVII-2 and 2005, Statement of Interpretation on Article 11, §5). Measures required under Article 11 should be designed, in the light of current knowledge, to remove the causes of ill-health resulting from environmental threats such as pollution (this link was established in Conclusions XV-2, Poland, Article 11§1).”


18. Principle 21 of the Pinheiro Principles establishes that all refugees and displaced persons have the right to full and effective compensation, monetary or in kind, as an integral component of the restitution process. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible. They should ensure that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice. Principle 21 of the Pinheiro Principles establishes that all refugees and displaced persons have the right to full and effective compensation, monetary or in kind, as an integral component of the restitution process.”

171. Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §81 “In addition the Committee considers that any medical treatment without informed consent necessarily raises issues under Article 11 of the 1961 Charter. Informed consent has been defined by the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental health (see above §36) as follows: “informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers. Its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well-being.”

172. Confédération générale du Travail (CGT) c. France, Complaint No. 55/2009, Decision on the merits, 23 June 2010, §§31-38: “31. The Government considers that the national situation is in conformity with European Union law and, as a result, that it is in conformity with the Charter. In reply to this argument, the Committee reiterates that the fact that the provisions at stake are based on a European Union directive does not remove them from the ambit of the Charter (CFE-CGC v. France, complaint No. 16/2003, decision on the merits of 12 October 2004, §30; see also, mutatis mutandis, Cantoni v. France, judgment of the European Court of Human Rights of 15 November 1996, §30).

33. In this regard, the Committee has already stated that it is neither competent to assess the conformity of national situations with a directive of the European Union nor to assess compliance of a directive with the European Social Charter. However, when member states of the European Union agree on binding measures in the form of directives which relate to matters within the remit of the European Social Charter, they should – both when preparing the text in question and when transposing it into national law – take full account of the commitments they have taken upon ratifying the European Social Charter. It is ultimately for the Committee to assess compliance of a national situation with the Charter, including when the transposition of a European Union directive into domestic law may affect the proper implementation of the Charter.

34. The Committee notes that the European Court of Human Rights has already found that in certain circumstances there may be a presumption of conformity of European Union Law with the European Convention on Human Rights (“the Convention”) by reason of a certain number of indicators resulting from the place given in European Union law to civil and political rights guaranteed by the Convention.

35. The Committee considers that neither the situation of social rights in the European Union legal order nor the process of elaboration of secondary legislation would justify a similar presumption – even rebuttable – of conformity of legal texts of the European Union with the European Social Charter.”
36. Furthermore, the lack of political will of the European Union and its member states to consider at this stage acceding to the European Social Charter at the same time as to the European Convention on Human Rights reinforces the Committee’s assessment.

37. The Committee will carefully follow developments resulting from the gradual implementation of the reform of the functioning of the European Union following the entry into force of the Treaty of Lisbon, including the Charter of fundamental rights. It will review its assessment on a possible presumption of conformity as soon as it considers that factors which the Court has identified when pronouncing on such a presumption in respect of the Convention and which are currently missing insofar as the European Social Charter is concerned have materialised.

38. In the meantime, whenever it has to assess situations where states take into account or are bound by legal texts of the European Union, the Committee will examine on a case-by-case basis whether respect for the rights guaranteed by the Charter is ensured in domestic law.”

173. **Conclusions 2005, Cyprus**: “The Committee notes that to be in conformity with Article 3§2 of the Revised Charter the occupational health and safety regulations must specifically cover the great majority of risks listed in the General Introduction to Conclusions XIV-2 (p. 39). The transposition of most of the Community acquis shows that this general obligation has been met.”

174. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§1 of the 1961 Charter**: “Protection against asbestos” International technical reference standards are ILO Convention No. 162 of 1986 on asbestos (ratified by seven Contracting Parties to the Charter) and Community Directive 83/477 on the protection of workers from the risks related to exposure to asbestos at work, amended by Directive 91/382. The Committee also notes that the Parliamentary Assembly of the Council of Europe adopted a recommendation on the dangers of asbestos for workers and the environment (Recommendation No. 1369 (1998)).”

175. **Conclusions 2005, Cyprus**: “For the situation to be in conformity with Article 3§2, states must offer effective protection against the risks related to ionising radiation, which involves adjusting their regulations to take account of the recommendations of the International Commission on Radiological Protection (ICRP). It considers that these recommendations are sufficiently reflected in the dose limits in Directive 96/29/Euratom and that the situation in Cyprus is therefore in conformity with Article 3§2 in this regard.”


40. The Committee notes from the outset that, whilst the European Social Charter has been ratified by all member states of the European Union and the Treaty on the European Union explicitly refers to it on several occasions, the preamble of this Directive does not make any reference to it.

41. Notwithstanding this oversight, the Committee considers that the concerns underlying the text of this Directive undoubtedly show the authors’ intention to comply with the rights enshrined in the Charter. It believes that the practical arrangements agreed between member states of the European Union, if properly applied, do not prevent a concrete and effective exercise of the rights contained in particular in Articles 2§1 and 4§2 of the Revised Charter.

42. However, the Committee notes that the Directive at stake provides for many exceptions and exemptions which may adversely affect respect for the Charter by States in practice. It thus
considers that depending on how Member States of the European Union make use of those exemptions and exceptions or combine them, the situation may be compatible or incompatible with the Charter.”


178. *Conclusions 2011, Statement of Interpretation on Article 19§6,* “The Committee notes that with regard to the implementation of Article 19§6, several States have invoked the application of the Directive of the European Union (EU) 2003/86/EC on the right to family reunification. In this regard, the Committee recalls that it rules on the Charter and not on EU law. In any case, it notes that the above directive, *expressis verbis*, is without prejudice to more favourable provisions of the Charter.

Referring to its decision of 23 June 2010 on the merits of Complaint No. 55/2009, *Confédération générale du Travail (CGT) v. France* (§§31-42), the Committee concludes that the above-mentioned directive contains provisions allowing the member states concerned to adopt and apply rules that infringe Article 19§6 of the Charter.

These provisions concern in particular:

a) the length of residence requirement for migrant workers wishing to be joined by members of their family.

In this connection, the Committee has always considered (cf. Conclusions I, Germany), taking account of the provisions of the European Convention on the Legal Status of Migrant Workers (ETS No. 93), that a length of more than one year is excessive and, consequently, in breach of the Charter.

b) The exclusion of social assistance from the calculation of the income of a migrant worker who has applied for family reunion (in connection with the criteria relating to available means).

The Committee notes that the Court of Justice of the EU (CJEU) has already limited the possibility provided by the above-mentioned Directive to restrict family reunification on the ground of available income (see CJEU judgment of 4 March 2010, case Chakroun, C-578/08, paragraph 48).

The Committee recalls in this respect that migrant workers who have sufficient income to provide for the members of their families should not be automatically denied the right to family reunion because of the origin of such income, in so far as they are legally entitled to the benefits they may receive.

In view of the above and of the relevant case-law of the European Court of Human Rights (ECtHR) - see judgment of 19 February 1996, Gül v. Switzerland, No. 23218/94 – the Committee considers that the above-mentioned exclusion is such as to prevent family reunion rather than facilitating it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is consequently not in conformity with the Charter.

c) The requirement that members of the migrant worker's family sit language and/or integration tests to be allowed to enter the country, or pass these tests once they are in the country to be granted leave to remain.

In this connection, the Committee considers that, in so far as this requirement, because of its particularly stringent nature, discourages applications for family reunion, it constitutes a condition likely to prevent family reunion rather than facilitating it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is consequently not in conformity with the Charter.”

179. *Conclusions I (1969), Germany:* “In its examination of the first Report submitted by the Government of the Federal Republic of Germany the Committee observed a contradiction between the statistics supplied by the government, showing that a large number of foreign workers are accompanied by their wives, and the existence of certain discriminatory practices with regard to obtaining housing (which has already been mentioned under Article 19 (4)) and with respect to the grant of residence permits for members of the families of migrant workers from Contracting States not members of the European Communities. The Committee noted that residence permits are only granted to members of the family of migrant workers if the workers
have been resident in the Federal Republic for at least three years. In those circumstances the Committee found that it was not in a position to decide whether or not the Federal Republic of Germany satisfies its undertaking under this paragraph and hoped to find additional information in the Federal Government's second biennial Report.”

180. **Conclusions 2009, General Introduction, §§15-18:** “Comment on the application of the Charter in the context of the global economic crisis:

15. The Committee notes that during the reference period of the current reporting cycle the economic climate in Europe was still generally favourable and many governments were expanding their social safety nets. However, the severe financial and economic crisis that broke in 2008 and 2009 has already had significant implications on social rights, in particular those relating to the thematic group of provisions “Health, social security and social protection” of the current reporting cycle. Increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline.

16. In this context, the Committee recalls that under the Charter the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.

17. From this point of view, the Committee considers that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.

18. The Committee also recalls that 2010 is the European Year for Combating Poverty and Social Exclusion, focusing on promoting solidarity, social justice and social inclusion. One of the key priorities of the European Year is to recognise the fundamental right of people in a situation of poverty and social exclusion to live in dignity and to play a full part in society. In this context the Committee wishes to reiterate that the right to protection against poverty and social exclusion is one the fundamental rights protected under the revised Charter. Concerted efforts of states to accept and secure this right are therefore pertinent.”

181. **General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, Decision on the merits of 23 May 2012, §§16 to 18:** “16. However the Committee said, in the general introduction to Conclusions XIX-2 (2009) on the repercussions of the economic crisis on social rights, that, while the “increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline”, by acceding to the 1961 Charter, the Parties “have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.” Accordingly, it concluded that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.

17. The Committee considers that what applies to the right to health and social protection should apply equally to labour law and that while it may be reasonable for the crisis to prompt changes in current legislation and practices in one or other of these areas to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter.

18. The Committee considers that a greater employment flexibility in order to combat unemployment and encourage employers to take on staff, should not result in depriving broad categories of employees, particularly those who have not had a stable job for long, of their fundamental rights in the field of labour law, protecting them from arbitrary decisions by their employers or from economic fluctuations. The establishment and maintenance of such rights in the two fields cited above is indeed one of the aims the Charter. In addition, doing away with such guarantees would not only force employees to shoulder an excessively large share of the
consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection.”

182. **Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, Decision on the merits of 7 December 2012, §75:**

“75. More generally, the Committee has already been called to express its opinion on the repercussions of the economic crisis on the social rights, that the “increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increases, while tax and social security contribution revenues decline”. There it noted that by acceding to the 1961 Charter, the states parties “have accepted to pursue by all appropriate means the attainment of conditions in which, inter alia, the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.” Accordingly, “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need protection the most” (General introduction to Conclusions XIX-2, 2009). The Committee has recently readopted this analysis and précised that “doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection” (General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §18).”
Article 1 The right to work

Article 1§1

183. Conclusions I (1969), Statement of interpretation on Article 1§1: “The Committee interpreted this provision as imposing an obligation as to means rather than as to results. It recognised that in order to decide whether a country is really fulfilling this obligation, it is necessary to adopt a dynamic standpoint, to assess the situation existing at a given moment having regard to the continuous action pursued.”

184. Conclusions III (1973), Statement of Interpretation on Article 1§1 “On considering the reports submitted as part of the third cycle of supervision, the Committee reaffirmed its earlier view that the provisions of Article 1, paragraph 1 are, firstly, of a dynamic character and, secondly, carry an obligation as to means rather than as to results. It also made it clear that the decline of unemployment alone is not a sufficient indication of efforts towards the achievement of full employment when, for example, unemployment still affects 5% of the active population. On the other hand, a large increase in the rate of unemployment would not prevent the Committee from concluding that the Charter was being satisfied, so long as a substantial effort is made to improve the labour market situation.”

185. Conclusions XVI-1 (2002), Statement of interpretation on Article 1§1: “Basing itself on its deliberations in recent supervision cycles, the Committee has decided to assess the conformity of national situations with the obligation laid down by Article 1§1 of the Charter. The assessment rests on a certain number of legal, economic and social indicators which are particularly linked to the results achieved by states in providing active assistance to unemployed persons and the translation of economic growth into employment.”

186. Conclusions 2012, Albania: “Finally, the Committee recalls that labour market measures should be targeted, effective and regularly monitored.”

187. Conclusions XVI-1 (2002), Netherlands (Netherlands Antilles and Aruba): “The report states that the Government aims to achieve full employment by way of industrial development policies favouring in particular the tourism industry. However, while the report states that employment policy is the responsibility of the island governments, it also states that these same governments pursue no specific employment policy and that no budget is allotted for this purpose. The Committee considers that, in light of the employment situation described above, the absence of a specific employment policy is irreconcilable with the purpose of Article 1§1.”

188. Conclusions 2004, Bulgaria: “During the years 1993-1996 the (total) unemployment rate in Bulgaria decreased from 21.4% to 14%. It remained unchanged until 1998 when it began to rise again. After a particularly strong increase in 2000 (of nearly 3 percentage points) the rate reached 19.6% the following year. It was slightly higher for males. The Committee observes that the 2002 data provided in the report indicates a rapid decline of (registered) unemployment – from 18.6% in January 2002 to 16.3% in December 2002. This recent trend, according to the report, started already in 2001 as a result of active employment measures taken by the government. The Committee notes from another source that long-term unemployment has been on the rise since 2000. It amounted to 52.8% that year, 57.9% the following year and reached 65.4% in 2002. During the reference period these rates were slightly higher for males. As indicated in the Joint Assessment of Employment Priorities in Bulgaria 2002, almost 50% of the long-term unemployed and 70% of the young long-term unemployed had low educational attainment (primary education or below 7).

[...] The Committee notes from the Joint Assessment of Employment Priorities in Bulgaria that expenditure on active labour market programmes during the reference period represented 0.35% of GDP. The Committee observes that this rate is low by the European standards. Furthermore, the Committee observes that after a considerable increase from 7% in 1991 to
31.2% in 1998, the share of expenditures for active policy fell to 23.6% in 2001. This despite the objective, set out in the national Action Plan, to increase the relative share of the expenditures for active measures to 40% of the total employment policy expenditure. Moreover, the provision of active measures is heavily concentrated on temporary employment measures, which do not contribute to the long-term employability

According to the report, 106,780 individuals participated in active measure programmes organised in 2001. Given the total number of unemployed, which was about 684,000 that year, the level of participation is modest.

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

– a high general unemployment rate,
– a very high long-term unemployment rate, and
– inadequate financing of active measures.”

189. **Conclusions XVI-1 (2002), Poland:** “The Committee observes that relative spending on active labour market measures has decreased in favour of passive measures due to the high growth in the number of unemployment benefit claimants. More importantly, however, it notes from OECD information that total expenditure on labour market measures has fallen steadily since 1996 when it stood at 2.2% of GDP, compared to 0.96% in 2000. According to the report, there was a very modest increase in total expenditure from 1999 to 2000 (from 0.93% of GDP to 1.01%) exclusively due to increased benefit payments. Spending on active measures has plummeted according to both the report and the OECD, accounting for only 0.15% of GDP in 2000 (the share was thus more than halved in one year, as it stood at 0.35% of GDP in 1999) which is 7-8 times less than the OECD Europe average. Spending in absolute terms per unemployed person was as low as € 940 in 1998 and has declined further. The report explains that the situation of the labour market policy financing institution, the Labour Fund, was difficult in 2000. Due to the increased outlays on pre-retirement benefits and allowances the Fund was unable to fully finance other programmes, in particular active measures.

Notwithstanding the challenges facing the Polish economy, especially the still comparatively low economic output and the on-going privatisation process, the Committee considers that these negative developments in the labour market policy effort, both in terms of activation of unemployed persons and expenditure, occurring as they do at a time when the economy is in fact growing and unemployment is soaring, are irreconcilable with the purpose of Article 1§1.”

190. **Conclusions 2012, Albania:** “As regards active measures to assist unemployed persons in finding a job, the report describes three programmes which were made available by the Employment Office in 2010. A total of 1,757 persons participated in these programmes. Around 75% of the beneficiaries were long-term unemployed. Prior to enrolling in such programmes, the persons must have been registered with the Unemployment Office for three months. Taking into account the number of registered unemployed jobseekers in 2010, which was 142,800, the Committee finds that the number of persons which had access to training was too low (an activation rate of 1.2%).”

191. **Conclusions 2012, Armenia:** “According to the report, public expenditure on active labour market policies amounted to 0.025% of GDP in 2010, which is by international comparison very low.”
Article 1§2

192. **Conclusions II (1971), Statement of Interpretation on Article 1§2**: “As the Committee decided during the consideration of the first biennial reports, this provision deals essentially with two particularly important problems: the prohibition of forced labour and the elimination of all forms of discrimination in employment.”

193. **Conclusions XVI-1 (2002), Statement of Interpretation on Article 1§2**: “As far as Article 1§2 (right to earn one’s living in an occupation freely entered upon) is concerned, a provision which has not been amended in the Charter, the Committee developed its case law as follows:
– first, it holds that most of the requirements for compliance with Article 1§2 as regards the prohibition of discrimination on the ground of sex apply to any ground of discrimination;
– secondly, it will henceforth systematically examine the length of civilian service, the loss of unemployment benefits for refusal to take up employment and the consequences of part-time work. These questions are gathered under a new heading “Other aspects of the right to earn one’s living in an occupation freely entered upon”.

194. **Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, Decision on the merits of 2 July 2013, §§115-117**: “115. Under Article 1§2 of the Charter, elderly persons cannot be excluded from the effective protection of the right to earn one’s living in an occupation freely entered upon. In particular, beyond the issue of pension rights (an important element of social protection purported to ensure the decent standard of living for the elderly, even though not directly at stake in the current complaint), the Committee holds that the rights of elderly persons at the workplace cannot be dissociated from the protection against discrimination especially on the grounds of age under Article 1§2.

116. This aspect of the right to earn one’s living in an occupation freely entered upon is also consistent with one of the primary objectives of Article 23, which is to enable elderly persons to remain full members of society and, consequently, to suffer no ostracism on account of their age. From this point of view, the Committee has considered that the right to take part in society’s various fields of activity should be granted to everyone active or retired, including measures to allow or encourage elderly persons to remain in the labour force (Conclusions XIII-5, Finland). Such measures include prolonging their retirement age or taking early retirement in order to take up another job or to become self-employed. The related instruments adopted by the Parliamentary Assembly of the Council of Europe (see paragraphs 24-27 above) are in line with the Charter in this field.

117. The Committee refers to its findings under Article 24, according to which the arguments advanced as grounds for the age-limit did not amount to a sufficient justification in present-day conditions (see paragraph 96) for the difference in treatment, the effect of which is to deprive qualified personnel from continuing in the occupation of their choosing for as long as employees in other occupations. On the same grounds, it considers that the age-limit disproportionately affects the seamen who come within the scope of application of the contested legislation and considers that under Article 1§2, this difference in treatment constitutes discrimination contrary to the right to non-discrimination in employment guaranteed under the said Article.”

195. **Conclusions 2006, Albania, Conclusions 2012 Iceland, Moldova, and Turkey**: “The Committee considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.”

196. **Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No 91/2013, Decision on the merits of 12 October 2015, §238**: “238. Discriminatory acts prohibited by Article 1§2 are those that may occur in connection with employment conditions in general (in particular with regard to remuneration, training, promotion, transfer and dismissal or other detrimental action) (Conclusions XVI-1, 2002, Austria).”
197. **Conclusions XVI-1 (2002), Austria**; “The Committee interprets Article 1§2 of the Charter as requiring states to legally prohibit any discrimination, direct or indirect, in employment. Stronger protection may be provided in respect of certain grounds, such as gender or membership of a race or ethnic group. The discriminatory acts and provisions prohibited by this provision are all those which may occur in connection with recruitment and employment conditions in general (mainly remuneration, training, promotion, transfer, dismissal and other detrimental action). The Committee considers that in order to comply with Article 1§2 states should take legal measures to safeguard the effectiveness of the prohibition of discrimination.”

198. **Conclusions XVI-1 (2002), Austria** op cit

199. ** Syndicat national des professions du tourisme v. France, Complaint No. 6/1999, Decision on the merits of 10 October 2000, §§24-25.** “24. The Committee points out that Article 1§2 of the Charter requires those states which have accepted it to protect effectively the right of workers to earn their living in an occupation freely entered upon. This obligation requires inter alia the elimination of all forms of discrimination in employment whatever is the legal nature of the professional relationship. 25. A difference in treatment between people in comparable situations constitutes discrimination in breach of the Charter if it does not pursue a legitimate aim and is not based on objective and reasonable grounds.”

200. **Conclusions XVI-1 (2002), Greece**; “As the Committee stated in its previous conclusion, limiting the number of women eligible for police training could be justified under Article 31 of the Charter. The Committee then has to establish whether the restriction on the right to equal treatment is necessary in a democratic society to protect public interest or national security. Such a restriction might also be justified where sex is a decisive criterion due to the nature of the activities concerned or the conditions under which they are exercised.”

201. **International Association Autism-Europe (IAAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §52.** “52. The Committee observes further that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court of Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the Thlimmenos case [Thlimmenos c. Greece [GC], No. 34369/97, CEDH 2000-IV, §44], the principle of equality that is reflected therein means treating equals equally and unequals unequally. In particular it is said in the above mentioned case: ‘The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.’ In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality. In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.”

202. **Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the merits of 25 June 2010, §35.** “35. The Committee reiterates that Article E prohibits discrimination and therefore establishes an obligation to ensure that, in the absence of objective and reasonable justifications, any individual or groups with particular characteristics enjoys in practice the rights secured in the Revised Charter. Moreover, Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (see, inter alia, Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52 and ERRC v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §40).”
49. The Committee also states that discrimination may arise either by treating people in the same situation differently or by treating people in different situations identically. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §35).

107. It also notices that the Government has failed to take specific measures in this field towards the migrant Roma population when it should have. Treating the migrant Roma in the same manner as the rest of the population when they are in a different situation constitutes discrimination.

132. The Committee underlines that it appears from the case file that the Government does not take special measures, which should be taken for the benefit of members of a vulnerable group, in order to ensure equal access to education for Roma children of Romanian and Bulgarian origin. It concludes that the French education system is not sufficiently accessible to these children.

144. The Committee considers that the state has failed to meet its positive obligation to ensure that migrant Roma, whatever their residence status, including children, enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services.

153. The Committee therefore holds that there is a violation of Article E taken in conjunction with Article 11§2.

163. Infectious diseases and risk of domestic accidents largely result from the poor living conditions in the migrant Roma camps. The Committee further notes the very low vaccination coverage among the migrant Roma. The Government provides no information on preventive measures taken for migrant Roma to address these problems but only refers to the emergency care fund. The Committee finds that this is not sufficient. The particular situation of migrant Roma requires the Government to take specific measures in order to address their particular problems. Treating the migrant Roma in the same manner as the rest of the population when they are in a different situation constitutes discrimination.

"Legislation should cover both direct and indirect discrimination, in the context of indirect discrimination the Committee recalls that it has stated that in the context of Article E of the Charter: "Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Autism Europe v. France, Complaint No. 13/2000, Decision on the merits of 4 November 2003, §52)."

"The Committee considers that in order to comply with Article 1§2 states should take legal measures to safeguard the effectiveness of the prohibition of discrimination. These measures must at least provide:

- that any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms’ own regulations may be declared null or be rescinded, abrogated or amended;
- appropriate and effective remedies in the event of an allegation of discrimination;
- protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action;
- in the event of a violation of the prohibition of discrimination, sanctions that are a sufficient deterrent to employers as well as adequate compensation proportionate to the damage suffered by the victim."


209. Syndicat de Défense des fonctionnaires v. France Complaint No. 73/2011, Decision on the merits of 13 September 2012, §59: “59. On all these matters, the Committee considers that it is for the redeployed civil servants themselves to assert their rights to redress in the domestic courts. On this subject, the Committee points out that Article 1§2 of the Charter requires provision to be made for appropriate and effective remedies in the event of alleged discrimination and that reparations must be adequate, proportionate and dissuasive (Conclusions 2006, Albania). The burden of proof must also be shifted in the employee's favour (Conclusions 2002, France) and there must be some protection for employees who lodge complaints or bring actions in court against dismissal or other reprisals by employers (Conclusion XVI-1, Iceland).”

210. Conclusions 2002, France: “In principle, in the event of an allegation of discrimination in either a civil or a criminal case, the burden of proof rests on the complainant, who has to demonstrate that he is being subjected to unfavourable treatment related to his person and prohibited by law. As regards labour law litigation, Act No. 2001-1066 provides for a new balance to be applied to the burden of proof, similar to that found in the arrangements applying under the Labour Code to equal pay. Under this scheme, the labour court reaches its decision on the basis of the information provided by the parties and, where necessary, after carrying out the requisite investigations. The burden of proof is not therefore on the employee or the employer, and the employee has the benefit of any doubt.

The Committee observes that when they accept Article 1§2 of the Revised Charter, states undertake to prohibit any discrimination, whether this takes the form of an explicit rule or occurs in practice, and to organise appropriate and effective remedies in the event of allegations of discrimination. It takes the view that the effectiveness of a remedy in a matter of discrimination requires an amendment of the burden of proof, so as to enable the court to deal with the discrimination in the light of the effects produced by the rule, act or practice.”


212. Conclusions 2012, Andorra: “According to the report should a court find that a person has been discriminated it may order compensation for illegal dismissal (up to a maximum of 30 months’ salary) or require his/her reintegration and award compensation for loss. “The Committee wishes to clarify is position on the issue of ceilings to compensation in discrimination cases: The Committee considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed. The Committee asks for further information on the situation in Andorra including information on awards of compensation made in discrimination cases.”

213. Conclusions 2006, Albania: “As regards discrimination in employment on grounds of nationality the Committee recalls that under Article 1§2 of the Charter while it is possible for states to make foreign nationals’ access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.”

214. Conclusions 2012, Albania: “As regards discrimination in employment on grounds of nationality the Committee recalls again that under Article 1§2 of the Charter while it is possible for states to make foreign nationals’ access to employment on their territory subject to possession of a work
permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. The Committee asks again whether and if so, what categories of employment are closed to non-nationals. The Committee concludes that it has not been established that restrictions on the employment on nationals of other states parties are not excessive.

215. Conclusions 2006, Lithuania: “As regards discrimination in employment on grounds of past employment in the security services of the former Soviet Union, the Committee notes that the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Former Permanent Employees of the Organisation (16 July 1998) significantly restricts the employment rights of former employees of the USSR institutions competent in security matters. [...] The Committee notes that the restrictions are prescribed by law within the meaning of Article G of the Charter and serve one of the purposes therein, the protection of national security, however it considers that they are not necessary and proportionate in that they apply to a large field of employments and not solely to those services which have responsibilities in the field of law and order and national security or to functions involving such responsibilities.”

216. Conclusions XIII-3 (1995), Ireland: “With regard to the prohibition of forced labour, the Committee noted in the Irish report that the provisions of the Merchant Shipping Act 1894, whereby restrictions and in some cases detention could be imposed on seamen who failed to rejoin their ship or who did not carry out orders, had still not been repealed. It recalled once again its established case law on the subject, according to which the non-application of national legislation did not suffice to demonstrate a state’s compliance with this provision.”

217. International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 7/2000, Decision on the merits of 5 December 2000, §22: “22. With regard to the prohibition of forced labour, the Committee noted in the Irish report that the provisions of the Merchant Shipping Act 1894, whereby restrictions and in some cases detention could be imposed on seamen who failed to rejoin their ship or who did not carry out orders, had still not been repealed. It recalled once again its established case law on the subject, according to which the non-application of national legislation did not suffice to demonstrate a state’s compliance with this provision.”

218. Conclusions 2012, Portugal: “The Committee concludes that the situation in Portugal is not in conformity with Article 1§2 of the Charter on the ground that the Merchant Navy Criminal and Disciplinary Code provide for prison sentences against seafarers who abandon their posts even when the safety of the ship or the lives or health of the people on board are not at stake.”

219. International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 7/2000, Decision on the merits of 5 December 2000, §21: “21. As for Article 64 of Legislative Decree No. 1400/73 concerning career officers in the Greek army, who have received several periods of training, the Committee has similarly concluded since the eleventh supervision cycle that this provision violates Article 1 para. 2 of the Charter. A compulsory period of service of up to 25 years is excessive and contrary to the freedom to choose and to leave an occupation (Conclusion XI-1, p. 43; most recently Conclusion XV-1, p. 294).”
220. **Conclusions 2004, Ireland:** “In its last conclusion under the 1961 Charter, the Committee found that the situation was not in conformity because army officers could not seek early termination of their commission unless they repaid to the state at least part of the cost of their education and training, and the decision to grant early retirement was left to the discretion of the Minister of Defence. This could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation. This reason for non-conformity has remained unchanged since 1998 (Conclusions XIV-1 (1998)) and the report does not refer to any change. The Committee therefore concludes that the situation in this respect is not in conformity with the Charter.”

221. **Conclusions 2012, Ireland:** “The Committee recalls that it has previously found that the situation was not in conformity because army officers could not seek early termination of their commission unless they repaid to the state at least part of the cost of their education and training, and the decision to grant early retirement was left to the discretion of the Minister of Defence. This could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation. This reason for non-conformity has remained unchanged since 1998 (Conclusions XIV-1(1998)) and the report does not refer to any change.”

222. **Conclusions XVI-1 (2002), Greece:** “In the decision of 5 December 2000 on the merits of complaint No. 7/2000, the Committee considered Greece to be in contravention of Article 1§2 of the Charter on the grounds that Legislative Decree No. 17/74, which provides for the mobilisation of the civilian population in a state of emergency, that is “in any unforeseen situation causing disruption of the country’s economy and society”, is of such a general nature that it cannot be considered to be in conformity with Article 1§2 of the Charter, even if the provisions of Article 31 are taken into account. The report states that Legislative Decree No. 17/74 has been amended by Act No. 2936/2001 and that it is now possible to mobilise the civilian population in situations defined as follows: “a state of emergency is any unforeseen situation caused by natural phenomena or by other technological incidents or war which cause or threaten to cause extensive loss, damage and destruction to persons or property or to obstruct and disturb the economic and social life of the country”. The Committee considers that the notion of state of emergency is now defined with sufficient clarity and that the violation of Article 1§2 of the Charter has now been remedied.”

223. **Conclusions 2012, Statement of Interpretation on Article 1§2:** “Prisoners’ working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison service. In accordance with the principle of non-discrimination enshrined in the Committee’s case law, this supervision, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions).”

224. **Conclusions 2012, Statement of Interpretation on Article 1§2:** “The requirement for persons claiming unemployment benefit to accept the offer of a job or training or otherwise no longer be entitled to unemployment benefit should be dealt with under Article 12§1. However, the Committee takes due account of the Guide to the concept of suitable employment in the context of unemployment benefit drawn up by the Committee of Experts on Social Security of the Council of Europe at its 4th meeting, held in Strasbourg from 24 to 26 March 2009, and holds that the loss of benefit or assistance when an unemployed person rejects a job offer may constitute a restriction on freedom to work where the person concerned is compelled, on pain of losing benefit, to accept any job, notably a job:

- which only requires qualifications or skills far below those of the individual concerned;
- which pays well below the individual’s previous salary;
- which requires a particular level of physical or mental health or ability, which the person does not possess at the relevant time;
- which is not compatible with occupational health and safety legislation or, where these exist, with local agreements or collective employment agreements covering the sector or
occupation concerned and therefore may affect the physical and mental integrity of the worker concerned;

- for which the pay offered is lower than the national or regional minimum wage or, where one exists, the norm or wage scale agreed on for the sector or occupation concerned, or where it is lower, to an unreasonable extent, than all of the unemployment benefits paid to the person concerned at the relevant time and therefore fails to ensure a decent standard of living for the worker and his/her family;

- which is proposed as the result of a current labour dispute;

- which is located at a distance from the home of the person concerned which can be deemed unreasonable in view of the necessary travelling time, the transport facilities available, the total time spent away from home, the customary working arrangements in the person’s chosen occupation or the person’s family obligations (and in the latter case, provided that these obligations did not pose any problem in the person’s previous employment);

- which requires persons with family responsibilities to change their place of residence, unless it can be proved that these responsibilities can be properly assumed in the new place of residence, that suitable housing is available and that, if the situation of the person so requires, a contribution to the costs of removal is available, either from the employment services or from the new employer, so respecting the worker’s right to family life and housing.

In all cases in which the relevant authorities decide on the permanent withdrawal or temporary suspension of unemployment benefit because the recipient has rejected a job offer, this decision must be open to review by the courts in accordance with the rules and procedures established under the legislation of the State which took the decision.”

225. Conclusions 2008, Statement of Interpretation on Article 1§2: “The Committee draws attention to the existence of forced labour in domestic environment (see judgment of the European Court of Human Rights in the case of Siliadin v. France, 26 July 2005). It asks for information on the legal provisions adopted to combat such types of forced labour as well as measures taken to implement them.”

226. Conclusions 2012, Statement of Interpretation on Article 1§2: “The length of service to replace military service (alternative service during which persons are deprived of the right to earn their living in an occupation freely entered must be reasonable. The Committee evaluates whether the length of such replacement service is reasonable in view of the period of military service, whether it is proportionate and not excessive. The Committee recalls in this respect Recommendation R(87)8 of the Committee of Ministers Regarding Conscientious Objection to Compulsory Military Service which provides that ‘Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits.’ The Committee notes that compulsory military service has been abolished by many States Parties in the past decade and that only a minority of States retain such a service. The Committee has in the past stated that alternative service which is not more than 1.5 times the length of military service is in principle in conformity with the Charter. The Committee wishes now to further develop its case law, the question remains one of proportionality and reasonableness but the approach need to be more flexible and holistic. Where the length of military service is short the Committee will not necessarily insist on alternative service being not more than 1.5 times the length of military service. Nevertheless, the longer the period of military service is the stricter the Committee will be in evaluating the reasonableness of any additional length of the alternative service.”

227. Quaker Council for European Affairs (QCEA) v. Greece, Complaint No. 8/2000, Decision on the merits of 25 April 2001, §§23-25: “23. The Committee considers, however, that alternative civilian service may amount to a restriction on the freedom to earn one’s living in an occupation freely entered upon. Such a situation comes therefore within the scope of Article 1 para. 2 of the Charter. It is accordingly for the Committee to determine whether, in the present case, the conditions and modalities for the performance of alternative civilian service, compared to military
service, constitute a disproportionate restriction on the freedom guaranteed by Article 1 para. 2 of the Charter.

24. As regards the duration of alternative civilian service, the Committee accepts the Government’s view that the less onerous nature of civilian service justifies a longer duration than that of military service. The Contracting Parties to the Charter indeed enjoy a certain margin of discretion in this area.

25. In the present case, the Committee observes however that the duration of civilian service is 18 months longer than that of the corresponding military service, be it of 18, 19 or 21 months, or reduced to 12, 6 or 3 months. A conscientious objector may therefore perform alternative civilian service for a period of up to 39 months. The Committee considers that these 18 additional months, during which the persons concerned are denied the right to earn their living in an occupation freely entered upon, do not come within reasonable limits, compared to the duration of military service. It therefore considers that this additional duration, because of its excessive character, amounts to a disproportionate restriction on “the right of the worker to earn his living in an occupation freely entered upon”, and is contrary to Article 1 para. 2 of the Charter.”

228. Conclusions 2012, Cyprus: “In previous conclusions (Conclusions XVI-1 (2002) ,Conclusions 2004 and 2008), the Committee maintained that the duration of the service that replaced compulsory military service, generally twice the length of the military service itself, was excessive. The report contains no information on this point. However the Committee notes from information provided by the Cypriot delegate to the Governmental Committee (T-SG (2010)6 para 21-22) that the legislation governing alternative service for conscientious objectors was amended in 2007 and the duration of alternative service had been reduced. Currently military service is of 24 months duration, alternative service has been reduced from 42 to 34 months and special military service from 34 to 30 months. The Committee considers that the overall length of alternative military service amounting to almost three years is too long and therefore remains excessive and not in conformity with the Charter.”

229. Conclusions 2012, France: “The Committee notes the information submitted on minimum periods of service in the professional armed forces. It highlights that any minimum period must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefitted from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate.”

230. Conclusions 2006, Statement of Interpretation on Article 1§2: “13. Individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation. Modern electronic communication and data collection techniques have increased the chances of such interference.

14. Since the term “private life” may be defined with varying degrees of strictness it may be preferable to speak of “infringements of private or personal life”.

15. In the first place, employers may place unnecessary restrictions on their employees’ freedom of action. These include interference in their personal, or non-working, lives, even though the activities included in this autonomous sphere may be viewed as “public” because they occur in public. Examples include dismissing employees for attending a political rally or for buying a make of car in competition with that sold by their employer. The Charter’s insistence that anyone is entitled to earn his living in an occupation freely entered upon (Revised Social Charter, Part I, 26 and Article 1§2) means that employees must remain free persons, in the sense that their employment obligations, and hence the powers of management, are limited in scope.

16. The principle is indisputable, even though it is sometimes difficult to determine the precise boundary between the occupational and non-occupational spheres, bearing in mind the nature of the work and the purpose of the business.”
17. Admittedly, Article 1§2 only refers explicitly to the time when workers enter into employment. Logically, though, the fundamental principle of freedom which the Charter refers to with respect to this particular occasion must continue to apply thereafter in the non-work sphere. According to the Committee’s case-law, “the discriminatory acts and provisions prohibited by this provision are all those which may occur in connection with recruitment and employment conditions in general (mainly remuneration, training, promotion, transfer, dismissal and other detrimental action)” (Conclusions XVI-1 (2002)).

18. Secondly, employees must be protected against infringements of their dignity, as embodied in the Charter (Part I, Article 26, in which “dignity” appears in the title). What is at issue here is people’s private lives in the strictest sense. For example, certain employers, taking advantage of their dominant position over employees, intercept oral or written conversations of their employees or of job seekers between themselves or with third parties or question them about their sexual relationships or their religious or political beliefs.

19. Infringements of the two principles described above take many diverse forms. They may arise from questions to employees or job seekers about their family situation or background, their associates, their opinions, their sexual orientation or behaviour and their health or that of members of their family and about how they spend their time away from work. They may also arise from the storage, temporarily or permanently, and processing of such data by the employer, from their being shared with third parties and from their use for purposes of taking measures regarding the employees.

20. In Articles 1§2 and 26, as cited above, the principles protecting employees from unnecessary interference in their personal or private lives are worded in the most general terms. However, it should not be overlooked that under various specific circumstances, violations of these principles can also constitute violations of other articles of the Revised Social Charter. This applies in particular to Article 3 (one of whose aims is to counter threats to workers’ health, including their mental health), Article 5 (in relation to the right to join organisations and not to disclose that one is a member), Article 6 (in relation to collective bargaining), Article 11 (in relation to mental health), Article 20 (in relation to discrimination on the ground of sex), Article 24 (in relation, in particular, to paragraph a., on reasons for dismissal) and Article 26 (in relation to protection against various forms of harassment).

21. Quite apart from the fact that the various types of conduct described above are sometimes aggravated by an intention to discriminate, they may in themselves upset the balance between the needs of the workplace and the individual’s right to protection.”

231. Conclusions 2012, Statement of Interpretation on Article 1§2: “The Committee notes that the emergence of the new technologies which have revolutionised communications have permitted employers to organise a continuous supervision of employees and in practice enable employees to work for their companies at any time and in any place, including their homes with the result that the frontier between professional and private life has been weakened. The result is an increased risk of work encroaching upon all reaches of private life, even outside working hours and outside the place of work. The Committee considers that the right to undertake work freely includes the right to be protected against interferences with the right to privacy. Therefore it is essential that the fundamental right of workers to privacy should be asserted within the employment relationship so as to ensure that this right is properly protected.”

Article 1§3

232. Conclusions XIV-1 (1998), Statement of Interpretation on Article 1§3: “Under Article 1§3, the Committee has confirmed , inter alia, the States’ obligation to maintain employment services free of charge for all workers and in all sectors of the economy. It follows from the wording of this provision of the Charter that free services should be provided not only for the unemployed but also for employed workers looking for another job. Moreover according to the established case law of the Committee, the basic services such as registration or supply and demand for labour should be free for both workers and employers.”

233. Conclusions XIV-1 (1998), Turkey: “The Committee noted in its previous conclusion with respect to Turkey that employers had to pay a fee for the notification of vacancies and asked the
Turkish Government to indicate the basis for this fee, its amount and whether all employers were obliged to pay it. The report states only that the fees are reimbursements of expenses incurred by the State Employment Agency and that the amounts were 1.5 million Turkish pounds (TRL) for public employers and TRL 400,000 for private employers. Taking into account that Article 1 para. 3 requires that employment services are free of charge for both workers and employers, the Committee considers that the charging of a fee for such a fundamental operation of the employment services as is the notification of vacancies cannot be in conformity with the Charter. The Committee has stated that “the principle of free services would be devoid of its meaning if it applied only to the demand of employment by workers and did not include the supply of jobs by employers.” And further “that services paid for concern specifically selection or assessment separate from the registration of supply and demand of manpower, which must remain free” (Conclusions VIII (1984)).

234. Conclusions XIV-1 (1998), Greece: “From the Greek report, the Committee notes the information on the number of vacancies registered and the number of placements made by the Manpower Employment Organisation (OAED) in 1994, which enjoys a monopoly on employment services in Greece. Due to technical difficulties related to the implementation of an electronic data registration system, the information covers only the year 1994. The Committee notes that a total of 11,136 vacancies were notified to OAED and that 3,994 persons were placed in work, corresponding to a placement rate of 36%. While the placement rate is rather low, the Committee is seriously concerned at the number of vacancies and placements in absolute terms. Considering that the employed labour force in Greece comprises about 3.9 million persons and that there are more than 450,000 unemployed, it appears to the Committee that the placement services of OAED are of marginal importance in the Greek labour market.

From another source, the Committee notes that jobseekers registered with the public employment service only accounted for 10.5% of all jobseekers in 1994, while the average of the other European countries for which this information was available was about 68%. Moreover, the percentage of jobseekers reporting that the public employment service was their main means of seeking employment was exceptionally low at about 5% compared to a European Union average of about 57%.

[...]

In view of the evidently insufficient results of the public employment service, the Committee can only reach a negative conclusion. “

235. Conclusions XV-1 (2000), Addendum, Poland: “Finally, the Committee observes that employers’ organisations, trade unions and regional bodies are actively involved in the formulation of employment policy in general and in the objective setting for employment offices. The dialogue between the parties takes place within the framework of Employment Councils, organised at central, regional and districts levels. Their role is to jointly define measures aimed at full employment.

In the light of the information provided, the Committee concludes that the situation in Poland complies with Article 1 para. 3 of the Charter.”

Article 1§4

236. Conclusions 2003, Bulgaria: “Under Article 1§4 of the Charter, the Committee considers vocational guidance, continuing vocational training for workers and rehabilitation for people with disabilities (subjects dealt with by Articles 9, 10§3 and 15§1 respectively).”

237. Conclusions 2012, Georgia: “Finally, the Committee asks if nationals of other States Parties lawfully resident or working regularly in Georgia enjoy equal treatment regarding all aspects considered under Article 1§4.”

238. Conclusions XII-1 (1991), Statement of Interpretation on Article 1§4: “The purpose of Article 1 of the Charter being to ensure the effective exercise of the right to work, the Committee specified that in order to satisfy the requirements of Article 1, para. 4, a state must not only have institutions providing vocational guidance, training and rehabilitation, but must also ensure access
to the institutions for all those interested, including foreigners, nationals of the States parties to
the Charter, and the disabled.”

239. **Conclusions 2008, Albania**: “Article 1§4 is completed by Articles 9 (right to vocational
guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with
disabilities to vocational guidance, education and training), which contain more specific rights to
vocational guidance and training. However, Albania has not accepted these three provisions and
the Committee assess the conformity of the situation under Article 1§4.
The Committee considers the following questions from the standpoint of Article 1§4: whether the
labour market offers vocational guidance and training services for employed and unemployed
persons and guidance and training aimed specifically at persons with disabilities;
access: how many people make use of these services;
the existence of legislation explicitly prohibiting discrimination on the ground of disability in the
field of training.”

240. **Conclusions XX-1 (2012), Iceland**: “The Committee recalls that in order to assess the
effectiveness of vocational guidance services it also needs information on the funding, staffing
and the number of beneficiaries of vocational guidance. It therefore asks the next report to also
include information on these matters.”

241. **Conclusions 2008, Bulgaria**: “This implies that no length of residence requirement may be
imposed on students or trainees who reside in whatever capacity or are authorised to reside,
because of their links with persons legally residing in the country, in the territory of the party
concerned, before they can begin their training. The Committee notes that there is a length of
residence requirement for foreigners wishing to receive vocational guidance, training or
rehabilitation and that this situation constitutes unequal treatment in breach of the Revised
Charter.”

242. **Conclusions 2007, Bulgaria**: “Article 1§4 is completed by Articles 9 (right to vocational
guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with
disabilities to vocational guidance, education and training), which contain more specific rights to
vocational guidance and training.”

243. **Conclusions 2008, Statement of Interpretation on Article 1§4**: “The Committee considers that
since Article 15§1 covers a broader range of rights besides the right to vocational training of
persons with disabilities a conclusion of non-conformity under this provision should be taken up
under Article 1§4 only where the ground of non-conformity is linked specifically to vocational
training.”

244. **Conclusions 2003, Bulgaria**: “Due to the fact that [Bulgaria] has accepted none of the following
provisions, that is Articles 9 (right to vocational guidance), 10§3 (right to vocational training and
retraining of adult workers), and 15§1 (the right of persons with disabilities to guidance, education
and vocational training) of the Charter, the Committee examines [under Article 1§4] all these
issues.”
Article 2 The right to just conditions of work

Article 2§1

245. Conclusions XIV-2 (1998), Statement of interpretation on Article 2§1: “The Committee recalls that the aim of Article 2 para. 1 is to "protect workers' health and safety of workers — hence their lives — without neglecting more general interests, particularly economic ones" (Third report on certain provisions of the Charter which have not been accepted)."

246. Confédération Générale du Travail v. France, Complaint No. 22/2003, Decision on the merits of 7 December 2004, §34: “34. The Committee stresses that the provisions of the Revised Charter concerning working time are intended to protect workers' safety and health in an effective manner. Every worker must therefore receive rest periods adequate for recovering from the fatigue of work and of preventive value in reducing risks of health impairment which could result from accumulation of periods of work without the necessary rest. (…)"

247. Conclusions I (1969), Statement of Interpretation on Article 2§1: "A Contracting Party [cannot] be considered as complying with the obligation [under Article 2§1] unless reasonable daily and weekly working hours were established in that country either by law or regulations or by collective agreement, or by some other process imposing an obligation whose performance is subject to the supervision of an appropriate authority."

248. Conclusions XIV-2 (1998), Norway: “[The Committee] is therefore of the opinion that daily working hours of sixteen hours are too long to be considered as reasonable under this provision of the Charter. The Committee does not find that the limits set to weekly working hours, etc. can compensate the fact that the daily hours are unreasonably long. Reaching this conclusion the Committee has considered the fact that overtime work may only be performed in the cases mentioned in Section 49 and that there are certain other guarantees in the legislation for daily working hours of sixteen hours to be permissible, i.e. that local agreements providing for such long working hours may only be concluded in enterprises bound by collective agreement, that they are only valid for three months and that the individual worker must agree.”

249. Conclusions XX-3 (2014), Armenia: The Committee takes note of the Decision No 1223-N of the Government of 11 August 2005, which approves the list of occupations, containing 36 different professions, for whom 24-hours long working day is permitted. The Committee considers that the situation which it has previously considered not to be in conformity with the Charter has not changed. The Committee recalls that the daily working time should in no circumstances (except for extraordinary situations) exceed 16 hours, even if, in compensation, it entails a limitation to the weekly working time. Therefore, the situation is not in conformity with the Charter.

250. Conclusions XIV-2 (1998), Netherlands: “The Committee notes that the regulations allowing for working time flexibility described above have a precise normative framework and that the new legislation does aim to protect the safety and health of workers. It observes that the way the flexibility system is organised does not afford sufficient protection to workers: on the one hand, unless the relevant collective agreement contains provisions on the length of working time “flexibility regulations” may be introduced by an agreement at enterprise level, and, on the other hand, the “basic regulations” which also allow for adjustments of working time apply directly in the absence of a workers’ representative body or of staff delegates within the enterprise or if the employer does not obtain an agreement. The Committee finds that in these circumstances a total working week (usual hours plus overtime) which within the framework of “flexibility regulations” may attain up to sixty hours per week is unreasonable.”

251. Conclusions XIV-3 (2014), Netherlands: The Committee considers that in the absence of any statutory limit to daily and weekly working hours for these categories of workers, they are left without any guarantees that they will not be asked to perform unreasonable daily and weekly
working hours, in situations that go beyond what can be considered as exceptional circumstances. The Committee considers that the exclusion of all these categories from the statutory protection amounts to a violation of Article 2§1 of the Charter.

252. Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1: “(...) working hours are assessed “by taking into account not only normal working hours but also overtime, which should therefore also be regulated in the sense that it should not be left at the discretion of the employer or the worker; the utilisation and/or the length of overtime should be limited in order to avoid exposing the worker to the risks of accidents at the end of a working day”.

253. Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1: “When examining national reports, the Committee cannot give an opinion in the abstract on which daily and weekly working hours are reasonable over a given period in time. It recalls that it has held that what is reasonable under the Charter varied from place to place and from time to time. Moreover, the progressive reduction of working hours depends on “the increase of productivity and other relevant factors”. Such other factors are the nature of the work, including the risks to which the workers’ safety and health are exposed. As the Committee has pointed out on many occasions, risks are higher for workers occupied for long hours over a considerable period of time.”

254. Confédération Française de l’Encadrement CFE-CGC v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38: “29. The Committee recalls that it has considered that flexibility measures regarding working time are not as such in breach of the Charter (see in particular General Introduction, Conclusions XIV-2 (1998)). In order to be found in conformity with the revised Social Charter, national laws or regulations must fulfil three criteria:
(i) they must prevent unreasonable daily and weekly working time;
(ii) they must operate within a legal framework providing adequate guarantees;
(iii) they must provide for reasonable reference periods for the calculation of average working time;
(iv) length of daily and weekly working time.

30. The Committee observes that the system of annual working days does not set any limit to the daily working time of managerial staff. Consequently, the right to a daily rest period of 11 hours provided for by Article L 220-1 of the Labour Code applies. No derogation is permitted. Therefore, managerial staff cannot work for more than 13 hours on any day within the maximum of 217 working days in the year, no matter what the circumstances. This daily limit is in conformity with Article 2 para. 1 of the Revised Social Charter.
31. There is no specific limit to weekly working time either in the annual working days system. Here again it is the minimum rest period provided for in Article L221-4 of the Labour Code which sets a limit to weekly working time. The weekly rest period must be for 35 consecutive hours, meaning that, no matter what the circumstances, the managerial staff concerned cannot work for more than 78 hours per week. The Committee is of the view that this length of working time is manifestly excessive and therefore cannot be considered reasonable within the meaning of Article 2 para. 1 of the revised Social Charter.

32. In order to be deemed in conformity with the revised Social Charter, a flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.
33. In the present case, the annual working days system can only be adopted on the basis of collective agreements. Furthermore, such agreements are required by law to lay down the procedures to monitor the working time of the managerial staff concerned, especially their daily working time and their workload.
34. The Committee observes that the law does not require that collective agreements provide for a maximum daily or weekly limit, although the social partners are clearly free to do so. It accordingly considers that the guarantees afforded by collective bargaining are not sufficient to comply with Article 2 para. 1.

35. The Committee further observes that collective agreements may be reached at enterprise level. The possibility to do so is not in conformity with Article 2 para. 1 unless specific guarantees are provided for. It observes in this respect that the procedure for contesting collective agreements under Article L. 132-26 of the Labour Code does not constitute such a guarantee since its implementation is of a random nature. Consequently, the Committee concludes that the situation is not in conformity with Article 2 para. 1 of the revised Social Charter.

(iii) a reasonable period for the calculation of average working time.

36. When determining the conformity of flexible working time systems with the revised Social Charter, the Committee takes account of the length of the reference period which is used to calculate average working (see in particular General Introduction, Conclusions XIV-2 (1998)).

37. In light of the findings above on the first two criteria, the Committee considers that it is not necessary in the present case to pronounce on the third criterion.

(iv) Conclusion

38. In conclusion, the Committee holds that the situation of managerial staff in the annual working days system constitutes a violation of Article 2 para. 1 of the revised Social Charter given the excessive length of weekly working time permitted and the absence of adequate guarantees.

255. Conclusions XIV-2 (1998), Statement of interpretation on Article 2§1: “The Committee requires more safeguards if the flexible working hours have been agreed upon in collective agreements reached at the enterprise level.”

256. Conclusions XIV-2 (1998), Statement of interpretation on Article 2§1: “It also takes into account the reference periods for the averaging of working hours: periods that do not exceed four to six months are accepted, and periods of up to a maximum of one year may also be acceptable in exceptional circumstances.”

257. Conclusions XIX-3 (2010), Spain: “The extension of the reference period by collective agreement up to 12 months is acceptable, provided there are objective or technical reasons or reasons concerning the organisation of work justifying such an extension.”

258. Conclusions XX-3 (2014), Germany: “According to the report, the establishment of a reference period exceeding 12 months in combination with a weekly working time of less than 48 hours on average offers the workers the possibility to increase working-time flexibility. Therefore they can take a longer period of paid leave, plan their working lives more flexibly, work part-time, undergo further training or use flexible retirement arrangements and thus contributes to the reconciliation of family, private and professional life. The collective agreements fixing a longer reference period provide for additional compensation taking account of the shorter working time prescribed by the collective agreement. Additional compensation is to be granted within the extended reference period. Moreover, according to the report, in contrast to the EU Working Time Directive, which only requires a daily minimum period of rest of 11 hours, as a general rule it is not permissible in the case of full-time to work more than 60 hours. The German legislation provides for a maximum daily working time of 8 hours on 6 working days (48 hours a week). However, the daily maximum hours may be extended to 10 hours (60 hours a week) if compensatory time-off is granted. The Committee understands that during the reference periods longer than 12 months the average of 48 hours will still be respected in the 12 month period and that the additional compensation will be granted within the extended reference period. It also understands that the maximum weekly working hours, including overtime, will never exceed 60 hours. The Committee asks the next report to confirm that its understanding is correct and asks for more evidence that in practice, the
workers on flexible working time arrangements with long reference periods do not work unreasonable hours or an excessive number of long working weeks”.

259. Confédération générale du travail (CGT) v. France (§§ 65-66), Complaint No 55/2009, Decision on the Merits of 23 June 2010: “65. In its decision on the merits of 7 December 2004 in Complaint No. 22/2003 CGT v. France, the Committee stated: “35. The Committee considers that the “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, except in the framework of certain occupations or particular circumstances and pursuant to appropriate procedures.

36. The “périodes d’astreinte” are in effect periods during which the employee is obliged to be at the disposal of the employer with a view to carrying out work, if the latter so demands. However, this obligation, even where the possibility of having to carry out work is purely hypothetical, unquestionably prevents the employee from the pursuit of activities of his or her own choosing, planned within the limits of the time available before the beginning of work at a fixed time and not subjected to any lack of certainty resulting from the exercise of an occupation or from the situation of dependency inherent in that exercise.

37. 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 therefore constitute an adequate criterion for regarding such a period as a rest period.”

65. The Committee therefore holds that the assimilation of on-call periods to rest periods constitutes a violation of the right to reasonable working time provided in Article 2§1 of the Revised Charter.

260. Confédération Française de l’Encadrement CFE-CGC v. France, Complaint No. 16/2003, Decision on the merits of 12 October 2004, §§50-53: “50. The Committee considers that the “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, except in the framework of certain occupations or particular circumstances and pursuant to appropriate procedures.

51. The “périodes d’astreinte” are in effect periods during which the employee is obliged to be at the disposal of the employer with a view to carrying out work, if the latter so demands. However, this obligation, even where the possibility of having to carry out work is purely hypothetical, unquestionably prevents the employee from the pursuit of activities of his or her own choosing, planned within the limits of the time available before the beginning of work at a fixed time and not subjected to any lack of certainty resulting from the exercise of an occupation or from the situation of dependency inherent in that exercise.

52. 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 therefore constitute an adequate criterion for regarding such a period as a rest period.

53. The Committee therefore holds that the assimilation of “périodes d’astreinte” to rest periods constitutes a violation of the right to reasonable working time provided in Article 2§1.”

Article 2§2

261. Conclusions 2014, Netherlands: The Committee previously noted (Conclusion XIV-2 (1998)) that, although the right to public holidays with pay is not set by law, it results from the collective agreements. It asks whether there are any collective agreements that do not recognise the right to public holidays with pay. It also asks whether the circumstances under which an employee might be required to work on a public holiday are identified and restricted, either by law or collective agreements, and asks for relevant examples in this respect.
262. Conclusions 2014, Andorra: The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday.

263. Conclusions 2014, France: The Committee asks for information in the next report on the levels of compensation provided for in the form of increased salaries and/or compensatory time off under the various collective agreements in force, in addition to the regular wage paid on a public holiday, be it calculated on a daily, weekly or monthly basis.

264. Conclusions XX-3 (2014), Greece: In this respect, in light of the information available, the Committee considers that a compensation corresponding to the basic daily wage increased by 75% is not sufficiently high to constitute an adequate level of compensation for work performed on a public holiday.

Article 2§3

265. Conclusions I (1969), Statement of interpretation on Article 2§3: "Having examined the arrangement under Swedish and Norwegian law whereby annual holiday may not be taken until the twelve working months for which it is due have fully elapsed, the Committee considered that this was not incompatible with the Charter."

266. Conclusions I (1969), Ireland: "The Committee stated that the legislation allowing agricultural employees to forego [the] annual holiday and accept a lump sum in compensation was incompatible with the interpretation of [Article 2§3]"

267. Conclusions I (1969), Statement of interpretation on Article 2§3: When it examined the first Reports submitted by the Governments of the Federal Republic of Germany and of Ireland, the Committee interpreted the provisions of this paragraph as laying down the principle that workers must not be able to waive their right to annual holidays, even in consideration of an extra payment by the employer. The Committee considered that the need to protect the workers as fully as possible made such a waiver incompatible with the Charter, even with the free consent of the workers concerned. The Committee recognised, however, that this principle does not prevent the payment of a lump sum to an employee at the end of his employment in compensation for the paid holiday to which he was entitled but which he had not taken.
Conclusions 2007, Statement of interpretation on article 2§3: “An employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.”

Conclusions XII-2 (1992), Statement of Interpretation on Article 2§3: “The Committee recalled the fundamental importance of the right to an annual holiday guaranteed by Article 2 para. 3, which, in accordance with its consistent case-law, cannot be waived. As a result, Article 2 para. 3 requires that a worker who is incapacitated for work by reason of illness or injury during all or part of his/her annual holiday must be entitled to take at some other time the days thereby lost, at least insofar as is necessary to guarantee the worker the two week annual holiday provided for by the Charter. This requirement applies in all cases, whether the incapacity commences before or during the holiday period, as well as in cases of employment in which there is a fixed holiday period for all workers in an enterprise.”

Article 2§4

Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §232-236:

“232. The Committee points out that Article 2§4 of the Charter requires states to grant workers exposed to occupational health risks compensatory measures.

233. The Committee notes that for a number of years Greece, like the other states party to the Charter, has been pursuing a policy of occupational risk prevention and elimination rather than one of compensation. It considers that this development needs to be taken into account in interpreting Article 2§4 of the Charter, to ensure consistency with Articles 3 (right to safe and healthy working conditions) and 11 (right to protection of health). A literal reading of Article 2§4, without taking other factors into consideration, would point to the conclusion that there had been a violation of the Charter.

234. It follows from the newer interpretation that states’ obligation under Article 2§4 of the Charter consists in measures to compensate for residual risks. By this, the Committee means situations in which workers are exposed to risks that it is not possible or has not yet been possible to eliminate or sufficiently reduce despite the application of the preventive and protective measures referred to in Articles 3 and 11 or in the absence of their application.

235. In this case, it considers that the mining industry is still one of the particularly dangerous industries in which workers’ health and safety risks cannot be eliminated, and that Greek law still classifies mining as an arduous and hazardous occupation. It therefore considers that, in addition to preventive and protective measure, the state was required to provide for compensation in this sector.

236. Article 2§4 mentions two forms of compensation, namely reduced daily working hours and additional paid holidays. In its examination of reports under the revised Charter, the Committee has stated that other means of reducing the length of exposure to risks may be considered acceptable (Conclusions 2003, Bulgaria, Article 2§4 of the revised Charter, pp. 24-27). It states that under no circumstances can financial compensation be considered an appropriate response under Article 2§4. Apart from this particular situation, the Committee will rule on the suitability of other approaches not in the abstract but case by case. For example, in a situation where a measure of this type was contemplated as a general solution, making no distinction according to the type and nature of the risk involved, it ruled that a reduction in the number of years of exposure was not an appropriate measure in all cases (ibid).”

Conclusions 2005, Statement of Interpretation on Article 2§4: “In order to assess national situations under Article 2§4 of the Charter the Committee will examine information on the measures taken to eliminate risks in inherently dangerous or unhealthy occupations. Where appropriate it will take into account the information provided and the conclusions reached in respect of Article 3 of the Charter.”
272. **Conclusions XII-1 (1991), United Kingdom**: “The Committee [...] felt bound to recall that while the elimination of risks is without doubt the objective to be sought, as long as that objective was not reached in a specific occupation, the reduction in working hours or the provision of additional holidays is required by Article 2 para. 4 for the purpose of reducing the stress or fatigue caused by working in dangerous or unhealthy occupations.”

273. **Conclusions XX-3 (2014), Germany**: The Committee points out that the States party to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations. In view of the changing practices of States in this regard, placing emphasis on the prevention and elimination of occupational hazards, it takes account of these developments in its assessment of conformity with Article 2§4 of the 1961 Charter (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006). Accordingly, it examines firstly what measures have been taken to progressively eliminate the inherent risks in dangerous or unhealthy occupations. Secondly, it examines what compensatory measures are applied to workers who are exposed to risks that cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures referred to above or because they have not yet been applied. (…) The Committee considers that, despite the effective implementation of policies aimed at preventing the risks connected with dangerous or unhealthy activities, which are taken into account under the first part of Article 2§4, certain activities are still likely to involve the need to preserve the workers’ vigilance and psycho-physical health through specific measures dealing with the organisation of work (management of working rhythms, in terms of daily, weekly and annual resting periods). These are the “compensation” measures assessed under the second part of Article 2§4. In light of this clarification, the Committee invites the authorities to explain in detail in the next report how they ensure in practice, through the organisation of working rhythms, that the workers are not unduly exposed to the residual risks inherent in dangerous or unhealthy activities.

274. **Conclusions II (1971), Statement of Interpretation on Article 2§4**: When examining the second reports, the Committee observed that the term "as prescribed" did, admittedly, leave the national legislature a certain latitude in the choice of occupations to be classed as dangerous or unhealthy. This choice is still subject to review by the Committee and, were it not to include occupations which were manifestly dangerous or unhealthy, the latter might conclude that the Charter had been violated.

275. **STTK ry and Tehy ry v. Finland, Complaint No. 10/2000, Decision on the merits of 17 October 2001, §20**: “20. [The Committee] recalls that this provision of the Charter leaves the Contracting Party concerned a certain latitude in the choice of occupations to be classed as dangerous or unhealthy. This choice is however still subject to review by the Committee (Conclusions II (1971))."

276. **STTK ry and Tehy ry v. Finland, Complaint No. 10/2000, Decision on the merits of 17 October 2001, §27**: “However in light of the evidence, in particular the current recommendations of the ICRP, the Committee considers that at present it cannot be stated that exposure to radiation even at low levels is completely safe. It finds no reasons to alter its case law, namely that work involving exposure to ionising radiation is covered by Article 2 para. 4. Therefore radiation related work in the health sector in Finland must be considered as being dangerous and unhealthy within the meaning of Article 2 para. 4 of the Charter. This being the case, workers in this sector should be entitled to additional paid holidays or reduced working hours.”

277. **Conclusions XIV-2 (1998), Norway**: “The Committee notes that the report contains no information on occupations which it has always considered dangerous and unhealthy, such as work in steelworks and shipyards or jobs which expose individuals to ionising radiation, extremes of temperatures, noise, etc.”

278. **Conclusions V (1977), Statement of Interpretation on Article 2§4**: “It felt, in fact, that if on the one hand a constant improvement of the technical conditions in which are carried out certain
dangerous or unhealthy occupations represents a major factor for the reduction of the risk of accidents or disease, on the other hand, a decrease in working hours and the granting of additional holidays are equally necessary in the light of the above provision of the Charter, as they allow for a reduced accumulation of physical and mental fatigue and a re-education in the exposure to risk, whilst at the same time granting workers longer periods of rest.”

279. **Conclusions III (1973), Ireland:** “The Committee stressed the importance of reducing working hours and providing additional holidays where such elimination is not possible, both because of the need for workers in hazardous situations to be alert, and in order in limit the period of exposure to safety and health risks.”

280. **Conclusions 2005, Statement of Interpretation on Article 2§4:** “It further wishes to point out in this respect that while Article 2§4 requires provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations where it has not yet been possible to eliminate or reduce risks sufficiently, it considers, in view of the overriding health and safety aims of this provision, that other means of reducing the length of exposure to risks may also satisfy the Charter in such cases.”

281. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §236:** “236. Article 2§4 mentions two forms of compensation, namely reduced daily working hours and additional paid holidays. In its examination of reports under the revised Charter, the Committee has stated that other means of reducing the length of exposure to risks may be considered acceptable (Conclusions 2003, Bulgaria, Article 2§4 of the revised Charter, pp. 24-27). It states that under no circumstances can financial compensation be considered an appropriate response under Article 2§4. Apart from this particular situation, the Committee will rule on the suitability of other approaches not in the abstract but case by case. For example, in a situation where a measure of this type was contemplated as a general solution, making no distinction according to the type and nature of the risk involved, it ruled that a reduction in the number of years of exposure was not an appropriate measure in all cases (ibid). “

282. **Conclusions 2014, Finland:** The Committee notes that, in response to this question, the report submitted in 2010 indicated that under Section 39 of the Occupational Safety and Health Act the employees’ exposure to such agents as radiation that causes hazards or risks to safety or health must be reduced to such a level that no hazard or risk is caused to the employees’ safety, health or reproductive health. The report furthermore referred to the adoption in 2010 of a Decree on Protecting Workers from Optical Radiation, the drafting of a decree on electromagnetic radiation, and the adoption of detailed rules and procedures on radiation and nuclear safety by the Radiation and Nuclear Safety Authority (STUK). In the light of these measures and of its finding of conformity under Article 3§1 (Conclusion 2013), the Committee considers that the situation in Finland is now in conformity with Article 2§4 of the 1996 Revised Charter.

283. **Conclusions XIII-3 (1995), Greece:** The Committee recalled that pay increases granted to workers engaged in the above-mentioned branches of activity were not sufficient for compliance with Article 2 para. 4, which required that employees whose work was considered to be dangerous or unhealthy also be granted reduced working hours.

284. **Conclusions 2003, Bulgaria:** “(...) “the Committee nevertheless wishes to point out that it does not consider early retirement to be a relevant and appropriate measure to achieve the aims of Article 2§4 of the Charter.”

285. **Conclusions 2007, Romania:** “(...) “the Committee nevertheless wishes to point out that it does not consider early retirement, wage increases or food supplements to be relevant or appropriate measures to achieve the aims of Article 2§4 of the Revised Charter.”
286. **Conclusions XX-3 (2014), Greece:** The Committee points out in this respect that under no circumstances can financial compensation be considered an appropriate response compliant with Article 2§4. It also considers that the additional measures provided for in the collective agreement – one additional day of public holiday and the setting of the weekly period of work at 40 hours – do not adequately correspond to the aim of offering workers exposed to risks regular and sufficient time to recover from the associated stress and fatigue, and thus maintain their vigilance in the workplace. In the light of the information provided in the report on early retirement for mine workers, the Committee does not consider that such a measure is relevant and appropriate to achieve the aims of Article 2§4.

287. **Conclusions 2014, Netherlands:** It notes from the report that there is no list of occupations which are considered inherently dangerous or unhealthy in the Netherlands. However, each employer has the obligation to assess the risks connected to their activities, and social partners are strictly involved in the adoption of all necessary measures to comply with the occupational safety and health goals. The measures that can be adopted in this respect might include compensation measures in the sense of Article 2§4, namely measures dealing with the organisation of work (management of working rhythms, in terms of daily, weekly and annual resting periods) aimed at preserving the workers' vigilance and psycho-physical health. However, the adoption of these measures is not regulated at a central level, but is left to the agreements reached by social partners themselves in each sector. Since Dutch legislation does not provide for any of the compensatory measures required by Article 2§4 of the Charter, the Committee reiterates its finding of non-conformity in this respect.

**Article 2§5**

288. **Conclusions 2010, Romania:** The Committee previously noted that in exceptional cases the weekly rest days can be cumulated over longer periods on the basis of an agreement between the employer and the employee, the weekly rest can be granted cumulatively, after a period of continuous work that cannot be longer than fifteen calendar days and only subject to permission by the Territorial Labour Inspectorate and the agreement of the trade union (the employee representative, as the case may be). (...) According to the report, in 2008, the Labour Inspectorate issued 19 permits, with the consent of the trade unions or employee representatives. (...) The permits were granted taking into account activities carried out abroad and the need to honour employment contracts in order to avoid unemployment. In the course of its inspections, the Labour Inspectorate found no instances of continuous work performed without prior authorisation. The Committee notes that the number of permits issued by the Labour Inspectorate is low and that the postponement of the weekly rest period for 15 days is truly exceptional. It therefore considers that the situation is in conformity with Article 2§5.

**Conclusions 2014, Sweden:** temporary exceptions from the general duration of weekly rest may be made without special permission from the Work Environment Authority, provided that this is justified by special circumstances that the employer could not have foreseen and could not be solved otherwise. The authorisation of the Work Environment Authority is also no longer needed for emergency overtime, but a safety representative can ask for action on the basis of the Working Hours Act if the employer does not respect the rules concerning overtime and emergency overtime.

**Conclusions XX-3 (2014), Denmark:** The Committee previously noted (Conclusion XVIII-2 (2006)) that periods of work longer than 12 days between rest days are allowed only as an exception, upon permission of the WEA. In the light of the safeguards provided and the indication that the WEA had not approved any agreements or given dispensations to more than 12 days between two rest periods, the Committee previously considered the situation to be in conformity with the Charter.
289. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§5**: “During the examination of the different national situations, the Committee has been prompted to recall the aim of Article 2 para. 5, which is to protect the health and safety of workers by guaranteeing a weekly rest period which corresponds as far as possible with the day of the week recognised as a rest day by tradition or custom (Sunday in all the Contracting Parties to the Charter). The Committee has also stated that this provision allows for the rest to be taken on a day other than Sunday, where the type of activity so requires or for reasons of an economic nature. The Committee insists on the fact that at all events, another day of rest during the week must be provided for. Moreover, the Committee has noted that in some Contracting Parties, legislation or collective agreements may in certain cases provide for the postponement of weekly rest periods. In Sweden, for instance, collective agreements signed or approved by a trade union confederation may provide derogations from the rule stipulating that weekly rest periods must be taken in the course of each seven-day period of work. The Committee has made clear that the possibility for those concerned to waive their right to weekly rest periods is not in compliance with the Charter. However, it considered in the latter case, where weekly rest is postponed, that the situation is not in breach of the Charter, as two days' rest are provided for following twelve consecutive days' work. The Committee has nevertheless observed that twelve consecutive working days before a rest period is a maximum.”

290. **Confédération Générale du Travail (CGT) v. France, Complaint No. 22/2003, Decision on the merits of 7 December 2004, §§35-39**: “35. The Committee considers that the “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, except in the framework of certain occupations or particular circumstances and pursuant to appropriate procedures.

36. The “périodes d’astreinte” are in effect periods during which the employee is obliged to be at the disposal of the employer with a view to carrying out work, if the latter so demands. However, this obligation, even where the possibility of having to carry out work is purely hypothetical, unquestionably prevents the employee from the pursuit of activities of his or her own choosing, planned within the limits of the time available before the beginning of work at a fixed time and not subjected to any lack of certainty resulting from the exercise of an occupation or from the situation of dependency inherent in that exercise.

37. 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 therefore constitute an adequate criterion for regarding such a period as a rest period.

38. The Committee therefore holds that the assimilation of “périodes d’astreinte” to rest periods constitutes a violation of the right to reasonable working time provided in Article 2§1 of the Revised Charter.

39. As far as these “périodes d’astreinte” can be on Sundays, the Committee holds that there is also a violation of Article 2§5 of the Revised Charter.”

**Article 2§6**

291. **Conclusions 2014, Republic of Moldova**: The Committee notes that the length of notice periods for termination of contracts or employment relationships does not have to figure in the contract, but is established instead by Article 184 of the Labour Code. The Committee asks whether this information is included in other mandatory documents given to workers upon recruitment (employers’ and employees’ rights and obligations, collective contracts or company regulations; official appointment orders, post descriptions, etc.) or, alternatively, whether the contract refers to the relevant statutory provision.

292. **Conclusions 2003, Bulgaria**: “The Committee considers that the written information which workers are guaranteed under Article 2§6 of the Charter must at least cover the essential aspects of the employment relationship or contract, including the following:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;"
– in the case of a temporary contract or employment relationship, the expected duration thereof;
– the amount of paid leave;
– the length of the periods of notice in case of termination of the contract or the employment relationship;
– the remuneration;
– the length of the employee’s normal working day or week;
– where appropriate, a reference to the collective agreements governing the employee’s conditions of work.”

Article 2§7

293. **Conclusions 2014, Bulgaria**: The Committee previously noted (Conclusions 2003 and 2007) that, pursuant to Article 140 of the Labour Code, night work is work performed between 10 pm and 6 am and that night working hours may not exceed 7 per 24 hour period and 35 per week. It notes from the ILO database (Bulgaria working time 2011) that “night worker” indicates a worker who performs at least 3 hours of night work whether on a regular basis or in shifts.

294. **Conclusions 2003, Romania**: “Having regard to the general recognition that night work places special constraints, including mental and physical strain, on workers, the Committee considers that the measures provided for under Article 2§7 of the Charter should include, as a minimum, the following:
- periodic medical examinations, including a check prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- continuous consultation with workers’ representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.”
Article 3 The right to safe and healthy working conditions

295. Conclusions I (1969), Statement of Interpretation on Article 3: “The Committee regarded this Article as establishing a widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights. Considerable attention has been given in the Charter to the application of this principle: indeed, two more articles (Articles 7 and 8) have been devoted to the protection of young persons and women. The second of the three paragraphs comprising Article 3 has, in the opinion of the Committee, a particular importance, since it establishes the need to provide for a system of labour inspection to safeguard the implementation of the rights to safe and healthy working conditions in practice. The Committee considered that a country which has accepted this article can only be regarded as fulfilling the undertaking deriving from it if it can prove that safety and health regulations have been issued for all economic sectors, that such regulations are adequately enforced through inspection and civil and criminal sanctions, and finally that any necessary consultations on safety and health matters between Governments and both sides of industry are arranged and actually take place.”

296. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3: Article 3, which requires of the Contracting Parties that they guarantee the right to safe and healthy working conditions, protects individuals’ right to physical and mental integrity at work. Its purpose is related to that of Article 2 of European Convention on Human Rights and Fundamental Freedoms which recognises the right to life. Article 3 provides that this right be ensured by requiring Contracting Parties to agree to three undertakings:
   a. to issue health and safety regulations;
   b. to provide for measures of supervision of the enforcement of these regulations;
   c. to consult employers’ and workers’ organisations on measures to improve industrial safety and health.”

297. Conclusions II (1971), Statement of Interpretation on Article 3: “This article is designed to guarantee the right to safe and healthy working conditions not only for employed persons but also for the self-employed, ought to apply to ALL sectors of the economy if only on account of the technical advances and increasing mechanisation manifest in every branch of activity.”

298. Conclusions 2013, Statement on Interpretation on Article 3: “In relation to the application of the right to safe and healthy working conditions set out in Article 3, new trends such as increased competition; free movement of persons; new technology; organisational constraints; self-employment, outsourcing and employment within small and medium-sized enterprises; increased work intensity, produce constant change in the work environment and new forms of employment which generate, increase and shift factors of risk to the workers’ health and safety. In particular, new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. These may in turn cause mental health problems for the persons concerned, with serious consequences on work performance, illness rates, absenteeism, accidents and staff turnover. They have also been identified as some of the most significant factors of disease and disability worldwide, cutting across age, sex and social strata, impacting low-income and high-income countries alike. Recent studies have also established that occupational health and safety policies and psychosocial risk management are more common in larger undertakings, and that in practice, the main drivers for addressing in particular psychosocial risks are compliance with legal obligations and requests by workers. They further show that drivers for, and barriers to, psychosocial risk management are per se multidimensional, insofar as the employers’ willingness to act depends on a variety of factors such as organisational rationality, economic opportunity, or in any event compliance with legal obligations. The Committee recognises that such complex and
multidimensional factors place greater demands on the competence, resources and institutional capacity of labour inspection systems, which States Parties should consider when seeking to fulfil their obligations under the Charter.

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

**Article 3§1**

299. **Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria:** “To ensure that all persons working benefit from the right to health and safety at work, the new paragraph 1 of Article 3 of the Charter requests states, in consultation with employers’ and workers’ organisations, to formulate, implement and periodically review a coherent national policy on occupational health and safety. Under Article 3§1 such a policy must include strategies for making occupational risk prevention an integral aspect of the public authorities’ activity at all levels. To comply with this provision states must ensure the following:

- the assessment of work-related risks and introduction of a range of preventive measures taking account of the particular risks concerned, monitoring of the effectiveness of those measures and provision of information and training for employees, since, within individual firms, occupational risk prevention means more than simply applying regulations and remediating situations that have led to occupational injuries;
- the development of an appropriate public monitoring system - more often than not a responsibility for the labour inspectorate - to maintain standards and ensure they apply in the workplace;
- the establishment and further development of programmes in areas such as:
  - training (qualified staff);
  - information (statistical systems and dissemination of knowledge);
  - quality assurance (professional qualifications, certification systems for facilities and equipment);
  - where appropriate, research (scientific and technical expertise).”

300. **Conclusions 2013, Statement of Interpretation on Article 3§1:** “Under the provisions of Article 3§1 of the Revised Charter, which requires to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment, the Committee will:

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

301. **Conclusions 2013, Statement of Interpretation on Article 3§1** *op cit*

302. **Conclusions 2009, Armenia:** “The Committee underlines that, in accordance with paragraph 1 of Article 3 of the Revised Charter, the main objective policy must be to foster and preserve a culture of prevention in respect of occupational health and safety.”

303. **Conclusions 2005, Lithuania:** “The Committee asks whether provision is made for a periodical assessment and reviewing of the national policy strategies and which steps are taken for making occupational health and safety an integral aspect of other public authorities’ policies (such as employment policy, policy on disabled people, gender policy).
304. **Conclusions 2013, Albania:** “The report states that this legislation purports to implement ILO Convention No. 155 on Occupational Safety and Health (1981) and to incorporate the Community acquis established in particular by Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. The Committee takes note of this information. It notes Albania’s efforts to lay down and implement a national policy on occupational health and safety based on establishing and maintaining a culture of occupational risk prevention.”

305. **Conclusions 2013, Austria:** “The report also points out that the Government adopted a Health and Safety at Work Strategy for 2007-2012, modelled on the Community strategy 2007-2012 on health and safety at work, and whose aims are to exchange knowledge, set up networks and discuss topical issues with the ILO and EU institutions. [...] The Committee takes note of this information. It notes that there is a national policy which is intended to foster and preserve a culture of prevention in the occupational health and safety field.”

306. **Conclusions 2005, Lithuania:** “The Committee asks whether provision is made for a periodical assessment and reviewing of the national policy strategies […]”

307. **Conclusions 2009, Armenia:** “The Committee recalls that, in addition to compliance with protective rules, the assessment of work-related risks and the adoption of preventive measures geared to the nature of risks as well information and training for workers.”

308. **Conclusions 2007, Cyprus:** “The Committee takes note of the role played by the Labour Inspectorate in the development of a culture of health and safety among employers and workers, namely via the launching of awareness raising campaigns, training of employers and workers on occupational health and safety, and the distribution of information materials.”

[...] The Committee also notes that employers are responsible for assessing risks in the undertaking, and for taking measures to eliminate or reduce them to an acceptable level. The situation on this point is therefore in conformity with Article 3§1 of the Revised Charter.”

309. **Conclusions 2009, Malta:** “As regards the role of the labour inspectorate, there is a duty for inspectors to share the knowledge of risks and risk prevention they have acquired during their inspections and investigations conducted as part of their prevention activities (e.g. information, education).”

310. **Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria: op. cit.**

311. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 3:** “Article 3, which requires of the Contracting Parties that they guarantee the right to safe and healthy working conditions, protects individuals’ right to physical and mental integrity at work. Its purpose is related to that of Article 2 of European Convention on Human Rights and Fundamental Freedoms which recognises the right to life. Article 3 provides that this right be ensured by requiring Contracting Parties to agree to three undertakings: — to issue health and safety regulations; — to provide for measures of supervision of the enforcement of these regulations; — to consult employers’ and workers’ organisations on measures to improve industrial safety and health.”

312. **Conclusions 2009, Lithuania:** “The Occupational Safety and Health Commission, which is a tripartite cooperation body, has been described in a previous conclusion of the Committee (Conclusions 2005). Its role is to coordinate the interests of the State, workers and employers in the area of safety and health at work, and to act as an advisory body to the Ministry of Social Security and Labour. Local Commissions at regional and municipal levels have also been set up.
in 2002. The Committee reiterates its question regarding the effectiveness of these bodies in promoting social dialogue in the area of health and safety, notably by providing concrete examples illustrating their effectiveness.”

Article 3§2 (ex-Article 3§1 of the 1961 Charter)

313. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): “Article 3 para. 1 requires the Contracting Parties to issue regulations on health and safety at work. In order to be in conformity with the Charter, the regulations in force should meet requirements as to their content and personal scope.

The regulations should provide for preventive and protective measures against most of the risks provided in the international technical reference standards

The Committee observes that generally speaking, the legislative and regulatory measures relating to industrial health and safety in the Contracting Parties are organised as follows: Framework legislation on health and safety at work which imposes general obligations on employers and on workers. All Contracting Parties, members of the European Union or parties to the Agreement on the European Economic Area have adopted this type of legislation, in some cases following the incorporation during the reference period of Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work; Regulations providing for specific measures in accordance with the risks and hazards connected with:

– the establishment of, alteration to and upkeep of workplaces;
– work equipment;
– hazardous agents and substances;
– certain sectors and activities;
– certain vulnerable categories of workers,
– the organisation of work.

The first stage in supervision of the conformity of the content of regulations consists in defining the risks that should be regulated. During the first supervision cycles, the Committee referred in various separate cases to the numerous ILO Conventions and recently to several Community Directives on health and safety at work.

The Committee observes that since the last cycle during which it examined Article 3 for all the Contracting Parties (Conclusions XIII-1, reference period 1990-1992), Community legislation on safety and health has been developed substantially and now covers most areas of workers' health and safety (following the introduction of Article 118A and the adoption of the Charter of Fundamental Social Rights of Workers). It considers that reference to Community law is now necessary in this field, in particular in the light of Directive 89/391/EEC which establishes the framework and principles of the protection of workers' health and safety and serves as a basis for a large number of more specific directives.

Consequently, the Committee has at its disposal a very complete set of international technical reference standards which can be of use for defining and listing the main risks and occupations concerning which regulations should provide for protection and prevention measures in order to comply with Article 3 para. 1 of the Charter. Aware of the particularly changing nature in this field with the progress made in technology, ergonomics and medicine, the Committee will explain the new areas to which it will turn its attention each time it examines Article 3.

Currently, the areas in which supervision is conducted are the following: Establishment, alterations and upkeep of workplaces — Work equipment

– Workplaces and equipment, in particular the protection of machines, manual handling of loads, work with display screen equipment
– Hygiene (Commerce and Offices)
– Maximum Weight
– Air Pollution, Noise and Vibration
Personal protective equipment
- Safety and/or health signs at work.

Hazardous agents and substances
- Chemical, physical and biological agents in particular carcinogens, including: white lead (painting), benzene, asbestos, vinyl chloride monomer, metallic lead and its ionic compounds, ionizing radiation;
- Control of major accident hazards involving dangerous substances

Risks connected with certain sectors or activities
- Marking of weight (packages transported by vessels) *
- Protection of dockers against accidents
- Dock Work
- Building Safety Provisions, temporary or mobile construction sites
- Mines, mineral through drilling and underground mineral extracting industries
- Ships and fishing vessels
- Prevention of Major Industrial Accidents

Risks connected with certain vulnerable categories of workers
The protection of health and safety for certain categories of workers calls for special provisions:
- The Committee notes that there have been substantial changes in the characteristics of the active population over the past years, and in particular an increased use of insecure types of employment (temporary and fixed-term employment and self-employment). It observes that these workers are more subject to a combination of risks in terms of health and safety, related both to the nature of the work they are asked to perform (often in the building and industrial sectors) and to their statute.

This explains why the Committee decided to pay attention to the situation of workers in insecure employment or working under fixed-term contracts. It therefore asks those Contracting Parties bound by Article 3 whether appropriate rules have been laid down to take account of the specific nature of these types of employment relationship, in order to ensure that the workers concerned enjoy the same level of health protection at work as other workers in the undertaking. For example, the Committee will take into account the existence of a list of occupations in which these workers may not be employed, and of provisions providing for special information, training and medical surveillance.

It notes that these forms of work are the subject of prescriptions at Community law level, in Directive 91/383 which supplements the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.
- Article 7 of the Charter contains provisions for specific measures to be taken in relation to children and young persons (higher minimum age of admission to employment with the exception of certain prescribed light work, higher minimum age for certain dangerous and unhealthy occupations, limited working hours, ban on night work, medical examinations). The Committee considers that control of the compliance with these prescriptions falls within the remit of Article 7;
- Article 8 para. 4 of the Charter provides for regulation of the employment of women workers on night work in industrial employment (Article 8 para. 4a) and for the prohibition of all employment of women workers in underground mining work and as appropriate of all other work unsuitable for them by reason of its dangerous, unhealthy or arduous nature (Article 8 para. 4b). For several cycles the Committee has focused on situations connected with maternity. It found the expression "as appropriate" used in Article 8 para. 4b permitted states to limit the prohibition of employment of women in the above-mentioned occupations to the sole cases where this was necessary to protect motherhood, notably pregnancy, confinement and the post-natal period, as well as future children (Conclusions X-2). The Committee thus examines the special protection which must be afforded to women and especially pregnant women, those having recently given birth or who are breastfeeding in the context of Article 8 para. 4.
Risks connected with the organisation of work.

These include prescriptions on working hours, weekly rest periods, paid leave, etc, covered as such by Article 2, of which the aim is to protect the health and safety of workers, similarly to Article 3. Article 2 para. 4 contains a specific requirement in relation to the organisation of working time in dangerous or unhealthy occupations. Supervision of the effects of the adjustment of working time, and in particular its development (flexibility measures) on health and safety at work, are therefore part of the assessment of conformity with Article 2. This supervision will be extended to cover night work in the framework of the revised Charter (Article 2 para. 7).

Regulations should provide for preventive and protective measures without any major gap

The Committee considers that the extent, technical nature and development of prescriptions prevent it from monitoring the situation in a detailed and thorough fashion. It thus proceeds to its assessment in the following manner:

- it firstly makes a global appraisal of the level of protection offered in order to assess whether there are any major loopholes. Appraisal is not only based on information included in the report but also on the observations of the ILO Committee of Experts on the application of the many ILO conventions in the field and on the information about the incorporation of Community directives into the domestic law of the Contracting Parties which are members of the European Union and parties to the Agreement on the European Economic Area. The Committee considers that significant criteria for assessment are: the scope of employers' general requirements and in particular those related to risk management; the order of importance of the main means of protection and prevention, and the trends in the area of industrial accidents and occupational disease examined under Article 3 para. 2;
- it also makes an assessment by subject, determining more precisely the actual means of prevention and protection needed against certain risks, again with reference to international technical standards. Assessment of these risks plays a significant part in the global examination of levels of protection.

It asked general questions in Conclusions XIII-4 on protection against hazards related to asbestos and ionizing radiation:

Protection against asbestos

International technical reference standards are ILO Convention No. 162 of 1986 on asbestos (ratified by seven Contracting Parties to the Charter) and Community Directive 83/477 on the protection of workers from the risks related to exposure to asbestos at work, amended by Directive 91/382. The Committee also notes that the Parliamentary Assembly of the Council of Europe adopted a recommendation on the dangers of asbestos for workers and the environment (Recommendation No. 1369 (1998).

The Committee concentrated its examination on the following measures:

Threshold levels for exposure. The ILO Convention and the Directive oblige exposure to asbestos to be reduced to the lowest levels and provide for the prescription of limits to exposure. The Directive sets them at 0.6 fibres per cm² for chrysotile (ribbon fibres considered only slightly dangerous) and at 0.3 fibres per cm² for the other types of asbestos. It also notes that the ILO Convention requires limits to be revised and periodically updated to match technological progress and developments in technical and scientific knowledge.

The Committee considers that in order to comply with Article 3 para. 1, limits to exposure should be at least equal to or lower than the limits set out in the Directive. In this respect it observes that during the Reference period, this was in fact the case in all the member states of the European Union except Greece.

Measures of prohibition. The ILO Convention and the Directive prohibit asbestos spraying in any form whatsoever. The ILO Convention also requires that where necessary and technically possible, legislation should provide for the replacement by other less toxic materials or the partial
prohibition of the use of asbestos. At all events, the use at workplaces of asbestos in one of its most harmful forms (crocidolite) should be prohibited. The Parliamentary Assembly’s Recommendation states that asbestos must be eliminated where technical knowledge allows. The Committee holds that the total prohibition of asbestos is a measure which will ensure that the right provided under Article 3 para. 1 of the Charter is more effectively guaranteed. It notes from the information at its disposal that France, the Netherlands, Italy, Denmark, the United Kingdom, Germany, Finland and Sweden have taken measures of general prohibition of asbestos. These measures are very different, varying according to the scope of the ban (use, handling, import, export, sale and manufacture), the exceptions allowed and the type of fibres prohibited. In addition, bearing in mind the importance of this issue in the light of the right to health of the population (Article 11 of the Charter), the Committee requests whether measures have been taken to draw up an inventory of all contaminated buildings and materials.

Protection against ionising radiation

The Committee considers that effective protection against the risks related to ionising radiation requires that the maximum levels prescribed in 1990 by the International Commission on protection against radiation be respected and invites Parties which are members of the European Union and parties to the Agreement on the European Economic Area that have not yet adjusted their legislation according to these levels to do so in the framework of Directive 96/29/Euratom. The Committee points out that Article 3 of the revised Charter contains a requirement of coherent risk prevention policy, such as reducing to the minimum the causes of risks inherent in the working environment and providing for the institution of health services at work for all workers. This will enable the Committee to focus on such prevention factors as the training and informing of workers, the medical supervision of workers and the organisation of that supervision, etc.

All workers, regardless of their category and the sector of activity in which they are occupied, must be protected

As Article 33 does not apply, this aspect of Article 3 has always been systematically monitored by the Committee and has led to negative conclusions in certain cases, generally connected with a lack of adequate protection for the self-employed. The Committee recalls that it has recognised that, “given the difference in the conditions in which an employee and a self-employed worker carry out their activities, there may, to a certain extent, have to be different rules for applying safety and health requirements. However, the objective of providing a safe and healthy working environment must be the same for both employed and self-employed workers, and the regulations and their enforcement must be adequate and suitable in view of the work being done” (inter alia, Conclusions XIII-4).

In the light of these remarks, the Committee examined the new Belgian legislation (Welfare of Workers Act of 4 August 1996) and observed that, although the category of self-employed workers was still not fully protected, the rules on prevention and safety provided for in the 1996 Act must be respected in the majority of situations in which the health and safety of such workers may be jeopardised. Therefore the only self-employed workers to whom the law does not apply at all are those who work for themselves, at home, without anyone under their authority. In these circumstances the Committee concluded that Belgium does guarantee self-employed workers the protection required under Article 3 para. 1.

The Committee notes that the incorporation into domestic law of Community directives in matters of health and safety at work has led several Contracting Parties to extend the personal scope of their regulations, in particular to cover the self-employed. It cannot, however, take this positive development into consideration if the states in which the problem has arisen (Greece, Italy and the Netherlands) do not supply sufficient information to allow it, as in the case of Belgium, to make an assessment of which regulations apply to self-employed workers and in which situations they are effectively covered and therefore subject to supervision by the labour inspection.”
314. Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §224: “224. States’ first obligation under Article 3 is to ensure the right to safe and healthy working standards of the highest possible level. Paragraph 1 of this article requires them to issue health and safety regulations providing for preventive and protective measures against most of the risks recognised by the scientific community and laid down in Community and international regulations and standards (Conclusions XIV-2 (1998), Statement of Interpretation on Article 3).”

315. Conclusions 2013, Statement of Interpretation on Article 3 “In relation to the application of the right to safe and healthy working conditions set out in Article 3, new trends such as increased competition; free movement of persons; new technology; organisational constraints; self-employment, outsourcing and employment within small and medium-sized enterprises; increased work intensity, produce constant change in the work environment and new forms of employment which generate, increase and shift factors of risk to the workers’ health and safety. In particular, new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. These may in turn cause mental health problems for the persons concerned, with serious consequences on work performance, illness rates, absenteeism, accidents and staff turnover. They have also been identified as some of the most significant factors of disease and disability worldwide, cutting across age, sex and social strata, impacting low-income and high-income countries alike.

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

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

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

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

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

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

Under the provisions of Article 3§3 of the Revised Charter (which relates to Article 3§1 under the 1961 Charter), which requires to provide for the enforcement of safety and health regulations by means of supervision; and in light of Part III Article A§4 of the Revised Charter, whereby States Parties shall maintain a system of labour inspection appropriate to national conditions, the Committee will:
• examine measures taken by public authorities to address increasingly complex and multidimensional demands on the competence, resources and institutional capacity of labour inspection systems;
• examine measures taken by public authorities to focus labour inspection on small and medium-sized enterprises (SMEs).

Under the provisions of Article 3§4 of the Revised Charter, which requires to promote, in consultation with employers’ and workers’ organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions, the Committee will:
• examine whether occupational health services are trained, endowed and staffed to identify, measure and prevent work-related stress, aggression and violence.”

316. Conclusions 2013, Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): “Under the provisions of Article 3§2 of the Revised Charter (which relates to Article 3§1 under the 1961 Charter), which requires that most of the risks listed in the General Introduction to Conclusions XIV-2 (1998) be specifically covered, the Committee will: include work-related stress, aggression and violence when examining the risks covered by occupational health and safety regulations;”

317. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e on Article 3§1 of the 1961 Charter): op. cit.

318. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e on Article 3§1 of the 1961 Charter): op. cit.

319. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e on Article 3§1 of the 1961 Charter): op. cit.

320. Conclusions XIV-2 (1998), Italy: “1. The main regulations on protecting workers against asbestos (a general question in Conclusions XIII-4 (1996)) are to be found in Act No. 257/1992. The Committee notes with interest that Italy has taken measures to introduce an overall ban. The above Act is in fact intended to prohibit the extraction, import, export, sale and production of asbestos and products containing asbestos. It also establishes the maximum concentration levels of asbestos fibre in the air, making them equal to or less than those fixed by Directive 83/477, as amended by Directive 91/382. The Committee also observes that steps have been taken to identify and eliminate the risks associated with the use of materials containing asbestos in school and hospital buildings. The Committee considers that in this respect the situation complies with Article 3 para. 1.
2. The Committee has learnt that the Legislative Decree of 30 July 1990 and Legislative Decree No. 230/1995 on ionising radiation (a general question, ibid.) transpose several Euratom directives into Italian law and are chiefly intended to minimise workers’ exposure to ionising radiation. However, this information does not enable it to ascertain whether Italy has adapted its regulations in such a way as to respect all the maximum doses recommended in 1990 by the International Commission on Radiological Protection. If this is not the case, given the importance which the Committee attaches to these recommendations, it invites the Italian Government to act on the recommendations when transposing into national law Directive 96/29/Euratom on protecting the health of workers and the general public against the dangers arising from ionising radiation.
3. The Committee learnt from the ILO that there are serious shortcomings in the establishment of maximum values for exposure to benzene. The report does not reply to the question on this matter in the previous conclusion (Conclusions XIII-3 (1995)). It emerges from another source that Legislative Decree No. 626/1994 (see above) is cited by the Italian Government as a measure for transposing directive 90/394 into national law. However, this act contains only general rules and does not establish any limits to exposure. The Committee emphasises that the establishment of limits that comply with current international technical norms for exposure to this carcinogen is a crucial protective and preventative measure in terms of conformity with Article 3
para. 1. It therefore hopes that the next report will contain information on the introduction of regulations to improve the situation.

4. Air pollution, noise and vibration. The Committee learnt from information provided by the ILO that there is no national organisation responsible for updating the limits for exposure in these areas. Pointing out that this situation could result in considerable discrepancies, particularly with regard to the norms established by ILO Convention No. 148 on Working Environment (Air Pollution, Noise and Vibration), the Committee asks that the next report describe the procedures by which the criteria and exposure limits are revised in the light of new information.

- Workplaces and work equipment.
The Committee has learnt that there is no legal limit on the weight of loads that can be transported manually by adult male workers (this observation was made in 1994 by the ILO Committee of Experts on the application of Convention No. 127 on Maximum Weights). It asks that the next report indicate the measures taken or foreseen to remedy this lacuna.

- Protection against the risks inherent in certain sectors and occupations
The Committee notes that Italy excludes on-board aircraft workers from the scope of Convention No. 148. As flying personnel are particularly exposed to these risks, the Committee insists that the next report indicates which regulations apply the norms established by Convention No. 148 to the air transport sector.

321. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): op. cit.

322. Conclusions 2005, Cyprus: “In its last report before Cypriot accession to the European Union ("Comprehensive Monitoring Report on Cyprus’s Preparations for Membership" 2003), the European Commission found that most of the Community acquis in the area of health and safety at work had been transposed. However, it also said that alignment with regard to indicative occupational exposure limit values (chemical agents at work) must continue. The Committee notes that to be in conformity with Article 3§2 of the Charter the occupational health and safety regulations must specifically cover the great majority of risks listed in the General Introduction to Conclusions XIV-2 (1998)). The transposition of most of the Community acquis shows that this general obligation has been met.”

323. Conclusions 2013, Malta: “Given that, according to another source, the number of ILO Conventions ratified by Malta is particularly low in the important shipping, fishing and docking sectors, the Committee asks for information in the next report on the Government’s intent to improve the situation in this regard.”

324. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): op. cit.

325. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): op. cit.
Conclusions 2009, Estonia: “However, the Committee asks for confirmation that Directive 2003/18/EC of the European Parliament and the Council of 27 March 2003 and Commission Directive 1999/77/EC of 26 July 1999, which bans the placing on the market and use of products containing asbestos as from 2005, have been transposed into domestic law and that they are observed in practice. It further asks whether the authorities have drawn up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks for the next report to provide specific information on steps taken to this effect.”

Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): op. cit.

Conclusions 2013, Portugal: “The Committee takes note of this information […] It also asks for information about the measures taken to incorporate the exposure limit value of 0.1 fibres/cm³ introduced by Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work, which was adopted during the reference period.”

Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): op. cit.

Conclusions 2007, Romania: It also asks whether under Romanian regulations the dose limits that may not be exceeded in the workplace are the same as those recommended by the International Commission on Radiological Protection (ICRP).”

Conclusions 2009, Andorra: “The Committee enquires whether national standards also take into account the recommendations made by the International Commission on Radiological Protection (ICRP, publication No. 60), relating in particular to maximum doses of exposure in the workplace but also persons who, although not directly assigned to work in a radioactive environment, may be exposed occasionally, or whether Council Directive 96/29 Euratom of 13 May 1996 laying down basic standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation has been reflected in national legislation.”

Conclusions 2005, Cyprus: “For the situation to be in conformity with Article 3§2, states must offer effective protection against the risks related to ionising radiation, which involves adjusting their regulations to take account of the recommendations of the International Commission on Radiological Protection (ICRP). It considers that these recommendations are sufficiently reflected in the dose limits in Directive 96/29/Euratom and that the situation in Cyprus is therefore in conformity with Article 3§2 in this regard.”

The Committee takes note of this information. It nevertheless points out that the report must provide full, up-to-date information on changes in the legislation and regulations during the reference period.

334. Conclusions II (1971), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): *op.cit.*

335. Conclusions 2005, Estonia: “The Committee points out that for the purposes of Article 3§2 all workers, including non-permanent workers, must be covered by health and safety at work regulations (Conclusions I (1969) and Conclusions II (1971)). It has always maintained this interpretation, on the grounds that permanent and temporary workers are normally exposed to the same risks and that self-employed workers are often employed in high-risk sectors. Noting that self-employed persons in Estonia are not covered by the occupational health and safety laws, the Committee considers that the situation is not in conformity with Article 3§2 of the Charter.”

336. Conclusions III (1973), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): “On proceeding to its re-examination of the scope of this provision, the Committee made it clear that although, so far, it had not considered paragraph 1 of Article 3 as having a dynamic character, it is up to the governments, in the event of technical developments rendering their regulations on health and safety at work seemingly out of tune with the new situation, to prove that the existing regulations were still adequate and, if appropriate, to adapt them continuously to these developments.”

337. Conclusions IV (1975), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter): “However, this may be, the activities of the self-employed also affect both the personal health and safety, and the duties in this regard, of other people; these therefore have an interest in effective regulation and inspection. [...] Of course, derogations for practical reasons, such as to the low risk of certain economic sectors, the difficulty of inspection, lack of co-operation with inspection and so on. It is also clear that as regards more specifically agriculture there is no presumption that there is a case warranting such derogations: rather the opposite.”

338. Conclusions XIII-4 (1996), Belgium: “The Committee considered that even though the protection offered to the self-employed could be extended through the bill mentioned above, this category was not entirely covered. It was particularly concerned about the situation of farmers, considering the many hazards involved in their work. The Committee recalled its case law according to which the requirement under this provision concerned both employed and self-employed workers in all sectors of the economy, although “given the difference in the conditions in which an employee and a self-employed worker carry out their activities, there may, to a certain extent, have to be different rules for applying safety and health requirements.” However, “the objective of providing a safe and healthy working environment must be the same for both employed and self-employed workers, and the regulations and their enforcement must be adequate and suitable in view of the work being done” (Conclusions XIII-1 (1993)).”

339. Conclusions 2009, Andorra: “The Committee points out that for the situation to be in conformity with Article 3§2 of the Revised Charter, states must take the necessary measures to equip non-permanent workers (temporary agency workers and fixed-term workers) with information, training and medical surveillance adapted to their employment status, in order to avoid any discrimination in respect of health and safety in the workplace. The Committee indicates that these measures must ensure that such workers are afforded adequate protection, including against risks resulting from a succession of accumulated periods spent working for a variety of employers, exposed to
dangerous substances, and, if necessary, must contain provisions prohibiting the use of vulnerable workers for some particularly dangerous tasks.”

340. **Conclusions 2013, Bulgaria:** “The Committee previously examined (Conclusions 2003, 2007 and 2009) the protection of temporary workers, interim workers and workers on fixed-term contracts. The report provides no information on the subject. According to other sources, ILO Convention No. 181 on Private Employment Agencies (1997) is in force and Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship has been transposed by various legal acts. In view of this information, and of its previous conclusion, the Committee confirms that temporary workers, interim workers and workers on fixed-term contracts enjoy the same standard of protection than workers on indefinite contracts.”

341. **Conclusions 2009, Romania:** “The report states that Governmental Decision No. 557/2007 provides that employers have a duty to ensure employees who are a contract of temporary employment or who are employed through temporary agencies with the same conditions of occupational safety and health, particularly regarding personal protective equipment, as other employees. According to the aforementioned Governmental Decision, the employer has a duty to inform this type of worker, before they start work, of the qualifications, skills or medical services that apply in the activity to be undertaken as well as the major risks specific to the workplace. The employer has a duty to provide resources for medical services for the medical screening of employees' health, in accordance with Governmental Decision No. 355/2007 on the supervision of workers' health and with Article 7(6) of the above-mentioned Safety and Health at Work Law. The Committee asks for confirmation that these provisions on medical services apply to temporary workers.”

342. **Conclusions 2009, Lithuania:** “The Committee reiterates its question about the medical supervision for this category of workers. It also asks whether non-permanent workers are entitled to representation at work.”

343. **Conclusions 2009, Belgium:** “The Committee considered in a previous conclusion (Conclusions XVI-2) that the relevant legislation took into account the specific nature of temporary employment in a manner consistent with the requirements of the Charter. In reply to the question put by the Committee regarding measures taken to reduce the incidence of occupational accidents of temporary agency workers, the report indicates that Royal Decree of 19 February 1997 concerning the protection of temporary agency workers is under revision. The draft decree is currently being discussed with social partners, notably the question of the supervision of such workers’ health, before being submitted to the Minister of Labour for signature. The Committee therefore asks to be kept duly informed of developments concerning the future decree.”

344. **Conclusions I (1969), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter):** “The Committee interpreted this provision as requiring the Contracting States to issue safety and health regulations for all economic sectors, i.e.:
(a) manufacturing industry,
(b) mining and quarrying,
(c) commerce and transport (including shipping),
(d) agriculture.”

345. **Conclusions XIII-1 (1993), Greece:** “The Committee noted that according to the Greek report the 1985 Act on health and safety at work was not the only relevant legislation in this field and there were other specific provisions applying to firms with fewer than 150 employees. However, it also noted that minimum staff levels were always required for the application of these provisions. [...] Given the minimum staff levels for the application of health and safety legislation, [...] the Committee could only renew its negative conclusion.”
346. **Conclusions XIII-1 (1993), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter):** “The Committee requested that all States bound by paragraph 1 and/or 2 of this provision of the Charter indicate, in their next reports, the extent to which home workers are covered by the regulations governing health and safety at work and the measures which exist for the supervision of the enforcement of such regulations.”

347. **Conclusions XIV-2 (1998), Belgium:** “The Committee had also explained that it reached a negative conclusion because of the absence of health and safety regulations applying to domestic employees and their employers. It notes, however, in this connection, that Section 20 of the Employment Contracts Act of 3 July 1978 obliges employers “to see to it, carefully and diligently, that the work is carried out in appropriate conditions of worker safety and that first aid is provided in case of accident […] and to give workers suitable accommodation as well as an adequate amount of nourishing food […].” Employers are also obliged to insure their employees against industrial accidents, irrespective of whether they are employed on a regular or casual basis and of whether or not they are covered by the National Social Security Office (Industrial Accidents Act of 10 April 1971). The Committee considers that, in the light of this information, domestic employees are protected by health and safety regulations as required by Article 3 para. 1.”

348. **Conclusions 2005, Estonia:** “The Committee points out that for the purposes of Article 3§2 all workers, including non-permanent workers, must be covered by health and safety at work regulations (Conclusions I, p. 8 and Conclusions II, p. 182). It has always maintained this interpretation, on the grounds that permanent and temporary workers are normally exposed to the same risks and that self-employed workers are often employed in high-risk sectors. Noting that self-employed persons in Estonia are not covered by the occupational health and safety laws, the Committee considers that the situation is not in conformity with Article 3§2 of the Revised Charter.”

349. **Conclusions XIX-2 (2009), Spain:** “The Committee already noted the enactment of Act No. 20/2007 of 11 July 2007 concerning the status of self-employed workers including in respect of occupational risk prevention. The Committee asks for more information on the extent to which health and safety legislation and regulations apply to the self-employed, especially considering that, according to another source, self-employment account for around 3.6 million persons (representing 18.3% of the total Spanish workforce). It considered in its previous conclusion that self-employed workers were not sufficiently covered by the relevant regulations.”

350. **Conclusions 2013, Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter):** “Under the provisions of Article 3§2 of the Revised Charter (which relates to Article 3§1 under the 1961 Charter), which requires that most of the risks listed in the General Introduction to Conclusions XIV-2 (1998) be specifically covered, the Committee will: […]

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

351. **Conclusions 2017, Ukraine** “The Committee recalls that regulations must be drawn up in consultation with employers’ and workers’ organisations. Article 3§2 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation in the drafting of laws and regulations at all levels and in all sectors.”

**Article 3§3 (ex-Article 3§2 of the 1961 Charter)**

352. **Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §231:** “231. The Committee considers that in the areas such as the right to safety and health at work, which are so intimately linked with the physical integrity of individuals, the state has a duty to provide precise and plausible explanations
and information on developments in the number of occupational accidents and on measures taken to ensure the enforcement of regulations and hence to prevent accidents. In the present case, the Committee considers that Greece has failed to honour its obligation to effectively monitor the enforcement of regulations on health and safety at work particularly as the Government recognises the lack of inspectors and is unable to supply precise data on the number of accidents in the mining sector.”

353. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§3 (i.e. Article 3§2 of the 1961 Charter): “Under paragraph 2 of Article 3, Contracting Parties must provide for the enforcement of health and safety regulations by measures of supervision. The purpose of this provision is to ensure individuals an effective implementation of the right to protection of their physical and mental integrity at work. The Committee monitors compliance with this undertaking by taking into account developments in the area of occupational accidents and diseases as well as the setting up and maintenance of an effective inspection system. It considers that there is no systematic link to be maintained between the conclusions it adopts under paragraph 1 and under paragraph 2 of Article 3 and that each of these provisions contains its own requirements which may be the subject of an independent assessment.

Occupational accidents and diseases

In order to assess the development of the situation the Committee takes into account the number of accidents in absolute terms and of trends in the numbers of workers over the same period, which allows it to ascertain the frequency of accidents (the number per one hundred workers). In the absence of other indications in the report on the number of workers taken into consideration for the compilation of statistics, the Committee refers to total employment as defined and given in the ILO’s Yearbook of Labour Statistics. It also uses the figures given on the number of occupational accidents in this source where those in national reports are imprecise or partial.

In addition, it decided during the reference period to adopt a more “comparative” approach. For this it uses to supplement the information included in the Contracting Parties’ reports the work of Eurostat on “Accidents at work in the European Union in 1994” in Statistics in focus, Population and Social Conditions, No. 1998/2. These figures cover eight branches of activity (agriculture/hunting/forestry; manufacturing; building; wholesaling and retailing; restaurants; transport and communication; finance; renting and business services), covering 50% to 65% of the entire workforce according to the countries. They define a standardised number of occupational and fatal accidents per 100,000 people in employment, i.e. the number of accidents reported, adjusted or standardised to give each branch of activity the same weight at national level as in the European Union as a whole, so as to correct the impact of a given country’s activities structure on its total accident frequency.

The Committee is aware of the problems related to the accuracy of statistical comparisons and is therefore cautious in its approach. For this reason, it has only found breaches of the Charter where situations present obvious problems. For the current reference period, it thus observed that Portugal’s average figures for the number of industrial accidents and fatalities recorded are far higher than those of other European Union member states — and even the highest of all and that there did not seem to be any prospects of improvement in the period in question. It considers that the frequency of industrial accidents and fatalities is clearly too high for it to conclude that effective exercise of the right to protection from physical and mental injury in the workplace is ensured in Portugal.

The proportion of fatal accidents in relation to the total number of accidents and its fluctuations are taken as a significant factor for assessment of the conformity of situations. The Committee has observed that very few Contracting Parties were able to report a reduction in this proportion, although the standard and frequency of prevention and protection measures is rising, which should in principle result in less serious accidents. It hopes that the recent adoption in several Contracting Parties of measures aimed to prevent major industrial incidents and control the dangers related to major accidents involving hazardous substances will have a positive impact on the probability of death by an occupational accident in the long term.
The Committee notes that in the great majority of Contracting Parties the construction sector of activity is the most dangerous — the average number of accidents and fatal accidents is twice as high as in the other branches. The Committee is aware that temporary workers and subcontractors are often present in this sector where the labour turnover is rapid. It feels that these characteristics explain in part the high number of accidents and stresses the importance of information and training for all workers in general, and above all the necessity of devising information and training methods adapted for workers in insecure employment (see above).

The Committee observes that in several Contracting Parties, there is a great difference between the number of accidents registered and the actual occurrence of accidents, resulting in a loss of precision and thus usefulness, of statistics. This prevents the Committee from assessing the effective enforcement of prescriptions accurately enough to reach a decision, and has prompted it to postpone its conclusion on several occasions. It hopes that the Contracting Parties concerned will take measures to improve the situation, by making the requirement for employers to register accidents more mandatory.

Activities of the Labour Inspectorate

Despite the general question posed on this subject in Conclusions XIII-1 (1993), there is a general lack of information in national reports. Therefore, the Committee takes this opportunity to recapitulate the information it needs in order to adopt a conclusion.

It must be supplied with figures on the number of firms under the Inspectorate’s supervision and the number of workers employed in them, on inspections made and on the number of workers covered by visits. For a number of years the Committee has observed a declining trend in inspections, sometimes offset by an increase in inspectors’ prevention activities. It draws the Contracting Parties’ attention to the fact that an efficient inspection system can only be maintained where a minimum number of inspections are performed on a regular basis, the aim being to ensure that the right enshrined in Article 3 is effectively enjoyed by the largest possible number of workers. In the case of Portugal it found that the number of inspections taken as the relation between workers inspected and total employment was so low that this objective could not be considered to be achieved.

The Committee also asks to be given regular information on the structure of the Labour Inspectorate, including staff levels and the powers of inspectors. In this respect, it noted with interest that in most of the Contracting Parties inspectors can use coercive means of enforcement such as stoppage of activities, placing of seals, etc. in the event of an immediate danger to the health or safety of workers.

Finally, reports should include information on breaches of safety and health regulations, the fields in which they occurred and what action, including legal measures, was taken. In order to ascertain whether the system of sanctions is sufficiently dissuasive for employers, information on sanctions should state their range and for fines should explain how amounts are decided (inter alia, if they are proportional to the number of workers concerned), with a breakdown by administrative and criminal sanctions if this applies.

The Committee invites the Contracting Parties which have ratified ILO Convention No. 81 concerning labour inspection and ILO Convention No. 129 on labour inspection in agriculture, to send it copies of the reports they submit periodically to the ILO in compliance with these conventions.

354. Conclusions 2017, France

355. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter): op.cit.
356. **Conclusions XIV-2 (1998), Portugal:** “The Committee points out that in certain branches of activity Portugal’s average figures for the number of industrial accidents and fatalities recorded are far higher than those of other European Union member states — and even the highest of all. In 1994, in eight branches of activity Portugal’s standardised number of industrial accidents necessitating more than three days’ absence per 100,000 people in employment was 7,361, or 170,114 accidents reported (about 75% of the total number of accidents in 1994 according to the ILO); the European Union average was 4,539. In the same year and the same branches of activity the standardised number of fatalities per 100,000 people in work was 9.7 (or 194 accidents reported excluding road deaths and those from natural causes); the European Union average was 3.9. The Committee considers that the industrial accidents situation gives cause for concern. It would point out to the Portuguese Government that, in accepting Article 3, it committed itself to guarantee individuals the right to protection from physical and mental injury in the workplace. It is under paragraph 2 of Article 3 that the Committee monitors whether this right can effectively be exercised, and, in this connection, it regards the frequency of industrial accidents and the trend thereof as decisive factors. In Portugal’s case, it considers that the frequency of industrial accidents and fatalities is clearly too high for it to conclude that effective exercise of the right is ensured.”

357. **Conclusions 2009, Italy:** “As regards the situation of immigrant workers, about which the Committee expressed concern in its last conclusion (Conclusion 2007), the report states that the number of accidents affecting non-EU workers has continued to rise during the reference period and in 2007 represented more than 15% of the total number of accidents (compared to 12.5% in 2006 and 11.5% in 2005). In 2007, 70% of accidents among domestic workers, who are not covered by health and safety regulations, concerned foreigners (an increase of 24% since 2005). In reply to the Committee’s question on steps taken to improve this situation, the report states that Legislative Decree no. 81/2008 has been adopted with a view, inter alia, to protecting immigrant workers. It provides for example that information given to workers must be easily understandable and allow them to acquire an adequate knowledge of safety, and it must also be ensured that they have sufficient knowledge of the language in which information is provided. The Decree provides that similar steps be taken about training on safety matters. Criminal sanctions are foreseen in case of breach of these obligations. The Committee takes note of this Decree but, in view of the negative trend observed during the reference period, it reiterates serious concerns about the situation of immigrant workers and asks to be kept informed of the implementation and impact of this new text.”

358. **Conclusions 2003, Slovenia:** “The Committee notes that in the extractive sector the accident frequency is more than double the average (6%), followed by the construction industry (5%). In the former, the situation deteriorated in 2000 to reach a frequency of 7.8 accidents per 100 workers. In the light of the foregoing information, the Committee draws the Slovenian Government’s attention to the fact that in accepting Article 3 it has undertaken to guarantee individuals’ right to physical and psychological integrity at work. The Committee recalls that the satisfactory application of the Charter “cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised” (Complaint No. 1/1998, International Commission of Jurists against Portugal, decision on the merits, 9 September 1999, §32). The Committee considers that in assessing respect for the right enshrined in Article 3§3, the number and frequency of fatal accidents and their trends are a decisive factor. In Slovenia’s case, it considers that the number of fatal accidents, particularly in the extractive sector, is patently too high for this right to be considered secured.”

359. **Conclusions XIV-2 (1998), Portugal:** “The Committee points out that in certain branches of activity Portugal’s average figures for the number of industrial accidents and fatalities recorded are far higher than those of other European Union member states — and even the highest of all. In 1994, in eight branches of activity Portugal’s standardised number of industrial accidents necessitating more than three days’ absence per 100,000 people in employment was 7,361, or 170,114 accidents reported (about 75% of the total number of accidents in 1994 according to the ILO); the European Union average was 4,539. In the same year and the same branches of
activity the standardised number of fatalities per 100,000 people in work was 9.7 (or 194 accidents reported excluding road deaths and those from natural causes); the European Union average was 3.9.

The Committee considers that the industrial accidents situation gives cause for concern. It would point out to the Portuguese Government that, in accepting Article 3, it committed itself to guarantee individuals the right to protection from physical and mental injury in the workplace. It is under paragraph 2 of Article 3 that the Committee monitors whether this right can effectively be exercised, and, in this connection, it regards the frequency of industrial accidents and the trend thereof as decisive factors. In Portugal’s case, it considers that the frequency of industrial accidents and fatalities is clearly too high for it to conclude that effective exercise of the right is ensured."

360. **Conclusions 2013, Lithuania:** “The Committee takes note of this information. It recalls that satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised, and that the frequency of occupational accidents and their evolution are key aspects of monitoring the effective observance of the right enshrined in Article 3§3 of the Charter. The Committee therefore concludes that the incidence rate for fatal accidents, which is consistently twice as high as the average rate in the EU-27, is too high for this right to be secured.

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

361. **Conclusions XXI-2 (2017), Iceland**

362. **Conclusions IV (1975), Interpretative Statement on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter)**

363. **Conclusions 2013, Albania:** “The Committee takes note of this information. It considers that the figures supplied do not establish that occupational accidents and diseases are monitored efficiently. It asks that the next report contain information on measures adopted to improve the rate of reporting occupational accidents and cases of occupational disease in practice.

[...]
The Committee concludes that the situation in Albania is not in conformity with Article 3§3 of the Charter on the grounds that it has not been established that:
- occupational accidents and diseases are monitored efficiently;”

364. **Conclusions 2013, Albania:** “The Committee [...] considers that the figures supplied do not establish that occupational accidents and diseases are monitored efficiently. It asks that the next report contain information on measures adopted to improve the rate of reporting occupational accidents and cases of occupational disease in practice. It also requests full statistics (occupational accidents; fatal occupational accidents; cases of occupational disease; cases of fatal occupational disease) for each year of the reference period.”

365. **Conclusions 2013, Statement of Interpretation on Article 3§3 (i.e. Article 3§2 of the 1961 Charter):** “Under the provisions of Article 3§3 of the Revised Charter (which relates to Article 3§2 under the 1961 Charter), which requires to provide for the enforcement of safety and health regulations by measures of supervision; and in light of Part III Article A§4 of the Revised Charter, whereby States Parties shall maintain a system of labour inspection appropriate to national conditions, the Committee will:
- examine measures taken by public authorities to address increasingly complex and multidimensional demands on the competence, resources and institutional capacity of labour inspection systems;
- examine measures taken by public authorities to focus labour inspection on small and medium-sized enterprises (SMEs).”
366. Conclusions 2017, Latvia

367. International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits, 9 September 1999, §32: “32. The satisfactory application of the Charter ‘cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised’.”

368. Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §228: “228. Based on the lack of effective supervision of health and safety regulations, the Committee recalls that the compliance with the Charter "cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised" (International Commission of Jurists v. Portugal, decision cited above, §33). The enforcement of health and safety regulations required by Article 3§2 is therefore essential if the right embodied in Article 3 is to be effective.”

369. Conclusions 2013, Austria: “The report points out that inspection visits by the Labour Inspectorate do not cover administrative, associative or educational workers coming under the jurisdiction of the Länder or the local authorities, or the religious institutions attached to religious communities recognised by law. It also states that during the reference period, Act No. 27/1993 of 14 January 1993 on the labour inspectorate was amended under Acts Nos. 150/2009 of 31 December 2009 and 93/2010 of 29 November 2010, with a view to granting the Labour Inspectorate access to specific files concerning the federal civil service and allowing it to request specific data and report offences involving physicians employed in hospitals to the Medical Boards.”

370. Conclusions 2013, Ukraine: “The Committee takes note of this information. It notes that labour inspection services are divided between several public authorities, who lack resources and cooperate only imperfectly. It asks for information in the next report on the implementation of joint labour inspections under the Regulations on the interaction between the Derzhatomrehuliuvannia and the Derzhhipromnahliad in matters of occupational health and safety in the use of nuclear energy (registered with the Ministry of Justice on 22 March 2010 under No. 234/17529). It also notes that the proportion of workers covered by inspection visits is too low. The Committee concludes that the labour inspection system is inefficient.”

371. Conclusions XIV-2 (1998), Belgium: “It draws the attention of the Belgian Government to the fact that, in order to maintain an efficient system of inspection, there must be a minimum number of regular inspections to ensure that the largest possible number of workers benefit from the right enshrined in Article 3 as soon as possible. In view of the statistics available to the Committee, it doubts that this objective is met in Belgium. However, it defers its assessment on this point, given that it has no information on the inspection work of the Technical Inspectorate. It therefore emphasises that the next report should contain as much information as possible on these activities.”

372. Conclusions XIII-1 (1993), Statement of Interpretation on Article 3§3 (i.e. Article 3§2 of the 1961 Charter): op.cit.

373. Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §229: "229. States that have ratified the Charter have undertaken, under Article 20§5, to "maintain a system of labour inspection appropriate to national conditions". The Committee considers that states have a measure of discretion regarding not only how they organise their inspection services but also what resources they allocate to them. However, since such services are the main safeguard of health and safety in the workplace, "there must be a minimum number of regular inspections to ensure that the largest possible number of workers benefit from the right enshrined in Article 3" (Conclusions XIV-2 (1998), Belgium) and that the risk of accidents is reduced to a minimum. The Committee stresses that this limits states’ discretion and that the Charter is violated when the staffing of the inspection services and the number of visits carried out is manifestly inadequate for the number of employees concerned."
374. Conclusions 2017, Belgium

375. Conclusions 2017, Turkey

376. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§3 (i.e. Article 3§2 of the 1961 Charter): op. cit.

377. Conclusions 2013, Statement of Interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter): op. cit.


379. Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§3 (i.e. Article 3§2 of the 1961 Charter): op. cit.

380. Conclusions 2017, Estonia

381. Conclusions 2013, Romania: “It notes that inspection visits are supplemented by prevention, advice and awareness-raising activities. It nevertheless notes that the SLI does not inquire into the vast majority of occupational accidents and that, according to the SLI annual report for 2010 (pp. 50-52), most contraventional sanctions applied in 2010 were warnings and only about 10% of them were fines.

The Committee asks that the next report contain information on the authority (legislative framework; staffing; means; powers; activities; sanctions) in charge of labour inspection on civil nuclear activities. In order to gauge the efficiency of the labour inspectorate and the deterrent nature of the sanctions imposed, it also asks for information concerning any measures taken to focus inspection visits on small and medium-size enterprises; to include self-employed and domestic workers; and to inquire into complaints filed by workers or their representatives. It then asks for information on the number of withdrawals of establishment licenses, on the number of criminal sentences passed on cases filed with the prosecution authorities, and for an explanation of the sharp drop in suspensions of activity in 2011.”

382. Conclusions 2005, Norway: “The Committee asks for information in the next report on the practical means of informing and consulting employers’ and workers’ organisations about labour inspectorate activities apart from company inspections. This last issue is examined under Article 22 of the Charter, as accepted by Norway.”

Article 3§4

383. Conclusions 2003, Bulgaria: “The Committee recalls that when accepting Article 3§4 states undertook to give all workers in all branches of the economy and every undertaking access to occupational health services. These services may be run jointly by several undertakings. If occupational health services are not established by every undertaking the authorities must develop a strategy, in consultation with employers’ and employees' organisations, for that purpose. The Committee will then assess whether sufficient progress has been made.”

384. International Association Autism-Europe (IAAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §53: “When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.”
385. **Conclusions 2009, Albania:** “A State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.”

386. **Conclusions 2013, Ukraine:** “The Committee takes note of this information. Recalling that, when accepting Article 3§4 of the Charter, states undertook to give all workers in all branches of the economy and all undertakings access to occupational health services, it notes that access to such services is restricted to workers employed in heavy works, works under harmful or hazardous working conditions, or works requiring professional selection. It asks for information in the next report on access to occupational health services in other sectors than coal mining.”

387. **Conclusions 2009, Slovenia:** “The Committee noted with concern in its last two conclusions (Conclusions 2003 and 2007) that the number of doctors specialised in occupational health was very low (around 135 such doctors) compared to the total workforce (in 2004, 176 491 workers). Bearing in mind that the implementation of Article 3§4 of the Revised Charter should be achieved progressively by states parties, the Committee decided to defer its conclusion until further information is provided in the next report, i.e. the report for the reference period here at issue, especially as regards the number of occupational health doctors and the steps taken to encourage the development of these services.”

388. **Conclusions 2009, Albania:** “The Committee notes the percentage of enterprises employing an occupational doctor is low but also notes that it is increasing. It asks for further information on measures being taken to ensure compliance with the relevant legislation.”

389. **Conclusions 2009, France:** “In its previous Conclusions the Committee took note of the reform of the occupational health services in accordance with a Decree of 28 July 2004 transposing into French law European Directive 89/391/CEE which foresees a multidisciplinary approach to occupational health. The Committee concluded the French situation was in conformity with Article 3§4.”

390. **Conclusions 2007, Lithuania:** “The report states that in the period 2003-2004, 2.3 % of undertakings had recourse to external occupational health services, whilst all the remaining undertakings had their own occupational safety and health services. The Committee asks the next report to confirm that all undertakings in all branches of economic activity, except the 2.3 % of companies mentioned above, provide in-house occupational health services to their employees.”

391. **Conclusions 2009, Ukraine:** “The Committee notes that the occupational safety services mentioned in the report are not specialised in occupational health matters but cover more broadly safety at work. While some preventive measures foreseen as part of the activities of these services meet the requirements of Article 3§4, the Committee underlines the importance of the medical monitoring of all workers.”

392. **Conclusions 2003, Bulgaria:** “Occupational health services advise and assist employers and working conditions committees on how to provide and maintain a safe and healthy work environment and secure optimum standards. Their main duties are to help draw up measures to eliminate and reduce risks in the workplace, monitor employees’ health and provide health and safety training for employees and managers. They also assess health and safety risks and the effect of working conditions on employees’ health.”

393. **Conclusions 2013, Statement of Interpretation on Article 3§4:** “Under the provisions of Article 3§4 of the Revised Charter, which requires to promote, in consultation with employers’ and workers’ organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions, the Committee will:

- examine whether occupational health services are trained, endowed and staffed to identify, measure and prevent work-related stress, aggression and violence.”
Article 4 The right to fair remuneration

Article 4§1

394. Conclusions XX-3 (2014), Greece: “It notes in the present case that, after deduction of social security contributions and income tax, which has been applicable since the reduction in the tax-free threshold under Act No. 4024/2011, the minimum wage for all single workers in the private sector is below the minimum threshold. It also observes that, while the wages of tenured civil servants governed by Act No. 3205/2003 are in conformity with Article 4§1 of the 1961 Charter, the minimum wage for contractual staff in the civil service is less than the minimum threshold and accordingly does not permit a decent standard of living.”

395. Conclusions 2014, France: “The Committee also reiterates that the payment of a lower minimum wage to younger workers is not in breach of the Charter if it both furthers a legitimate aim and is proportionate to achieve that aim (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §60). To be able to examine the situation of France in this respect, it requests that the next report provide details of the assisted employment contracts and the authorised deductions from the SMIC.”

396. Conclusions 2014, Andorra: “It notes in the present case that the minimum wage for immigrant workers set by the CSI is more than 60% of the net average wage and therefore constitutes a remuneration that is in conformity with Article 4§1 of the Charter. It also establishes that the SMI net of social contributions for workers older than 18 years was 47.52% of the net average wage in 2012, which is lower than the minimum threshold set at 50% of the net average wage, and does not constitute a decent remuneration within the meaning of Article 4§1 of the Charter.”

397. Conclusions 2010, Statement of Interpretation on Article 4§1: “The Committee holds that a ‘decent standard of living’ which is at heart of this provision of the Charter, goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities. It follows that guaranteeing a decent standard of living means ensuring a minimum wage (and supplemented by any additional benefits where applicable) the level of which should be sufficient to meet these needs.”

398. Conclusions XVI-2 (2003), Denmark: “The report further states that the lowest wage fixed by collective agreement is that of a cashier in a supermarket: about 79 Danish crowns (DKK; 10.60 €) per hour which corresponds to about 152,000 DKK (20,458 €) on an annual basis (before deduction of tax and contributions). The authorities have no information on the lowest wages paid to workers not covered by collective agreement, but it is pointed out that there is a considerable “spill-over” effect from the agreement regulated areas. From Eurostat information the Committee notes that the average gross monthly wage of a single male manual worker in manufacturing industry was 2,660 € in 1999 and the corresponding net wage was 1,332 €. In comparison the gross monthly wage of the supermarket cashier mentioned above would amount to 1,704 € (about 64 % of the average of the manufacturing industry worker).

In view of the scant information contained in the report, the Committee once again has to point out that in order for it to assess the situation properly each report must contain information on the lowest wages actually paid in the labour market, whether determined by collective agreement or by other means, as well as on the national average wage. Both the lowest wages and the average wage should be given net of any tax and social security contributions. If the information is not readily available, the Committee invites the Government to carry out any surveys necessary to make the appropriate estimates.”
Conclusions XVI-2 (2003), Denmark: op cit

Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1:

Historical background
Assessment of the implementation of Article 4 para. 1, requiring states “to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living” has proved difficult throughout the history of the supervision of the Charter. Several factors have contributed to the difficulties, notably the widely differing wage formation mechanisms in the countries concerned due to differences in labour market, socio-economic and institutional conditions and the paucity of data which could be used to determine the relevant wage levels.

As early as in its first conclusions, the Committee observed that this provision “which obliges Contracting States to take appropriate measures to ensure a decent standard of living for workers and their families, requires those states to make a continuous effort to achieve the objectives set by this provision of the Charter. This being so, account must be taken of the fact that the socio-economic status of the worker and his family changes and that his basic needs, which at first are centred on the provision of purely material basic necessities such as food and housing, subsequently move towards concerns of a more advanced and complex nature, such as educational facilities and cultural and social benefits.” (Conclusions I (1969)).

In Conclusions V (1977) the Committee adopted an assessment method based on statistical studies carried out by the OECD and the Council of Europe from which a so-called decency threshold for the lowest wage was established. The basic premise of this method was that wages which fall markedly behind those of the community in general could not be considered decent or fair. Thus for a wage to be decent it had to be at least equal to 68 % of the national average wage in a given country. If the lowest wage fell below this level, the Committee did however take certain compensatory factors into account such as taxes, substantial social benefits, including family and housing benefits (see Conclusions V (1977)).

In supervision cycles XIII-1 and XIII-2 the Committee deferred its conclusions with regard to all Contracting Parties, except for two states where a negative conclusion was reached. From cycle XIII-3 it refrained entirely from reaching conclusions under this provision, both because of increasing doubts as to whether the method applied was appropriate considering the social and economic developments that had taken place since the Charter entered into force and because the data furnished by governments in many cases simply did not enable it to assess the situation with any degree of validity.

A modified assessment method
During the present supervision cycle the Committee therefore reviewed the matter in the light of all the information submitted by the Contracting Parties and decided to make certain adjustments to the method of assessment with a view to assessing the situation for the Contracting Parties concerned. In doing so, the Committee deliberated on and clarified a number of points with respect to some basic definitions in the light of the wording of Article 4 para. 1. It also considered the question of data availability.

The Committee still proceeds from the fundamental assumption that in order for the situation to be in conformity with the Charter, i.e. for a wage to be fair, the lowest wage should not fall too far behind the national average wage in a given country. However, the Committee found it appropriate to fix the percentage threshold (lowest net wage as a percentage of net average wage), below which the lowest wage should not fall, at 60% instead of 68%. It emphasises the following reasons for this adjustment:

the developments in the earnings patterns of families since the 68% threshold was introduced make it untenable to maintain a general requirement that a single wage income must give a decent living standard to a whole family. The notion in the wording of Article 4 para. 1 that a single wage earner, implicitly male, alone should provide for the family reflects an outdated conception of family structures which is not, in effect, conducive to promoting equal opportunities of women in the labour market. The Committee has noted with interest that the
Community Charter of Fundamental Social Rights of Workers from 1989 also states the principle of fair remuneration, but describes it as ‘a wage sufficient to enable them (i.e. the workers) to have a decent standard of living’.

– the 68 % threshold reflected statistical studies made at an early stage of the supervision of the Charter when there were a limited number of Contracting Parties representing a significant economic homogeneity. At present there are twenty-two Contracting Parties with the number being expected to grow rapidly over the next few years. The new percentage threshold must be able to accommodate a situation with less homogeneity, notably in so far as the new democracies of Central and Eastern Europe are concerned, where the wage structure is different and dispersion greater.

The Committee proceeds from the expectation that a wage amounting to at least 60% of the average wage (calculated net — see infra) will provide the wage earner concerned — and not the family — with a decent living standard. It nevertheless underlines that a wage does not meet the requirements of the Charter, irrespective of the percentage, if it does not ensure a decent living standard in real terms for a worker, i.e. it must be clearly above the poverty line for a given country.

The Committee notes that in many countries provision is made for a minimum guaranteed income for persons whose income falls below a given poverty line. The minimum guaranteed income is paid under particular conditions which vary from country to country and without prejudice to the employment situation of the person concerned. It also notes from a Eurostat study that in general the minimum guaranteed income is significantly lower than the lowest wages paid to full-time workers, both in countries with a statutory minimum wage and in countries with negotiated wage minima. 3 The Committee emphasises that in so far as the minimum guaranteed income is not linked to the wage of a full-time worker so as to increase the level of the minimum wage, it is not directly relevant to the assessment of conformity under Article 4 para. 1.

The Committee defines remuneration for the purposes of the assessment under Article 4 para. 1 as the net value, i.e. after deduction of social security contributions and taxes, of the total wages, in principle both monetary and in kind, paid regularly by an employer to a worker for work carried out. Account shall where applicable be taken of bonuses and gratuities not paid regularly with each pay packet. Social security contributions shall be calculated on the basis of employee contribution rates laid down by law or collective agreement. Taxes are all taxes on earned income. Indirect taxes are thus not taken into account.

Social transfers or welfare benefits which are not directly linked to the wage will not be taken into consideration as Article 4 para. 1 concerns remuneration for work as such. Governments are urged to provide evidence of any social transfers/benefits applicable to all full-time workers on minimum wages (and not to average earners) irrespective of their family situation, as such transfers/benefits may be of relevance to the assessment. The Committee underlines that by looking at net wages it takes into account any redistributive effects of contributions and taxes.

The reference wage considered by the Committee is the national net average wage for a full-time wage earner, if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as manufacturing industry or for several sectors. 4 As the lowest wage the Committee will consider the net statutory minimum wage for those countries where such a wage has been established. For countries with no statutory minimum wage it will consider information on the net value of minima agreed upon in collective agreements and/or actually paid in the labour market. Obviously, the Committee will seek to determine the practical relevance of the minima in terms of the number of workers receiving them.
If the lowest wage in a given Contracting Party does not satisfy the 60% threshold, but does not fall very far below, the Committee will not immediately reach a negative conclusion, but will ask the Government in question to furnish it with detailed evidence that the lowest wage is sufficient to give the worker a decent living standard even if it is below 60% of the national net average wage. In particular, consideration will be given to the costs of having health care, education, transport, etc. In extreme cases, however, for instance where the lowest wage is less than half the average wage the Committee would, however, consider the situation to be in breach of the Charter and proceed to conclude negatively."

401. **General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, Decision on the merits of 23 May 2012, §60:** "60. From a general point of view the Committee considers that it is permissible to pay a lower minimum wage to younger persons in certain circumstances (e.g. when they are taking part in an apprenticeship scheme or otherwise engaged in a form of vocational training). Such a reduction in the minimum wage may enhance the access of younger workers to the labour market and may also be justified on the basis that it reflects a statistical tendency for them to incur lower expenditure on average than other categories of workers when it comes to housing, family support and other living costs. However, any such reduction in the minimum wage should not fall below the poverty level of the country concerned."

402. **General Federation of employees of the national electric power corporation (GENOP-DEI)/Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, Decision on the merits of 23 May 2012, §§68 and 70:** "68. Providing for the payment of a lower minimum wage to workers below the age of 25 involves a difference of treatment based on age. However, the Committee considers that it is open to a state to demonstrate objective justification for the payment of a lower minimum wage to younger workers, if this can be shown to further a legitimate aim of employment policy and be proportionate to achieve that aim. Applying this test to the facts at issue, the Committee is of the view that the less favourable treatment of younger workers at issue is designed to give effect to a legitimate aim of employment policy, namely to integrate younger workers into the labour market in a time of serious economic crisis. However, the Committee considers that the extent of the reduction in the minimum wage, and the manner in which it is applied to all workers under the age of 25, is disproportionate even when taking into account the particular economic circumstances in question. [...]

70. Therefore, the Committee holds that there is a violation of Article 4§1 of the 1961 Charter in the light of the non-discrimination clause of the Preamble to the 1961 Charter.”

**Article 4§2**

403. **Conclusion I (1969), Statement of interpretation on Article 4§2:** “The term "overtime" is generally taken to include work thus performed outside or in addition to normal working hours.”

404. **Conclusions XIV-2, Statement of Interpretation on Article 4§2:** “The principle established in this paragraph is based on the assumption that work performed in special circumstances and outside normal working hours requires increased effort on the part of the worker”.

405. **Conclusions I (1969), Statement of Interpretation on Article 4§2:** “Not only must the worker receive payment for overtime, therefore, but also the rate of such payment must be higher than the normal wage rate.”

406. **Conseil Européen des Syndicats de Police (CESP) v. France, Complaint No. 68/2011, Decision on the merits of 5 November 2012, §§76, 77 et 86 à 88:** “76. In this connection, the Committee considers it essential to emphasise that it is not the purpose of the command bonus in itself to compensate for overtime; it is only the extra amount added to the bonus since 2008 in the form of an increase that is intended to compensate for the overtime worked by senior police officers.”
77. The Committee notes that the general rule under the Labour Code is that the increased remuneration rate for overtime may be freely negotiated by the social partners provided it is not less than 10% (Conclusions 2010, France). Accordingly, and bearing in mind:
   a) the information supplied by the CESP concerning the increase in the amount of the command bonus, as determined by the orders of the Minister of the Interior over the period from 2004 to 2010;
   b) the increase in the amount of the bonus following the order of the Minister of the Interior of 6 January 2011 (see paragraph 15 above);
   c) the Committee notes that following the abolition, in April 2008, of payment for overtime by senior police officers, in practice, the increase in the command bonus applied was well below the percentage referred to above and therefore the increase could compensate only for a very small number of hours of overtime. […]

86. In this connection, the Committee would point out that:
   – “not only must the worker receive payment for overtime, therefore, but also the rate of such payment must be higher than the normal wage rate” (Conclusions I (1969), Statement of Interpretation on Article 4§2);
   – “(…) the aim of Article 4 §2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the form of an increased rate of remuneration. However, the Committee recognises reward in the form of time off, provided that the aim of the provision is met. This means, in particular, that where remuneration for overtime is entirely given in the form of time off, … Article4§2 requires that this time be longer than the additional hours worked”(Conclusions XIV-2 (1998), Belgium);
   – “(…)the principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage. The Committee allows additional time off to replace increased remuneration…” (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§2).

87. In view of the foregoing, the Government concludes that:
   a) the increase in the command bonus following the withdrawal, in April 2008, of the overtime payments which the senior police officers received before the current regulations were introduced - regulations which could, in principle, have compensated for this withdrawal-and which was introduced by Decree No. 2000-194 of 3 March 2000, as amended by Decree No. 2008-340 of 15 April 2008, the general regulations governing employment in the national police force of 6 June 2006, as amended by ministerial order NOR IOCC0804409A of 15 April 2008, and Instruction NOR INTC0800092C of 17 April 2008 is not in conformity with Article 4§2of the Charter;
   b) the arrangements for compensatory time off for overtime worked by senior police officers provided for by the Order of 6 June 2006 on the general regulations governing employment in the national police force and Decree No. 2008-340 of 15 April 2008 amending Article 1 of Decree No. 2000-194 of 3 March 2000 on the conditions for the payment of overtime to operational members of the national police force are not in conformity with Article 4§2 of the Charter.

88. Consequently, the Committee holds that there is a violation of Article 4§2 of the Charter.”

407. European Council of Police Trade Unions (CESP) v. France, complaint No. 57/2009, decision on the merits of 1st December 2010:
“The Committee considers that it is not responsible for ruling on the level of flat-rate overtime payments of police officers and on its effects on their purchasing power. The Committee is only required to determine, in accordance with Article 4§2 of the revised Charter, whether those concerned receive remuneration for overtime worked and, above all, whether this is at a higher rate than their normal pay”. 
408. **Conclusions XIV-2 (1998), Belgium**: “The Committee points out that the aim of Article 4 para. 2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the form of an increased rate of remuneration. However, the Committee recognises reward in the form of time off, provided that the aim of the provision is met. This means, in particular, that where remuneration for overtime is entirely given in the form of time off, as in the present case, Article 4 para. 2 requires that this time be longer than the additional hours worked. That requirement is not met in the Belgian public service, and the Committee therefore takes the view that the situation does not comply with this provision.”

409. **European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 60/2010, Decision on the merits of 17 October 2011, §21**: “The Committee also acknowledges that there may be mixed systems for compensating overtime, for example where an employee is paid the normal rate for the overtime worked but also receive time in lieu, or where the extra time worked is “banked”.

410. **Conclusions XX-3 (2014), Slovenia**: In its previous conclusion the Committee asked whether remuneration for overtime could be replaced by time off. It notes from the report that this is not envisaged by the legislation, but some collective agreements in the private sector provide for compensation of overtime work with time off. The Committee notes several examples, such as the collective agreement for railway transport industries which provides for time off of the same length, plus allowance for overtime. Overtime hours worked in the public sector are compensated on the basis of the Decree on working hours of public administration bodies, according to which a public employee may be granted time off in lieu of overtime. The time off granted is of the same length as the overtime worked, but the employee will get an allowance for the work performed during less favourable working hours. The Committee considers that the combination of equivalent time off and an allowance for overtime corresponds to an increased remuneration for overtime hours and is therefore, in conformity with the Charter.

411. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§2**: “The Committee recalls that the principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage. The Committee allows additional time off to replace increased remuneration. As has been pointed out in the conclusions for Article 2§1, overtime must be regulated. The Committee has noted that most Contracting Parties having accepted this provision have adopted schemes providing for flexible working hours, according to which working hours are calculated as an average over given reference periods. The result of these schemes is that hours worked in excess of the average number are compensated in practice by rest periods in the course of other weeks within the reference period. The Committee has considered that such arrangements are not in breach of Article 4§2. In some cases, increased remuneration for overtime work has been maintained where work is carried out over and above the maximum daily or weekly hours provided in the flexibility scheme. The Committee reserves the possibility to assess on a case-by-case basis whether flexible working time arrangements ensure effective compliance with Article 4§2.”

412. **Conclusions XX-3 (2014), Portugal**: The Committee considers that flexibility measures regarding working time are not as such in breach of the Charter. Under flexible working time arrangement working hours are calculated on the basis of average weekly hours worked over a period of several months. Over such period, weekly working hours may vary between specified maximum and minimum figures without any of them counting as overtime and thus qualifying for a higher rate of pay. Arrangements of this kind do not, as such, constitute a violation of Article
4§2 (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§2), provided that the conditions laid down in Article 2§1 are respected, such as the following:

(i) maximum weekly (more than 60) and daily (up to 16) working hours are respected;
(ii) flexibility measures operate within a legal framework providing adequate guarantees which clearly circumscribe the discretion left to employers and employees to vary, by means of collective agreement, working time.
(iii) flexible working time arrangements provide for a reasonable reference period for the calculation of average working time.

The Committee asks whether the flexible working time regimes (adaptability or hour bank regimes) satisfy these conditions. In the meantime, the Committee reserves its position on this point.

413. Conclusions IX-2 (1986), Ireland: “The Committee noted the contents of the Irish report from which it appears that there are in Ireland a number of workers not covered by any legislation, regulations or collective agreements making higher rates of remuneration compulsory for overtime work. Even if this question is generally dealt with in individual employment contracts, one cannot exclude the possibility that some workers (the number of which remains to be determined) might not benefit from the right enshrined in Article 4, paragraph 2, of the Charter. The Committee stressed that, since Article 33 of the Charter was not applicable, all workers (except in special cases, e.g. state employees, management executives, etc.) are entitled under the Charter to higher rates of pay for overtime.”

414. Conclusions X-2 (1990), Ireland: “[The Committee] noted that, by virtue of the legislation and regulations in force, collective agreements and established practice, increased rates of remuneration were actually paid for overtime work in the public and private sectors, except to senior officials, management and workers for whom there are no arrangements for overtime. […] The Committee was thus able to conclude that Ireland complies with this provision of the Charter.”

415. Conseil Européen des Syndicats de Police (CESP) v. France, Complaint No. 57/2009, Decision on the merits of 1 December 2010, §§42-44: “42. The Committee recalls that it understands the term "particular cases", to which exceptions to states' obligation to grant entitlement to increased remuneration for overtime work might apply, to include "senior officials" of state employees and management executives. Concerning management executives, exceptions may be applied to all senior managers. However, the Committee has ruled that certain limits must apply, particularly on the number of hours of overtime not paid at a higher rate (Confédération Française de l’Encadrement CFE-CGC v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §45).
43. The Committee notes that the organisational status and responsibilities of members of the command corps have continued, since 15 April 2008, to differ significantly from those of police commissioners. The former act as operational heads of police departments and offer a high level of expertise in policing and internal security matters. They provide support to or stand in for members of the planning and management corps, the most senior branch of the service. The latter are the most senior managers in the French police, and constitute what is defined as a higher technical corps with joint ministerial responsibilities. Whereas senior police officers are simply responsible for heading specific departments and units, police commissioners have both operational and organisational responsibility for the departments they manage. Finally, senior police officers carry out inquiries and fact-finding and surveillance operations in the police operational departments whereas commissioners have certain judicial powers under the law.
44. The Committee therefore finds that, in general, members of the national police command corps (senior police officers) do not fall into the category of exceptions provided for in Article 4§2 of the Revised Charter.”
416. *Union syndicale des magistrats administratifs (USMA)* v. France, Complaint No. 84/2012, Decision on the merits of 2 December 2013, §§67 and 69: “67. Administrative court judges, given their functions and their status, belong to the category of senior public officials and benefit from considerable autonomy in organising their work. Moreover, they belong to the same judicial corps, which has a relatively small number of members (1391 magistrates in 2012 according to the Government out of which 1155 work in the administrative courts).

69. The Committee therefore concludes that the number of administrative court judges and the nature of their duties include them among the particular cases referred to in article 4§2.”

417. *Conseil Européen des Syndicats de Police (CESP)* v. France, Complaint No. 38/2006, Decision on the merits of 3 December 2007, §22: “22. The Committee considers that the system of flat-rate payments for overtime established by Article 3 of Decree No. 2000-194 – resulting from the fact that, for national police officers, all such pay is determined with sole reference to salary point 342 – has the effect of denying the proper increase required by Article 4§2 of the Revised Charter to officers who cannot be excluded from entitlement to increased remuneration because of the nature of their duties. In particular, the functions of senior officers and commanders do not always equate to planning and management tasks.”

418. Conclusions XV-2 (2001), Poland: “The Committee concludes that the situation in Poland is not in conformity with Article 4 para. 2 of the Charter since:
   – for workers covered by the Labour Code, it is permissible for overtime work to be compensated by a rest period which merely equals the period of overtime and therefore does not correspond to a higher rate of pay;
   – the rules which applied during the reference period governing overtime work by civil servants were not in conformity with this provision of the Charter, since they did not provide for a higher rate of pay or a corresponding period of rest.”

419. *Confédération Française de l’Encadrement CFE-CGC* v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §45: “45. The Committee considers that the number of hours of work performed by managers who come under the annual working days system and which, under the flexible working time system, are not paid at a higher rate is abnormally high. In such circumstances, a reference period of one year is excessive. The situation is therefore contrary to Article 4 para. 2 of the Revised Charter.”

420. *Confédération Générale du Travail (CGT)* v. France, Complaint No. 55/2009, Decision on the merits 23 June 2010, §§87-89: “87. The Committee considers that the introduction of a solidarity day results in an unpaid additional day’s work, which implies, for monthly paid workers, additional hours of work paid at a normal rate.

88. The Committee considers that this restriction on Article 4§2 is provided by law, pursues the legitimate aim of protection of public health in respect of a vulnerable section of the population, and is proportionate to the legitimate aim pursued.

89. Therefore, the Committee holds that there is no violation of Article 4§2 of the Revised Charter.”

**Article 4§3**

421. Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol: “Recalling its general observation on Article 1 of the Additional Protocol to the Charter (Conclusions XIII-3 (1995)), the Committee notes that the rights and obligations ensuing from this provision are also, in part, within the ambit of provisions of the Charter itself, i.e. in particular, Article 1§2 and Article 4§3.

All three provisions entail the following obligations for Contracting Parties:
   – to promulgate the rights concerned in legislation;
– to take legal measures to ensure the effectiveness of the rights concerned;
– to define active policies and to take measures to implement them, and thus the rights concerned, in practice.

The scope in substance of the provisions noted are, however, not wholly coinciding. Whereas Article 1§2 of the Charter covers discrimination in employment on other grounds than gender, Article 1 of the Additional Protocol relates only to gender discrimination. Whereas Article 4§3 of the Charter relates specifically to equal pay for work of equal value, Article 1 of the Additional Protocol — while similarly encompassing remuneration — on the whole has a wider scope. Moreover, within its ambit Article 1 of the Additional Protocol entails further obligations for states than those ensuing from Article 1§2 and Article 4§3 of the Charter, within their respective scopes. The Committee wishes to underline that the entry into force of Article 1 of the Additional Protocol will not affect the case law developed under the latter provisions.

With a view to expounding the contents of the three provisions in question (Article 1§2, Article 4§3 and Article 1 of the Additional Protocol), it notes:

[...]

In respect of Article 4§3 of the Charter, that it has established a clear set of legal criteria which a state must fulfil. A basic requirement is that the legislation of a state which has accepted it must prescribe that men and women workers must receive equal pay not only for equal work but also for work of equal value. Equal pay must be guaranteed not only as far as basic wages are concerned, but also for all other benefits paid by the employer to the worker as a consequence of the employment relationship.

Furthermore, legislation must provide effective protection against any retaliatory measures taken by the employer against a worker asking to benefit from the right to equal pay. The latter requirement includes in particular an obligation to prohibit dismissal in such cases and in cases of unlawful dismissal to provide for the reinstatement of the worker. In exceptional cases, where reinstatement is not possible or is not desired by the worker, financial compensation instead may be acceptable, but only if it is sufficient to deter the employer and to compensate the worker.

In its endeavour to ensure that the principle of equal pay is implemented effectively, the Committee has also insisted on being informed of measures such as placing the burden of proof on the employer in certain cases, on state intervention in the fixing of wages, on objective evaluation of jobs and on the raising of wages in sectors characterised by relatively low remuneration and traditionally employing large numbers of women.”

422. Conclusions I (1969), Statement of Interpretation on Article 4§3: “...This provision obliges the Contracting States who have accepted it to recognise the principle of equal pay for work of equal value, not only in law but also in fact.

[...] The Committee pointed out that equal pay for men and women workers is required for work of equal value, this presupposes the establishment by the governments of the states concerned of objective criteria for evaluating work, on the basis of appropriate methods (commissions, surveys, etc.). In this connection, the Committee considered that the Charter leaves governments free to choose the methods whereby equality of pay between men and women workers is achieved and that this equality may be ensured either by means of legislation and regulations or by collective agreements, provided only that equality is achieved in practice.”

423. Conclusions XVI-2 (2003), Portugal: “The Committee considers that the principle that there should be no discrimination between the sexes implies that the rule of equal pay for full-time and part-time workers should be observed, since most of the latter are women and this can gives rise to indirect discrimination.
424. **Conclusions XV-2 (2001), Slovak Republic:** “The Slovak Constitution provides general protection for employees against discrimination. However, there is no express statutory guarantee of the right of men and women to equal pay for work of equal value. The Committee recalls that under the Charter the right of male and female workers to equal pay for work of equal value must be expressly provided for in domestic law. Article 4§3 of the Charter also requires that all clauses in employment contracts or collective agreements which violate the principle of equal pay must be held to be null and void. Further, a court must have the power to waive the application of the offending clauses. Employees who claim their right to equal pay must be legally protected from all forms of retaliatory action. Where an employee is the victim of retaliatory action, there must be an adequate remedy, which will both compensate the employee and serve as a deterrent to the employer. National law should not unduly restrict the scope for job comparisons, e.g. by confining them to the same enterprise. In the absence of specific legislation on the above-mentioned points, the Committee finds that the legal situation is not in conformity with the requirements of the Charter and urges the Slovak authorities to explicitly incorporate the notion of equal pay for work of equal value in domestic law.”

425. **Conclusions XX-3 (2014), Georgia:** In its conclusion on Article 20 (Conclusions 2012) the Committee noted that the provisions on gender equality in employment (the Labour Code) were supplemented by the adoption of the Gender Equality Act in 2010. The latter, inter alia, provides for equal treatment of men and women in the evaluation of work (Section 4, paragraph 2(i)), thereby strengthening the right of women and men to equal pay for work of equal value. However, the Committee notes that the Gender Equality Act does not contain an express guarantee of the right of men and women to equal pay for work of equal value. The Committee recalls that Article 4§3 guarantees the right to equal pay without discrimination on the ground of gender. The principle of equal pay applies to the same work and also to different types of work of the same value. The Committee takes note of the report of the Georgian Trade Union Confederation (GTUC) regarding compliance of the Labour Code with the European Social Charter that Article 2§3 of the Labour Code provides that discrimination is prohibited in labour relations, including on the ground of gender. However, according to the GTUC there is no explicit prohibition of unequal pay for the work of equal value. The right of men and women to “equal pay for work of equal value” must be expressly provided for in legislation (Conclusions XV-2 (2001), Slovak Republic). The Committee observes that in the legislation there is no express statutory guarantee of the right of men and women to equal pay for work of equal value. Therefore, it considers that the situation is not in conformity with the Charter.

426. **Conclusions I (1969), Statement of Interpretation on Article 4§3:** op. cit.

427. **Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol:** op. cit.

428. **Conclusions XVI-2 (2003), Malta:** “The Committee asks for information on the consequences of breaches of the equal pay principle. It asks whether victims are entitled to the difference in pay…”

429. **Conclusions XVI-2 (2003), Portugal:** “The Committee has consistently held that comparisons of pay and jobs must extend to other enterprises, where this is necessary for an appropriate comparison (Conclusions XIII-1 (1993)). It considers that the ‘possibility of looking outside the enterprise for an appropriate comparison is of fundamental importance for a system of objective job evaluation to be efficient in certain circumstances, in particular in enterprises where the workforce is largely, or even exclusively, female’ (Conclusions XIII-5 (1997)).”
430. **Conclusions XX-3 (2014), Romania**: The Committee asks whether pay comparisons outside the company are possible in equal pay litigation cases, when the differences identified in the pay conditions of female and male workers performing work of equal value are attributable to a single source. This could signify employees working for the same legal person or group of legal persons, employees of several undertakings or establishments covered by the same collective works agreement or regulations. In such cases, regulation of the terms and conditions of employment actually applied is traceable to one source, whether it be the legislature, the parties to a collective works agreement or the management of a corporate group (Opinion of Advocate General Geelhoed of 14 March 2002 regarding the ECJ Case C-320/00).

In its Statement of Interpretation of 2012 (XIX-1) the Committee held that Article 20 (Article 1 of the Additional Protocol of 1988) requires that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation in the Netherlands complied with this principle, because in equal pay cases in the Netherlands comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands).

431. **Conclusions XVII-2 (2005), Czech Republic**: “The Committee emphasises that in order to comply with Article 4§3 of the Charter, States must take or encourage other bodies to take positive measures to narrow the pay gap as much as possible. To assess the situation, it requests that the next report state:
- if and to what extent collective agreements deal directly or indirectly with equal pay;
- what measures have been taken to improve job classifications and the role of job evaluation as a means of reducing inequalities in pay;
- what measures have been taken to improve the quality and coverage of wage statistics, as provided for in the action plan on ‘Priorities and procedures in the enforcement of equality of men and women’;
- how much attention is paid to the issue of equal pay for women and men in the National Action Plan (NAP) for employment.”

432. **Conclusions XIX-3 (2010), Iceland**: “The Committee points out that in the event of retaliatory dismissal, reparation must, in principle, take the form of reinstatement in the same or a similar post. Where this is not possible or not desired by the employee, financial compensation may be acceptable, but only if it is of a sufficient amount to deter the employer and to compensate the worker (see, in particular, Conclusions VII (1981) and VIII (1984), Denmark; Conclusions XIII-5(1997), general observation; Conclusions XIV-2, Luxembourg and Iceland).”

433. **Conclusion XIII-2 (1994), Malta**: “It also noted that a person dismissed in retaliation for a claim for equal pay could bring a claim of unfair dismissal, the remedy for such being either reinstatement or an award for compensation. The Committee asked that the next report indicate the circumstances in which compensation would be awarded and the amount of such compensation, recalling its case law to the effect that the worker’s reinstatement should always be the solution, and that only in situations where reinstatement was not possible should financial compensation be accepted as a last resort, in which case it must be sufficient to compensate the worker and to deter the employer. The Committee also asked what remedies were available to a worker who had suffered retaliatory action short of dismissal.”

434. **Conclusions XIX-3 (2010), Germany**: “On the other hand, even if the courts rule that dismissals are null and void, when employees do not consider reinstatement to be a desirable or viable
option they can also ask them to end the employment contract and order the payment of compensation. Such compensation is an alternative to continued employment and its amount set by the court, within the legal maximum level which is of 12 monthly wages (or 18 monthly wages if the employee is 50 years old and if the working relationship lasted for more than 15 years). The Committee considers that courts should be free to decide upon the amount aimed at compensating the damage caused by the termination of the working relationship because it limits the ceiling of the compensation.

435. Conclusions XX-3 (2014), Germany: The Committee thus observes that while there is no ceiling on compensation in case of discrimination regarding pay, the legislation establishes, in cases involving reprisal dismissals regarding equal pay, a ceiling of a maximum of 12 months’ (or 18 months’ in case of longer employment relationship) wages. The Committee recalls that (Conclusions XVIII-2, 2006, Germany) that in order to ensure the observance of labour law and the effective guarantee of the rights contained in the Charter, where the contract is terminated by the courts at the request of the employee, remedies for violations should not be limited to the payment of the amount of money which is owed. The Committee considers that no ceiling should be set to the remedies, such as the severance pay. To do so risks not being sufficiently deterrent for employers, nor adequately compensatory for the employee. The Committee holds that this principle applies both to litigations involving equal pay and reprisal dismissals. Therefore, the Committee finds that the situation in Germany is not in conformity with the Charter due to the ceiling on compensation in litigation concerning reprisals.

Article 4§4

436. Conclusions XIII-3 (1995), Portugal: “The Committee recalled that in the interpretation of this provision of the Charter, it had refrained from defining in absolute terms the word “reasonable”. In fact it followed the reverse procedure and examined on a case-by-case basis if the duration of certain periods of notice were clearly “unreasonable”."

437. Conclusions 2007, Armenia: “The Committee first notes that Armenian legislation takes no account of employees’ length of service in determining periods of notice, although according to its case-law this is the most important criterion when assessing whether a notice period is reasonable.”

438. Conclusions 2007, Albania: “The Committee concludes that the situation in Albania is not in conformity with Article 4§4 of the Revised Charter because: – five days’ notice is insufficient for workers with fewer than three months’ service, even in the probationary period;”

439. Conclusions XIII-3 (1995), Portugal: “The Committee considered that a period of notice of seven days provided by Portuguese legislation for a worker with less than six months’ service, was insufficient with regard to its case law (Conclusions XIII-2 (1994)) and to the purpose of Article 4§4 of the Charter, which intended to allow a dismissed worker to find new employment.”

440. Conclusions XVI-2 (2003), Poland: “The Committee recalls that a two-week termination notice for workers with a period of service of more than 6 months is not reasonable with regard to the rights guaranteed by the Charter.”

441. Conclusions XIV-2 (1998), Spain: “The Charter requires a period of notice of at least one month where the worker has more than one year’s service. This arrangement is therefore inconsistent with Article 4 para. 4. The Committee asks what notice must be granted to workers who have fixed-term contracts lasting less than one year.”

442. Conclusions 2010, Turkey: “Nevertheless, the Committee has already considered that a eight weeks’ notice is not reasonable for an employee who has worked over fifteen years in the same company (Conclusions 2007, France). The minimum term of eight weeks mentioned above is therefore not in conformity with the article 4§4.”
443. **Conclusions 2010, Estonia:** “The Committee concludes that the situation in Estonia is not in conformity with Article 4§4 of the revised Charter on the grounds that:
- one month is not reasonable notice for employees dismissed because of unsuitability for the post who had five or more years’ service;

444. **Conclusions 2010, Turkey:** “The Committee also notes that it is possible to replace notice by the payment of an amount equivalent to what the worker would have earned during the corresponding period of notice.”

445. **Conclusions 2014, Russian Federation:** “The Committee considers that in order to ensure that the protection granted by Article 4§4 of the Charter is effective, the notice and/or compensation should not be left to the discretion of the parties to the employment contract, but should be governed by legal instruments such as legislation, case law, regulations or collective agreements. In the instant case, the rule that notice periods for the dismissal of employees of self-employed persons (Article 307, paragraph 2 of the Code) and of religious organisations (Article 347, paragraph 2 of the Code), as well as of home workers (Article 312 of the Code) are determined by the employment contracts, is not in conformity with Article 4§4 of the Charter.”

446. **Conclusions XIV-2 (1998), Spain:** “However, it appears that where the reason for the dismissal is the death, retirement or incapacity of the employer, the worker is entitled to one month’s pay (Article 49.1.g). Since Article 4§4 also applies in such circumstances, the Committee finds that this arrangement is not in conformity with the Charter inasmuch as it fails to make allowance for longer periods of service (e.g. more than five years).”

447. **Conclusions XIV-2 (1998), Spain:** “Where a fixed-term contract is concluded for a period in excess of one year, each party must give fifteen days' notice of termination (Section 49.1.c). The Charter requires a period of notice of at least one month where the worker has more than one year’s service. This arrangement is therefore inconsistent with Article 4 para. 4. The Committee asks what notice must be granted to workers who have fixed-term contracts lasting less than one year.”

448. **Conclusions XVIII-2 (2007), Slovak Republic:** “However, it also notes that Article 49 of the Labour Code, concerned with part-time work, sets a distinction based on weekly hours worked rather than length of service. For example, under this article, employees working fewer than twenty hours a week are liable to fifteen days' notice. There is no reference to any criterion based on length of service. The Committee therefore concludes that the situation in Slovakia is not in conformity with the Charter on the grounds that the length of service of employees working fewer than twenty hours a week is not taken into consideration in order to establish the period of notice.”

449. **Conclusions 2010, Bulgaria:** “The Committee notes that there has been no change in the notice periods of fifteen days for the termination of contracts for work in addition to the employee’s principal occupation with the same employer or with different employers. These periods are said to take account of the specific nature of these “additional contracts”, which is embodied in their title. It is submitted in the report that in these specific cases, it is neither reasonable nor acceptable to take account of the employee’s length of service. The Committee points out that two weeks is not a reasonable notice period for employees with over six months’ service.”

450. **Conclusions 2010, Georgia:** “The arrangements for dismissing public officials are set out in the Public Service Act. This specifies a period of notice of one month and compensation equivalent to two months' salary in the event of termination of employment. If the one month's notice period and two months' equivalent salary apply to all agents in the public service, the Committee considers that the situation is compatible with Article 4§4. It therefore asks for confirmation that the period of notice and compensation referred to apply to all public officials without distinction, including those serving probationary periods and those working part time. It also asks for information in the next report on the grounds for dismissal in the public sector, including the provisions governing disciplinary offences and immediate dismissal.”
451. **Conclusions XVI-2 (2003), Greece:** “It recalls that Greek law provides that manual workers are given daily wages instead of a period of notice for termination of employment and that, in its previous conclusions, it found that the number of daily wages granted was not reasonable.”

452. **Conclusions I (1969), Italy:** “The Committee found in fact that, on the basis of custom and of certain collective agreements, only six days’ notice was legally applicable, even to workers with five years’ service. The Committee was of the opinion that such a period of notice could not be considered as reasonable within the meaning of the Charter. Consequently, in the Committee’s view, a recommendation should be sent to the Italian Government inviting it to take the necessary action to ensure a longer period of notice in respect of the workers concerned.”

453. **General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, Decision on the merits of 23 May 2012, §§26 and 28:** «26. To date the Committee has not been required to rule specifically on the concept of probationary or trial periods, the length that such a period might last, in view, in particular, of the qualifications required for the post occupied, or the circumstances under which the extension of the period may be regarded as acceptable. However, it does go without saying that, while it is legitimate for such concepts to apply to enable employers to check that employees’ qualifications and, more generally, their conduct meet the requirements of the post they occupy, the concept should not be so broadly interpreted and the period it lasts should not be so long that guarantees concerning notice and severance pay are rendered ineffective.(…) 28. Therefore, whatever the qualification that is given to the contract in question, the Committee concludes that Section 17§5 of Act No. 3899 of 17 December 2010 constitutes a violation of Article 4§4 of the 1961 Charter.”

454. **Conclusions XIV-2 (1998), Spain:** “The Charter requires a period of notice of at least one month where the worker has more than one year’s service. This arrangement is therefore inconsistent with Article 4 para. 4. The Committee asks what notice must be granted to workers who have fixed-term contracts lasting less than one year.”

455. **Conclusions XVIII-2 (2007), Slovak Republic:** “However, it also notes that Article 49 of the Labour Code, concerned with part-time work, sets a distinction based on weekly hours worked rather than length of service. For example, under this article, employees working fewer than twenty hours a week are liable to fifteen days’ notice. There is no reference to any criterion based on length of service. The Committee therefore concludes that the situation in Slovakia is not in conformity with the Charter on the grounds that the length of service of employees working fewer than twenty hours a week is not taken into consideration in order to establish the period of notice.”

456. **Conclusions XVIII-2 (2007), The Netherlands:** “Finally, the Committee notes that Netherlands legislation authorises reductions in notice periods to at least one month under collective agreements. Such a reduction is not compatible with Article 4§4 in the case of employees with five or more years’ length of service (see Conclusions 2003, Bulgaria, p. 41 and Sweden, pp. 579-580). The situation is therefore not in compliance with the Charter in this respect. In addition, the Committee asks the Netherlands to clarify whether its domestic legislation authorises reductions in notice periods to at least one month under collective agreements in every case, irrespective of employees’ length of service, or whether it sets certain limits.”

457. **Conclusions 2014, Estonia:** “The reduced notice period of 15 days during the probationary period, the duration of which is limited to four months in accordance with section 86, paragraph 1 and 3 of the ECA, is also in conformity with Article 4§4 of the Charter.”
458. **Conclusions 2010, Albania:** “It points out that according to the appendix to Article 4§4, the only exception to the principle of reasonable notice provided for in the Revised Charter concerns immediate dismissal for serious offences, but that the accumulation of several less serious breaches with written warnings from the employer may amount to a serious offence.”

459. **Conclusions 2014, Lithuania:** *op.cit.*

460. **Conclusions 2014, Lithuania:** *op.cit.*

461. **Conclusions 2014, Lithuania:** *op.cit.*

462. **Conclusions 2014, Lithuania:** *op.cit.*

463. **Conclusions 2014, Lithuania:** *op.cit.*

464. **Conclusions 2014, Lithuania:** *op.cit.*

465. **Conclusions 2014, Portugal:** “The Committee also notes that dismissal on legitimate grounds is authorised without notice or compensation when it is the result of improper conduct by an employee, the seriousness and consequences of which jeopardise the employment relationship (Article 351, paragraphs 1 and 2 of the Code) and, in particular:

a. Deliberately disregarding instructions;

b. Infringing colleagues’ rights and guarantees;

c. Repeated incitement of conflicts with colleagues;

d. Repeated failure to fulfil the duties entailed by the job or post;

e. Major infringements of the employer’s material interests;

f. False statements to justify absences;

g. Unjustified absences of more than five consecutive days or more than ten days per year;

h. Negligent failure to comply with occupational health and safety rules;

i. Violent, abusive or insulting conduct towards staff and their representatives or employers and their representatives;

j. Holding the aforementioned persons hostage or restricting their freedom of movement;

k. Resistance or opposition to the execution of judicial or administrative decisions;

l. Abnormal decrease in productivity.

[...]

The Committee also considers that the grounds for dismissal for legitimate reasons set out in Article 351, paragraphs 1 and 2 of the Code correspond to serious offences, which are the sole exceptions justifying immediate dismissal (Conclusions 2010, Albania).”

466. **Conclusions 2014, Portugal:** *op.cit.*

467. **Conclusions 2014, Russian Federation:** “The Committee considers that the following grounds amount to a serious offence, which is the sole exception justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania): repeated or serious professional misconduct; accounting errors leading the employer to lose trust; immoral acts making it impossible for employees to be kept in teaching posts; or the use of forged documents or false information for the negotiation of employment contracts (grounds provided in Article 81, paragraph 1, numbers 5, 7, 8 and 11 of the Code).”

468. **Conclusions 2010, Armenia:** “The Committee concludes that the situation in Armenia is not in conformity with Article 4§4 of the revised Charter on the grounds that: (...) employees who fail to fulfil or inadequately fulfil their obligations or in whom employers have lost confidence or who are performing military service, may be dismissed without notice.”
469. **Conclusions 2014, Georgia:** “Furthermore, the lack of any notice and/or severance pay during probationary periods or in the event of termination of employment owing to a breach of the employment contract, to the death of the employer or to the winding up of the company (Article 37(c), (h) and (i) and Article 38, paragraph 4 of the Code) is not in conformity with Article 4§4 of the Charter.”

470. **Conclusions 2014, Lithuania:** “It considers, however, that some grounds of termination of employment do not meet the criteria of a gross breach of duties, such as: the entry into force of a judicial decision which prevents the performance of work; the withdrawal of administrative licences required for the performance of work; the request from bodies or officials authorised by the law; and the unfitness for work certified by authorised bodies (Article 136, paragraph 1, Nos. 1 to 4 of the Code). Excluding notice or compensation under these circumstances are not in conformity with Article 4§4 of the Charter.”

471. **Conclusions 2014, Lithuania:** *op.cit.*

472. **Conclusions 2014, Lithuania:** *op.cit.*

473. **Conclusions 2014, Malta:** “The Committee also points out that serious misconduct is the only circumstance justifying instant dismissal (Conclusions 2010, Armenia) and therefore considers that authorising dismissal without notice or severance pay in economic, technological or organisational circumstances requiring changes in the workforce (section 36, paragraph 14 of the EIRA), is not in conformity with Article 4§4 of the Charter.”

474. **Conclusions 2014, Russian Federation:** “The Committee considers that the following grounds amount to a serious offence, which is the sole exception justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania): repeated or serious professional misconduct; accounting errors leading the employer to lose trust; immoral acts making it impossible for employees to be kept in teaching posts; or the use of forged documents or false information for the negotiation of employment contracts (grounds provided in Article 81, paragraph 1, numbers 5, 7, 8 and 11 of the Code). The same does however not apply to duly confirmed insufficient qualifications for the post; changes in the ownership of the organisation; single breaches of professional duties; single breaches of professional duties by senior management; withdrawal of access to top-secret information; cases specified in the contracts of senior management or board members; and cases provided for by federal legislation (grounds given in Article 81, paragraph 1, numbers 3 (b), 4, 9, 9 to 12 and 14 of the Code).”

475. **Conclusions 2014, Slovenia:** “The Committee also considers that the grounds for exceptional dismissal without notice or severance pay (Article 111, paragraph 1 of the ERA) generally equate to serious misconduct, which is the only authorised exception to the right of workers to a reasonable notice period (Conclusions 2010, Albania), except as regards refusal to transfer contracts to successor employers and inconclusive probationary periods.”

476. **Conclusions 2014, Turkey:** “The Committee also considers that inappropriate lifestyles resulting in duly established health consequences and immoral and dishonourable conduct (grounds given in section 25-I(a) and (b), and 25-II of the Labour Act) correspond to serious offences, which are the sole exceptions justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania). This is, however, not true of the other cases of immediate dismissal on the grounds of long-term illness, force majeure or being taken into custody or arrested (grounds given in section 25-I, last paragraph, 25-III and 25-IV of the Labour Act). The lack of notice or compensation in these cases of dismissal (grounds given in section 25-I, last paragraph, and 25-IV of the Labour Act) is not in conformity with Article 4§4 of the Charter.”

477. **Conclusions 2014, Turkey:** *op.cit.*
Article 4§5

478. **Conclusions 2005, Norway:** “On the basis of the information provided in the Norwegian report and in previous reports under the Charter of 1961, the Committee notes that the situation, which it previously considered not to be in conformity with the Charter, on the ground that workers may waive their right to limited deductions from wages, has not changed.”

479. **Conclusions 2014, Portugal:** “It notes that section 219 of the RCTFP, by authorising deduction at the express request of tenured civil servants or civil service contractual staff, does precisely put the salary at the disposal of the parties to the employment contract, without providing for adequate guarantees against the deprivation of means of subsistence. Hence it concludes that this provision is therefore not in conformity with Article 4§5 of the Charter.”

480. **Conclusions XI-1 (1991), Greece**

481. **Conclusions 2014, Estonia:** “It points out, however, that the aim of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers that in the present case, the protected amount of the wage established by Article 132, paragraph 1^1 of the Code allows situations to persist in which workers receive only 50% of the minimum wage, an amount which does not enable them to provide for themselves and their dependents. It would point out that compliance with maintenance obligations must not be achieved at the expense of the protection afforded by Article 4§5 of the Charter.”
Article 5 The right to form associations

482. Conclusions XVII-1 (2004), Poland: “The Committee points out that the notion of “worker” in the sense of the Charter covers not only workers in activity but also persons who exercise rights resulting from work. By way of consequence, the Committee considers that the granting of a separate legal regime for the right to organise to retired persons, homeworkers and to the unemployed is not in conformity with the Charter.”

483. Conclusions 2010, Georgia: “The Committee has held that initial formalities such as declaration and registration must be simple and easy to apply.”

484. Conclusions XV-1 (2000), United Kingdom: “A certificate of independence is granted by the Certification Officer once he is satisfied that the union meets the statutory definition of independence laid down in Section 5: Such a certificate is needed in order that a trade union may benefit from the statutory rights and guarantees afforded to trade unions, for example the right to take part in trade union activities, to gain information for collective bargaining and to take time off for trade union duties and activities.
An appeal against refusal to grant such a certificate lies to the EAT on point of law and fact.
Application for a certificate of independence costs currently £3,891. This amount appears high to the Committee and it asks whether it is charged exclusively to cover administrative costs.”

485. Conclusions XVI-1 (2002), United Kingdom: “Previously, the Committee raised the issue of the amount of the fee charged for a certificate of independence, which a trade union must possess in order to benefit from statutory rights and guarantees. The report states that the certification process is very time-consuming and that this is reflected by the fee, which covers administrative costs only.”
Note: the Committee concluded that the situation is in conformity with the Charter on this issue.

486. Conclusions XIII-5 (1997), Portugal: “The Committee considers that when the legislation sets a minimum number of members required to form a trade union which may be considered to be manifestly excessive, this could constitute an obstacle to founding trade unions and, as such, infringe the freedom of association.”

487. Conclusions I (1969), Statement of Interpretation on Article 5: “Employers and workers have the right to form national or international associations, for the protection of their economic and social interest.”

488. Conclusions 2016, Malta: “Under Article 5 trade unions and employer organisations must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply. There must also be provision in domestic law for a right of appeal to the courts to ensure that all these rights are upheld.”

489. Conclusions I (1969), Statement of Interpretation on Article 5: “The Committee noted that two obligations were embodied in this provision, having a negative and positive aspect respectively. The implementation of the first obligation requires the absence, in the municipal law of each Contracting State, of any legislation or regulation or any administrative practice such as to impair the freedom of employers or workers to form or join their respective organisations. By virtue of the second obligation, the Contracting State is obliged to take adequate legislative or other measures to guarantee the exercise of the right to organise and, in particular, to protect workers’ organisations from any interference on the part of employers.”
490. **Conclusions 2010, Republic of Moldova:** “The Committee underlines that trade union members must be protected by law from any detrimental consequences that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities.”

491. **Conclusions 2004, Bulgaria:** “The Committee considers that where such discrimination has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. In the particular case of termination of employment on the ground of trade union activities, it considers – in accordance with its ruling under Article 24 of the Charter, which prohibits termination of employment without valid reason (Conclusions 2003) – that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement.”

492. **Conclusions III (1973), Statement of Interpretation on Article 5:** “The Committee is also of the opinion that any form of legally compulsory trade unionism must be considered incompatible with the Charter.”

493. **Conclusions VIII (1984), Statement of Interpretation on Article 5:** “While conceding that the Appendix to the Charter in respect of Article 1§2 stipulates that this provision “shall not be interpreted as prohibiting or authorising any union security clause or practice” the Committee considers in view of the clear wording of Article 5, that no Contracting Party can fail to provide legal remedies or sanctions for practices which unduly obstruct the freedom to form or join trade union organisations, for otherwise the scope of the aforementioned provision of the Appendix would be excessively widened and situations incompatible with the fundamental freedom secured by Article 5 would be considered lawful.”

494. **Conclusions XIX-3 (2010), Iceland:** “The report indicates that priority rights, which result from priority clauses, mean that the employer undertakes to accept union members in preference to non-unionised workers as long as they are available. (...) The Committee considers that such priority clauses constitute a serious interference with the right not to join trade unions as non-unionised workers find themselves in a clearly disadvantageous position on the labour market compared to workers belonging to trade unions having negotiated priority clauses for their members. The report indicates that it is the Government's position that intervention by way of legislation or measures aiming to prohibit priority clauses in collective agreements would risk jeopardising the stability of the labour market. Arguing that these clauses are the result of agreements freely reached by employers and unions and are long-standing practice, the Government appears to leave it to the social partners themselves to stop having recourse to them. The Committee, however, considers that, ultimately, it remains for the Government to ensure conformity of the national situation with the Charter. (...)The Committee concludes that the situation in Iceland is not in conformity with Article 5 of the Charter on the ground that the existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment infringes the right not to join trade unions.”

495. **Conclusions XIII-3 (1995)- United Kingdom:** “While noting that Section 14 appeared to strengthen the right of every individual to join the trade union of his choice, the Committee was concerned at the considerable restrictions put to the right of trade unions to establish their own rules and choose their members.”
497. **Conclusions 2010, Georgia:** “The Committee has stated that trade unions and employers’ organisations must be independent in respect of their organisation or functioning. The following examples constitute infringements in breach of Article 5: prohibiting the election of or appointment of foreign trade union representatives, substantially limiting the use that a trade union can make of its assets and substantially limiting the reasons for which a trade union is entitled to take disciplinary action against its members.”

498. **Conclusions XII-2 (1992), Germany:** “[Article 5] protects not only the right of workers to join or not to join a trade union, but also the right of trade unions to organise freely and to perform their activities effectively, which is essential for “the protection of workers’ economic and social interests”.”

499. **Conclusions XV-1 (2000), France:** “The Committee considers that the provision of office premises and equipment for trade union organisations so that organisational or information meetings may be held inside office buildings either outside or during working hours, allowing trade union publications to be distributed and trade union dues to be collected in the administrative buildings and allowing trade union representatives to be granted special leave when they need to take part in trade union institutional activities (congresses and meetings of trade union management bodies) is in conformity with Article 5 of the Charter.”

500. **Conclusions 2014, Andorra:** “The Committee recalls that domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone. However, for the situation to comply with Article 5, the following conditions must be met: a) decisions on representativeness must not present a direct or indirect obstacle to the founding of trade unions; ....”

501. **Conclusions XV-1 (2000), Belgium:** “The Committee considers that a trade union that is not representative should enjoy certain prerogatives, for example, they may approach the authorities in the individual interest of an employee, they may assist an employee who is required to justify his or her action to the administrative authority; they may display notices on the premises of services and they receive documentation of a general nature concerning the management of the staff they represent.”

502. **Conclusions XV-1 (2000), France:** “The Committee observes that the criteria for establishing representativity, in particular for the purpose of collective bargaining, must be pre-established, clear and objective.”

503. **Conclusions I (1969), Statement of Interpretation on Article 5:** “All classes of employers and workers, including public servants, subject to the exceptions mentioned below, are fully entitled to the right to organise in accordance with the Charter. Certain restrictions to this right are, however, permissible under the terms of the two last sentences of Article 5 in respect of members of the police and armed forces.”

504. **Conclusions XIX-3 (2010), Poland:** “The Committee considers that there can be no satisfactory justification to deprive altogether home workers of the right to form trade unions and thus finds the situation in breach of Article 5.”

505. **Conclusions 2010, Statement of interpretation on Article 5:** “Unemployed and retired workers may join and remain in trade unions. However, States are not required to allow them to form trade unions, as long as they are entitled to form organisations which can take part in consultation processes that may impact on their rights and interests.”

506. **Conclusions XIII-3 (1995), Turkey:** “Finally, as regards membership of trade union organisations and the enjoyment of the benefits of collective bargaining, the Committee took note that Article 5 of the Trade Union Act (No. 2721) prohibited aliens from becoming founding members of a trade union. It considered that membership of a trade union should also cover the right for foreign workers to become a founding member, in the same way as nationals. It considered therefore
that the restriction contained in Turkish legislation was incompatible with this paragraph in so far as it applied to the nationals of Contracting Parties to the Charter. The Committee wished to be informed of any measure that the Turkish Government might take to remedy this situation."

507. Conclusions XIX-3 (2010), “the former Yugoslav Republic of Macedonia”: “The Committee underlines that under Article 19§4b of the Charter, states party must secure for nationals of other parties treatment not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining. Therefore, it asks for information on this question in the next report. Should this information not be provided, there will be nothing to establish that the situation is in conformity in this regard.”

508. Conclusions I (1969), Statement of Interpretation on Article 5: “The Committee considered, however, that any form of compulsory unionism imposed by law must be considered incompatible with the obligation arising under this article of the Charter.”

509. European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, decision on the merits of 22 May 2002 §§25-26 “25. The Committee recalls that Article 5 permits states to restrict but not to completely deny police officers’ right to organise. 26. It follows, firstly, that police personnel must be able to form or join genuine organisations for the protection of their material and moral interests and secondly, that such organisations must be able to benefit from most trade union prerogatives.”.

510. European Council of Police Trade Unions (CESP) v. France Complaint No. 101/2013, Decisions on the merits of 27 January 2016 § 61-63 : “61. In assessing whether members of the Gendarmerie enjoy the right to organise where the National Gendarmerie is functionally equivalent to a police force, the Committee must take the wording of Article 5, second sentence of the Charter concerning police forces into consideration, according to which the extent to which the guarantees provided for in the said Article apply to the police shall be determined by national laws or regulations. It must also take Article G of the Charter into consideration, which provides that any restriction to the right to organise provided for under Article 5 of the Charter must be prescribed by law and [be] necessary in a democratic society for, inter alia, the protection of national security. In addition, it takes note of the international instruments cited above (see paragraphs 20, 23-25, 27-28, 30-33), which all provide for the possibility to impose restrictions upon the right of police forces to organise. 62. The Committee recalls that, with regard to police forces, if the right to organise may be restricted in accordance with Article G of the Charter, it may not be completely denied (Conclusions I (1969), Statement of Interpretation on Article 5; European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 11/2001, decision on the merits of 21 May 2002, §25; European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, decision cited above, §§71-72). Members of police forces must be free to form or join genuine organisations for the protection of their material and moral interests and […] such organisations must be able to benefit from most trade union prerogatives […]. These are basic guarantees with regard to i) the constitution of their professional associations; ii) the trade union prerogatives that may be used by these associations; and iii) the protection of their representatives (European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 11/2001, decision cited above, §§26-27; European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, decision cited above, §73). 63. As long as these basic guarantees are provided, States Parties may make distinctions according to different categories of police personnel and [from] grant[ing] more or less favourable treatment to these different categories (European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 11/2001, decision cited above, §27; European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, decision cited above, §109). They may even exclude, under specific circumstances and provided the requirements under Article G of the Charter are met, senior police officers from the scope of the right to organise (European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, decision cited above, §79)."
Conclusions I (1969), Statement of Interpretation on Article 5: “It is clear, in fact, from the second sentence of Article 5 (...) and from the “travaux préparatoires” on this clause, that while a state may be permitted to limit the freedom of organisation of the members of the police, it is not justified in depriving them of all the guarantees provided for in the article.”

European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §§119 and 121: “119. This allows the conclusion that the right of Gardaí members to affiliate to national employees’ organisations has firstly and foremostly been restricted for the purpose of disallowing them to negotiate on pay, pensions and service conditions represented by national organisations. 121. Moreover, as the restriction has the factual effect of depriving the representative associations of the most effective means of negotiating the conditions of employment on behalf of their members, it cannot be considered as a proportionate measure for achieving its purposes.”

Conclusions XX-3 (2014), United Kingdom: “Bearing in mind the considerations set out in its last conclusion with respect to this issue, the Committee recalls that further to the restrictions permissible under the terms of the last two sentences of Article 5, in respect of members of the police, any restriction to a right set forth in the Charter is only in conformity with the latter if it satisfies the conditions laid down in Article 31 (Article G of the Revised Charter). This provision of the Charter provides that any restriction has to be prescribed by law, pursue a legitimate purpose and be necessary in a democratic society for the pursuance of this purpose. In this case, this means that there must be a reasonable relationship of proportionality between the imposed restrictions on the right to organise and the legitimate aim to protect the rights and freedoms of others. The Committee reiterates that the above mentioned restrictions are not permitted under Article 5, since they do not satisfy the requirements laid down in Article 31 (Article G of the Revised Charter).”

European Council of Trade Unions (CESP) v. France Complaint No. 101/2013, Decisions on the merits of 27 January 2016 § 61-63 op cit

European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, Decisions on the merits of 27 January 2016, §27; “27. The Committee considers that, in assessing the observance of the Charter in relation to the treatment of PSP personnel, there is no need to compare their treatment with that applicable to judicial police personnel as the complainant asks. If police personnel is given basic guarantees with regard to i) the constitution of their professional associations; ii) the trade union prerogatives that may be used by these associations; and iii) the protection of their representatives, nothing prevents the Contracting Parties to the Charter from making distinctions according to different categories of police personnel and from granting more or less favourable treatment to these different categories. i) Constitution of professional organizations of the PSP”

European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §109. “109. Taking into consideration the special position of the police under the international instruments referred to above (see paragraphs 22, 28-29, 31-32), all of which provide for the possibility of restricting the freedom of association of police personnel, the Committee considers that states may choose to regulate the right to organise of the police through a mechanism applicable only to the police force. However, this may not deprive police representative associations from expressing their demands on working conditions and pay in an appropriate and effective manner.”

European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §79. “79. The Committee observes that this exclusion of the most senior police officers from the scope of the right to organise can be regarded as justified under the provisions of Article G. This limitation on their rights is established by law, namely by the Garda Síochána (Associations) Regulations in force, and pursues the legitimate objectives of public safety and national security by aiming to prevent situations where the most senior police personnel were unable to attend to their official duties and responsibilities
due to their involvement in union activity. It is also narrowly tailored to achieve these objectives and therefore proportionate to them, as the restriction only affects a limited number of very senior officers. The most stringent part of the restriction therefore fulfils the requirements of the Charter, while the great majority of the police are allowed to establish representative organisations.”

518. European Council of Trade Unions (CESP) v. Portugal, Complaint No.11/2001, decision on the merits of 21 May 2002, §§35-36, 38. “35. The Committee recalls that Article 5 of the Charter allows national legislation to require that professional police associations be composed exclusively of members of the police force. 36. In this particular case, it notes that PSP personnel may not join trade unions but are entitled to join any PSP professional association. - Affiliation to other organizations” 38. In this particular case, the Committee notes that PSP professional associations are entitled to affiliate to national and international federations or confederations of trade unions pursuing similar goals. This right is currently guaranteed by Article 2 of the Act of 2002. It points out, in this regard, that the Associação Sócio-Profissional da Polícia, established under the Act of 1990, is affiliated to the complainant. - Organisation and internal operation”

519. European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §77: “77. In the same vein, while certain of the international instruments refer in particular to trade unions, others generally mention organisations of workers and employers. The Committee observes that reference is made in Article 5 to “organisations” only. Therefore, the formal categorisation of a body adopted in national law does not necessarily establish whether the members of a representative organisation effectively enjoy or not the rights set out in Article 5. Instead, it is necessary to examine the concrete situation that forms the subject of this complaint in order to ascertain whether police personnel in Ireland enjoy these rights in practice.”

520. European Federation of Employees in Public Services (EUROFEDOP) v. France, Complaint No. 2/1999, Decision on the merits of 4 December 2000, §28: “28. As the Committee has consistently held, it follows from the wording of the final sentence of Article 5 of the European Social Charter of 1961 that states are permitted to “limit in any way and even to suppress entirely the freedom to organise of the armed forces.””

521. Conclusions XVIII-1 (2006), Poland: “In order to determine how closely the status of staff of the Internal Security Agency (ISA) resembled that of armed forces personnel, the Committee requested information on the breakdown of its responsibilities into civil and military tasks. The ISA’s duties are listed in section 5 of the Internal Security Agency Act. The Committee notes that the agency’s role in identifying, preventing and eliminating threats to Poland’s territorial integrity and defending the state means that it is indirectly involved in national defence. The Committee recalls that Article 5 of the Charter only authorises restrictions on or the removal of the right to organise for two categories of employees, namely members of the police and the armed forces. Any other measures aimed at restricting or abolishing the right to organise of members of the security and intelligence service must therefore be considered in the light of Article 31 of the Charter, which authorises restrictions on the right to organise if they are prescribed by law, have a lawful purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. The Committee notes that the restriction is prescribed by law (section 5 of the ISA Act) and that the purpose – national security – is lawful. However, it considers that simply removing ISA members’ right to organise cannot be deemed necessary in a
democratic society to protect national security. It therefore finds that the situation is not in compliance with Article 5 of the Charter."

522. European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013, Decision on the merits of 27 January 2016, §59: "59. The Committee considers that the National Gendarmerie may be functionally equivalent either to a police or an armed force, depending on the duties assigned; hierarchic authority; and tasks performed, the latter being determinant in this regard. Consequently, it is depending on his or her concrete situation with regard to the combination of these connecting factors that each member of the Gendarmerie does, or does not, qualify as members of the armed forces under Article 5 of the Charter, that situation being subject to fluctuation during the career."

523. European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §82. "82. Customary international law, mainly codified in Article 31§§1 to 3 of the Vienna Convention of the Law on Treaties (see paragraph 29), requires the terms of a treaty to be read in their context and in the light of its objective and purpose. In so doing, the Committee must consider Article 5, third sentence of the Charter in the light of complementary international instruments, above all the Convention and the Court’s interpretation of its provisions. The International Covenant on Economic, Social and Cultural Rights is another key source of interpretation (mutatis mutandis, International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§68-71; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, complaint No. 39/2006, decision on the merits of 5 December 2007, §§64-65)."

Article 6 The right to bargain collectively

Article 6§1

525. Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and the merits of 3 July 2013, §109: “109. From a general point of view, the Committee considers that the exercise of the right to bargain collectively and the right to collective action, guaranteed by Article 6§2 and 4 of the Charter, represents an essential basis for the fulfillment of other fundamental rights guaranteed by the Charter, including for example those relating to just conditions of work (Article 2), safe and healthy working conditions (Article 3), fair remuneration (Article 4), information and consultation (Article 21), participation in the determination and improvement of the working conditions and working environment (Article 22), protection in cases of termination of employment (Article 24), protection of the workers’ claims in the event of the insolvency of their employer (Article 25), dignity at work (Article 26) workers’ representatives protection in the undertaking and facilities to be accorded to them (Article 28), information and consultation in collective redundancy procedures (Article 29).”

526. European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §159. “159. The Committee first observes that nothing in the wording of Article 6 of the Charter entitles states parties to enact restrictions on the right to bargain collectively on part of the police in particular. Article 6 differs in this regard from Article 5 (see paragraphs 67, 105), as any restrictions are exclusively limited by Article G.”

527. European Council of Police Trade Unions (CESP) v. France, complaint No. 101/2013, decision on the merits of 27 January 2016, §118. “118. The Committee first recalls that, unlike in Article 5 of the Charter, nothing in the wording of Article 6 entitles States Parties to enact restrictions in respect of the police in particular. Therefore, any restrictions must comply with the requirements set out in Article G of the Charter (European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, decision cited above, §159). Also, since unlike the wording of Article 5 of the Charter (see paragraphs 54-59), the wording of Article 6 of the Charter draws no distinction between the rights police and armed forces may enjoy under its provisions, the Committee will not examine separately the situation depending on the civilian or military nature of the National Gendarmerie.”

528. Conclusions I (1969), Statement of Interpretation on Article 6§1: “The Committee interprets this provision as meaning that any Contracting State which has accepted it is bound to take steps to promote joint consultation between workers and employers, or their organisations, on all matters of mutual interest and on the following questions among others: productivity, efficiency, industrial health, safety and welfare.”

529. Conclusions V (1977), Statement of Interpretation on Article 6§1: “..., the Committee,... considered that the expression “joint consultation” was to be interpreted as being applicable to all kinds of consultations between both sides of industry – with or without any government representatives - on condition that both sides of industry have an equal say in the matter.”

530. Centrale générale des services publics (CGSP) v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41: “41. The Committee interprets Article 6§1 to mean that States must take positive steps to encourage consultation between trade unions and employers’ organisations. If such consultation does not take place spontaneously, the State should establish permanent bodies and arrangements in which unions and employers’ organisations are equally and jointly represented (Conclusions XVI-2 (2003), Hungary). These bodies and arrangements must allow the social partners to discuss and submit their views on all issues of mutual concern. In the case of officials bound by regulations laid down by the public authorities, such consultation will particulary concern the drafting and implementation of these
regulations (Conclusions III (1973)). The Charter, and in particular Article 6§1, cannot be regarded as permitting interference with the rules for drafting legislation as provided for by constitutional provisions. This process is the prerogative of sovereign States.”

531. **Conclusions 2010, Ukraine, Article 6§1** “The Committee notes that the report only refers to consultation at the national level. It recalls that under Article 6§1 consultation must take place on several levels: national, regional/sectoral and enterprise…”

532. **Conclusions III (1973), Denmark, Germany, Norway, Sweden**: “….the Committee held, as mentioned below in connection with Article 6, paragraph 4, the provisions of Article 6 as a whole to be applicable not only to employees in the private sector, but to public officials subject to regulations, though with the modifications obviously necessary in respect of persons bound not by contractual conditions but by regulations laid down by the public authorities. Article 6§1 can only be regarded as respected where such officials are concerned if consultation machinery is arranged for the drafting and implementation of the regulations, which should not give rise to any special difficulty.”


534. **Conclusions 2004, Ireland**: “The Committee takes note of the information contained in the Irish report. It deferred its previous conclusion pending receipt of information on the practice of consultation in the private sector at the enterprise level. Since consultation at this level is also provided by Article 22 of the Charter, which was accepted by Ireland, the Committee will examine this information under Article 22.”

535. **Conclusions I (1969), Statement of Interpretation on Article 6§1**: op. cit.

536. **Conclusions V (1977), Ireland**: “...furthermore, the committee wished again to draw attention to the importance of joint consultation within firms, especially in order to settle occupational problems (working conditions, vocational training and refresher courses, working hours, production rates, structures and number of staff, etc) and social matters (social insurance, social welfare, etc.)…”

537. **Conclusions 2006, Albania**: “The Committee recalls in this respect that in order to render the participation of trade unions in the various procedures of consultation efficacious, it is open to States parties to require them to meet an obligation of representativeness subject to certain general conditions. With respect to Article 6§1 of the Charter, any requirement of representativeness must not excessively limit the possibility of trade unions to participate effectively in the consultations. In order to be in conformity with Article 6§1 of the Charter, the criteria of representativeness should be prescribed by law, be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusal.”

**Article 6§2**

538. **Conclusions I (1969), Statement of Interpretation on Article 6§2**: “[…] the Contracting Parties undertake not only to recognise, in their legislation, that employers and workers may settle their mutual relations by means of collective agreements, but also actively to promote the conclusion of such agreement if their spontaneous development is not satisfactory and, in particular, to ensure that each side is prepared to bargain collectively with the other. Where adequate machinery for voluntary negotiation is set up spontaneously, however, the government in question is not, in the Committee’s opinion, bound to intervene in the manner prescribed in this paragraph.”
539. **Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden**, Complaint No. 85/2012, Decision on admissibility and the merits of 3 July 2013, §§111 and 120: "111. The Committee recalls that on the basis of Article 6§2 of the Charter “Contracting Parties undertake not only to recognise, in their legislation, that employers and workers may settle their mutual relations by means of collective agreements, but also actively to promote the conclusion of such agreement if their spontaneous development is not satisfactory and, in particular, to ensure that each side is prepared to bargain collectively with the other (...)” (Conclusions I - 1969, Statement of Interpretation on Article 6§2). The Committee also considers that the States should not interfere in the freedom of trade unions to decide themselves which industrial relationships they wish to regulate in collective agreements and which legitimate methods should be used in their effort to promote and defend the interest of the workers concerned.

120. However, the Committee considers that national legislation which prevents a priori the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards would not be in conformity with Article 6§4 of the Charter, as it would infringe the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers. In this context, within the system of values, principles and fundamental rights embodied in the Charter, the right to collective bargaining and collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers: if the substance of this right is to be respected, trade unions must be allowed to strive for the improvement of existing living and working conditions of workers, and its scope should not be limited by legislation to the attainment of minimum conditions."

540. **Conclusions III, (1973) Germany.**

541. **European Council of Trade Unions v. Portugal**, Complaint No. 11/2002, Decision on the merits of 22 May 2002, §58. "58. As a preliminarily matter, the Committee recalls that the extent to which, if at all, ordinary collective bargaining applies to officials may be subject to regulations determined by law. Nevertheless, such officials always retain the right to participate in any processes that are directly relevant to the determination of the procedures applicable to them.”


**European Organisation of Military Associations (EUROMIL) v. Ireland** Complaint No. 112/2014, Decision on the merits of 12 September 2017, §§87-88. "87. The Committee reiterates that the extent to which ordinary collective bargaining applies to officials may be determined by law. Officials nevertheless always retain the right to participate in any processes that are directly relevant for the determination of procedures applicable to them (Conclusions III, (1973) Germany, CESP v. Portugal, Complaint No. 11/2002, §58, op. cit.). A mere hearing of a party on a predetermined outcome will not satisfy the requirements of Article 6§2 of the Charter. On the contrary, it is imperative to regularly consult all parties throughout the process of setting terms and conditions of employment and thereby provide for a possibility to influence the outcome. Especially in a situation where the trade union rights have been restricted, it must maintain its ability to argue on behalf of its members through at least one effective mechanism. Moreover, in order to satisfy this requirement, the mechanism of collective bargaining must be such as to genuinely provide for a possibility of a negotiated outcome in favour of the workers' side (EuroCOP v. Ireland, Complaint No. 83/2012, §177, op. cit.).

88. The Committee has previously had the opportunity to consider the issue of collective bargaining and more specifically negotiation over pay in respect of the police. It examines under Article 6§2 of the Charter whether, based on practical examples, a police trade union has effectively been consulted and its opinions taken into account (EuroCOP v. Ireland, Complaint No. 83/2012. §§161-178, op. cit.; Conclusions XVII-1 (2005), Poland). It decides to adopt this approach to members of the armed forces as well.”
543. **Conclusions 2006, Albania**: “The Committee recalls that in order to render the participation in the various procedures of collective bargaining efficacious, it is open to States parties to require them to meet an obligation of representativeness subject to certain general conditions. With respect to Article 6§2 of the Revised Charter, any requirement of representativeness must not excessively limit the possibility of trade unions to participate effectively in collective bargaining.”

544. **ICTU v. Ireland, Complaint No. 123/2016, decision on the merits of 12 September 2018, §§37-40**: “The Committee further observes that the world of work is changing rapidly and fundamentally with a proliferation of contractual arrangements, often with the express aim of avoiding contracts of employment under labour law, of shifting risk from the labour engager to the labour provider. This 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. These developments must be taken into account when determining the scope of Article 6§2 in respect of self-employed workers. Moreover, the Committee emphasises that collective mechanisms in the field of work are justified by the comparably weak position of an individual supplier of labour in establishing the terms and conditions of their contract. This contrasts with competition law where the grouping of interests of suppliers endanger fair prices for consumers. To overcome the lack of individual bargaining power the anti-cartel regulations are considered inapplicable to labour contracts and this has also been generally accepted by the CJEU (see Albany International BV v. Stichting Bedrijfspensioenfonds Textielindustrie, Case C-67/96, judgment of 21 September 1999). 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 finally observes that ILO Conventions 98, 151 and 154 extend collective bargaining rights to all employers and workers and all subjects and according to the 2012 General Survey the right to collective bargaining should also cover organisations representing self-employed workers (ILO General Survey, para. 209).

The Committee does not consider it appropriate to elaborate a general definition of how self-employed workers are covered by Article 6§2. However, even without developing the precise circumstances under which categories of self-employed workers fall under the personal scope of Article 6§2, 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 this provision (see mutatis mutandis, European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017, §94).”

545. **Conclusions XIX-3 (2010), “the former Yugoslav Republic of Macedonia”:** “As regards the requirements to be an eligible party to a collective agreement, the Committee understands from the report and from other sources that during the reference period collective bargaining was restricted to trade unions representing at least 33% of the employees at the level at which the agreement was concluded (company, sector or country). The report acknowledges that this restriction created problems in practice and thus the representativeness requirements were modified in 2009 (outside the reference period). While referring to its questions and remarks in this regard under Article 5 and 6§1, the Committee holds that during the reference period the requirements to be met to be entitled to enter negotiations were excessive and therefore such as to infringe the right to bargain collectively.”

546. **Conclusions 2010, Statement of interpretation on Article 6§2**: “The Committee considers, like the ILO Freedom of Association Committee, that the extension of collective agreements should take place subject to tripartite analysis of the consequences it would have on the sector to which it is applied” (Digest of the Freedom of Association Committee of the Governing Body of the ILO, 5th (revised edition), 2006, para. 1051).
Article 6§3

547. Conclusions I (1969), Statement of Interpretation on Article 6§3: “The machinery for the settlement of labour disputes envisaged in this provision may be established by legislation, collective agreements, or industrial practice and its object may be the settlement of any kind of labour dispute. The Committee takes the view that, where conciliation machinery established, for example, on the basis of collective agreements, is sufficiently efficacious, there is no need for the government concerned to establish arbitration procedures or to promote their use.”

548. Conclusions III, (1973) Denmark, Germany, Norway, Sweden, Article 6§1: *op.cit.*

549. Conclusions 2010, Georgia, Article 6§3: “Article 6§3 applies to conflicts of interest, i.e. generally conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement. It does not concern conflicts of rights, i.e. conflicts related to the application and implementation of a collective agreement, or to political disputes.”

550. Conclusions V (1977), Italy: “…In these reports, especially in the 4th, the Italian Government gave extensive information on conciliation and arbitration. But this concerned only the resolution of conflicts – individual or collective – arising out of the interpretation or application of work contracts or collective agreements in force. However, Article 6, paragraph 3, does not deal with this subject. It is clear in fact from the introductory passage on this Article that its paragraph 3 refers only to conciliation and arbitration within the framework of collective bargaining, i.e. the purpose of which is to resolve the disputes, which can arise at the time of the negotiation and conclusion of collective agreements.”

551. Conclusions 2014, Republic of Moldova: “It recalls that conciliation is a process aimed at the peaceful settlement of a labour conflict, while arbitration can resolve the conflict outside the courts on the basis of a judgement taken by one or more individuals selected by the parties. The distinction is important as the result of a conciliation proceeding is not binding for the parties, and recourse to arbitration should be also voluntary (subject to the agreement of the parties). However, once the parties have chosen to solve the dispute through arbitration, the result of the arbitration proceedings is binding on the parties.”

552. Conclusions XIV-1 (1998), Iceland: “Moreover, the Committee shares the opinion of the ILO Committee on Freedom of Association that a system of arbitration shall be independent and that the substantive outcome of arbitration shall not be pre-determined by legislative criteria.”

553. Conclusions 2006, Moldova, Article 6§3: “The Committee recalls that any form of recourse to compulsory arbitration constitutes a violation of Article 6§3 of the Revised Charter, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both, unless such deferral is limited to cases prescribed by Article G of the Revised Charter.”

Article 6§4

554. Conclusions I (1969), Statement of Interpretation on Article 6§4: “It is clear from the text that this provision relates to both strikes and lock-outs — even though the latter are not explicitly mentioned in the text of Article 6 para. 4 of the Charter, or in the gloss to this provision in the Appendix. The Committee came to this conclusion because the lockout is the principal, if not the only, form of collective action which employers can take in defence of their interests.”
555. **Conclusions I (1969), Statement of Interpretation on Article 6§4:** "In its fourth paragraph, Article 6 deals with the right of employers to take collective action in cases of conflicts of interest, including the right to strike. The Committee notes that by this provision, the right to strike is for the first time explicitly recognised in an international convention."

556. **Conclusions I (1969), Statement of Interpretation on Article 6§4:** "Where the limits within which the right to strike may be exercised have been determined, in a state, not by legislation but by the courts, it is for the Committee to examine whether the case law thus established is in accordance with the requirements of the Charter."

557. **Conclusion XVII-1 (2004), Netherlands:** "The Committee recalls that since the judgment of 30 May 1986 in which the Dutch Supreme Court ruled that Article 6§4 and Article 31 of the Charter were directly applicable in national law (Conclusions XI-1 (1991)), it pays particular attention when examining case law of the Dutch courts, in particular Supreme Court rulings, in order to check whether the courts take decisions in the light of the principles laid down in the matter (Complaint No. 12/2002, Confederation of Swedish Enterprise v. Sweden, decision on the merits, 15 May 2003, §43). It is up to the Committee to verify, as a last resort, that the Dutch courts are ruling in a reasonable manner and in particular that their intervention does not so reduce the substance of the right to strike as to render it ineffective."

558. **Conclusions XVII-1 (2004), Netherlands:** "The Committee considers that the fact that a Dutch judge may determine whether recourse to strikes are “premature” impinges on the very substance of the right to strike as this allows the judge to exercise one of the trade unions’ key prerogatives, that of deciding whether and when a strike is necessary."

559. **Conclusions I (1969), Statement of Interpretation on Article 6§4:** "It is clear from the text that this provision relates to both strikes and lock-outs — even though the latter are not explicitly mentioned in the text of Article 6 para. 4 of the Charter, or in the gloss to this provision in the Appendix. The Committee came to this conclusion because the lockout is the principal, if not the only, form of collective action which employers can take in defence of their interests."

560. **Conclusions VIII (1984), Statement of Interpretation on Article 6§4:** "The Committee pointed out in the first place that if, by virtue of Article 6 para. 4, the Charter recognises the right of workers and employers to collective action where conflicts of interests arise, it certainly does not raise any obstacle to the existence of legislation regulating the exercise of the right to call a lock-out, as well as of the right to strike, provided that neither legislation nor judicial decisions affect the very existence of the right thus recognised.

However, subject to the aforesaid, the Charter does not necessarily imply that legislation and case law should establish full legal equality between the right to strike — which the Charter indeed mentions explicitly and which is recognised as a fundamental right by the Constitution of several member States — and the right to call a lock-out. Consequently, the Committee, thought, in the first place, that a state party to the Charter cannot be found at fault for not having passed legislation regulating the exercise of lock-out and, in the second place, that the competent tribunals were entitled to place certain restrictions on the exercise of lock-out in specific cases where it would in particular constitute an abuse of the right or where it would be devoid of justification on the ground of “force majeure” or of the disorganisation of the enterprise caused by the workers' collective action."

561. **Conclusions VII (1980) Statement of interpretation on Article 6§4**

562. **Conclusions 2004, Sweden:** "In Conclusions 2002 the Committee concluded that the situation was not in conformity with Article 6§4 of the Charter because strikes could only be called by those entitled to be parties to collective agreements. However it has decided to re-examine the situation. It considers that the reference to “workers” in Article 6§4 relates to those who are entitled to take part in collective action but says nothing about those empowered to call a strike. In other words, this provision does not require states to grant any group of workers authority to
call a strike but leaves them the option of deciding which groups shall have this right and thus of restricting the right to call strikes to trade unions. However, such restrictions are only compatible with Article 6§4 if there is complete freedom to form trade unions and the process is not subject to excessive formalities that would impede the rapid decisions that strike action sometimes requires.”

563. Conclusions 2014, Germany

564. Conclusions XV-1 (2000), France: “While taking into consideration, inter alia, the fact that the unionisation rate is very low in France, the Committee considers that the requirement that a strike must be initiated by one of the trade unions that are most representative at the national level, in the professional category or in the firm, organisation or department concerned, in order for a public sector strike to be lawful, amounts to a restriction of the right to collective action that is not compatible with Article 6 para. 4 of the Charter.”

565. Conclusions XVI-1 (2002), Portugal: “In its previous conclusion, the Committee noted that the trade unions have a virtual monopoly of the right to strike and that non-unionised workers can only exercise this right in undertakings where the majority of employees do not belong to a union. It therefore asked for information to show that non-union members of an undertaking where the majority of employees are union members are able, legally and in practice, to form a union in order to call a strike. Its purpose is to establish whether even non-unionised workers are fully entitled to take collective action, in accordance with Article 6§4 of the Charter. The report states that Article 10 of Legislative Decree No. 215-B/75 of 30 April 1975 confers legal personality on trade unions, and thus the right to call strikes, once their statutes have been published in the official gazette of the Republic. Publication must be within thirty days of the statutes’ registration with the Ministry of Labour and Solidarity. The Committee concludes from this that workers who are not affiliated to an existing trade union may exercise the right to strike only through a trade union that they have constituted for that purpose, within an excessive time frame of thirty days. It therefore considers that the situation in Portugal is not in conformity with the Charter in this respect.”

566. Conclusions I (1969), Statement of Interpretation on Article 6§4: “This provision recognises the right to collective action only in cases of conflicts of interest. It follows that it cannot be invoked in cases of conflicts of right, i.e. in particular in cases of disputes concerning the existence, validity or interpretation of a collective agreement, or its violation, e.g. through action taken during its currency with a view to the revision of its contents. This interpretation should be adopted even where a collective agreement contains provisions purporting to permit such industrial action.”

567. Conclusions II (1971), Statement of Interpretation on Article 6§4: “Political strikes are not covered by Article 6, which is designed to protect “the right to bargain collectively”, such strikes being obviously quite outside the purview of collective bargaining.”

568. Conclusions XX-3 (2014), Germany: “Article 6§4 of the 1961 Charter refers to the right of workers and employers to collective action in cases of conflicts of interest, thereby recognising that other types of conflict may exist where workers’ interests may be protected through other means than collective action. Article 6§4 of the 1961 Charter however must also be interpreted as requiring states to ensure that workers and employees can exercise their right to collective bargain in an effective manner, including the right to strike to defend workers’ interests, and that limitations on the circumstances in which workers and employees can engage in collective action are not excessive. The Committee considers that the specific German approach of leaving conflicts of rights to be determined by courts while requiring that collective action must be directed towards resolving conflicts of interest is thus in principle in conformity with the provisions of Article 6§4 of the 1961 Charter, as long as excessive constraints are not imposed upon the right of workers and employees to engage in collective action in respect of conflicts of interest. Protecting the right to collective action under the 1961 Charter pursues the objective of solving collective conflicts. As
long as such objective is effectively ensured in practice, equivalent means to this end may be established. The Committee however reserves its position in case specific situations might indicate conflicts of interest other than those aiming at concluding collective agreements which cannot be solved by a competent court.”

569. Conclusions X-1 (1987), Norway: “.... in accordance with the Appendix to Article 6 para. 4 of the Charter, each Contracting Party may regulate the exercise of the right to strike by law, provided that any further restriction can be justified under the terms of Article 31. The latter provision ensures that the rights and principles enshrined in Part I of the Charter and their effective exercise provided for in Part II cannot be made subject to restrictions or limitations not justified under Parts I and II, except where they are prescribed by law and necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of the public interest, national security, public health or morals.”

570. European Trade Union Confederation (ETUC)/Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium, Complaint No. 59/2009, Decision on the merits of 13 September 2011, §43-44 : “43. In providing that restrictions on the enjoyment of Charter rights must be “prescribed by law”, Article G does not require that such restrictions must necessarily be imposed solely through provisions of statutory law. The case-law of domestic courts may also comply with this requirement provided that it is sufficiently stable and foreseeable to provide sufficient legal certainty for the parties concerned. The decisions of the domestic courts adopted under the emergency relief procedure, as brought to the Committee’s attention by the parties to the complaint, do not meet these conditions (see paragraphs 14-16). In particular, inconsistencies of approach appear to exist as between similar cases, and the case law lacks sufficient precision and consistency so as to enable parties wishing to engage in picketing activity to foresee whether their actions will be subject to legal restraint.

44. In addition, the Committee considered that the expression “prescribed by law” includes within its scope the requirement that fair procedures exist. The complete exclusion of unions in practice from the so called “unilateral application” procedure poses the risk that their legitimate interests are not taken into consideration. Unions may only intervene in the procedure after an initial binding decision has been taken and the collective action has been stopped. As a result of the unilateral nature of this procedure, the judge “may” summon other affected parties, but if he elects not to do so, the decision can be taken without such parties making submissions at the initial hearing or in its immediate aftermath. As a result, unions may be obliged to initiate collective action again, or else must go through a time-consuming appeal procedure. Consequently, the exclusion of unions from the emergency relief procedure may lead to a situation where the intervention by the courts runs the risk of producing unfair or arbitrary results. For this reason, such restrictions to the right to strike cannot be considered as being prescribed by law.”

571. Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and the merits §119 “119. The Committee considers that excessive or abusive forms of collective action, such as extended blockades, which would put at risk the maintenance of public order or unduly limit the rights and freedoms of others (such as the right of co-workers to work, or the right of employers to engage in a gainful occupation) may be limited or prohibited by law. In this context, the Committee considers that the prohibition of certain types of collective action, or even the introduction of a general legislative limitation of the right to collective action in order to prevent initiatives aimed at achieving illegitimate or abusive goals (e.g. goals which do not relate to the enjoyment of labour rights, or relate to discriminatory objectives) would not be necessarily contrary to Article 6§4 of the Charter.”

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120. However, the Committee considers that national legislation which prevents \textit{a priori} the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards would not be in conformity with Article 6§4 of the Charter, as it would infringe the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers.

Conclusions XX-3 (2014), United Kingdom: “The Committee notes that the ban on secondary action forms part of a matter brought before the European Court of Human Rights by the National Union of Rail, Maritime and Transport Workers (RMT) – Judgment of 8 April 2014. In that case, the Court found that secondary action was protected under the relevant International Labour Organisation Convention and the European Social Charter, and that it would be inconsistent for the Court to take a narrower view of freedom of association of trade unions than that which prevailed in international law. However, because the right to organise had still been partially effective, the United Kingdom’s legislation was found by the Court to be within the margin of appreciation within the framework of the European Convention of Human Rights and the interference was therefore not considered to be disproportionate. The Committee notes that Article 6§4 of the Charter is more specific than Article 11 of the Convention. It therefore considers that while the rights at stake may overlap, the obligations on the State under the Charter extend further in their protection of the right to strike, which includes the right to participate in secondary action.”

120. However, the Committee considers that national legislation which prevents \textit{a priori} the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards would not be in conformity with Article 6§4 of the Charter, as it would infringe the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers. In this context, within the system of values, principles and fundamental rights embodied in the Charter, the right to collective bargaining and collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers: if the substance of this right is to be respected, trade unions must be allowed to strive for the improvement of existing living and working conditions of workers, and its scope should not be limited by legislation to the attainment of minimum conditions.

121. The Committee further considers that legal rules relating to the exercise of economic freedoms established by State Parties either directly through national law or indirectly through EU law should be interpreted in such a way as to not impose disproportionate restrictions upon the exercise of labour rights as set forth by, further to the Charter, national laws, EU law, and other international binding standards. In particular, national and EU rules regulating the enjoyment of such freedoms should be interpreted and applied in a manner that recognises the fundamental importance of the right of trade unions and their members to strive both for the protection and the
improvement of the living and working conditions of workers, and also to seek equal treatment of workers regardless of nationality or any other ground.

122. Consequently, the facilitation of free cross-border movement of services and the promotion of the freedom of an employer or undertaking to provide services in the territory of other States – which constitute important and valuable economic freedoms within the framework of EU law – cannot be treated, from the point of view of the system of values, principles and fundamental rights embodied in the Charter, as having a greater a priori value than core labour rights, including the right to make use of collective action to demand further and better protection of the economic and social rights and interests of workers. In addition, any restrictions that are imposed on the enjoyment of this right should not prevent trade unions from engaging in collective action to improve the employment conditions, including wage levels, of workers irrespective of their nationality."

575. **Conclusions I (1969), Statement of Interpretation on Article 6§4**: “Legislation denying the right to strike to persons employed in essential public services may, by virtue of Article 31, be compatible with the Charter whether such restriction be total or partial. Whether or not in a given case it is so compatible depends on the extent to which the life of the community depends on the services involved.”

576. **Constitutional Court of the Czech Republic**: “The Committee considers that the strike ban is prescribed by law, and that such a restriction may be justified to the extent that, because of the nature of their responsibilities, work stoppages by these categories of workers could threaten the lives of others, national security and/or public health. However, the Committee thinks that simply prohibiting these workers from striking, without distinguishing between their particular functions, cannot be considered proportionate to the particular circumstances of each of the sectors concerned, and thus necessary in a democratic society. At the very most, establishing a minimum service in these sectors could be considered in conformity with Article 6§4 of the Charter.”

577. **Conclusions I (1969), Statement of Interpretation on Article 6§4**: “As regards the right of public servants to strike, the Committee recognises that, by virtue of Article 31, the right to strike of certain categories of public servants may be restricted, including members of the police and armed forces, judges and senior civil servants. On the other hand, the Committee takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter.”

578. **Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §§44-46**: “44. Firstly, the Committee observes that Section 47 of the CSA limits the exercise of collective action in respect of all civil servants to wearing or displaying signs, armbands, badges or protest banners. Civil servants thus are only entitled to engage in symbolic action which the law qualifies as strike and do not have the right to collectively withdraw their labour. The Committee finds that this restriction amounts to a complete withdrawal of the right to strike for all civil servants.”
45. Secondly, the Committee recalls that restrictions to the right to strike of certain categories of civil servants, for example those whose duties and functions, given their nature or level of responsibility are directly affecting the rights of others, national security or public interest may serve a legitimate purpose in the meaning of Article G (see Conclusions I (1969), Statement of Interpretation).

46. However, the Committee considers that there is no reasonable relationship of proportionality between prohibiting all civil servants from exercising the right to strike, irrespective of their duties and function, and the legitimate aims pursued. Such restriction can therefore not be considered as being necessary in a democratic society in the meaning of Article G."


582. EUROMIL v Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017 §113-117. “113. The Committee recalls having held that restrictions on the right to strike for member of the armed forces may be in conformity with the Charter “As regards the right of public servants to strike, the Committee recognises that, by virtue of …Article G of the Revised Charter, the right to strike of certain categories of public servants may be restricted, including members of the police and armed forces, judges and senior civil servants. On the other hand, the Committee takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter” (Conclusions I (1969), Statement of Interpretation on Article 6§4).

114. As regards police officers the Committee has, in the context of the diversity of the legal systems in this area, also taken note of the evolution towards the expansion of the right to strike to police officers. Their right to collective action may be restricted. Such a restriction may nevertheless only be compatible with the Charter if the requirements of Article G are met, i.e. if the restriction is established by law, pursues a legitimate aim and is objectively necessary in a democratic society, that is to say proportionate to the aim pursued. Concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. On the other hand the imposition of restrictions as to the mode and form of such strike action can be in conformity to the Charter (EuroCOP v. Ireland, Complaint No. 83/2012, §§203-204, op. cit.).

115. However, the Committee in the instant case is called upon to determine whether members of the armed forces can be prohibited from striking. In the present case it is not disputed that the restriction is established by law. The restriction furthermore pursues a legitimate aim in that it seeks to maintain public order, national security and the rights and freedoms of others by ensuring that the armed forces remains fully operational and available to respond at all times.

116. Accordingly, the Committee is called upon to resolve the question of whether a prohibition on the right to strike by members of the armed forces, as a means of pursuing a legitimate aim such as those outlined in the previous paragraph, is necessary in a democratic society. It finds that the margin of appreciation is greater than that afforded to states in respect of the police.

117. The Committee further notes that most Council of Europe states prohibit members of the armed forces from striking (with the exception of Austria and Sweden). Therefore and having regard to the specific nature of the tasks carried out by members of the armed forces, the special circumstances of members of the armed forces who operate under a system of military discipline, the potential that any industrial action could disrupt operations in a way that threatens national
security, the Committee considers that there is a justification for the imposition of the absolute prohibition on the right to strike set out in Section 8 of the 1990 Industrial Relations Act. The statutory provision is proportionate to the legitimate aim pursued and, accordingly, can be regarded as necessary in a democratic society."

583. European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §211: “211. Since this applies in respect of restrictions on the exercise of the right to strike for the purpose of improving conditions of work beyond a given minimum level, it a fortiori applies also for every absolute prohibition of the right to strike established a priori by law. In other words, the Committee holds that restrictions on human rights must be interpreted narrowly. As a consequence, in the context of the regulation of the collective bargaining rights of police officers, states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action.”

584. Conclusions 2004, Norway: “The Committee decides to no longer consider, as part of the reporting procedure, the situations in which arbitration has been imposed by the Parliament to end a strike in the sectors which are prima facie covered by Article G. It considers that this examination is a natural part of the complaints procedure that Norway accepted during the reference period. The Committee notes that during the reference period arbitration was imposed on three occasions in the health sector. It considers that this sector is prima facie covered by Article G.”

585. Conclusions 2014, Norway, Article 6§4 “First, the Committee examines the oil sector conflict. In 2012, the Government intervened to end a dispute in the oil sector by recommending the use of compulsory arbitration. … The Government found that even a short interruption to all oil and gas production would be highly detrimental to the trust in Norway as a credible supplier of oil and gas. Furthermore, a full shutdown of production would have a serious impact on the Norwegian economy, including major ripple effects on the supplier industry…. The Committee observes that even though the strike in the case at hand may have had important consequences for the economy, this being the primary consideration on which state intervention to terminate the strikes was based, the intervention (which brought the collective action to an end) was not necessary for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The Committee accepts that the implications of the industrial action would be serious in terms of the loss of revenue but is not satisfied that the situation was so serious that it fell within the limits of Article 31 of the Charter, ie. that it was necessary for the protection of the public interest. The loss of revenue, the Committee notes, would not necessarily have been of a permanent nature. The Committee therefore considers that the intervention of the Government to terminate the collective action and impose compulsory recourse to arbitration in the oil sector conflict was not in conformity with Article 6§4 of the Charter.”

586. Conclusions 2004, Norway: “The Committee reconsiders the question of peace obligation. It recalls that, in the Norwegian system of industrial relations, collective agreements are seen as a social peace treaty of fixed duration during which strikes are prohibited. The peace obligation is a contractual obligation and is imposed by statute law. It is also relative since it applies to disputes concerning the existence, validity, interpretation and application of a collective agreement, as well as to disputes pertaining to claims based on the agreement. It also applies to matters regulated and sought to be regulated by collective agreement. The Committee wishes the next report to indicate whether a strike is nonetheless possible outside this framework e.g. to protest against a collective redundancy or dismissal of a trade union representative. Taking into consideration all aspects of the Norwegian system, in particular that the peace obligation reflects the certain will of social partners and that the parties to a dispute have the
possibility to have a recourse to a dispute settlement mechanism which is in conformity with Article 6§3, the Committee considers that the system is in conformity with Article 6§4 of the Charter.”

587. Conclusions II (1971), Cyprus: “The submission of a strike declaration to a secret ballot of the workers concerned was not incompatible with the Charter, since the vote did not prevent the expression of the free collective will of the interested parties.”

588. Conclusions XIV-1 (1998), United Kingdom: “The Committee recalls in this context that it has previously criticised various provisions in the United Kingdom restricting the right to strike…. Among these limitations the Committee mentioned, inter alia, that (Conclusions XII-1 (1991)):

a. […]

b. strikes are only lawful if they have been approved by a majority of workers, through a secret ballot under very restrictive conditions; […]"

589. Conclusions XVII-1 (2004), Czech Republic: “Strikes that start before mediation has been tried are unlawful, by virtue of Section 20 (a) of the Act. In its previous conclusion the Committee considered that this mediation requirement, which was considerably more onerous than a cooling off period, constituted a restriction of the right to take collective action not in conformity with the Charter. In particular, it thought that the length of the period prescribed in Section 12 of the Act (“if the dispute has not been resolved within thirty days of the mediator being informed of the substance of the dispute, the mediation is considered to have failed”) was excessive.”

590. Conclusions XIV-1 (1998), Cyprus: “The Committee recalls that cooling off periods are, in principle, compatible with the Charter; such provisions do not impose a real restriction on the right to collective action, they simply regulate the exercise thereof (Conclusion II, p. 187). However, the Committee reserves the right to return to the issue of the length of such a period after examining the situation in all Contracting Parties to the Charter.”

591. Conclusions XX-3 (2014), Denmark: “The Committee notes that the activities of the Public Conciliator are subject to judicial supervision, and consequently the social partners (trade unions or employers’ organisations) which are not satisfied with the Public Conciliator’s actions may bring the matter before the Labour Court. The Committee recalls that the primary responsibility for implementing the European Social Charter naturally rests with national authorities. Having regard to their constitutional arrangements and their welfare and industrial relations systems, these authorities may in turn delegate certain powers to local authorities or the social partners. In the light of the specific characteristics of the Danish trade union system as described above, and considering that the non-representative and smaller trade unions have the possibility to contest the Public Conciliator’s actions, the Committee considers that the situation is in conformity with Article 6§4 of the 1961 Charter on this point.”

592. Conclusions I (1969), Statement of Interpretation on Article 6§4: “… the Committee examined the compatibility of a rule according to which a strike terminates the contracts of employment. In principle, the Committee takes the view that this is not compatible with the respect of the right to strike as envisaged by the Charter. Whether in a given case a rule of this kind constitutes a violation of the Charter is, however, a question which should not be answered in the abstract, but in the light of the consequences which the legislation and the industrial practice of a given country attaches to the termination and resumption of the employment relationship. If in practice those participating in a strike are, after its termination, fully reinstated and if their previously acquired rights, e.g. as regards pension, holidays and seniority in general, are not impaired, the formal termination of the contracts of employment by the strike does not, in the opinion of the Committee, constitute a violation of the Charter.”
593. **Conclusions XIII-1 (1993), France:** “The rule of the indivisible thirtieth, which makes possible a deduction in salary larger than that corresponding to the length of the strike and thus constitutes a form of sanction, did not appear compatible with the free exercise of the right to strike.”

594. **Confédération Française de l’Encadrement (CFE-CGC) v. France, Complaint No. 16/2003, Decision on the merits of 12 October 2004, §63:** “63. The Committee recalls its assessment in connection with Complaint No. 9/2000, CFE-CGC v. France, that Article 6§4 requires that deductions to the salaries of strikers be in proportion to the duration of the strike.”

595. **Conclusions XVIII-1 (2006), Denmark:** “Workers who are not members of a trade union, but do participate in a strike called by a trade union can be liable to individual sanctions for breach of their contract of employment, irrespective of whether the strike is legal or illegal. The Committee recalls that States must ensure that workers, participating in a strike without being members of the trade union having called the strike, enjoy the same protection as members. It reiterates its finding that the situation in Denmark is not in conformity with Article 6§4 of the Charter in this regard.”
Article 7 The right to special protection for children

Article 7§1

596. **Conclusions I (1969), Statement of Interpretation on Article 7§1:** “[…] the Committee considered, in fact, that the general admission of fourteen year olds to agricultural work and domestic work is not compatible with the requirements of this paragraph.”

- all economic sectors and all types of enterprises, including family businesses, as well as all forms of work, whether paid or not (see in particular Conclusions VII (1981)),
- agricultural and domestic work, which the Committee has declared cannot be automatically considered to be light work within the meaning of this paragraph (Conclusions I (1969)),
- home working and sub-contracting.

28. Work within the family (helping out at home) also comes within the scope of Article 7 para. 1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7 para. 1 is intended to eliminate. The supervision required of states must, in such cases, as the Portuguese Government itself observes, concern not just the Labour Inspectorate but also the educational and social services.”

598. **International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32**: “32. Finally, the Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. In this regard, it considers that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (see for example Conclusions XIII-3 (1995)). It considers that the Labour Inspectorate has a decisive role to play in effectively implementing Article 7 of the Charter.”

599. **International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§29-31**: “29. If Article 7 para. 1 provides for an exception to the prohibition on work under the age of fifteen years in respect of “prescribed light work”, this can only mean work which does not entail any risk to the health, moral welfare, development or education of children. The light nature of the work is assessed on the basis of the circumstances of each case.

30. The nature of the work is a determining factor. Work which is unsuitable because of the physical effort involved, working conditions (noise, heat, etc.) or possible psychological repercussions may have harmful consequences not only on the child’s health and development, but also on its ability to obtain maximum advantage from schooling and, more generally, its potential for satisfactory integration in society. In order to comply with Article 7 para. 1, states are therefore required, under the supervision of the Committee, to define the types of work which may be considered light, or at the very least to draw up a list of those which are not.

31. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work”, especially the maximum permitted duration and the prescribed rest periods so as to allow supervision by the competent services. Even though it has not set a general limit on the duration of permitted light work, the Committee has considered that a situation in which a child under the age of fifteen years works for between twenty and twenty-five hours per week during school term (Conclusions II (1971)), or three hours per school day and six to eight hours on week days when there is no school is contrary to the Charter (Conclusions IV (1975)).”
Conclusions 2015, Statement of Interpretation on Articles 7§1 and 7§3 – permitted duration of light work: “The Committee recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education. In addition, the Committee recalls that, in any case, children should be guaranteed at least two consecutive weeks of rest during summer holiday.”

Conclusions 2015, Statement of Interpretation on Articles 7§1 and 7§3: op.cit.

Conclusions 2011, Statement of interpretation on Article 7§3

Article 7§2

Conclusions 2006, Article 7§1: “The Committee asks how the conditions under which home work is performed are supervised in practice. In particular, it asks whether the Labour Inspectorate can enter homes, under what conditions and on what legal basis.”

Conclusions 2006, France: “The Committee has previously found that the situation was not in conformity with the Charter because the French Labour Code stipulates minimum ages ranging from 15 to 18 years of age for the performance of dangerous or unhealthy work, for example Article R. 234-16 sets 16 as the minimum age for working with dissolved, compressed or liquefied gases. The report indicates that Articles R. 234-20 and R. 234-21 of the Labour Code prohibit the employment of young workers under 18 in work of this kind. It notes that these more recent provisions, not Article R. 234-16 (an older provision setting the age limit at 16 years), apply in practice. The Committee notes, however, that the situation is not clear. Article R. 234-21 allows young people aged 17 to be employed in work connected with industrial oil furnaces. The Committee stresses that while the more recent provisions meet the requirements of Article 7§2, their co-existence with other provisions such as Article R. 234-16 prevents the existence of a norm which is available and predictable for citizens and courts, and thereby contravenes the principle of legal certainty. Thus, only the repeal of the rules in question would make it possible to secure the right set forth in Article 7§2 of the Charter. Consequently, the Committee renews its conclusion that the situation is not in conformity.”

Conclusions 2006, Norway: “The Committee recalls that the Appendix to Article 7§2 allows derogations from the rule that young persons under 18 years of age may not be permitted to undertake work that is potentially dangerous or unhealthy, if it is absolutely necessary for training and where such work is carried out in accordance with conditions prescribed by the competent authority. The Committee considers that in principle the situation is in conformity with the Charter. However, it asks for information as to how it is ensured that such work is absolutely necessary for training and further how these arrangements are monitored by the Labour Inspectorate and any findings it has made in this respect.”
606. Conclusions 2006, Sweden: “The Committee considers that the Appendix to Article 7§2 permits exceptions in cases where young people under the age of 18 have received training for performing dangerous tasks and, thus, received the necessary information.”

607. Conclusions 2006, Portugal: “The Committee asks the next report to indicate whether and in what circumstances the prohibition on dangerous or unhealthy work may be waived. It recalls that it interprets such derogations in keeping with the Appendix to Article 7§2. It asks for information as to how it is ensured that such work is absolutely necessary for training and further how these arrangements are monitored by the Labour Inspectorate and any findings it has made in this respect.”

Article 7§3

608. Conclusions I (1969), Statement of Interpretation on Article 7§3: “The Committee interpreted this provision as requiring a state which had accepted it to ensure that children still subject to compulsory education were not employed to work likely to deprive them of the full benefit of such education. The measures taken should, at the very least, limit the employment of children still attending school to work after school hours or at weekends.”

609. Conclusions I (1969), Statement of Interpretation on Article 7§1: “The Committee interpreted this provision as applying to all categories of work, including, for example, agricultural and domestic work; it took the view that such work could not automatically be considered as "light" work within the meaning of the paragraph.”

610. Conclusions 2015, Statement of Interpretation on Articles 7§1 and 7§3: op.cit.

611. Conclusions 2006, Statement of Interpretation on Article 7§3: “In the case of states that have set the same age, which must be over 15 years, for admission to employment and the end of compulsory education, the Committee examines questions related to light work under Article 7§1. However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, the Committee will examine relevant matters under that article.”

612. Conclusions V (1977), Statement of Interpretation on Article 7§3: “(…) mere school attendance would not suffice, if the necessary measures are not taken by Contracting States to avoid any interference, through occupational activities, with such education.”

613. Conclusions 2006, Portugal: “Regarding the regime applying to cultural, artistic and advertising activities which the Committee also examined under Article 7§1, it notes that during school period, 6 year old children are authorised to work 2 hours per day and 4 hours per week, children aged from 7 to 11 years may work 3 hours per day and 6 hours per week while children from 12 to 15 years are allowed to work 4 hours per day and 8 hours per week. During the school holidays, children from 6 to 11 years are authorised to work 6 hours per day and 12 hours per week, whereas the children from 12 to 15 years can work 7 hours per day and 16 hours per week.

The Committee notes that the aforementioned activities are subject to additional limitations:

- the activity should not coincide with the school schedule or prevent in any way from participating in school activities;
- a rest of at least 1 hour must be provided for between the activity of the child and the attendance to the classes;
- the activity of the child must be suspended at least one day per week, this day of interruption having to coincide with the day of rest of the schooling;
- for the daily periods of the activity, one or more 30 minutes minimal duration pauses must be assured so that the consecutive activity of the child does not exceed half of these periods.
The participation of children under 16 years in these activities depends on an authorisation of the Commission for the protection of children and young people (CPCJ). When children subject to compulsory education are concerned, the request for authorisation of the employer must mention, inter alia, the educational establishment attended by the child and must be accompanied by information on the timetable and the school results of the child. The authorisation is granted following the favourable opinion of the establishment. The aforementioned establishment must communicate to the CPCJ any negative school results of the child. The CPCJ must require that a modification of the conditions of participation of the child be introduced in order to correct the situation when the modification of the school timetable is incompatible with the exercise of the activity and when the activity can be at the origin of deteriorating school results. When its decision is not applied by the employer or when there is no modification which can solve this problem, the CPCJ cancels the authorisation granted for the exercise of this activity.

The Committee considers that this regime presents adequate safeguards for the purposes of Article 7§3.

614. Conclusions 2006, Albania: “To enable it assess the situation concerning Article 7§3 of the Revised Charter, which requires time worked to be limited so as not to interfere with children's school attendance, receptiveness and homework, the Committee asks what daily working hours are permitted during the school year.”

615. Conclusions 2015, Statement of Interpretation on Articles 7§1 and 7§3: op.cit.

616. Conclusions XVII-2 (2005), Netherlands: “The Committee considers that allowing children aged 15 and still subject to compulsory education to deliver newspapers from 6 a.m. for up to 2 hours per day, 5 days per week before school is not in conformity with the Charter.”

617. Conclusions 2011, Statement of Interpretation on Article 7§3: “The Committee considers that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays which shall under no circumstances be less than two weeks during the summer holiday. The adequacy of the length of the mandatory and uninterrupted period free of any work will be assessed by the Committee on a case-by-case basis taking into account a number of factors, in particular the length and distribution of holidays over the school year and the timing of the uninterrupted period of rest. In addition, the Committee will also have regard to the definition of the nature of the work (light work) that children subject to compulsory education may perform during school holidays, limitations of daily and weekly hours during which such work may be performed as well as the overall state of the protection in law and in practice against exploitation of children in the labour market, including the efficiency of the labour inspectorate.”

Article 7§4

618. Conclusions 2006, Albania: “The Committee reminds that with a view to ensuring the effective exercise of the right of children and young persons to protection, the States undertake, through the acceptance of Article 7§4, to limit the working hours of persons under 18 years of age in accordance with their development, and particularly with their need for vocational training. This limitation may be the result of legislation, regulations, contracts or practice.”

619. Conclusions XI-1 (1991), Netherlands: “The duration of working hours i.e. 8 hours per day and 40 hours per week, (...) has been criticised by the Committee since it could be detrimental to their development and is therefore contrary to this provision of the Charter.”

620. Conclusions 2002, Italy: “The Committee considers this limitation of working hours to be satisfactory for young workers over the age of 16 years of age under Article 7§4 of the Charter, but viewed in isolation it is insufficient in respect of workers under 16.”
Article 7§5

621. Conclusions XI-1 (1991), United-Kingdom: “(...) in its conclusion under Article 4, paragraph 1, the Committee expressed its deep concern over the very low wages paid to large numbers of workers (especially female workers). This in turn reflects upon the adequacy of wages paid to young workers who are paid but a percentage of adult workers' wages.”

622. Conclusions II (1971), Statement of Interpretation on Article 7§5: “Where young workers are concerned, there is not really any basic reason for not paying the same wage for the same output. However, it is not unthinkable that certain reductions may be justified, allowing for the fact that the needs of young workers are less than those of adults. Nevertheless, such reductions must not be too substantial and ought to be for a limited time.”

623. Conclusions 2006, Albania: “The Committee would point out that under Article 7§5 of the Charter, wages that are 30% lower than adult workers' starting or minimum wage are acceptable in the case of young workers aged 15-16 and that a 20% difference is acceptable in the case of young workers aged 16-18.”

624. Conclusions XII-2 (1992), Malta: “If, in effect, the reference wage for adults was very low, the wage for a young worker could not be considered as fair.”

625. Conclusions II (1971), Statement of Interpretation on Article 7§5: “As to apprentices, the value of the training given ought obviously to be taken into account, but it appeared to the Committee that after two or three years' vocational training an apprentice was fitted to render services such that one count hardly go considering him as an apprentice.”

626. Conclusions 2006, Portugal: “The Committee points out that, in the context of Article 7§5, the allowance paid to apprentices must equal at least one-third of the adult minimum or starting wage at the beginning of the apprenticeship and at least two thirds at the end.”

Article 7§6

627. Conclusions XV-2 (2001), Netherlands: “[The Committee] holds that vocational training within the framework of and for the purpose of an apprenticeship should be considered as working time and remunerated as such (...)”

628. Conclusions V (1977), Statement of interpretation on Article 7§6: “Moreover the Committee wished to make it clear that the fact that the time spent by young persons on their vocational training “during the normal working hours” shall be treated as forming part of the working day, implies in particular:
- that such time be remunerated (by either the employer or by public funds as the case may be) and
- that it does not give rise to any form of recuperation which would result in the total number of working hours of the persons concerned being extended accordingly.”

Article 7§7

629. General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, Decision on the merits of 23 May 2012, §§30-32: “30. As regards annual holiday with pay, the Government confirmed in this additional submission that: “The apprentices are not entitled to a three-week leave within the one year of their special apprenticeship contract; given that the labour law does not apply – excluding the provisions concerning health and safety at work. 31. The Committee notes that the young persons concerned are excluded from the scope of the labour legislation and are not entitled to three weeks’ annual holiday with pay.”
32. Therefore, the Committee holds that there is a violation of Article 7§7 of the 1961 Charter.

630. See *mutatis mutandis* Conclusions XII-2 (1992), Statement of Interpretation on Article 2§3: "The Committee recalled the fundamental importance of the right to an annual holiday guaranteed by Article 2 para. 3, which, in accordance with its consistent case-law, cannot be waived. As a result, Article 2 para. 3 requires that a worker who is incapacitated for work by reason of illness or injury during all or part of his/her annual holiday must be entitled to take at some other time the days thereby lost, at least insofar as is necessary to guarantee the worker the two week annual holiday provided for by the Charter. This requirement applies in all cases, whether the incapacity commences before or during the holiday period, as well as in cases of employment in which there is a fixed holiday period for all workers in an enterprise."

631. Conclusions 2006, France: "The Committee points out that, according to Article 7§7 of the Charter, employees incapacitated for work by illness or accident during all or part of their annual leave must have the right to take the leave lost at some other time - at least to the extent needed to give them the four weeks' paid annual leave provided for in the Charter. This principle applies in all circumstances, regardless of whether incapacity begins before or during leave - and also in cases where a company requires workers to take leave at a specified time (see, *mutatis mutandis*, Conclusions XII-2 (1992) Article 2§3)."

**Article 7§8**

632. Conclusions XVII-2 (2005), Malta: "The Committee holds that under Article 7§8 some derogations to the prohibition of night work are allowed provided that they are explicitly provided in national law, in very limited cases and to the extent that they are necessary for the proper functioning of the economic sector in which they are applied. (...)The Committee requests information showing that these exceptions are necessary for a proper functioning of the relevant economic sector and that the number of young workers concerned is low. Should the next report fail to provide this information, there would be no evidence that the situation in Malta is in conformity with Article 7§8 of the Charter."

633. Conclusions I (1969), Statement of interpretation on Article 7§8: "The Committee pointed out that it can only form an opinion as to whether or not Contracting States which have accepted this provision fulfil their obligations in the matter if they supply adequate data in their two-yearly reports on:

- the period defined in national regulations as “night” for the purposes of the prohibition of night work;
- the occupations in which night work by minors under 18 is permitted, either in general or by special decision;
- the extent of such derogation (maximum hours allowed, minimum age, etc.);
- the hours during which the night work of adolescents is, in any case, prohibited;
- the percentage in each category of employment of minors under 18 not covered by national legislation on night work;
- the numbers:
  - of all young people under 18 years at work;
  - of young people who in fact are normally required to work at night."

**Article 7§9**

634. Conclusions IV (1975), Statement of Interpretation on Article 7§9: "In examining the implementation of this provision within the framework of the IVth cycle of supervision by the countries concerned, the Committee again stipulated that, in order to meet the requirements of the Charter, all relevant national regulations must make provision for regular compulsory checks. A regulation providing merely for the possibility of a young worker's undergoing a regular medical check was not fully in compliance with this provision of the Charter. This was an important aspect.
of social protection that should not be left to the discretion of the parties concerned, not even to
the protected persons themselves.”

635. **Conclusions 2006, Albania:** "The Committee recalls that, under Article 7§9 of the Charter, States Parties must provide for compulsory regular medical examinations for workers under 18 years of age employed in occupations specified by national laws or regulations. These examinations must be adapted to the specific situation of young workers and the particular risks to which they are exposed.”

636. **Conclusions VIII (1984), Statement of interpretation on Article 7§9:** “Considering the development of regular medical examination for the benefit of all workers and the extension of medical services in a certain number of countries the protection of young workers’ health does not necessarily require widespread legislative provisions, calling for a specific organisation of medical services for young workers. However, this can only be envisaged in a state whose medical services and examinations for the benefit of workers have reached the necessary level of development, and should be wholly compatible with the development of a policy of prevention and protection of young workers which constitute the very scope of Article 7, paragraph 9. The committee considers it essential, in this case that precise guidelines and instructions are expressly given to the bodies responsible for carrying out medical examinations of workers, so that, when such examinations concern young workers, prevention and protection of their health be taken into account.”

637. **Conclusions XIII-1 (1993), Sweden:** “The Committee considered that the vocational training provided for could not replace the requirement for medical examinations when the nature of the activity rendered such necessary. It hoped that the next report would specify if medical examinations were provided for young persons carrying out a dangerous or unhealthy activity and that, as provided for in Article 7 para. 9, these examinations were indeed carried out not just on employment, but also at regular intervals.”

638. **Conclusions 2011, Estonia:** “The Committee considers that although the interval between the medical check-ups has been shortened from three years previously to two years, such a period between medical check-ups for persons under 18 years of age continues to be excessive.”

639. **Conclusions XIII-2 (1994), Italy:** “With regard to Italy the Committee had received confirmation that the legislation complied with the requirements of this provision of the Charter, namely:

- that workers under the age of eighteen were required to show that they were physically fit for the job by producing a medical certificate, which had to be attached to the employment record;
- that a regular check was kept on physical fitness by means of a compulsory medical examination at least once a year (Section 9 of Act No. 977/1967), which entailed updating the medical certificate and was treated as part of a preventive approach;
- that the effective implementation of the above provisions was enforced by the Labour Inspectorate (Presidential Decree No. 432 of 20 January 1976).

The Committee therefore renewed its positive conclusion.”

**Article 7§10**

640. **Conclusions XV-2 (2001), Statement of Interpretation on Article 17, 7§10** Cycle XV-2 is the first time for a number of supervision cycles that the Committee has had the opportunity to examines Articles 7 para.10 and 17 for all Contracting Parties. The Committee has therefore endeavoured to develop and clarify its interpretation of these provisions. It has done so in the lights of the case-law developed under other international treaties as regards the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights. It has also taken into account developments in national legislation and practice as regards the protection of children.
As the scope of Articles 7 para. 10 and 17 is to a large extent overlapping, the Committee has decided, with respect to the Contracting Parties having accepted both provisions to deal with the following issues under Article 7 para. 10:
– Protection of children against moral dangers at work and outside work;
– Involvement of children in the sex industry and in begging.

The following issues will mainly be dealt with under Article 17:
– Establishment of parentage and adoption;
– Children and the law;
– Children in public care;
– Protection of children from ill-treatment and abuse.

The Committee has decided to deal with the various aspects of Article 17 relating to the protection of mothers under Article 16 with respect to Contracting Parties having accepted both provisions.
Preventative measures in the fields of drug addiction and alcoholism, will be considered mainly under Article 11.

The Committee is aware of the increased involvement of children and young persons in the sex industry in a number of European countries. It considers that Article 7 para. 10 requires a clear prohibition against any such practices in the legislation of the Contracting Parties. The prohibition must be combined with an adequate supervisory system and sanctions.
It also considers that Article 7 para. 10 requires Contracting Parties to prohibit and combat all forms of sexual exploitation of children.
Moreover, the Committee holds that the use of children in begging and other forms of exploitation prejudicial to any aspect of the child’s welfare must be prohibited and that measures must be taken to prevent such practices.

641. Association for the protection of All Children (APPROACH) Ltd. v. Cyprus, Complaint No.97/2013, decision on admissibility of July 2013

642. Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, Decision on the merits on 23 October 2012, §§85-86: “85. With specific reference to Article 7§10, the Committee recalls that this provision guarantees children and young persons special protection against the physical and moral hazards to which they are exposed. Above all regarding protection against physical hazards, this is clearly a very important requirement to States Parties so as to ensure that certain fundamental rights are effectively guaranteed, in particular the right to life and to physical integrity. For this reason the Committee deems that not considering States Parties to be bound to comply with this obligation in the case of foreign minors who are in a country unlawfully would therefore mean not guaranteeing their fundamental rights and exposing the children and young persons in question to serious impairments of their rights to life, health and psychological and physical integrity.

86. Consequently, the Committee considers that the children and young persons concerned by this complaint come within the scope of Article 7§10 of the Charter.”

643. Conclusions 2004, Bulgaria: “In order to comply with Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular their involvement in the sex industry. This prohibition shall be accompanied with an adequate supervisory mechanism and sanctions.”

644. Conclusions XVII-2 (2005), Portugal: “As regards child pornography, Section 172 [of the Criminal Code] criminalises the production and distribution of child pornography; the maximum penalty is 5 years’ imprisonment. Possession of child pornography is not yet criminalised, but a bill is pending on the subject. The Committee finds that the situation is not in conformity with the Charter in this respect.”

645. Conclusions 2004, Bulgaria: “Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment. This covers, in particular, the protection of children against all forms of exploitation and against the misuse of
information technologies. Trafficking of human beings is also covered because it is a form of exploitation."

646. Conclusions 2004, Bulgaria: “An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children. To implement such a policy, Parties should adopt legislation, which criminalise all acts of sexual exploitation, and a national action plan combating the three forms of exploitation mentioned above.”

647. Conclusions XVII-2 (2005), Poland: “The Committee recalls that the previous conclusion found that the situation was not in conformity with Article 7§10 as the protection of young persons between the ages of 15 and 18 years was not adequately ensured (legislation on pornography only protects those under 15 years of age) and there was an insufficient number of activities to combat sexual exploitation.

As regards child pornography the Committee previously noted that the Penal Code only protected persons under the age of 15 years. The report states that amendments to the Penal Code are currently before the parliament and envisage prohibiting the production and dissemination of pornography involving minors under 18 years of age. It is further proposed to make it a criminal offence to possess pornography involving a minor under 15 years of age. The Committee asks to be kept informed of all developments in this respect.

However, since the violation has not been remedied during the reference period, the Committee considers that the situation is not in conformity on this point.

The Committee had previously asked whether the criminal law prohibits the purchase of sexual services from all those under 18 years of age. According to the report, it is an offence to induce by force, or threat or to facilitate the prostitution of a minor, but the Committee is unclear whether this covers the purchase of sexual services from all those under 18 years of age. The Committee again seeks clarification of the situation. It also wishes to receive confirmation that child prostitutes themselves are not criminalized and information on any measures taken or programmes in place to assist child prostitutes reintegration.

Trafficking in human beings is prohibited by the Penal Code and the Penal Code provides for harsher penalties where the trafficking involves children.”

648. Conclusions XVII-2 (2005), Czech Republic: “The Committee notes that the Criminal Code has been strengthened to provide increased protection to young persons between the ages of 15 and 18 years; anyone who offers, promises or provides payment or another advantage or benefit to a person under 18 years of age in return for sexual intercourse or other defined acts is guilty of a criminal offence. Prostitutes under 18 years of age are not criminally liable.”

649. Conclusions XVII-2 (2005), United Kingdom: “The Committee notes that the Sexual Offences Act 2003 introduced new offences of trafficking of people for the purposes of sexual exploitation, of paying for the sexual services of a child, causing or inciting child prostitution, controlling a child prostitute and arranging or facilitating child prostitution, and the grooming of children both on and off line. Legislation also provides for extra territorial jurisdiction over sexual offences committed against children outside the United Kingdom where the accused is a national of the United Kingdom or resident therein. The Committee will examine the legislation in more detail during the next examination of Article 7§10, however it asks in particular whether the possession of child pornography is a criminal offence and whether criminal liability has been removed for children (under 18 years of age) involved in prostitution.

The Committee asks for information about the situation in practice as well as measures in place to assist child victims of sexual exploitation.”

650. Conclusions XVI-2 (2003), Poland: “The Committee notes from other sources that Poland is country of origin, transit and destination for the trafficking of women and girls for sexual purposes, boys are also victims. The Committee asks what measures apart from legislation have been taken to address the problems of commercial sexual exploitation and to implement the Stockholm Agenda for Action on Work Against the Commercial Exploitation of Children (and the follow up the Yokohoma Global Commitment) and to implement the Council of Europe’s Committee of Ministers’ Recommendation Rec(2001)16 on the protection of children against sexual
exploitation. The Committee notes that as yet there is no national plan on action to combat the sexual exploitation of children.”

651. **Conclusions 2006, Albania:** “In January 2002 the Government of Albania approved a Country Strategy Against the Trafficking of Human Beings and more recently a National Strategy for Children. Both strategies are strengthen the partnership between the Government and NGOs. The Committee notes from another source that the National Strategy on Children aims to inter alia to combat the sexual exploitation of children. However, the necessary structures and financial and human resources have not been provided to allow for implementation of the national plan and that there is concern that the rather fragmented approach adopted by the Government may prove difficult to coordinate, causing overlap or gaps in certain areas. The Committee asks how the Government has ensured that adequate financial and human resources are provided for its implementation, as well as its monitoring and coordination mechanisms. The Committee furthermore asks whether the plan has been evaluated in which case it wishes to receive the results of this evaluation.”

652. **Conclusions XIX-4 (2011), Poland:** “A new type of crime was introduced in the Criminal Code (Article 200a entitled ‘child grooming’). It concerns contacting a minor under 15 years through the computer communications system or telecommunications network, and making arrangements to meet the minor with a view to sexual exploitation or production of pornographic material involving the minor.”

653. **Conclusions 2004, Romania:** “Since the Internet is becoming one of the most frequently used tools for the spread of child pornography, the Committee considers that Internet service providers should be responsible for controlling the material they host, securing the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

The Committee observes that it is not self-evident that, as such, the Penal Code and Law no. 678/2001 on trafficking criminalises children pornography conducted through the means of Internet. It asks, therefore, the next report to indicate whether legislation, the adoption of codes of conduct by Internet service providers, the setting-up of Internet hotlines, or other kinds of activities are foreseen in order to protect children from Internet-related risks of sexual exploitation. The Committee also asks information about existing rules protecting children and young people from access to morally dangerous audiovisual and print material.”

654. **Conclusions XIX-4 (2011), Croatia:** “In its previous conclusion the Committee asked whether internet service providers were responsible for or were under an obligation to remove or prevent accessibility to illegal material to which they had knowledge, whether there were voluntary codes of conduct for multi-media service providers and whether there existed internet safety hotlines through which illegal material could be reported. The report does not provide this information. The Committee holds that if this information is not provided in the report, there will be nothing to establish that the situation is in conformity with the Charter.”

655. **Conclusions 2004, Bulgaria:** “Parties shall prohibit the use of children in other forms of exploitation following from trafficking or being on the street, such as, among others, domestic exploitation, begging, pick pocketing, servitude or the removal of organs, and shall take measures to prevent and assist street children.”

656. **Conclusions XV-2 (2001), Statement of Interpretation on Article 7§10:** op.cit.

657. **Conclusions 2004, Romania:** “Street children being a serious problem in Romania, the Government is active in the field in the wider context of the Governmental Strategy for the protection of children in difficulty (2001-2004). The Committee notes from the additional information provided by the Romanian Government (letter dated 7 February 2004), that a range
of activities have been carried out through the Street Children Intervention Programme and other programmes, during the period of reference."

**658. Conclusions 2006, Bulgaria:** “The Committee notes the efforts made by the authorities to tackle the phenomena of exploitation of children, trafficking for sexual or labour exploitation (and more recently trafficking for adoption), however it remains concerned that Bulgaria continues to be a country of origin for the trafficking in human beings, including minors. This is so even though according to other sources the number of minors trafficked has possibly decreased in recent years. According to information from International Organisation for Migration (IOM) the number of assisted victims trafficked for sexual exploitation was 159 in 2003 and 122, in 2004, only 8.5 % in 2003 and 5.7 % in 2004 were minors at identification. According to the IOM this represents a reduction in the comparison with the numbers for 2002.

The Committee notes that the information available indicates that there have been positive developments in this area and there seems to be a downward trend in the number of children being trafficked, however it considers that the number of children involved is still too high, indicating that the measures adopted have not yet been fully effective.

The Committee asks the next report to provide information on the results of the measures taken to reduce child sexual exploitation including the trafficking of minors.”
Article 8 Maternity rights of employed women

Article 8§1

659. Conclusions III (1973), Statement of Interpretation on Article 8§1: “After paying particular attention to the various arguments advanced by certain governments in their 3rd biennial reports on the question of interpretation of paragraph 1 of Article 8, the Committee reaffirmed its earlier opinion that this provision of the Charter involves two obligations:

a. to provide for women to take at least 12 weeks maternity leave, and
b. to ensure that women are adequately compensated for their loss of earnings during the period of leave.

The Committee noted that by custom in certain countries women workers enjoyed maternity leave. It nevertheless held that a right of such capital importance ought to be guaranteed by law. It was hence unable to accept the assertion that legislation is unnecessary when the customary rights in question are solidly based.”

660. Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1: “Article 8§1 of the Charter should be examined in the light, in particular, of developments in national legislation and international conventions. This provision was designed both to grant employed women protection in the case of maternity and to reflect a more general interest in public health, i.e. the health of the mother and child. In connection with the first point, the Charter requires a minimum of 14 weeks’ leave entitlement, together with adequate financial safeguards. With regard to the second point, the women concerned enjoy the right to protection against any work which might be harmful to the health of the mother or the child.”

661. Conclusions XV-2 (2001), Addendum, Malta: “The Committee also notes that Malta’s regulations on maternity leave cover home-workers, domestic employees and, since 1996, part-time workers. However, it does not apply to employees who are related to the employer, thus denying them the protection secured by Article 8§1.”

662. Conclusions VIII (1984), Statement of Interpretation on Article 8§1: “The provision of Article 8§1 of the Charter should be examined in the light, in particular, of developments in national legislation and international conventions. They were designed both to grant working women increased personal protection in the case of maternity and to reflect a more general interest in public health - i.e. the health of the mother and child.

In connection with the first point, the Charter prescribes a minimum of 12 weeks’ leave entitlement, matched by adequate financial safeguards. With regard to the second point, the aim is to prevent any work which might be harmful to the health of the mother or the child.

It should be pointed out, however, that the justifiable trend in most countries towards extending women’s entitlement to maternity leave does not imply that the period for which they are prohibited from actually working must necessarily be the same as the period of leave to which they are entitled.

Having carefully studied the relevant national legislation and international conventions in force, the committee considered that the two requirements mentioned above were reconcilable insofar as national legislation on the one hand allowed women the right to use all or part of their recognised entitlement to stop work for a period of at least 12 weeks, allowing them freedom of choice by means of a scheme of benefits set at an adequate level. and, on the other hand, obliged the woman concerned and the employer to observe within this total period, a minimum period of cessation of work, which had to be taken after the birth and which it was reasonable to fix at six weeks.”
Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1: “The requirement of six weeks postnatal leave is a means of achieving the protection provided for by Article 8 (see for example Conclusions VIII (1984), United Kingdom). Where compulsory leave is less than six weeks, the rights guaranteed under Article 8 may be realised through the existence of adequate legal safeguards that fully protect the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period (e.g. legislation against discrimination at work based on gender and family responsibilities); an agreement between social partners protecting the freedom of choice of the women concerned; and the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave).”

Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1: “Under Article 8§1 of the Charter the States Parties shall ensure that employed women are adequately compensated for their loss of earnings during the period of maternity leave (which shall be not less than 14 weeks under the Revised Charter and 12 weeks under the 1961 Charter). The modality of compensation is within the margin of appreciation of the States Parties and may be either a paid leave (continued payment of wages by the employer), social security maternity benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modality of payment, the level shall be adequate. In case of continued payment of wages or earnings-related benefits, these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage. A ceiling on the amount of compensation for high salary earners is not, in itself, contrary to Article 8§1. Minimum rate of compensation shall not fall below the poverty threshold defined as 50% of median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value. The right to compensation may be subject to entitlement conditions such as a minimum period of employment or contribution. However, such conditions shall not be excessive; in particular, qualifying periods should allow for some interruptions in the employment record.”

Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1: op.cit.

Conclusions XVII-2 (2005), Latvia: “The Committee notes the detailed information in the report on the calculation of maternity benefits, but wishes to know what proportion of the actual employee’s salary maternity benefit represents. It recalls that Article 8§1 of the Charter requires maternity benefit to be at least equal 70% of the employee’s previous salary (except for very high salaries).”

Conclusions XV-2 (2001), Belgium: “The Committee draws attention to the fact that during maternity leave a female employee’s financial situation must enable her to avoid having to work, so that she can really rest. This obligation can be fulfilled only by continuing payment of the woman’s salary or by paying a benefit equivalent to or only slightly lower than that salary. The Committee nonetheless takes the view that, where the salary exceeds a certain ceiling, a substantial reduction in salary during maternity leave is not, in itself, contrary to Article 8 para. 1 of the Charter. In order to assess the situation and to ensure the fairness of the reduction, the Committee takes into account a number of factors such as the amount of the ceiling, the ceiling’s position on the scale of earnings or the number of women earning more than that ceiling.”

Article 8§2

669. **Conclusions XIII-4 (1996), Austria:** “In its previous conclusion, the Committee had asked questions about the regulations governing the employment of women on fixed-term contracts, which could be used to undermine the protection provided by this provision. The Committee had observed that the law ensured that only legally or objectively justified contracts could expire on the due date, even if this occurred during the pregnancy of the employee. With all other fixed-term contracts, expiry was suspended until the employee went on maternity leave (eight weeks before the birth) or had to cease working at an earlier stage in her pregnancy. The Committee had asked if the reason for this arrangement was to ensure that such women would qualify for maternity leave and benefit. The report confirmed that this was so.”

670. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2:** “The Committee found it necessary to clarify the scope of Article 8 paragraph 2 in respect of the date of notice of dismissal. Job security for a worker on maternity leave means that the contract of employment must not be terminated during this period. This is guaranteed by the prohibition on giving notice of dismissal at such a time that the period of notice would expire during the absence on leave. The giving of notice during maternity leave initiates the period of notice and, where appropriate, the interview, consultation or conciliation procedures to be carried out during this period. The Committee felt that, given the purposes of maternity leave and the unlawfulness of dismissal during this period, notice of dismissal as such was not incompatible with the Charter provided that the period of notice and any procedures were suspended until the end of the leave. The same rules governing suspension of the period of notice and procedures during maternity leave must apply in the event of notice of dismissal prior to maternity leave, irrespective of the length of the period of notice.”

671. **Conclusions X-2 (1990), Spain:** “The only exception which its case law admitted to the prohibition, laid down by the Charter (Article 8, paragraph 2) against giving a woman notice of dismissal during her absence on maternity leave or at such a time that the notice would expire during such absence, was in the case of serious misconduct, the cessation of the firm's activities or the expiry of a fixed-term contract.”

672. **Conclusions 2005, Estonia:** “The 1992 Employment Contracts Act as amended in 2004 prohibits the termination of an employment contract of a pregnant woman or of a person raising a child under three years of age. Exceptions to this rule are made where the employer has gone into liquidation or bankruptcy, where the employee has failed the probationary period, lost the trust of the employer, breached duties or due to an indecent act by the employee. In all of the above cases the permission of the Labour Inspectorate must be sought prior to the termination of the contract of employment. The Committee finds that certain of the above mentioned exceptions to the prohibitions on dismissal go beyond those permitted by the Charter. Nevertheless, before reaching a conclusion on this point, it wishes to receive further information on how the above mentioned exceptions are interpreted by the Labour Inspectorate and the Courts.”

673. **Conclusions 2005, Cyprus:** “The Committee had previously found that the situation was not in conformity with the 1961 Charter as the power of the courts to order reinstatement of an unlawfully dismissed employee was limited to cases where the enterprise concerned has more than twenty employees. The Committee notes that there has been no change to this situation. In addition in notes that in these circumstances (and in general where a woman is not reinstated) the maximum amount of compensation payable is two years wages, the wages of the first year awarded by the court are paid by the employer and the second years wages are paid by the Redundancy Fund. However, women seeking higher compensation may apply to the District Courts (civil jurisdiction). The Committee recalls that compensation should be sufficient to deter the employer and compensate the employee. In order to assess the situation, it wishes to receive further information on the possibility for a worker unfairly dismissed to seek a higher level of compensation in the civil courts.”
674. **Conclusions 2011, Statement of Interpretation on Article 8§2 and 27§3:** “The Committee holds that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.”

**Article 8§3**

675. **Conclusions XVII-2 (2005), Spain:** “Contrary to what was stated in previous reports, the current report states that domestic workers do not have the right to time off for breastfeeding. The Committee therefore concludes that the situation is not in conformity with the Charter.

The Committee concludes that the situation in Spain is not in conformity with Article 8§3 of the Charter on the ground that domestic workers are not entitled to time off for nursing their children.”

676. **Conclusions XIII-4 (1996), Netherlands:** “The Committee recalled that it was critical of the situation in the Netherlands because the legislation on time off for breast-feeding (Section 11§2 of the Labour Act of 1919) indicated neither whether such time was considered as working time, nor whether it was paid and that its criticisms were backed up by the comments by the Netherlands Trade Union Confederation (FNV) to the ILO, according to which on the one hand collective agreements did not comprise any provisions explicitly ensuring that breaks in work for nursing purposes were included in working hours and remunerated as such, and on the other that in practice many employers required women to make up for any time taken off for breast-feeding or refused to pay them the salary corresponding to this time.

In reply, the government pointed out that a widely disseminated publication on maternity protection stated that time off for breast-feeding was to be regarded as working time and paid as such. It pointed out that this was based on the ratification of ILO Convention No. 103 (Maternity Protection) and on the interpretation given to Article 5 of this convention (time off for breast-feeding) by the Minister of Foreign Affairs, and quoted a decision handed down by the President of the Amsterdam Court in 1979, also based on that interpretation.

The Committee noted in this connection that, in its 1994 Observation on the implementation of Convention No. 103 by the Netherlands, the ILO Committee of Experts had again requested that measures be taken to give effect to Article 5 of the convention, in legislation as well as in practice. The Committee also noted that a provision explicitly stipulating that time off for breast-feeding was to be regarded as working time and paid as such had been included in the new Working Hours Bill which was currently before the Upper House of Parliament. It asked to be kept informed of developments in the enactment procedure and to receive a copy of the adopted text of the section of the new act relating to time off for breast-feeding in one of the official languages of the Council of Europe.”

677. **Conclusions 2005, Sweden:** “The Committee recalls that it has previously found that the situation was not in conformity with the Charter on the grounds that while women nursing their children may reduce their daily working time, this time is not remunerated as working time, although loss of income is compensated by parental benefit. However the Committee now considers that where loss of income is compensated in Sweden by parental benefit the situation is in conformity with the Charter.”

678. **Conclusions 2005, Cyprus:** “The Committee notes that the period (6 months) for which time off for nursing is permitted is short. The Committee considers that in principle nursing breaks should be granted until at least the child reaches the age of nine months. The Committee concludes that the situation in Cyprus cannot be considered as being in conformity in this respect.”
679. Conclusions I (1969), Italy: “Having considered the first report presented by the Government of Italy, the Committee noted that Italy was satisfying the undertakings deriving from Paragraph 3 of Article 8, concerning the entitlement of nursing mothers to “sufficient” time off work for this purpose. As a matter of fact, under Italian legislation, the situation is as follows:
  1) Working women who feed their children (breast-feeding or mixed-feeding) are entitled to two periods of rest a day for a year for the purpose of feeding;
  2) In cases where the employer has not provided a crèche or nursing room for mothers, these periods of rest are of one hour each (otherwise one-half hour) and shall entitle the mother to leave the premises;
  3) These periods are deemed to be hours of work and remunerated as such.”

680. Conclusions I (1969), Germany: ”When it examined the first Report submitted by the Government of the Federal Republic of Germany, the Committee found that that State satisfies the obligation arising from Article 8 (3). The Committee observed that in the Federal Republic working women who are feeding their children are entitled to at least two rest-periods of thirty minutes or one rest-period of an hour during the working day.”

681. Conclusions 2005, France: “The Committee has previously found that the situation in France was not in conformity with Article 8§3 of the Charter; although national law provides for time off from work for the purpose of breastfeeding up to a child’s first birthday this is not treated as working time and therefore women do not have to be remunerated for such periods. However the Committee notes that in practice women who are breastfeeding are permitted to begin work half an hour later and finish work half an hour earlier than usual without loss of pay, further it is not possible to make a deduction from a woman’s salary in these cases. The Committee asks for further information on a woman’s legal entitlement to remuneration for time off for nursing”

Article 8§4

682. Conclusions 2003, France: “The Committee takes note from the French report of the Labour Code provisions concerning the employment in night work of pregnant women and women who have recently given birth. In accordance with Section L. 122-25-1-1, the employer is required to transfer the woman to day work if she so requests (no justification may be required by the employer) or where the occupational physician certifies that night work is incompatible with her condition. In such cases, the woman is entitled to her full salary. If a transfer to day work is not possible, the woman’s employment contract is suspended until the end of the maternity leave. During this time, she is entitled to a payment corresponding to her remuneration. The Committee notes that Labour Code makes no express provision for women who breastfeed their children beyond the end of the statutory maternity leave period although Article 8§4 requires some form of protection for women as long as they are breastfeeding their children. The Committee notes from the information provided in the French report concerning Article 2§7 that the general rules on night work contain provision on workers with family responsibilities. In particular, such workers may request transfer to a day work. A worker with family responsibilities cannot be obliged to move to night work. The Committee considers that this constitutes sufficient regulation on night work for the purpose of Article 8§4. The Committee concludes that the situation in France is in conformity with Article 8§4 of the Charter.”

683. Conclusions X-2 (1990), Statement of Interpretation on Article 8§4: “With regard to the undertaking to “regulate” the employment of women workers on night work in industrial employment” (sub-paragraph (a)), the Committee confirmed its case law to the effect that, to comply with this provision, a state is not obliged to enact specific regulations for women if it can demonstrate the existence of regulations applying without distinction to workers of both sexes. Such regulations must specify the conditions governing night work, such as the need to secure permission from the Labour Inspectorate (if necessary), the laying down of working hours, breaks, days of rest following periods of night work, etc. These regulations are designed in particular to
limit the adverse effects of night work on the worker’s health and family life and to prevent abuses.”

Article 8§5

684. **Conclusions X-2 (1990), Statement of Interpretation on Article 8§5 (i.e. 8§4b) of the 1961 Charter**: “With regard to the undertaking to ‘prohibit the employment of women workers in underground mining’ (first part of sub-paragraph (b)), the Committee clarified its case by specifying that the above-mentioned prohibition is concerned only with the employment of women on underground extraction work in mines, to the exclusion of all other occupations, and in particular those of a social or medical nature, management, inspection, etc.”

685. **Conclusions 2003, Bulgaria**: “Regarding the other forms of work that are forbidden to women, the report contains very few details. In order to be able to determine whether national rules are sufficiently extensive, the Committee requests information on the types of work that are forbidden to workers who are pregnant, have recently given birth or breastfeeding. It underlines that in order to comply with this provision of the Charter, national law must ensure a high level of protection against all known hazards to the health and safety of the women who come within its scope.”

686. **Conclusions 2005, Lithuania**: “An employer is obliged to assess and eliminate all occupational risks for pregnant, breastfeeding and women who have recently given birth. If all risks cannot be eliminated or the work involves exposure to a substance or process prohibited, the employer must transfer the worker to another post. Where this is not possible the worker may take unpaid leave. The Committee finds that this situation is not in conformity with the Charter; any leave due to the impossibility to find an alternative post should be remunerated or should be compensated by an allowance.”
Article 9 The right to vocational guidance

687. Conclusions I (1969), Statement of Interpretation on Article 9: “The purpose of this article is to make it compulsory for those states having accepted it to operate a service that helps all persons, free of charge, to solve their problems relating to vocational guidance.”

688. Conclusions IV (1975), Statement of Interpretation on Article 9: “On examining the reports submitted as part of the fourth cycle of supervision, the Committee stressed the importance of vocational guidance in a modern economy especially at time of economic recession and defined it as the service which assists all persons to solve problems related to occupational choice and with due regard to the individual’s characteristics and their relation to occupational opportunity.”

689. Conclusions XIV-2 (1998), Statement of Interpretation on Article 9: “General social and employment trends during the latest reference period have revealed a growing need for and increasing importance of vocational guidance as a mechanism for striking a balance between social integration and personal professional fulfilment. The globalisation of the labour market, and the use of new technologies have led to a rise in the rate of unemployment, especially in the more traditional branches of industry. In particular, long-term unemployment and unemployment among young people have reached high levels. Changing demographic trends, increased mobility of the work force, the economic recession and the political changes in Europe and around the world were factors that also influenced the labour market’s absorption capacity and structure.
Traditionally vulnerable categories, such as women, young and older workers, unskilled or semi-skilled workers and migrants were the most affected by unemployment and consequently found themselves in search of new qualifications and professional re-orientation. Hence the greater need for improved, adapted, widely available guidance over the reference period.
In view of these changes, The Committee attaches a growing interest to the ways in which the member states have succeeded in finding appropriate solutions to the new guidance demands. It evaluates in particular the variety, efficiency and accessibility of the services provided, whether they are free of charge, with the overall aim of ensuring that all the segments of the population benefit from equal, adequate and real education and employment opportunities.
As in its previous conclusions, the Committee has taken the view that Article 9 foresees a two-fold obligation for the Contracting Parties: on one hand the promotion and provision of guidance relating to education possibilities, and on the other hand, guidance services for vocational opportunities.
The Committee appreciates that in the majority of countries the interdependence between the authorities responsible for educational guidance, usually the ministries of education and the labour market administration (Ministry of Labour, employment offices, etc.) has been reinforced. The presence of the social partners has also been more visible in the decision-making process for the content and structures of the guidance services.
Among the main indicators taken into consideration by the Committee in evaluating the commitment of states to providing appropriate guidance facilities are:
i. whether guidance service are subject to a fee, and the budget dedicated to this service out of the total GDP;
ii. the number and qualification of the specialised staff serving as guidance providers (teachers, psychologists, administrators, etc);
iii. the geographical location and institutional distribution of both types of guidance;
iv. the type of information available and the means used for its dissemination,
v. the number of people benefiting from guidance, their age, social origin and educational level.
Financial resources
The rise in the volume and importance of vocational guidance has implied that the total expenditure for guidance services as a share of national GDP increased in all countries during the reference period. Despite the scarcity of information on the different categories of expenditure, the rise in resources allocated to this service has proved the commitment of countries to providing and promoting appropriate services. International funding also became more available, either from the European Union (exchange and training programmes) for its member states, or from the World Bank, as in the case of Turkey, which enhanced the quality of guidance and training opportunities.

Human resources
Despite the increasing number of “self-service” centres and growing use of them, the number of administrative staff involved in the guidance services steadily increased in all the countries concerned. As vocational guidance is in most countries a compulsory part of the education curricula of all students, programmes for ensuring sufficient numbers of staff with appropriate skills have been put in place. Quality improvement as an intrinsic part of the training of counsellors, psychologists and teachers represented a main preoccupation for the states (for instance, vocational guidance skills are a compulsory part of teacher training).
In order to keep pace with the internationalisation of social and employment relations, several countries set up specialised programmes to promote the European dimension of guidance services. This is the case of Norway and in Cyprus, where European oriented training programmes have been designed for counsellors and teachers (e.g. European Dimensioning Educational and Vocational Guidance in Norway).

Dissemination of information
Assessment of the sufficiency of guidance distribution networks requires a twofold undertaking: Firstly, the Committee examines whether all institutions in the educational and employment fields are provided with sufficient financial, technical and human resources to respond to demands. Secondly, the even geographical availability of services of an equivalent standard is a fundamental factor to be taken into account in appreciating whether the countries meet the requirements of this provision of the Charter.
The institutional distribution of guidance services seems to be satisfactory in most of the countries, due to the above-mentioned compulsory character of the vocational guidance, integrated within the educational system from primary level (in Norway and Malta, for example) or from secondary level (Cyprus).
On the contrary, the geographical distribution is less satisfactory in countries where the number of guidance centres has remained unchanged since the last reference period and barely covers a few regions of the country, as in Turkey. In addition to the increase in the number of centres and staff, more flexible programmes have been introduced, with longer opening hours, thus allowing an increasing number of people to access services (in Sweden, for example).

Content and means of dissemination of information
The use of new technologies (e.g. Internet, computerised aid, self-service centres, CD-ROMs), for widespread dissemination of information is increasingly common, especially in Sweden, Norway and Cyprus, while the traditional means such as publications, TV and radio programmes remain popular, mainly in Malta and Turkey. Furthermore, the Maltese and Luxembourg reports also mention the practice of career fairs,
events that offer a meeting place for all those concerned (people in search of new career opportunities, education authorities, industry, social partners, etc).

New types of vocational guidance are also developing and gaining in popularity in most of the countries, caused by changes in the working environment. Consequently, programmes were launched to promote self-employment initiatives, alternative work-and-training schemes, and part-time work.

**Beneficiaries from vocational guidance**

The core of Article 9 remains the principle of equality of opportunities for all members of society. The Committee therefore considered the means employed by the states to make vocational guidance, training and retraining opportunities accessible to the whole population without any form of discrimination, on the sole criteria of individual competence.

The Committee has noted that gender equality plays an important part in all education and guidance services. It highly appreciated the Swedish initiative of encouraging women to take up traditionally male occupations and vice versa. The situation was less promising in Malta, where traditional attitudes mean that girls are reluctant to choose professions usually conceived as being men’s occupations.

The social reintegration of people with disabilities through suitable and adequate programmes was another aspect closely examined by the Committee. The usual practice observed in the member states is to integrate the disabled within the mainstream programmes, while individualising services offered to respond to the particular needs of the person assisted and increasing the overall budget dedicated to their effective training and guidance.

Finally, another recurrent issue the Committee considered was the equal treatment of nationals of Contracting Parties legally resident or regularly working in another country. The Committee has observed that the majority of the states undertook measures to facilitate the integration of foreign nationals. These measures took either direct forms such as ensuring a proper legal framework and coherence in the application of non-discriminatory measures and abolishing any existing prejudicial differentiation, or indirect measures such as issuing guidance documentation in English language (Norway) in view of facilitating the access to guidance for non-nationals.

Although not compulsory under Article 9, the Committee appreciated Maltese initiatives in developing guidance and training programmes for inmates in prison, with a view to their future social and vocational reintegration on release.

In conclusion, after examination of the reports under Article 9, the Committee considers that the Contracting Parties are undertaking continuous efforts to adapt and develop the structure of guidance services in order to respond to the contemporary changes in the European economic and social landscape. However, the dissemination of information and effective equality of chances still remain areas where implementation should be improved and to which the national authorities need to devote their activities.”

690. **Conclusions XVI-2 (2003), Poland:** “This length of the residence requirement implies that equal access to vocational guidance is provided only to non-nationals residing on the territory since at least three years.

[...]

The Committee concludes that the situation in Poland is not in conformity with Article 9 of the Charter because equal treatment for nationals of other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter lawfully resident or regularly working in Poland with respect to vocational guidance is not guaranteed.”

691. **Conclusions 2003, France:** “As [France] has accepted Article 15, the measures concerning training of persons with disabilities are dealt with under that provision.”
Article 10 The right to vocational training

Article 10§1

692. **Conclusions I (1969), Statement of Interpretation on Article 10§1**: “In the opinion of the Committee of experts the obligations implicit in this provision are twofold:
– The obligation to promote technical and vocational training for all persons, and …”

693. **Conclusions 2003, France**: “The Committee recalls that Article 10§1 covers all kind of higher education. In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the Committee considers that, today, the notion of vocational training of Article 10§1 covers initial training, i.e. general and vocational secondary education, university and non-university higher education, and continuing training. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.”

694. **Conclusions IV (1975), Statement of Interpretation on Article 10**: “When examining the biennial reports submitted as part of the fourth cycle of supervision, the Committee felt that the importance of vocational training should be emphasized at a time of economic recession and underlined that priority should be given to young persons, who are particularly hit by unemployment.”

695. **Conclusions 2003, France**: “…
– the most recent measures adopted to promote vocational training, including general and vocational secondary education, university and non-university higher education, apprenticeship, and continuing training (the description of the whole system may be recovered from existing database on the topic: Eurydice, Cedefop);
– highlight the bridges between secondary vocational education and university and non-university higher education;
– outline the mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general or technical education;
– underline the measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
– outline the mechanisms for the recognition of qualifications awarded by continuing vocational education and training.”

696. **Conclusions 2007, Ireland**: “Under Article 10§1, national reports must:
– report on the most recent measures taken to foster vocational training, including general and vocational secondary education, university and non-university higher education, apprenticeship and continuing education (systems are described in full in the special Eurydice and Cedefop databases);(…)

697. **Conclusions I (1969), Statement of Interpretation on Article 10§1**: “… the obligation to provide facilities for access to higher technical and university education, subject to no other criterion than individual fitness.”

698. **Conclusions 2003, France**: “It is clear that access to higher technical or university education based solely on individual aptitude cannot be achieved only by setting up educational structures which facilitate the recognition of knowledge and experience as well as the transfer from one type or level of education to another; this also implies that registration fees or other educational costs do not create financial obstacles for some candidates.”
699. **Conclusions 2012, Ukraine:** “The Committee recalls that facilities other than financial assistance to students should be granted to ease access to technical or university higher education based solely on individual aptitude. This obligation can be achieved namely by:
- (…);
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.”

700. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§1:** “Among the main indicators reflecting state commitment to “provide and promote” vocational training are total expenditure (e.g. as a share of GDP), the total capacity of the system, in particular the availability of training places for all applicants, the proportion of young people completing a vocational education and geographical coverage”. (see also Conclusions 2003)

701. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§1:** “Under …Article 10 a major preoccupation of the Committee is to verify that equal treatment in access to training institutions and programmes is ensured for all those interested, including nationals of other Contracting Parties legally residing or regularly working in the territory”.

702. **Conclusions 2003, Slovenia:** “The Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. The Committee recalls that all these conditions are not in conformity with the Charter (with respect to the residence requirement see Conclusions XIV-2 (1998), Ireland, with respect to the reciprocity clause see Conclusions XIV-2 (1998), Austria; and with respect to the working permit condition see Conclusions XII-2 (1992), XIII-2 (1994), XIII-3 (1995) all on Austria, and Appendix to Conclusions XIII-3 (1995), Luxembourg”).

703. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§1:** “Vocational training for disabled persons remains an important concern to the Committee. However, for the sake of clarity in the presentation of its conclusions, it has decided to refer the detailed consideration of this issue to Article 15 for those Contracting Parties which have accepted both provisions (only Turkey has not accepted Article 15”).

**Article 10§2**

704. **Conclusions XIX-1 (2008), Slovak Republic:** “Under Article 10§2 the Committee examines apprenticeship arrangements taking place within the framework of an employment relationship between the employer and the apprentice and leading to vocational education.”

705. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§2:** “Under paragraph 2 the Committee principally examines apprenticeship arrangements taking place within the framework of an employment relationship between the employer and the apprentice and leading to a vocational education…”

706. **Conclusions 2003, Sweden:** “…apprenticeship training is included in upper secondary school programmes…”.
707. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§2**: “The Committee has consistently underlined the importance of combining theoretical and practical training and of maintaining a close contact between training institutions and the world of work”.

708. **Conclusions XVI-2 (2003), Malta**: “Due to the evolution of the legal and practical framework of the organisation of apprenticeship at national level, the Committee has sometimes had difficulties in evaluating its conformity with Article 10§2 of the Charter. As a consequence, the Committee asks the next report to provide information on the following topics: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract”.

709. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§2**: “In assessing national situations the Committee is particularly concerned to determine the adequacy of apprenticeship arrangements, e.g. in terms of the number of participants, the availability of apprenticeship places for applicants, the proportion of trainees completing an apprenticeship and geographical coverage”.

710. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§5 (i.e. Article 10§4 of the 1961 Charter)**: “Under all of the first three paragraphs of Article 10 a major preoccupation of the Committee is to verify that equal treatment in access to training institutions and programmes is ensured for all those interested, including nationals of other Contracting Parties legally residing or regularly working in the territory.”

711. **Conclusions 2003, Slovenia**: “The Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose the Committee recalls that, with respect to access to training, the length of residence or employment requirements and/or the application of the reciprocity clause are not in conformity with the Charter (with respect to the residence requirement see Conclusions XIV-2 (1998), Ireland, with respect to the reciprocity clause see Conclusions XIV-2 (1998), Austria; and with respect to the working permit condition see Conclusions XII-2 (1992), XIII-2 (1994), XIII-3 (1995) all on Austria, and Appendix to Conclusions XIII-3 (1995), Luxembourg).”

**Article 10§3**

712. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§3**: “Under paragraph 3 the Committee examines all forms of labour market training and education for adult workers…”

713. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§3**: “Indicators of particular interest are the number of participants, the development in national expenditure, and the results of the effort, i.e. the employment effect.”

714. **Conclusions XIX-1 (2008), Spain**: “The Committee recalls that the purpose of Article 10§3 of the Charter is, among others, to oblige states to provide facilities for training and retraining of adult workers, in particular the arrangements for retraining redundant workers and workers affected by economic and technological change. The aim is to prevent the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress.”

715. **Conclusions 2003, Italy**: “In view of the growing importance of this type of training, the Committee also asks that the next report provide information on the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress.”
716. **Conclusions XIX-1 (2008), Hungary**: “It reiterates that each national report on this provision should provide information on vocational training courses available for the unemployed, the activation rate i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.”

717. **Conclusions 2003, Slovenia**: “The Committee asks whether legislation exists on the possibility of individual leave for training and, in particular, subject to what conditions, on whose initiative, of what length and whether it is paid or not. The Committee also requests information on the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training.”

718. **Conclusions IV (1975), Statement of Interpretation on Article 10§3**: “…a special effort should be made on their behalf, so that unemployed migrant workers may benefit from the same help in the matter of vocational training and retraining as nationals.”

719. **Conclusions XVI-2 (2003), Addendum, Ireland**: “The Committee concludes that the situation in Ireland is not in conformity with Article 10§3 of the Charter because of indirect discrimination against nationals of the other Contracting Parties to the 1961 European Social Charter and nationals of the States Parties to the Revised European Social Charter, lawfully residing or regularly working in Ireland, who are potentially more affected than Irish persons by the length of residence requirement in order to access continuing vocational training.”

**Article 10§4**

720. **Conclusions 2003, Italy**: “Article 10§4 of the Revised Social Charter concerns the measures designed to tackle long-term unemployment through retraining and reintegration. The Committee considers a person who has been without work for twelve months or more to be long-term unemployed.”

**Article 10§5**

721. **Conclusions XVI-2 (2003), United Kingdom**: “The Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside by reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, the Committee recalls that it has held that length of residence or employment requirements for vocational training financial assistance are contrary to the provisions of the Charter (Conclusions XIII-2 (1994), Austria; XIII-3 (1995), Finland; XIV-2 ((1998), Belgium, Finland).”

722. **Conclusions VIII (1984), Statement of Interpretation on Article 10§5**: “The importance of financial assistance in the framework of vocational training is, in fact, so great that the very existence of the right protected by Article 10 of the Charter may depend on it”.

723. **Conclusions XVI-2 (2003), Slovak Republic**: “The Committee asks information with respect to financial assistance for individuals following vocational training courses.”

724. **Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§5**: “Having examined the structure and wording of Article 10, notably the wording of paragraph 1 and paragraph 4b, the Committee finds that this interpretation should be revised. It emphasises that the words “as necessary” in paragraph 1 give each country a considerable margin of discretion in choosing the
means to guarantee the right to vocational training, whereas paragraph 4 explicitly requires that financial assistance to trainees be granted in “appropriate cases” in order to encourage the full utilisation of available training facilities. Consequently, paragraphs 1, 2 and 3 should not be taken to confer on states an obligation to provide financial assistance for all trainees. In the light of these considerations the Committee decided to treat all questions of financial assistance exclusively under Article 10§4.”

725. Conclusions XIII-1 (1993), Turkey: “With regard to the granting of financial assistance in appropriate cases, the Committee reminded [the Turkish authorities] that this meant providing financial assistance to persons who would not otherwise be in a position to undergo apprenticeship or training.”

726. Conclusion XVI-2 (2004), Slovak Republic: “The Committee asks whether the level of social scholarship is adequate in relation to the cost of living…”

727. Conclusions XIV-2 (1998), Ireland: “…in order to assess the situation properly, [the Committee] needs a full description of all the allowances and grants available for different training programmes: criteria for awarding allowances, size of allowances, number of allowances granted in relation to number of applicants.”

728. Conclusions 2003, Slovenia: “However, the Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. The Committee recalls that it held that length of residence or employment requirements for vocational training financial assistance are contrary to the provisions of the Charter (Conclusions XIII-2 (1994), Austria; XIII-3 (1995), Finland; XIV-2 (1998), Belgium, Finland).”

729. Conclusions XIV-2 (1998), United Kingdom: “…the Committee again expresses its concern at the apparent lack of participation of workers’ organisations in supervising the effectiveness of training schemes.”
Article 11 The right to protection of health

730. Conclusions 2005, Statement of Interpretation on Article 11§5: “The Committee made the following observation regarding Article 11 of the Charter: The Committee notes that the right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights - as interpreted by the European Court of Human Rights - by imposing a range of positive obligations designed to secure its effective exercise. This normative partnership between the two instruments is underscored by the Committee’s emphasis on human dignity. In Collective Complaint FIDH v. France (no. 14/2003) it stated that “human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and [that] health care is a prerequisite for the preservation of human dignity.”


732. Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §74 “74. Respect for physical and psychological integrity is also inextricably part of the right to the protection of health guaranteed by Article 11 of the 1961 Charter.”

Article 11§1

733. Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §71 “The Committee observes that Transgender Europe and ILGA-Europe invoke Article 11 generally. The Committee considers that the allegations raised relate to Article 11§1 of the 1961 Charter which encompasses, inter alia, the right to the highest possible standard of health and the right of access to health care. Under Article 11, health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in accordance with the definition of health in the Constitution of the World Health Organisation (WHO), which has been accepted by all Parties to the Charter.”

734. Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §79 “Like all Charter rights, Article 11 imposes a range of positive and negative obligations. The title of the article – 'the right to protection of health' – makes clear that States' obligations under that provision are not solely limited to ensuring enjoyment of the right to benefit from any positive, proactive state measures enabling enjoyment of the highest possible standard of health attainable (such as ensuring equal access to quality health care). Nor are states' duties limited to the taking of those measures highlighted in Article 11 of the 1961 Charter. Rather, the notion of the protection of health incorporates an obligation that the state refrain from interfering directly or indirectly with the enjoyment of the right to health. In this context it refers to the definition of health cited above. This interpretation of Article 11 is consistent with the legal protection afforded by other important international human rights provisions related to health.”

195. The Committee has therefore taken account of the growing link that states party to the Charter and other international bodies (see below) now make between the protection of health and a healthy environment, and has interpreted Article 11 of the Charter (right to protection of health) as including the right to a healthy environment.”

736. **Conclusions 2005, Statement of Interpretation on Article 11§5**: “Furthermore, the Committee henceforth pays attention to preventive policies regarding mental health also taking into account the recent Declaration of the WHO ministerial conference in Helsinki (12-15 January 2005).

737. **Conclusions XV-2 (2001), Denmark**: “It stresses that under Article 11 para. 1 of the Charter, health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action, and states must guarantee the best possible results in line with the available knowledge.”

738. **Conclusions 2005, Lithuania**: “The Committee recalls that to comply with the Charter States must demonstrate an improvement of the situation. Therefore it asks for detailed and up-to-date statistics in the next report as well as information on the effectiveness of the national programmes to prevent cardiovascular diseases and cancers, launched respectively in 2001 and 2002.”

739. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §202**: “202. Under Article 11 of the Charter, everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable. The Committee sees a clear complementarity between Article 11 of the Charter and Article 2 (right to life) of the European Convention on Human Rights, as interpreted by the European Court of Human Rights (General Introduction to Conclusions XVII-2 (2005), Statement of Interpretation on Article 11, §5). Measures required under Article 11 should be designed, in the light of current knowledge, to remove the causes of ill-health resulting from environmental threats such as pollution (this link was established in Conclusions XV-2 (2001), Poland, Article 11§1).”

740. **Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §80**: “Le Comité considère que l’opération chirurgicale de changement de sexe requise en République tchèque pour un changement d’identité de genre n’est pas nécessaire à la protection de la santé. Obliger un individu à subir une opération chirurgicale aussi lourde, qui pourrait en fait être préjudiciable à sa santé, ne peut être considéré comme conforme à l’obligation pour l’État de s’abstenir de toute ingérence dans l’exercice du droit à la santé. Dans ce cas, les Etats doivent éliminer l’ingérence. Toute forme de traitement médical qui n’est pas nécessaire peut être considérée comme contraire à l'article 11, si l'accès à un autre droit est subordonné à son acceptation.”

741. **Conclusions 2003, Romania**: “The Committee recalls that the state of mother and child health is a key indicator as to whether the health system as a whole is functioning well or not in a given country. A particularly high infant mortality rate (18.6 deaths per 1000 live births) raises the problem of conformity with Article 11 of the Charter.”

742. **Conclusions 2003, France**: “The Committee stresses that maternal mortality is an avoidable risk that States Parties must deal with if they are to comply with Article 11 of the Charter. Considering in particular the level of development of the French health care system, it holds that all necessary measures should be taken in order to achieve the risk as near as possible to zero.”

743. **Conclusions 2013, Ukraine**: “The Committee considers that the prevailing high infant and maternal mortality rates, examined together with the other basic health indicators mentioned above, show that the situation in Ukraine is below the average in other European countries, and point to weaknesses in the health system. It therefore finds that insufficient efforts and progress has been made in respect of such indicators, and concludes that the situation is not in conformity with the Charter on this ground.”
744. **Federation of Catholic Families Associations in Europe (FAFCE)v. Sweden, Complaint No 99/2013, decision on the merits of 17 March 2015, §73.** As regards the allegations that sex selective and eugenic abortions may take place, that viable foetuses may be unlawfully aborted, and that incorrect information over the viability of foetuses may have been given, as well as the allegations that measures may not be taken to ensure such events do not take place, the Committee considers that in the instant complaint FAFCE aims, through its allegations, to widen the personal scope of the Charter, by applying it to the unborn. The Committee notes that FAFCE’s complaints relate to an issue which is very sensitive for many of the State Parties to the Charter, i.e. the question of when human life begins, which depends on the wide diversity of values and traditions in the different states. The Committee has consistently held that it is not called upon to address issues of a medical or ethical nature but to interpret the provisions of the Charter from the legal standpoint. The Committee finds that, in the context relating to FAFCE’s above-mentioned allegations, States Parties enjoy a wide margin of appreciation in deciding when life begins and it is therefore for each State Party to determine, within this margin of appreciation, the extent to which a foetus has a right to health.

745. **Conclusions 2005, Statement of Interpretation on Article 11§5:** “In assessing whether the right to protection of health can be effectively exercised, the Committee pays particular attention to the situation of disadvantaged and vulnerable groups. Hence, it considers that any restrictions on this right must not be interpreted in such a way as to impede the effective exercise by these groups of the right to protection of health. This interpretation imposes itself because of the non-discrimination requirement (Articles E of the Charter and Preamble of the 1961 Charter) in conjunction with the substantive rights of the Charter. […] The Committee notes that this approach calls for an exacting interpretation of the way the personal scope of the Charter is applied in conjunction with Article 11 on the right to protection of health, particularly with its first paragraph on access to health care. In this respect, it recalls that it clarified the application of the Charter’s personal scope in its general introduction to Conclusions XVII-1 (2004) (see also the general introduction to Conclusions XVI-1 (2002)).”

746. **Conclusions 2004, Statement of Interpretation on Article 11:** “The Committee notes that the Parties to the Charter (in its 1961 and revised 1996 versions) have guaranteed to foreigners not covered by the Charter rights identical to or inseparable from those of the Charter by ratifying human rights treaties – in particular the European Convention of Human Rights – or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations.”

747. **Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §28.** “28. The Committee notes that, according to an argument put forward by States Parties in response to other complaints concerning the rights of foreign minors unlawfully present in the country (Defence for Children International v. the Netherlands, §8, and International Federation of Human Rights Leagues v. France, § 18), the implication of paragraph 1 of the Appendix to the Charter is that the persons concerned by this complaint (accompanied and unaccompanied foreign minors unlawfully present in a country) would not come within the personal scope of Article 17, as they are not nationals of other Parties "lawfully resident or working regularly" within the territory of the Party concerned. The Committee nonetheless points out that, the restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity (Defence for Children International v. the Netherlands, Complaint No. 47/2008, ibid, §19; International Federation of Human Rights Leagues v. France, ibid, §§ 30 and 31).”
748. **International Federation of Human Rights Leagues (FIDH) v. France, Complaint No.14/2003, decision on the merits of 8 December 2004, §32.** “32. The Committee holds that legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter.”

749. ibid

750. **Conclusions I (1969), Statement of Interpretation on Article 11:** “The Committee was of the opinion that, with the text as it thus stands, a country bound by the Charter should be considered as fulfilling its obligations on this point if it provides evidence of the existence of a medical and health system comprising the following elements: [...]
The bearing by collective bodies of all, or at least a substantial part, of the cost of the health services.”

751. **Conclusions XV-2 (2001), Addendum, Cyprus:** “Cyprus still does not have a general health-care scheme covering the whole of the population. […] The Committee draws the attention of the Cypriot authorities to the fact that in order to be in conformity with Article 11 para. 1 of the Charter, the health-care system must offer care accessible to the largest number, which presupposes sufficiently broad coverage of the population, and at best universal coverage, and “the bearing by collective bodies of all, or at least a substantial part, of the cost of the health services” (Conclusions I). The Committee notes that in the vast majority of Contracting Parties to the Charter, 98-100% of the population are today covered by the health-care system.”

752. **Conclusions 2013, Georgia:** “The Committee also notes from another source that health system regulation in Georgia is weak, and that out-of-pocket payments remain the main source of funding for the health system, which reduces access to services for much of the population, particularly in access to pharmaceuticals. Pharmaceuticals are not covered under the state-sponsored private health insurance packages and have only limited cover under other state health programmes. On the basis of this information, the Committee considers that it has not been established that there is a public health system providing universal coverage.”

753. **Conclusions XVII-2 (2005), Portugal:** “The Committee noted in its previous conclusion that the cost of medicines was reduced for only two categories of the population: pensioners on low incomes and the chronically ill. There is no other scheme for reducing the cost for other disadvantaged population categories. The Committee recalls that it examines the conformity of the situation in light of Recommendation 1626 (2003) of the Council of Europe Parliamentary Assembly on “the reform of health care systems in Europe: reconciling equity, quality and efficiency”. This Recommendation urges states to use, as the main criterion for judging the success of health system reforms, effective access to health care for all without discrimination, as a basic human right. The Committee would therefore like the next report to state whether measures have been taken or are planned in the context of the current reform to ensure better cover for disadvantaged sections of the population.”

754. **Conclusions XV-2 (2001), United Kingdom:** “The Committee is aware that the fact that waiting lists are getting longer has more than one cause and may in particular reflect growing demand and expectations of the population. However, the Committee notes that the duration of waiting times is long in absolute terms, that the situation is not improving and that simultaneously the number of hospital beds continues to decrease (see infra). It considers that on the basis of these data, the organisation of health care in the United Kingdom is manifestly not adapted to ensure the right to health for everyone. Nevertheless, before pronouncing itself on compliance with Article 11 para. 1 and referring to Recommendation No. RChs (99)21 of the Committee of Ministers of the Council of Europe on criteria for the management of waiting lists and waiting times in health care, the Committee requests information on the way in which waiting lists are managed (admission criteria and follow-up). The Committee underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national
level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life.”

755. Conclusions 2013, Poland: “The Committee notes from the report that, under the Ministry of Health Regulation of 26 September 2005 on medical criteria, waiting lists must be kept in such a way that the principle of just, fair, non-discriminatory and transparent access to health care is respected and in accordance with medical criteria, and that the Ministry of Health Regulation of 20 June 2008, amended on 13 September 2011, governs the scope of the data collected by providers, the methods for recording such data and the transmission thereof to the relevant officials for the public funding of the care. Having taken note of these adjustments designed to improve the management of waiting lists and reduce waiting times, it finds that the situation has not changed significantly since the previous assessment and that efforts to improve efficiency and increase capacity so as to reduce waiting times should be continued. The Committee therefore finds that the situation in Poland is not in conformity with Article 11§1 of the 1961 Charter.”

756. Conclusions XV-2 (2001), Addendum, Turkey: “The number of private hospitals has risen and in 1997 accounted for 5.2% of the total number of beds, which rose from 2.1 beds per 1,000 inhabitants in 1990 to 2.5. This figure is still very low compared with other Contracting Parties and falls below the objective laid down by the World Health Organisation (WHO) for developing countries (3 beds per 1,000). Moreover, according to the OECD, 10% of the population live in provinces where there is only 1 bed per 1,000 inhabitants.”

757. Conclusions XV-2 (2001), Denmark: “The number of hospital beds has continued to fall and stood at 24,525 in 1997, i.e. 40% down on 1975. The Committee notes from OECD figures that in relation to the total population, the number of beds (4.7 beds per 1,000 inhabitants in 1996) is among the lowest in OECD countries in Europe. It considers that the very low density of hospital beds, combined with the waiting lists, could be an obstacle to access to health care by the largest possible number of people.”

758. Conclusions 2005, Statement of Interpretation on Article 11§5: “Furthermore, the Committee henceforth pays attention to preventive policies regarding mental health taking into account also the recent Declaration of the WHO ministerial conference in Helsinki (12-15 January 2005). It focuses particularly on conditions in psychiatric institutions (including those for young persons) in accordance with the requirements of Articles 14 and 17 of the Charter and also in the light of Articles 3 and 5 of the European Convention on Human Rights as well as the Council of Europe Committee of Ministers Recommendation (2004) 10 concerning the protection of the human rights and dignity of persons with mental disorder. “

759. Conclusions 2005, Romania: “The Committee notes various reports concerning the alarming situation in certain psychiatric hospitals. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited three mental health establishments: […] The Committee observes that these findings are corroborated by other sources. The European Commission points out that there are continuing reports of ill treatment in psychiatric hospitals. Amnesty International particularly condemned the death in 2004 of 18 patients at the Poiana Mare psychiatric hospital – also visited by the CPT in June 2004 – due to malnutrition and hypothermia. In light of this information, which reveals that the living conditions in certain psychiatric hospitals are manifestly inadequate, the Committee considers that the situation is not in conformity with Article 11§1 of the Charter.”
66. As part of the positive obligations that arise by virtue of this fundamental right, States must provide appropriate and timely health care on a non-discriminatory basis, including services relating to sexual and reproductive health. As a result, a health care system which does not provide for the specific health needs of women will not be in conformity with Article 11, or with Article E of the Charter taken together with Article 11.”

662. The Committee considers that once States introduce statutory provisions allowing abortion in some situations, they are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are legally entitled under the applicable legislation (see, mutatis mutandis reference to the European Court of Human Rights in P. and S. v. Poland and R.R. v. Poland, paragraphs 53 and 54 above).”

166. The Committee notes that, in referring to the legislative provisions governing the right to health of women in case of abortion, the Government states that Act No. 194/1978 was adopted within the framework of a “margin of appreciation” under Article G of the Charter. The Committee notes that the complaint does not refer to the exercise of the right to conscientious objection guaranteed by the above mentioned Act as a restriction or limitation on the right of women to protect their health. Given the above, the
Committee considers that Article G of the Charter is not applicable to the allegations in the complaint.

167. Regarding the applicable caselaw and other relevant sources the Committee recalls that: “[i]n connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, (...) the implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein” (IPPF EN v. Italy, complaint no.87/2012, decision on the merits of 10 September 2013, §162).”

766. **Federation of Catholic Families’ Associations in Europe (FAFCE) v. Sweden, Complaint No 99/2013, decisions on the merits of 17 March 2015, §71.** “71. Consequently, the Committee holds that Article 11 of the Charter does not as such confer a right to conscientious objection on the staff of the health system of a State Party. Therefore, Article 11 is not applicable.”

**Article 11§2**

767. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §§216 and 219:** “216. In connection with the measures that the authorities were required to take to develop a sense of individual awareness among exposed groups towards the health risks arising from lignite mining, the Committee notes firstly that Greek regulations satisfy all the requirements concerning information to the public about and their participation in the procedure for approving environmental criteria for projects and activities. For example, prefectures are obliged to publish the preliminary environmental evaluation and appraisal and the environmental impact study in the local press. However, the circumstances surrounding the granting and extension of several authorisations, at least those concerning the joint authorisation for several plants and the case of the “Dytiko Pedio” mine, show that in practice the Greek authorities do not apply the relevant legislation satisfactorily.

219. The Government maintains that it is following a policy of health promotion and culture in accordance with the objectives of the World Health Organisation (WHO) and that those concerned have been presented with the results of epidemiological studies undertaken at the request of the state. The Committee considers that this is too vague to amount to a valid education policy aimed at persons living in lignite mining areas. The Committee also notes, as does the complainant organisation, that the figures quoted by the Government to show that it organises environmental health education courses in primary and secondary schools themselves reveal the shortcomings in this area.”

768. **Conclusions 2007, Albania:** “Informing the public, particularly through awareness-raising campaigns, must be a public health priority.”

769. **International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §43:** “43. The Committee recalls that under Article 11§2 States must provide education and aim to raise public awareness in respect of health-related matters. States must adopt concrete measures with a view to implementing a public education policy which is directed towards the population at large as well as particular population groups which are affected by specific health problems. The measures taken should seek to prevent activities that are damaging to health, such as smoking, excessive alcohol consumption and the use of drugs, and encourage the development of a sense of individual responsibility in respect of matters such as healthy diet, sexual and reproductive health and the environment.”
46. More specifically, in the context of Article 11§2 and the instant case, the Committee understands sexual and reproductive health education as a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour.

47. The Committee acknowledges that cultural norms and religion, social structures, school environments and economic factors vary across Europe and affect the content and delivery of sexual and reproductive health education. However, relying on the basic and widely accepted assumption that school-based education can be effective in reducing sexually risky behaviour, the Committee considers that States must ensure:

- that sexual and reproductive health education forms part of the ordinary school curriculum;
- that the education provided is adequate in quantitative terms, i.e. in respect of the time and other resources devoted to it (teachers, teacher training, teaching materials, etc.);
- that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health;
- that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements.

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

The Committee stresses that, according to Article 11§2 of the Revised Social Charter, counselling and screening should be free for pregnant women and children.

The health of children aged over 6 is monitored by the school health service. Two compulsory check-ups are carried out, at ages seven and fifteen. Examinations are also carried out on request or in emergencies. Each year, doctors carry out around 2.5 million medical examinations on the 13 million primary and secondary school children in France. In 1995 the school health service employed 2,200 doctors and 5,000 nurses, with each doctor responsible for an average of 7,200 pupils and each nurse responsible for 2,500. The Committee considers that these figures demonstrate a clear shortage of medical staff. However, having learned that new posts were created outside the reference period in an effort to improve the situation, the Committee decides to await until the next time Article 11 is examined.

The Committee points out that there should be screening, preferably systematic, for the diseases which constitute the principal causes of death. Since information on this does not appear in the report, the Committee cannot assess the situation. In the absence of information in the next report, and given the low life expectancy noted by the Committee in relation to Article 11§1 of the Charter, the Committee indicates that there would be nothing to show that the situation is in conformity with Article 11§2 of the Charter.
Conclusions XV-2 (2001), Belgium: “According to the information at the Committee’s disposal, no systematic mass screening programmes are organised in Belgium. With particular regard to cancer’s high impact on mortality in Belgium (see the conclusion in respect of Article 11 para. 1), the Committee considers that this situation, if it still holds true, could constitute a problem of compliance with Article 11 para. 2 of the Charter. Under that provision, preventive screening must play an effective role in improving the population’s state of health. Consequently, the Committee believes that, in fields where it has proved to be an effective means of prevention, screening must be used to the full.”

Article 11§3

As far as the implementation of the right to protection of health is concerned, the Committee considers that, when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection established by Article 11. Where required, these measures must be taken in accordance to relevant decisions adopted by national jurisdictions.

More specifically, such measures should have included regular analyses of the surface and ground water in the region of Oinofyta, scientific investigation of possible threats to human health linked to heavy metals (including Cr-6) and comprehensive epidemiological studies. In this framework, given the scientific uncertainty related to the health problems caused by the ingestion of Cr-6, the Greek authorities should also have taken urgent measures, including - at least for the areas directly concerned by the pollution - the setting of maximum contaminant levels concerning Cr-6 in drinking water and water for agricultural use.

In this connection, the Committee notes the following judgments of the Court of Justice and the Court of First Instance of the European Union regarding precautionary measures in view of health risks:

- In the Case C-157/96 of 5 May 1998 - The Queen v Ministry of Agriculture, Fisheries and Food, Commissioners of Customs & Excise, ex parte National Farmers’ Union, David Burnett and Sons Ltd, R. S. and E. Wright Ltd, Anglo Beef Processors Ltd, United Kingdom Genetics, Wyjac Calves Ltd, International Traders Ferry Ltd, MFP International Ltd, Interstate Truck Rental Ltd and Vian Exports Ltd, the Court of Justice held: "Where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent." (cf. paragraph 63);

- In the Case T-13/99 of 11 September 2002 - Pfizer Animal Health SA v Council of the European Union, the Court of First Instance held: "Unless the precautionary principle is to be rendered nugatory, the fact that it is impossible to carry out a full scientific risk assessment does not prevent the competent public authority from taking preventive measures, at very short notice if necessary, when such measures appear essential given the level of risk to human health which the authority has deemed unacceptable for society.” (cf. Summary of the Judgment).

In summary, the Committee considers that the Greek State has failed to take appropriate measures to remove as far as possible the causes of ill-health and to prevent as far as possible diseases on the basis of: the delay mentioned in paragraph 130 above; the deficiencies in the implementation of existing regulations and programmes regarding the pollution of Asopos River and its negative effects on health; the difficulties encountered in the co-ordination of the relevant administrative activities by competent bodies at national, regional and local level; the shortcomings regarding spatial planning; the poor management of water resources and waste; the problems in the control of industrial emissions and the lack of appropriate initiatives with respect to the presence of Cr-6 in the water.

The Committee therefore holds that these deficiencies constitute a violation of Article 11§§1 and 3 of the Charter.
Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §§203 et 205: “203. In order to fulfil their obligations, national authorities must therefore:
– develop and regularly update sufficiently comprehensive environmental legislation and regulations (Conclusions XV-2 (2001), Addendum, Slovakia);
– take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale (Conclusions 2005, Moldova, Article 11§3);
– ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery (see, mutatis mutandis, International Commission of Jurists v. Portugal, aforementioned decision, §33);
– inform and educate the public, including pupils and students at school, about both general and local environmental problems (Conclusions 2005, Moldova, Article 11§2, pp. 450-452);
– assess health risks through epidemiological monitoring of the groups concerned.

205. The Committee notes firstly that the Greek Constitution makes protection of the natural environment an obligation of the state and at the same time an individual right, and that Greek environmental legislation and regulations are well developed, have been regularly updated and substantially reflect the large number of European Union standards in this area. In particular, in the case of mining and fossil fuel combustion activities, an environmental impact study must be carried out, environmental criteria approved and an operating licence issued by the competent authorities. Provision is also made for the public to be informed and to participate in the decision making process. Limit values have been set for exposure to pollutants arising from lignite mining. Greece has also ratified all the relevant international treaties, in particular the United Nations Framework Convention on Climate Change of 9 May 1992 (UNFCCC) and the Kyoto Protocol to the UNFCCC of 11 December 1997.”

Conclusions XV-2 (2001), Italy: “Regarding control of localised types of pollution, an earlier report indicated that an air quality monitoring system had been introduced but proved inadequate. The Committee wishes to be informed of the measures taken to remedy this state of affairs, and the air quality objectives and maximum permissible concentrations of the principal pollutants identified as responsible for its deterioration (sulphur dioxide, nitrogen dioxide, ozone, lead, fine and suspended particles, carbon monoxide and benzene). As regards control over emissions of these polluting agents, the Committee finds from OECD data that in 1995 Italy achieved the goal, accepted by ratifying the Protocol on the reduction of sulphur emissions, of reducing sulphur dioxide emissions to 30% below the 1980 level, particularly through the use of low-sulphur fuels. On the other hand, Italy has not achieved any of the objectives set for the control of nitrogen oxide emissions.”

Conclusions XV-2 (2001), Addendum, Slovak Republic: “In the light of all this information, the Committee notes that substantial progress still needs to be made in order to provide the Slovak population with a healthy environment. It notes that the findings are the same in the UNDP report - which emphasises that the policy pursued with a view to giving protection of the environment an adequate legislative framework is not very ambitious, and that the Environment Ministry budget has declined steadily since 1993 - and in European Commission reports, which point to the weakness of the legislative framework, the slow speed of progress and the inadequacy of investments in the environment sector. The Committee emphasises that, in view of the proven effects of pollution on public health and of the poor indicators relating to the health of the Slovak population, particularly in polluted areas (see conclusion on Article 11§1), implementation of a more ambitious risk prevention strategy will be crucial to the assessment of compliance with
Article 11§3. It therefore wishes that Slovakia make sustained efforts with a view to reporting noteworthy progress, especially as regards the strengthening of the legislative framework.”

781. **Conclusions 2005, Moldova**: “The Committee considers that, according to Article 11§3 of the Charter, urban air quality targets and threshold values should be laid down, accompanied by measuring arrangements and information for the public. The Committee asks what the situation is in this respect and the results obtained.”

782. **Conclusions XV-2 (2001), Italy**: “As regards worldwide pollution processes, the Committee notes that in 1994 Italy ratified the United Nations Framework Convention on Climate Change (Rio de Janeiro, 1992). Its undertakings include reducing emissions of the principal greenhouse gases to 8% below the 1990 level over the period 2008-2012 in order to contribute to the achievement of the goals set following the Kyoto Conference in 1997 for the European Union. The Committee observes, on the basis of OECD data and the first report on the application of the Rio Convention that in 1995 Italy was still far short of this target, particularly for carbon dioxide. The latter report indicated that in 1997 Italy had not established a concerted national action plan to combat climate change. The Committee will keep a close watch on the development of the situation.”

783. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §§203, 209, 210, 215**: “203. In order to fulfil their obligations, national authorities must therefore:

- develop and regularly update sufficiently comprehensive environmental legislation and regulations (Conclusions XV-2 (2001), Addendum, Slovakia);
- take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale (Conclusions 2005, Moldova, Article 11§3);
- ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery (see, mutatis mutandis, International Commission of Jurists v. Portugal, aforementioned decision, §33);
- inform and educate the public, including pupils and students at school, about both general and local environmental problems (Conclusions 2005, Moldova, Article 11§2);
- assess health risks through epidemiological monitoring of the groups concerned.

209. Information supplied by the complainant organisation shows that when air quality measurements reveal that emission limit values have been exceeded, as in the case of the Aghios Dimitrios plant, the penalties imposed in the form of fines are limited and have little deterrent effect. The Government confines itself to stating that the financial penalties satisfy the proportionality principle and fails to show that when checks carried out reveal violations this leads to effective measures with a direct impact on emission levels.

210. Turning to measures to ensure that plant and equipment are adapted to the “best available techniques”, the Government simply indicates that checks are mainly carried out by the supervisory authorities responsible for the authorisation procedure in Directive 96/61/EC concerning integrated pollution prevention and control (the IDEH Directive) and in the procedure for approving environmental criteria. Again, it does not show how these checks are carried out in practice and how effective they are.
215. The Government does admittedly claim that measures to monitor and record emissions are equivalent to adapting to “best available techniques”. Apart from the fact that this argument is irrelevant and clearly incompatible with Greece’s European commitments, the Committee has in any case found that Greece has failed to show that the checks concerned were sufficiently effective, since the Greek authorities considered it satisfactory to carry out these checks prior to the authorisation process and deemed it acceptable to distinguish between operational and environmental authorisation.”

784. Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §§203 et 220: “203. In order to fulfil their obligations, national authorities must therefore:
  – develop and regularly update sufficiently comprehensive environmental legislation and regulations (Conclusions XV-2 (2001), Addendum, Slovakia);
  – take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale (Conclusions 2005, Moldova, Article 11§3);
  – ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery (see, mutatis mutandis, International Commission of Jurists v. Portugal, aforementioned decision, §33);
  – inform and educate the public, including pupils and students at school, about both general and local environmental problems (Conclusions 2005, Moldova, Article 11§2);
  – assess health risks through epidemiological monitoring of the groups concerned.

220. The Committee has already noted (§200) the health risks that lignite mining poses for local inhabitants. However, as the Government itself acknowledges, despite the importance the latter claims to ascribe to systematic epidemiological monitoring of those concerned very little has so far been done to organise such monitoring. For example, in 45 years of lignite mining in Greece, only two epidemiological surveys have been commissioned by the state, and these only covered part of the regions concerned. The results of these studies were presented to the public in 1998. Other epidemiological studies are admittedly scheduled or under way, but no morbidity studies have been carried out in the areas neighbouring the power plants.”

785. Conclusions 2013, Georgia: “According to the report, in 2010 availability of drinking water was still a major problem for 19% of the rural population. The Committee considers that having access to safe drinking water is central to living a life in dignity and upholding human rights. It also recalls that “under Article 11§1 of the Charter, health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action, and states must guarantee the best possible results in line with the available knowledge.” (Conclusions XV-2 (2001), Denmark). It therefore asks if any measures are being taken to improve access of rural population to safe water. In the meantime, it finds that it has not been established that adequate measures have been taken to ensure access to safe drinking water in rural areas.”

786. Conclusions XV-2 (2001), France: “As far as dose limits are concerned, the Committee notes that, in spite of its request in Conclusions XIV-2 (2001), France has still not adapted its regulations to apply the maximum values recommended by the ICRP in 1990 and has yet to transpose into domestic law Community Directive 96/29/Euratom on the protection of the health of workers and the general public against the dangers arising from ionising radiation. In view of the energy sources in use in France, the Committee points out that public safety from nuclear accidents is a decisive factor in its assessment of conformity with Article 11 para. 3.”
787. **Conclusions XV-2 (2001), Denmark:** “Whilst stressing that the absence of nuclear power stations in Denmark means that the safety of the general public is not a major concern, the Committee considers that Denmark has implemented adequate measures to conform with Article 11 para. 3 of the Charter with regard to the protection of the population against ionising radiation.”

788. **Conclusions XVII-2 (2005), Portugal:** “Asbestos – In addition to the information in the previous report, the Committee notes that Portugal has brought its legislation into line with Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, as modified by directives 83/478, 85/610 91/659, which ban the use of chrysotile other than for certain categories of products, and then subject to adequate labelling. Resolution No. 24/2004, in application of Commission Directive 1999/77/EC of 26 July 1999, prohibits the use of asbestos in the construction of public buildings and requires the government to draw up an inventory of all public buildings containing asbestos. The Committee considers that these measures are consistent with Article 11§3 of the Charter. However, they are not sufficient. Compliance with this provision entails a policy that bans the use, production and sale of asbestos and products containing it.”

789. **Conclusions XVII-2 (2005), Latvia:** “The Committee recalls that in order to be in conformity with the Charter, legislation must provide for the prohibition of asbestos or at least restrict in an adequate manner its marketing, its use and its production; it must also set out obligations on residential property owners and in respect of public buildings to search for any asbestos and where appropriate to have demolition work carried out, as well as obligations on enterprises in relation to waste disposal.”

790. **Conclusions XV-2 (2001), Addendum, Cyprus:** “The Committee points out that in order to comply with the Charter in this field, states must, at national level, lay down statutory food hygiene standards which take account of the relevant scientific data and set up and maintain machinery to monitor compliance with these standards throughout the food chain, and draw up, apply and update systematic measures aimed at preventing, including through appropriate labelling, and monitoring the occurrence of food-borne diseases.”

791. **Conclusions XVII-2 (2005), Portugal:** “When coupled with the information noted in the previous conclusion, this information shows that the legal situation is consistent with Article 11§3 of the Charter. The Committee asks for information in the next report on how measures taken to prevent and combat noise are applied in practice, in particular:

– the introduction of the surveillance arrangements and the noise maps;
– the prevention of locally generated noise linked to commercial activities: garages, restaurants, laundries and so on;
– measures to reduce noise caused by urban transport and airports;
– epidemiological studies of health problems linked to noise.”

792. **Conclusions XV-2 (2001), Greece:** “Smoking – The Committee stresses the importance of measures against smoking in meeting the requirements of Article 11 of the Charter. It wishes to point out that smoking, a major cause of avoidable death in developed countries (in Europe 30% of deaths from cancer are attributable to smoking), is associated with a wide range of diseases (cardiac and circulatory diseases, cancers, pulmonary diseases, etc.). Smoking kills one adult in ten throughout the world. The World Health Organisation (WHO) forecasts an increase to up to one in every six deaths by 2030, which is more than the figure for any other cause of death. The Committee also notes that WHO is drawing up a convention on measures to combat smoking and points out that WHO, as part of the Health for All campaign, has set a target for European countries of raising the proportion of non-smokers in the population to at least 80% and protecting non-smokers against involuntary exposure to tobacco smoke.”
Anti-smoking legislation in Greece includes a ban on direct or indirect advertising of tobacco products on television or radio (advertising in newspapers and magazines is permitted provided it refers to the health risks of smoking); a requirement that cigarette packets carry information about the dangers of smoking along with a health warning; rules on the maximum permissible levels of nicotine and tar in cigarettes; and a ban on smoking in places where health care is provided.

From the Eurostat figures, Greece has by far the highest level of annual per capita cigarette consumption in the European Union and European Economic Area (3,020 compared with a European average of 1,646 in 1997) and the figure has been rising steadily since 1988. The proportion of men who smoke every day (particularly in the 25-44 age group) is by far the highest in Europe.

The Committee considers that the policy of regulating tobacco sales is clearly inadequate to reduce tobacco consumption and lessen the extent of related health problems. It considers that this situation is not in conformity with Article 11§3 of the Charter.

The Committee wants to know how the Government intends to tackle this situation, in particular by toughening the existing legislation (e.g. to prohibit the sale of tobacco to young people and ban smoking in public places, including on public transport, ban on billboard advertising and advertising in newspapers and magazines).

793. Conclusions 2013, Malta: “The report indicates that policies are being implemented to ensure smoke-free public places in accordance with the WHO Framework Convention on Tobacco Control (FCTC), which Malta ratified on 24 September 2003 (entry into force 27 February 2005). Regulations were introduced in 2004 banning smoking in any enclosed private or public premises that are open to the public, except in designated smoking rooms approved by the Superintendent of Public Health. Under new regulations that will come into force in January 2013 these designated smoking rooms will not be allowed any more. This is a further step forward towards providing cleaner indoor air; it does not however affect exposure to tobacco smoke in private homes. Other measures to prevent smoking are in place, including a ban on all forms of tobacco advertising under a legal notice which came into force in 2011.”

794. Conclusions XVII-2 (2005), Malta: “Any protection policy must place effective restrictions on the supply of tobacco, alcohol and drugs, particularly through controls on production, distribution, advertising and prices. To assess the effectiveness of such policies the Committee needs statistics on trends in tobacco, alcohol and drug consumption.”

795. Conclusions XV-2 (2001), Portugal: “The Committee notes that the government’s 1998-2002 action plan to prevent smoking has the objective of increasing the number of 10 to 24 year old non-smokers by 10%. It considers this to be a very positive initiative but asks whether it can be achieved in the absence of a ban on young people smoking and on the sale of tobacco products to young persons.”

796. Conclusions 2013, Andorra: “In its previous conclusion, the Committee asked for information on the regulations governing smoking in public places and the sale and advertising of tobacco products (Conclusions 2009). The report does not contain any information on these issues. The Committee notes from the WHO report on the global tobacco epidemic (2011) that Andorra has not yet signed or ratified the WHO Framework Convention on Tobacco Control. According to the same source, Andorra does not have any legislation banning smoking in public places. The Committee asks for up-to-date information in the next report on the state of legislation on smoke-free environments, health warnings on cigarette packets and tobacco advertising, promotion and sponsorship. Pending receipt of this information, it considers that it has not been established that appropriate measures have been taken to prevent smoking.”
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797. Conclusions XV-2 (2001), Greece: “Anti-smoking legislation in Greece includes a ban on direct and indirect advertising of tobacco products on television or radio (advertising in newspapers and magazines is permitted provided it refers to the health risks of smoking); a requirement that cigarette packets carry information about the dangers of smoking along with a health warning, rules on the maximum permissible levels of nicotine and tar in cigarettes; and a ban on smoking in places where health care is provided.”


800. Conclusions XV-2 (2001), Belgium: “(…) Article 11§3, (…) requires states to ensure high immunisation levels, in order not only to reduce the incidence of these diseases, but also to neutralise the amount of virus and thus to pursue the goals set by the WHO (in particular, eradicating measles and poliomyelitis). It underlines that large-scale vaccination is recognised as the most efficient and most economical means of combating infectious and epidemic diseases. This objective is all the more important in that Europe is currently experiencing a resurgence of this type of infectious, epidemic disease.”

801. Conclusions XVII-2 (2005), Latvia: “The Committee recalls that States must demonstrate their ability to cope with infectious diseases (arrangements for reporting and notifying diseases, special treatment for AIDS patients, emergency measures in case of epidemics).”

802. Conclusions 2005, Moldova: “The Committee notes firstly the adoption of a series of instruments concerning the prevention of drink driving and secondly that road safety is a priority for the 2003-2008 period. In the absence of more detailed information, the Committee is unable to evaluate the situation. It requests that such information be included in the next report, with detailed facts and figures. The Committee also stresses that domestic accidents, accidents at school, accidents occurred during leisure time and those caused by animals are also covered by this heading. Since the report contains no information on this subject, it requests that the next report include information on these issues.”
Social Security

Article 12§1

803. Conclusions XIV-1 (1998), Ireland: “...self-employed workers in Ireland are apparently not covered by the national social insurance scheme in respect of disability, sickness and maternity. It asks that the next report confirm that this is the case and, if so, whether measures are envisaged to extend the welfare provisions in these branches to self-employed workers”.

804. Statement of interpretation on Articles 12 and 13, Conclusions XIII-4

805. Finnish Society of Social Rights v. Finland, Complaint No. 108/2014, §27, Decision on the merits of 4 December 2016 “The Committee has previously referred to the complexity of distinguishing between social security benefits and other benefits, notably social assistance benefits. In making the distinction between social security benefits and social assistance benefits under Article 12 and Article 13 respectively it pays attention to the purpose of and the conditions attached to the benefit in question. As far as social security benefits are concerned, these are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself (Statement of interpretation on Articles 12 and 13, Conclusions XIII-4).”

806. Conclusions XIII-4 (1996), Statement of Interpretation on Article 12: “Social security, which includes universal schemes as well as professional ones, is seen by the Committee in its application of Article 12 of the Charter as including contributory, non-contributory and combined allowances related to certain risks (sickness, disablement, maternity, family, unemployment, old age, death, widowhood, vocational accidents and illnesses). These are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself”.

807. Conclusions XVI-1 (2002), Statement of Interpretation on Article 12: “The notion of a social security system implies that a significant proportion of the population is covered and in essence based on collective funding and that the social risks which are considered essential must be covered by the system. Further the State must be the guarantor of contributions. The Committee will re-examine the proportion of persons covered by the social security system. It will further examine to what extent coverage of the needs for social protection is ensured by social security, by private insurance and savings or by social assistance and will verify that the proportion of social security does not fall below a level to be determined.”

808. Conclusions 2006, Bulgaria: “The Committee recalls that, under Article 12§1, the social security system should protect a significant proportion of the population in the following branches: health care, sickness, unemployment, old age, employment injury, family, and maternity.”

809. Conclusions 2013, Georgia: “The Committee further recalls that Article 12 of the Charter guarantees the right to social security to workers and their dependents including the self-employed. States must ensure this right through the existence of a social security system established by law and functioning in practice. A social security system exists within the meaning of Article 12§1 when it covers the traditional risks and therefore provides the following benefits: medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit and maternity benefit. The Committee holds that in the absence of unemployment and family benefit branches, the number of risks covered by the system of social security is inadequate and therefore, the situation is not in conformity with the Charter”.

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810. **Conclusions 2006, Bulgaria:** “The Committee asks the next report to provide figures, for the period of reference, for all branches in percentage in order to be able to assess the effective coverage of the population (health care, sickness, insurance and family benefits) and of the active population (sickness and maternity benefits, unemployment benefits, pensions, and work accidents or occupational diseases benefits)”.

811. **Conclusions 2006, the Netherlands:** “The Committee recalls that a social security system in conformity with Article 12§1 must be collectively funded (employees, employers and state budget). It found that “the development in the sickness and invalidity branches is not in conformity with Article 12§3 of the Charter as it undermines the collective nature of the funding of benefits in these branches” (Addendum to the Conclusions XV-1 (2000)). In its last conclusion (Conclusions XVII-1 (2004)), it recalled that “The principle of collective funding is a fundamental feature of a social security system as foreseen by Article 12 of the Charter as it ensures that the burden of risks are spread among the members of the community, including employers, in an equitable and economically appropriate manner and contributes to avoiding discrimination of vulnerable categories of workers (the above-mentioned Committee of Ministers resolution refers to negative effects regarding selection for recruitment of workers with a history of medical problems).”

812. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 12:** “The Committee is nevertheless not satisfied by the mere existence of a social security system: it ensures that the system in question covers a significant percentage of the population and at least offers effective benefits in several areas”.

813. **Conclusions 2013, Hungary:** “As regards the minimum levels of sickness benefit and job-seeker’s allowance, the Committee notes that they stand between 40% and 50% of the Eurostat median equivalised income. The Committee asks whether any additional benefits are available, such as housing assistance, for persons receiving the minimum level of these benefits”.

814. **Conclusions XVIII-1 (2006), Austria:** “The Committee notes that the level of the unemployment benefit for a single person calculated on a salary reference basis of € 1000 falls below the poverty threshold even when defined as 40% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. Therefore, its accumulation with other benefits, including social assistance, does not alter its conclusion that such level is manifestly inadequate and not in conformity with Article 12§1.”

815. **Conclusions 2013, Finland:** As regards **old-age benefits**, the Committee notes from the MISSOC that the guarantee pension (takuueläke) guarantees a minimum pension for residents with a small pension or with no other pension. According to the report, the Act on Guarantee Pensions (2010/703) entered into force on 1 March 2011. The guarantee pension is financed by the State and administered by the Social Insurance Institution. The amount of the guarantee pension stood at €688 in 2011. According to the report the amount of the housing allowance for pensioners is affected by their pension income, including the guarantee pension. The Committee holds that the minimum level of guarantee pension is inadequate as it falls below 40% of the median equivalised income.

816. **Finnish Society for Social Rights v. Finland, Complaint no.88/2013, decision on the merits of 9 September 2014§§59-63:** “59. Under Article 12§1 benefits provided within the different branches of social security should be adequate and in particular income-substituting benefits should not be so low as to result in the beneficiaries falling into poverty.

60. When assessing the adequacy of income-substituting social security benefits the Committee examines various quantitative indicators. First of all, it has regard to the minimum level of income-substituting benefits, in principle for a full-time beneficiary, whose situation under national social security law, whether in terms of contribution history or previous income, entitles him/her to the minimum benefit. Information on these benefits, usually expressed as monthly amounts in € (or recalculated in these terms), is available from the national social security administration and from
recognised international sources such as the Mutual Information System on Social Protection (MISSOC).

61. The Committee notes that both parties to the present complaint have provided information on the relevant minimum benefits, the amounts of which are not disputed.

62. Secondly, the Committee compares the minimum benefits to certain threshold values of median equivalised disposable income for a single person expressed in €; threshold values which are available from Eurostat and/or from official national statistics using the same definition and methodology: the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of "equivalent adults" using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.

63. Under Article 12§1, with regard to income-substituting benefits, the level of benefits should be such as to stand in reasonable proportion to the previous income and they should in any event not fall below a threshold defined as 50% of the median equivalised income. However, where an income-substituting benefit stands between 40% and 50% of median equivalised income, the Committee will also take into account other supplementary benefits, for example social assistance and housing allowance, where applicable (see e.g. Conclusions 2013, Hungary, Article 12§1). “

817. Conclusions XVIII-1 (2006), Malta: “Unemployment benefits last a maximum of 156 days (5 months) and at any event no longer than a certain number of days calculated on the basis of contributions (for example an employee who worked 70 weeks since his entry into the scheme will be entitled to 70 days). The Committee considers that the duration for which unemployment benefits are payable to be too short.”

818. Conclusions XVIII-1 (2006), Germany: “… the legislation is not in conformity with the Charter since there is no reasonable initial period during which the unemployed may refuse a job not matching with his previous occupation and skills without losing his unemployment benefits. The Committee considers this measure to undermine the adequate coverage of the unemployment risk for which every worker has contributed during his working activity.”

819. Conclusions 2012, Statement of Interpretation on Article 1§2: “The requirement for persons claiming unemployment benefit to accept the offer of a job or training or otherwise no longer be entitled to unemployment benefit should be dealt with under Article 12§1. However, the Committee takes due account of the Guide to the concept of suitable employment in the context of unemployment benefit drawn up by the Committee of Experts on Social Security of the Council of Europe at its 4th meeting, held in Strasbourg from 24 to 26 March 2009, and holds that the loss of benefit or assistance when an unemployed person rejects a job offer may constitute a restriction on freedom to work where the person concerned is compelled, on pain of losing benefit, to accept any job, notably a job (…)”

820. Conclusions 2013, Slovak Republic: “The Committee notes from MISSOC that only 50% of the sickness benefit is paid if the sickness has been a consequence of alcohol or drug abuse. It considers that linking entitlement to sickness benefit to the nature and origin of sickness is a punitive measure and cannot be justified. It amounts to discrimination in the meaning of Article E (health status). Therefore, the situation is not in conformity with the Charter.”

Article 12§2

821. Conclusions 2006, Italy: “The Committee recalls that in order to comply with Article 12§2 of the Charter the social security system of states party shall satisfy, at least, six risks (old-age counting per three under the European Code of Social Security), it follows that during the period of reference Italy gave full effect only to five risks”.
822. Conclusions XIV-1 (1998), Finland: “Consideration of all the information made available to the Committee indicates that Finland’s social security system is at least sufficient for ratification of ILO Convention No. 102, in accordance with the requirement of Article 12 para. 2 of the Charter.”

**Article 12§3**

823. Conclusions 2009, Statement of Interpretation on Article 12§3: “The Committee clarifies its interpretation of Article 12§3: Firstly, it considers that the existence of a social security system of a higher level than that required under Article 12§1 or Article 12§2 is not presupposed under Article 12§3. Secondly, a situation of progress may consequently be in conformity with Article 12§3 even though the social security system has not attained the levels required under the two first paragraphs of Article 12. Thirdly, it repeats that a partly restrictive evolution in the social security system is not automatically in breach of Article 12§3; the Committee has already detailed the criteria to assess such situations.”

824. Conclusions 2013, Georgia: “The Committee further recalls that Article 12§3 requires states to improve their social security system. The expansion of schemes, protection against new risks or increase of benefits are examples of such improvement. In order to ascertain whether the changes introduced do not infringe the principle and spirit of social security, the Committee makes a reasoned assessment of changes to the situation. The Committee considers that the measures taken during the reference period are inadequate. The modifications carried out are not proportionate to the aim of raising the system of social security to a higher level. Therefore, the situation is not in conformity with the Charter”.

825. Finnish Society of Social Rights v. Finland, Complaint No.88/2013, decision on the merits of 9 September 2014, §84: “84. The Committee recalls that Article 12§3 requires States to improve their social security system. The expansion of schemes, protection against new risks or increase of benefit rates are examples of improvement (Statement of interpretation on Article 12, Conclusions XVI-1).”

826. Conclusions XVI-1 (2002), Statement of Interpretation on Article 12§3: “The restrictions on the right to social security should be assessed in the light of Article 31§2 of the Charter. In view of the changes made to social security systems as a result of economic and demographic factors the Committee requested in cycle XIII-4 that inter alia the following information on any changes to the social security system be submitted:

- The nature of the changes (field of application, conditions for granting allowances, amounts of allowance, lengths etc...);
- The reasons given for the changes (the aims pursued) and the framework of social and economic policy in which they arise;
- The extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration);
- The existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);
- The results obtained by such changes (their adequacy).”

827. Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, Decision on the merits of 7 December 2012, §§78-83: “78. In contrast, the Committee considers that the cumulative effect of the restrictions, as described in the information provided by the complainant trade union (see paragraphs 56-61 above), and which were not contested by the Government, is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned.
79. Even taking into account the particular context in Greece created by the economic crisis and the fact that the Government was required to take urgent decisions, the Committee furthermore considers that the Government has not conducted the minimum level of research and analysis into the effects of such far-reaching measures that is necessary to assess in a meaningful manner their full impact on vulnerable groups in society. Neither has it discussed the available studies with the organisations concerned, despite the fact that they represent the interests of many of the groups most affected by the measures at issue.

80. As a result, the Committee considers that it has not been discovered whether other measures could have been put in place, which may have limited the cumulative effects of the contested restrictions upon pensioners.

81. In general, the Committee thus concludes that the Government has not established, as is required by Article 12§3, that efforts have been made to maintain a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population, as has been observed by various international organisations (see paragraphs 36 and 47 above).

82. The Committee finally holds, as has been done by the Court as concerns the Convention, that any decisions made in respect of pension entitlements must respect the need to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits. The Committee concludes that the restrictive measures at stake, which appear to have the effect of depriving one segment of the population of a very substantial portion of their means of subsistence, have been introduced in a manner that does not respect the legitimate expectation of pensioners that adjustments to their social security entitlements will be implemented in a manner that takes due account of their vulnerability, settled financial expectations and ultimately their right to enjoy effective access to social protection and social security. However, the Committee considers that other mechanisms are more suited to address complaints relating to the effects of the contested legislation on individual pensioners’ right to property. In this regard, also domestic courts are in a significant role.


828. **Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, §71** “In this context, the Committee has explicitly considered that restrictions or limitations to rights in the area of social security were compatible with the Charter in so far as they appeared necessary to ensure the maintenance of a given system of social security (General observation on Article 12§3; Conclusions XIII-4, p. 143) and did not prevent members of society from continuing to enjoy effective protection against social and economic risks. The Committee has also concluded that in view of the close relationship between the economy and social rights, the pursuit of economic goals is not incompatible with Article 12. It has considered that the contracting parties may consider that the consolidation of public finances, in order to avoid mounting deficits and debt interest, constitutes a means of safeguarding the social security system (Conclusions XIV-1, Austria). It has in particular considered that the adoption of measures aiming to ensure the financial viability of pension schemes, regard being had to demographic trends and the employment situation, may come within this field (Conclusions XIV-1, Belgium). It has likewise stated that new financing methods conducive to greater solidarity may be introduced within this context without this contravening the Charter (Conclusions XIV-1, France).”
829. **Conclusions XIV-1 (1998), Statement of Interpretation on Article 12**: “The Committee reminded most of the Contracting Parties that it has clearly made allowances for alterations in social security systems to the extent that these are necessary in order to ensure the maintenance of the system in question (general observation on Article 12 para. 3) and where any restrictions do not interfere with the effective protection of all members of society against the occurrence of social and economic risks and do not tend to gradually reduce the social security system to a system of minimum assistance”.

830. **Finnish Society of Social Rights v. Finland, Complaint No.88/2013, decision on the merits of 9 September 2014, §85-86**: “85. A restrictive development in the social security system is not automatically in violation of Article 12§3 (Statement of interpretation on Article 12, Conclusions XVI-1). However, as the Committee has previously held, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system. In any event any changes to a social security system must nonetheless ensure the maintenance of a basic compulsory social security system which is sufficiently extensive (Statement of interpretation on Article 12, Conclusions XVI-1).

86. The Committee has also previously held that restrictions or limitations to rights in the area of social security were compatible with the Charter in so far as they appeared necessary to ensure the maintenance of a given system of social security (Statement of interpretation on Article 12§3, Conclusions XIII-4)and did not prevent members of society from continuing to enjoy effective protection against social and economic risks. The Committee has further stated that in view of the close relationship between the economy and social rights, the pursuit of economic goals is not incompatible with Article 12 (see e.g. Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, §71)”.

831. **Conclusions XIV-1 (1998), Statement of Interpretation on Article 12**: “According to the Committee, the effective social protection of all the members of society, which should be the aim of all the states having accepted Article 12 para. 3, involves maintaining in the Contracting Parties social security systems functioning through solidarity, as this represents a basic safeguard against differentiation in this field. Financing by the community as a whole in the form of contributions and/or taxes is a vital factor of this safeguard, as it guarantees the sharing of risks between the various members of the community”.

832. **Conclusions 2013, Lithuania**: “The Committee considers that the nature of the amendments, as well as reasons given for them not contrary to the Charter as long as they have not endangered the existence of the pensions branch of the social security system and they have served the aim to consolidate public finances, in order to prevent deficits and debt interest from increasing, as one way of safeguarding the social security system (Statement of Interpretation, Conclusions XIV-1 (1998)). Moreover, the cumulative effect of these amendments has not been disproportionate for the most vulnerable groups of population.

The Committee has already been called to express its opinion on the repercussions of the economic crisis on the social rights, that the “increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increases, while tax and social security contribution revenues decline”. The Committee held that by acceding to the Charter, States Parties “have accepted to pursue by all appropriate means the attainment of conditions in which, inter alia, the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.” Accordingly, “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need protection the most” (General introduction to Conclusions XIX-2 (2009)).

The Committee recalls that in its decision on the merits of 7 December 2012 of the Complaint No. 76/2012 – Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, even taking into account the particular context in Greece created by the economic crisis and the fact that the Government (of Greece) was required to take urgent decisions, it considered that the
Government had not conducted the minimum level of research and analysis into the effects of such far-reaching measures that is necessary to assess in a meaningful manner their full impact on vulnerable groups in society. Neither had it discussed the available studies with the organisations concerned, despite the fact that they represent the interests of many of the groups most affected by the measures at issue. As a result, the Committee considered that it has not been discovered whether other measures could have been put in place, which may have limited the cumulative effects of the contested restrictions upon pensioners (§§79-80). In this decision the Committee held that Greece violated Article 12§3 of the Charter because of the cumulative effect of restrictive measures introduced in the old-age branch of social security”.

**Article 12§4**

833. **Conclusions XIV-1 (1998), Turkey:** “The Committee recalls that … Act No. 506 of 17 July 1964 on the wage-earners’ social security scheme excludes from the scope of the act foreign workers on secondment who declare that they are covered by a foreign scheme. The Committee considers that this provision does not pose any problem of conformity with the Charter inasmuch as it concerns foreigners working on behalf of a company based abroad and it only applies to long-term benefits. (…)The Committee notes that foreign workers are excluded from the scope of Act No. 1479 of 2 September 1971 on the social insurance of self-employed workers and that refugees and stateless persons have no social security coverage, in clear violation of the principle of equal treatment laid down by Article 12§4a”.

834. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4:** “[Article 12 para. 4] does not require reciprocity: it directly empowers the Contracting Parties to implement its principles by means other than concluding bilateral or multilateral agreements”.

835. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4:** “… equal treatment between the nationals of all the Contracting Parties to the Charter presupposes … not to grant entitlement to social security benefits solely to their own nationals or those of specific Contracting Parties, [nor] to impose additional conditions on nationals of other Contracting Parties. This rule has its limits because the appendix to Article 12 para. 4 allow Contracting Parties to require the recipients of non-contributory benefits who are nationals of other Contracting Parties to complete a prescribed period of residence. However, … the Committee reserves the right to assess the proportionality of length of residence required”.

836. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4:** “… the Committee is concerned that the Contracting Parties should avoid indirect discrimination, for instance conditions which are imposed on both their own nationals and those of other Contracting Parties but are more difficult for the latter to meet and which therefore represent a greater obstacle for them”.

837. **Conclusions 2004, Lithuania:** “The report confirms that in order to become entitled to benefits which are based on permanent residence status, a foreign national must have been living in Lithuania without interruptions for the past five years. The Committee considers that this amounts to a length of residence requirement which is not in conformity with the Charter where contributory social security benefits are concerned. Moreover, although the Appendix to Article 12§4 permits states to require the completion of a prescribed period of residence before granting non-contributory benefits to non-nationals, the Committee considers a period of five years to be too long”.

838. **Conclusions 2006, Statement of Interpretation on Article 12§4:** “The Committee again considered Article 12§4 as regards the issue of subjecting the payment of child benefits to a residence requirement in respect of the children. Following a thorough examination, it decided that a residence requirement in respect of children is in conformity with Article 12§4.”
839. **Conclusions 2006, Cyprus:** “As regards the payment of family benefits, the Committee considers that according to Article 12§4, any child resident in a state party is entitled to the payment of family benefits on an equal footing with nationals of the state concerned. Therefore, whoever is the beneficiary under the social security system, i.e. whether it is the worker or the child, state party are under the obligation to secure through unilateral measures the actual payment of family benefits to all children residing on their territory. In other words, imposing an obligation of residence of the child concerned on the territory of the state is compatible with Article 12§4 and its Appendix. However since not all countries apply such a system, states applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle.”

840. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4:** “Equality of treatment does not necessarily mean that family allowances should be paid at the same amount when the children for whom it is granted are not residents of the same country as the recipient. The Committee indeed considers that the level of benefit may in this case be reduced where the cost of living in the child’s country of residence is significantly lower. As it pointed out to Germany and Belgium in this supervision cycle, the Committee nevertheless reserves the possibility to examine whether the reduction is proportional to the differences in the cost of living in the countries concerned.”

841. **Conclusions XIV-1 (1998), Germany:** “… Turkish workers in Germany whose children are being brought up in Turkey are entitled to a lower level of family allowance because the cost of living is lower in the latter country. Considering that family allowance can in principle be paid at a reduced rate when the children do not reside within the territory of the institution paying the benefit, provided that the cost of living in the children’s country of residence is considerably lower and the reduction is proportional to the difference in the cost of living between the countries in question…”

842. **Conclusions XIV-1 (1998), Finland:** “The Committee recalls that in the absence of an agreement, Finland is required under Article 12 para. 4 of the Charter to take unilateral steps to comply with the requirements of this provision, including the retention of benefits arising out of Finnish social security legislation, irrespective of the person’s movements, particularly for long-term benefits.”

843. **Conclusions XIV-1 (1998), Norway:** “The Committee finds that because of the particular characteristics of unemployment benefit which is a short-term allowance closely linked to the trends in the labour market, the Contracting Parties may justifiably restrict the exportation of these benefits and that the situation does not raise any problems with respect to Article 12 para. 4.”

844. **Conclusions XVI-1 (2002), Belgium:** “The Committee notes that obligations entered into by the Contracting Parties must be fulfilled irrespective of any other multilateral social security agreement that might be applicable and that in making the right to export acquired benefits conditional on the existence of bilateral or multilateral agreements other than the Charter, Belgian legislation is not in conformity with Article 12§4a.”

845. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4:** “[Article 12 para. 4] directly empowers the Contracting Parties to implement its principles by means other than concluding bilateral or multilateral agreements. The Committee has pointed out in this respect that unilateral measures are possible. In the absence of a social security agreement every Contracting Party is required to adopt unilateral measures in order to ensure the application of the principles of Article 12 para. 4 for nationals of the other Contracting Parties.”

846. **Conclusions XIII-2 (1994), Norway:** “[The Committee] recalled that Article 12 para. 4 did not require that bilateral agreements exist, nor was it based on principles of reciprocity. Any state having accepted it could comply either through bilateral agreement or through unilateral action.”
847. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4**: “Under the Contracting Parties’ national legislation the right to certain social security benefits is made conditional on the completion of qualifying periods, that is periods of employment, insurance or length of residence, even though Article 12 para. 4b does not mention the latter. As a result, when persons change their country of employment or residence they often sustain financial loss if they have not completed the qualifying period required for entitlement to benefits under the legislation of the competent Contracting Party, or, in the particular case of long-term benefits, if they have not completed the requisite minimum periods under the various insurance systems for entitlement to a pension which would, in total, be comparable to that which they would have received if they had remained in the territory of only one Contracting Party. This situation therefore has to be remedied by ensuring the granting, maintenance and resumption of social security rights by the accumulation of periods completed as laid down in Article 12 para. 4b.”

848. **Conclusions XIV-1 (1998), Portugal**: “…the Committee considers that in the absence of an agreement, there is a direct obligation on Portugal under Article 12§4 of the Charter to introduce appropriate measures in order to comply with this provision. It asks the Portuguese Government what steps, such as administrative arrangements, are planned to bring the situation into line with the Charter.

849. **Conclusions 2006, Italy**: “Italy has ratified the European Convention of Social Security thereby securing its commitment to equal treatment as regards aggregation of insurance or employment periods towards non-nationals.”
Article 13 The right to social and medical assistance

Article 13§1

850. Conclusions I (1969), Statement of Interpretation on Article 13: “The four paragraphs of this article ensure for persons without adequate resources the right to social and medical assistance.

An attempt was made, when the Charter was drafted, to break away from the old idea of assistance, which was bound up with the dispensing of charity. The expressions in the Charter reflect a new concept of assistance - the use of the words “person without adequate resources”, for instance, instead of “the poor” and “want” instead of “poverty”. The scope of the various provisions in Article 13, however, is even more significant in this respect. First, under Paragraph 1 it is compulsory for those states accepting the article to accord assistance to necessitous persons as of right; the Contracting Parties are no longer merely empowered to grant assistance as they think fit; they are under an obligation, which they may be called on in court to honour.

Even greater advances seem to have been made when it comes to Paragraph 2 of Article 13, which makes it compulsory for those states accepting it to eradicate from their legislation any remnants of social and political discrimination against persons receiving assistance. The compilers of the Charter were anxious that necessitous persons should not be prevented from exercising their civil and political rights in full or from taking up certain kinds of employment and office. Persons receiving assistance were not to be regarded as second-class citizens, merely because they were unable to support themselves.

This refusal to exclude from society persons receiving assistance is to be related to the purely provisional nature of such assistance, as reflected in the terms of the Charter. The Contracting Parties must do all they can, in fact, to remove or alleviate want once it has arisen, as they must try to prevent want from arising (Paragraph 3). Like several other provisions in the Charter, Article 13 is thus progressive in that it binds the states accepting it to set up an effective system of assistance, but also to ensure that such assistance gradually becomes unnecessary, until it completely disappears - the ultimate aim.

The Committee had to deal with a delicate problem of interpretation in connection with this paragraph. The field of application of Paragraph 3 of Article 13 appeared at one stage in the elaboration of the Charter to overlap with that of Article 14. At first sight, the two provisions might seem to duplicate each other, since the measures referred to in Paragraph 3 of Article 13 generally come within the sphere of the social welfare services which are the subject of Article 14. This possibility is not to be ruled out a priori, in fact, since the Contracting Parties only have to accept a certain proportion of the Charter provisions. The Committee took the view, in the case in point, in the light of the “travaux préparatoires”, the wording of Paragraph 3 of Article 13 and its context, that this provision concerned only advisory services for persons without or liable to be without adequate resources, Article 14 being concerned with social welfare services in general.

The Committee felt that the obligation stated in Paragraph 3 of Article 13 was much more precise and more restricted than that in Article 14.

The gist of the matter is that, although both texts are concerned with the way in which social services are organised, Article 14 is a general provision while Paragraph 3 of Article 13 is special. The Committee came to the conclusion that the manner in which the Contracting Parties implemented the two provisions needed to be assessed separately. On the basis of this assessment, a Contracting Party could be deemed to be complying with the requirements of Article 14, even if its social services did not meet all the requirements of Article 13, Paragraph 3. Again, the fact of complying with Paragraph 3 of Article 13 did not necessarily mean that the requirements of Article 14 were being fulfilled.
These are the main features of the concept of assistance as set out in the first three paragraphs of Article 13. The fourth paragraph is not an autonomous provision, in so far as it merely indicates which persons are to receive protection under the previous three paragraphs. The Contracting Parties are bound, by this paragraph, to guarantee that nationals and aliens receive equal treatment when it comes to social and medical assistance, in accordance with the obligations incumbent upon them under the European Convention on Social and Medical Assistance, signed in Paris on 11 December 1953."

851. **Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13:** "The Committee noted that current trends in most of Europe’s social security systems show a tendency towards the expansion both of the categories of persons protected and the range of benefits paid and, in several cases towards the creation of benefits unconnected with the completion of periods of contribution. It has also observed that in several countries the system of social protection did not include or no longer included any distinction between social security and social assistance benefits.

Although the dichotomy between social security and social assistance is highly controversial, it appears in the Charter, which approaches the two areas in two separate Articles (Article 12 and Article 13) carrying different undertakings. The Committee must therefore take this division into account. The wording of the Charter itself contains no specific indications as to the scope of each of these two concepts. Whilst taking into consideration the views of the state concerned as to whether a particular benefit should be seen as social assistance or as social security, the Committee pays most attention to the purpose of and the conditions attached to the benefit in question.

It thus considers as social assistance, benefits for which individual need is the main criterion for eligibility, without any requirement of affiliation to a social security scheme aimed to cover a particular risk, or any requirement of professional activity or payment of contributions. Moreover, as Article 13 para. 1 demonstrates, assistance is given when no social security benefit ensures that the person concerned has sufficient resources or the means to meet the cost of treatment necessary in his or her state of health.

Social security, which includes universal schemes as well as professional ones, is seen by the Committee in its application of Article 12 of the Charter as including contributory, non-contributory and combined allowances related to certain risks (sickness, disablement, maternity, family, unemployment, old age, death, widowhood, vocational accidents and illnesses). These are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself.

When the Committee does not feel that it possesses sufficient data on some benefits, it asks the Contracting Party concerned to provide additional information in order for it to be in a position to assess whether the benefits in question should be examined in connection with social security or with social assistance.

The Committee is aware of the fact that the distinguishing criteria retained are imperfect and that border-line cases exist (which are tending to multiply) so that the division no longer corresponds entirely to the current situation as regards the European systems of social protection characterised by their complexity and their varying structures, the result of successive reforms and which often put social security and social assistance together. However, it observes that this distinction has been maintained in the revised Social Charter and was not questioned by the member states of the Council of Europe during discussion on this new instrument."
Article 13§1provides for the right to benefits, for which individual need is the main criterion for eligibility and which are payable to any person on the sole ground that he or she is in need (Conclusions 2013, Bosnia and Herzegovina).

The Committee recalls that under Article 13§1 adequate benefits must be payable to “any person” who is without adequate resources and in need. The text of Article 13§1 clearly establishes that this right to social assistance takes the form of an individual right of access to social assistance in circumstances where a basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person.”

The Committee felt it should draw the attention of the Spanish Government to the obligation under Article 13 paragraph 1 to ensure that “any person who is without resources” receives adequate assistance, and to its own case law (Conclusions IV (1975)) asking that the whole of the population be protected by the social assistance system. In the circumstances, the Committee could not but express concern over the possible situation of certain deprived persons, especially unemployed people no longer entitled to benefits, who do not have an adequate income guarantee in accordance with Article 13 paragraph 1 of the Charter. It also pointed out that according to its case law, social assistance should be granted “as of right” and not depend solely on a decision at the administration’s discretion. Such right should furthermore be supported by a right to appeal to an independent body.”

The Committee considers that in the light of the development of its case law with respect to this right and of the importance it attaches to the progress achieved in the field of social assistance, the exact scope of the Contracting Parties’ undertakings in this relation must be clarified. It also hopes that the next reports under Article 13 para. 1 will provide updated information on several points.

Social assistance

The Committee noted in its first Conclusions (Conclusions I (1969)) that the Charter required that social assistance be granted to persons in need as of “individual” right. This requirement implies that the right to assistance is to be supported by a right of appeal to an independent body:

- where this is not a legal body and in order to assess its independence, the Committee asks in particular that the report state how its members are appointed, the length of their term of office and what statutory factors ensure the required independence. Should the body not be an independent one, the Committee asks whether its decisions could be subject to subsequent review by a court;

- the Committee considers that the adequacy of such an appeal is subject to the following considerations: firstly, the appeal should be judged on the merits of the case; secondly the competent authorities cannot be allowed total discretion in assessing persons’ state of want, their need for assistance, or even the level of that assistance and therefore that the body rule on the basis of objectively determined criteria and lastly that the applicants may benefit from legal assistance despite their lack of resources.

The Committee needs regular information on the general organisation of social assistance in each Contracting Party: the relevant legislation, the various forms of assistance and the categories of persons covered, as well as the competent authorities.
As far as the form of assistance is concerned, the Committee has noted a development in national situations and that an income guarantee has been established in most Contracting Parties although its form varies. Whatever the nature of this assistance, with benefits provided in cash and/or in kind, the assistance must be provided as long as the need persists in order to help the person concerned to continue to lead a decent life.

When social assistance is granted in cash, adequate information should be provided on the level of financial assistance (basic and maximum amounts, percentage of the statutory minimum wage, readjustment, etc.). In order to assess the effectiveness of the assistance, the Committee reserves the right to determine whether the level is manifestly inadequate in comparison with the cost of living and/or a minimum level of subsistence fixed on a national level and account taken of eligibility for other forms of assistance (such as housing, transport or clothing).

Reports must further provide information on the conditions governing entitlement to assistance, for the Committee to establish whether the entire population is potentially covered by some system of assistance. For example, age, health or length of residence conditions may exclude a particular group of the population from assistance, thus failing to comply with the requirements of Article 13 para. 1.

The Committee must also be supplied with information on the objective criteria that are applied and the factors taken into account in assessing need and on the procedure for determining whether a person is without adequate resources and, in particular, the methods used to investigate needs and resources.

The Committee also asks the Contracting Parties to supply regular information on the amount of funds devoted to social assistance and the percentage of the social welfare expenses they represent.

Finally the Committee asks to know how many persons are permanently in receipt of social assistance during each reference period. The Committee considers it important that Contracting Parties undertake, in pursuance of the aims of Article 13 para. 3, to remove or alleviate as far as possible want once it has arisen, and equally to prevent want from arising. In the wording of the Charter, social assistance is temporary in nature, even though the parallel rises in long-term unemployment and poverty have demonstrated the need for more “constant” assistance.

b. Medical assistance

The Committee’s supervisory activities in this field focus, mutatis mutandis, on the same aspects as in respect of social assistance, especially as far as national systems without free health care are concerned.

The right to medical assistance should also be regarded as a “personal” right in so far as a refusal either to grant to persons in need financial assistance for the purpose of obtaining medical care or to provide them with such care free of charge should be subject to an appeal to an independent body. The Committee nevertheless considers that it is not within its competence to define the nature of the care required, or the place where it is given.

Adequate information must be supplied on the types of medical assistance as well as the conditions governing it and its scope. In this respect the Committee ensures that people in need are entitled, depending on the system of each Contracting Party, either to financial assistance allowing them to meet the costs of treatment necessitated by their condition or to free health care.

Reports are required to indicate, especially for states in which health care is not given free of charge, how many persons receive medical assistance in each reference period and to provide information on the amount of funds devoted to medical assistance and the percentage of the social welfare expenses they represent.
B — Exercise of political and social rights by persons receiving social and medical assistance (Article 13 para. 2)

The Committee stated in its first Conclusions that this provision obliges “those states accepting it to eradicate from their legislation any remnants of social and political discrimination against persons receiving assistance” and that the compilers of the Charter wished to ensure that “persons receiving assistance were not to be regarded as second-class citizens, merely because they were unable to support themselves”.

This requirement implies that Contracting Parties must eradicate any discrimination against persons receiving assistance which might result from an express provision, such as a legislative text. During this cycle, the Committee had occasion to remind Denmark of this objective. It noted that Article 29, paragraph 1, of the 1953 Constitution on voting rights stated that “it shall be laid down by Statute to what extent [...] public assistance amounting to poor relief within the meaning of the law shall entail disenfranchisement”. It asked how this provision had been applied. In addition, the Committee noted that the ban on discrimination with respect to persons receiving assistance was expressly guaranteed.

The Committee has taken note that the legislation of some Contracting Parties contains a compulsory residence requirement for entitlement to social services in general or to benefit from social and medical assistance in particular. It has expressed its concern over this situation in so far as it could have a greater effect on persons actually or potentially dependent on assistance, who might not necessarily have sufficient resources to establish a place of residence. The Committee therefore asks the Contracting Parties to provide information in their next reports on this point and on any planned steps to improve this situation. In this respect the Committee noted with interest the changes in Belgium brought about by the Act of 12 January 1993 containing a programme for greater social solidarity, to be implemented through Public Social Assistance Centres (PSACs). The PSACs are henceforth to grant social assistance and the minimum subsistence income to homeless persons staying within the municipal territory without being entered on the population registers.

More generally, the Committee pays attention to any measure taken in order to ensure that persons receiving social and medical assistance are able to exercise their political and social rights. In this cycle it has therefore asked for updated information on this point.

C — Advice and help in case of want (Article 13§3)

Contracting Parties which have accepted Article 13§3 are required to provide that everyone may receive, through the appropriate services, all advice and personal help that may be required to prevent, remove or alleviate personal or family want. It completes Article 13§1 as it makes compulsory the provision of social welfare services in favour of persons in need, giving them information and help in order to enable them to exercise effectively their right to social and medical assistance.

This provision concerns only social services providing advice or help to persons without or liable to be without adequate resources. Accordingly Article 13§3 is a special provision which is more precise than Article 14§1, which is concerned with social welfare services in general. The Committee considers it important to stress this distinction so that the governmental reports under Article 13§3 provide information concerning, in particular, social welfare services for persons without, or liable to be without, adequate resources.

The Charter does not require these services to be specific and separate from the social welfare services of Article 14. Specific care is to be given, however, to persons without, or liable to be without adequate resources.
In order to be able to assess compliance of national situations with Article 13§3, the Committee needs regularly updated information on the following:
- the main social welfare services as provided for under this provision, the way these services operate and are organised, including their geographical distribution;
- the number, qualifications and duties of the staff employed, including voluntary staff;
- funding provided for those services.

Services must be adequate in view of the needs. In this respect, having noted the significant increase in the number of social and medical assistance recipients in several Contracting Parties, the Committee asks that the next reports provide information on the one hand on the adequacy of the number of social workers employed in providing personal advice and help for persons without, or liable to be without adequate resources and on the other hand on the increasing needs in this area.

The effectiveness of the social welfare services provided for in Article 13§3 also depends on their accessibility to users. In order to determine whether these services are accessible enough, the Committee needs information on their geographical distribution and on information given to users on the social and medical assistance services available.

The Committee considers the effective implementation of Article 13§3 to be an important condition for ensuring the right of every person to social and medical assistance.

**D — Situation of nationals of other Contracting Parties with regard to assistance (Article 13§4)**

**a. Personal scope of Article 13**

The Committee considers that Article 13 para. 4 extends the scope of the first three paragraphs and covers not only foreigners who are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, but also those who are simply staying in the territory of another Contracting Party without residing (including refugees within the meaning of the Geneva Convention of 28 July 1951). To date therefore, the situation of all nationals of other Contracting Parties in relation to social and medical assistance has been examined by the Committee under Article 13§4, and the situation of nationals under paragraphs 1 to 3 of Article 13.

The Committee is however anxious to stress that the wording of the appendix to the Charter — “without prejudice to ... Article 13§4 ...” — does not refer to Article 13 in its entirety but only to paragraph 4, thus implying firstly, that paragraphs 1 to 3 are applicable in accordance with the appendix, meaning that the Contracting Parties must grant equal treatment to nationals of other Contracting Parties lawfully resident or working regularly in their territory, and secondly, that Article 13§4, through the exception in the appendix and according to the wording of paragraph 4 itself, applies also to the nationals of the other Contracting Parties who are lawfully present in the territory of a Contracting Party without legally residing there.

In order to take those elements in account, the Committee has decided henceforth to deal with the situation of nationals of other Contracting Parties lawfully resident or working regularly in their territory under paragraphs 1, 2 and 3 of Article 13 and with the situation of nationals of the other Contracting Parties lawfully present in the territory of a Contracting Party without residing there under Article 13§4. This method affects the definition by the Committee of the material scope of the provisions of Article 13 as regards nationals of other Contracting Parties.

**b. Material scope of Article 13 as regards nationals of other Contracting Parties**

1. **Article 13 para. 1**

The Committee considers that according to the terms of the appendix, this provision requires that nationals of Contracting Parties working regularly or residing legally in the territory of another Contracting Party must be entitled to social and medical assistance as of right on an equal basis with nationals in accordance with Article 13 para. 1 (see above A). This implies that no length of
residence requirement may be demanded and that repatriation on the sole ground that those nationals are asking for social or medical assistance is excluded as long as their regular work or lawful residence on the territory of the Contracting Party concerned lasts.

2. **Article 13 para. 2**

Nationals of Contracting Parties working regularly or residing legally in the territory of another Contracting Party must not, in accordance with Article 13 para. 2 (see above B), suffer any diminution of their political or social rights on the sole ground that they are receiving assistance. The assessment of a possible discrimination on this basis must of course be made in the light of the political rights these foreigners may claim under domestic law, it being understood that foreigners with a certain length of residence may enjoy more extensive rights.

3. **Article 13 para. 3**

Nationals of Contracting Parties working regularly or residing legally within the territory of another Contracting Party must have access to advice and personal help offered by social services on the same conditions as nationals in accordance with Article 13 para. 3 (see above C).

4. **Article 13 para. 4**

With regard to the scope of assistance which has to be granted to those lawfully present in the territory of a Contracting Party without regularly working or lawfully residing, the Committee stresses that as their stay is essentially temporary, the most appropriate form of assistance would be emergency aid to enable them to cope with an immediate state of need (accommodation, food, emergency care and clothing). In this way the grant of a guaranteed minimum income to someone who is only temporarily staying in the territory of a Contracting Party cannot be regarded as assistance under Article 13 para. 4.

The Committee considers in addition that the appendices I and II to the European Convention on Social and Medical Assistance of 1953 (Appendix I, containing the legislation on assistance applicable in each Contracting Party; Appendix II, containing the reservations formulated by the Contracting Parties) should be taken into account in an assessment of the compliance of national situations with the commitments entered into under this provision, as the wording of paragraph 4 itself provides.

Furthermore, the Committee recalls that appropriate assistance granted to someone staying in the territory of a Contracting Party is to be provided until the repatriation, if applicable, of the person concerned, which may be permitted but strictly in accordance with the limitations and conditions stipulated by the 1953 Convention. In this respect the Committee stresses that Article 13 para. 4 refers to the convention principally for the purpose of determining the Contracting Parties’ substantive obligations with regard to repatriation. The 1953 Convention prohibits repatriation solely on grounds of need for assistance, except within the limitations and conditions laid down by this instrument, which may be regarded as specific to the Convention in comparison with the commitments entered into under the Charter. Therefore the Committee recalls regularly that according to the wording of the Convention, Contracting Parties may have recourse to repatriation only with great moderation and asks in particular during this cycle whether any recourse is had to repatriation of nationals of Contracting Parties lawfully in the territory of another Contracting Party without residing there on the sole ground that they need assistance and, if so, whether and on which basis the conditions prescribed by Articles 6 to 10 of the 1953 Convention are observed.”

856. **Conclusions XV-1 (2000), France**: “The Committee considers that insufficient provision is made for social assistance to those under the age of twenty-five years. While it accepts the concern of the French authorities to avoid benefit dependency in early adulthood is not without foundation, it appears to the Committee that the age group in question experiences as at least as much deprivation as the rest of the adult population without being able to claim subsistence benefits.”
857. **Conclusions 2009, France**: “The Committee has always held that in the absence of subsistence aid, the existence of other forms of supplementary or conditional assistance for young people would be insufficient to comply with the Charter.”

858. **Conclusions XIX-2 (2009), Luxembourg**: “Third, under Section 3§1 b of the 2004 Act, persons who had been dismissed for serious misconduct are not entitled to the RMG. The Committee asked what means of subsistence such persons were entitled to. In the meantime, it held that the link made between dismissal for serious misconduct and the right to social assistance was contrary to the Charter. As no changes occurred during the reference period, the Committee reiterates this ground of non-conformity.”

859. **Conclusions XVI-1 (2002), Spain**: “The Committee would stress that both the lack of harmonised rules on entitlement to social assistance and the mere existence of length of residence requirements constitute violations of the Charter.”

860. **Conclusions XVIII-1 (2006), Czech Republic**: “The Committee notes that under Article 13§1 of the Charter, any person lawfully residing in the territory of another state party to the Charter or the Charter must be entitled to social assistance, including benefits offering a minimum income. The definition of “residence” is left to national legislation and a length of residence condition may be applied so long as it is not manifestly excessive (see mutatis mutandis Conclusions XVII-2 (2005), Poland, Article 14§1). In this case, the Committee notes that under the aforementioned rules, foreign nationals’ eligibility for social assistance is subject to ten years’ continuous presence in the country. It considers that this period is manifestly excessive and that the situation is not in compliance with Article 13§1.”

861. **Conclusions 2013, Bosnia and Herzegovina**: “The Committee asks the next report to clarify whether a length of residence requirement applies respectively in FBiH, RS and BD to be eligible to social and medical assistance and, if this is the case, whether such requirement applies both to nationals of Bosnia and Herzegovina when moving from a territorial entity to another and to foreign nationals of States Parties lawfully resident in the country. It recalls in this respect that eligibility to rights under Article 13§1 cannot be subject to a length of residence requirement either at national or regional level (see, inter alia, Conclusions XVI-1 and XVII-1 Spain, Article 13§1).”

862. **Conclusions 2013, Bulgaria**: “In response to the Committee’s question as to what forms of assistance apply to a person without resources, registered with the employment service, before being entitled to file a claim for social assistance, the report indicates that the period of compulsory registration with the employment office has been reduced from 9 to 6 months. As there is nothing to indicate that assistance is available to a person with resources within the first six months after registration with the employment service, the Committee holds that the impossibility to get social assistance before the expiry of a six-months period after registering with the employment office is not in conformity with Article 13§1.”

863. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 13**: op. cit.

864. **Conclusions XIV-1 (1998), Portugal**: “In the absence of information on the cost of living in Portugal, the Committee is unable to determine with certainty whether the minimum income benefit and the other allowances which exist are sufficient to meet basic needs in an adequate manner, as required by this provision of the Charter.”

865. **Finnish Society for Social Rights v. Finland, Complaint No 88/2013, decision on the merits of 9 September 2014, §111**: op cit
866. **Conclusions XIV-1 (1998), Statement of Interpretation on Article 13:**

"[Article 13] Paragraphs 1 to 3
The Committee observes that the term “social assistance”, as used in Article 13§1, should not be limited to the payment of a subsistence allowance. As it has already pointed out in the general introduction to Conclusions XIII-4 (1996), the ultimate aim in any system of social assistance must be to work towards a situation where assistance is no longer required. In other words, the system of social assistance must embrace an integrated strategy of alleviation of poverty and empowerment of individuals to regain their place as full members of society, through the means most appropriate to their personal circumstances, wishes and ability, and customary in the society where they live. In most cases, employment opportunities, together with vocational training or re-training, constitute the core element in any such strategy.

Article 13§3 expressly obliges Contracting Parties to ensure that adequate services are available to the public to offer advice and help to persons experiencing or threatened with deprivation. It is an essential complement to the obligation laid down under Article 13§1. Thus, compliance with both provisions is contingent on the existence and effective operation of a social assistance system in each state which is based on the integrated approach outlined above.

In many cases, an individual must comply with certain conditions (such as to be available for work, to undergo vocational training, etc.) in order to receive assistance payments. The Committee observes that in so far as such conditions are reasonable and fully consistent with the objective of providing a long-lasting solution to the problems of deprivation experienced by the individual, they are not inconsistent with the Charter. However, the right of appeal which attaches to entitlement to benefits must also apply to such conditions. […]"

867. **Conclusions 2006, Estonia:** “The Committee recalls that making eligibility for a guaranteed income conditional on the acceptance of “suitable” employment or participation in training does not, in itself, raise problems of compliance with Article 13§1. However, such conditions must be reasonable and consistent with the objective of finding a long-term solution to the individual’s problems (General introduction to Conclusions XIV-1 (1998)). Moreover, there must be a right of appeal against refusals to grant assistance (Conclusions XIV-1 (1998), France, Article 13§1) and those concerned must not in any circumstances be left without means of subsistence.”

868. **Conclusions 2009, Estonia:** “The Committee considers that as long as the benefit in question is only withdrawn leaving emergency assistance in place, such a situation does not amount to a breach of the Charter.”

869. **Conclusions XIII-2 (1994), Greece:** “The Committee took note of the reply according to which family solidarity in Greece was a moral value not legally defined. The Committee wished to know if there was any other legal obligation applicable to this situation other than that of maintenance obligations for children, as for example, a similar obligation towards the parents and other relatives.”

870. **Conclusions 2009, France:** “Family solidarity cannot be regarded as a sufficiently determinate ‘other source’ of income for a person without resources, where it takes the form of ‘a moral value not legally defined’. Family solidarity in such circumstances does not provide persons in need with a clear and precise basis of social support and in addition many families may not be in a position to supply the necessary minimum level of assistance.”

871. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§1:** op. cit.

872. **Conclusions 2006, Moldova:** “According to the report, there is no general system of social assistance for all persons who lack adequate resources. Establishing a system for allocating resources to individuals and families in real need is one of the objectives of the 2004-2006 economic growth and poverty reduction strategy. The Committee asks to be informed of progress in this respect."
Cash social assistance benefits are currently granted to certain categories of the population, either because they are considered to be particularly vulnerable, such as invalids, large families and elderly persons, or as a reward for services rendered to the nation (persons who served in the Second World War, helped to clear up the after-effects of the Chernobyl disaster or were actively involved in the siege of Leningrad). Such benefits are not means tested. [...] The Committee concludes that the situation in Moldova is not in conformity with Article 13§1 of the Charter on the ground that there is no system offering appropriate social assistance to all persons in need.

873. Conclusions 2013, Italy: “The Committee recalls that the domestic legal system cannot exempt a State Party from the international obligations it entered into on ratifying the Charter: even if under domestic law local or regional authorities are responsible for exercising a particular function, States Party to the Charter are still responsible, under their international obligations, to ensure that their responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the state (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29). Accordingly, where social welfare services are decentralised, the Committee assesses the compliance with the Charter taking into account the effective application also by the local bodies. In this respect, although the Charter does not require the same level of protection across the country, it requires a reasonable uniformity of treatment. The Committee considers indeed that, based on their strategic choices and priorities, the local entities (regions, provinces and/or municipalities) must nevertheless comply with Article 13 of the Charter (see, mutatis mutandis, The Central Association of Carers in Finland c. Finland, Complaint No. 70/2011, §§58-59). The Committee accordingly requests the next report to provide information on how, in theory and in practice, each responsible local entity ensures that benefits are effectively provided to any person in need and that their level is not manifestly below the poverty threshold. Meanwhile, it holds that not all persons in need are entitled to social assistance in Italy.”

874. Conclusions 2009, Armenia: “Given that Armenia has not accepted Article 23 of the Revised Charter (the right of elderly persons to social protection), the Committee assesses the level of non-contributory pension paid to a single elderly person without resources under this provision.”


876. European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 46/2007, Decision on the merits of 3 December 2008, §44: “44. The Committee also takes note of Decree No. 17 of 31 January 2007, which establishes a mechanism for the payment of the costs of hospital treatment for persons without resources (see §17). It finds that such a decree is a step towards improving the health of poor or socially vulnerable persons, but that it also has a number of shortcomings: firstly, as the decree only covers a 1-year period, it does not provide a long-term solution to the problem. Moreover, the scope of the decree is limited to covering expenses for hospital treatment, but does not include primary or specialised outpatient medical care, which a person without resources might require. Therefore, bearing in mind that Article 13§1 of the Revised Charter provides that persons without adequate resources, in the event of sickness, should be granted financial assistance for the purpose of obtaining medical care or provided with such care free of charge, the Committee considers that the measures adopted by the Government do not sufficiently ensure health care for poor or socially vulnerable persons who become sick, thus amounting to a breach of this provision.”


878. Conclusions 2009, Armenia: The Committee recalls that under Article 13§1 persons without adequate resources should be granted medical assistance in the event of sickness, appropriate to their condition. This right to medical assistance should not be confined to emergency situations.
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880. **Conclusions XIII-4 (1996), Greece**: “Under Article 6 of Legislative Decree No. 57 of 1973, Greek nationals who satisfied the basic requirements laid down in Article 1 of that decree were entitled to free medical and pharmaceutical assistance and to be admitted to hospital free of charge. In reply to a question from the Committee, the report stated that medical assistance was guaranteed to all irrespective of the seriousness of their case, but that priority was given to people in urgent need of assistance. The Committee considered that, where Greek nationals were concerned, the Charter’s requirements were respected.”

881. **Conclusions XIX-2 (2009), Latvia**: “The Committee notes that the Eurostat figure has been a reference point in the Committee’s interpretation of Article 13§1 as the decency threshold for all states - i.e. the level of income which can make it possible for a single person to live a decent life and to cover the basic needs. Therefore this reference point is applied in all situations and for all countries and is a point of departure for the Committee’s assessment.”

882. **Finnish Society for Social Rights v. Finland, Complaint No 88/2013, decision on the merits of 9 September 2014, §112**: 112. Social assistance must be adequate, i.e. it must enable its recipients to live a decent life and to cover their basic needs. When assessing the level of assistance, the Committee has regard to basic benefits, any additional benefits and a threshold in the country, which it has set at 50% of the median equivalised disposable income as calculated on the basis on the Eurostat at-risk-of-poverty threshold (e.g. Conclusions XIX-2, Latvia, Article 13§1). The Committee refers to the definition of this indicator given above (§§62-63).”

883. **Conclusions 2009, Armenia**: “Poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: in the absence of this indicator, the Committee takes the national poverty threshold into account, i.e. the monetary cost of the household basket containing the minimum quantity of food and non-food items which is necessary for the individual to maintain a decent living standard and be in good health.”

884. **Conclusions 2004, Lithuania**: “The amount of the benefit is calculated as 90% of the difference between the amount of the state-supported income and the actual average monthly income of the family. From Eurostat information the Committee observes that 50% of median equivalised income corresponded to about €78 per month in 2001 and it considers that social assistance which does not even attain the level of the state supported income (€39) and notwithstanding the existence of certain supplementary benefits (see infra) is inadequate and not in conformity with Article 13§1 of the Charter.”

885. **Finnish Society for Social Rights v. Finland, Complaint No 88/2012, decision on the merits of 9 September 2014, §113**: 113: The Committee considers that assistance is adequate where the monthly amount of assistance benefits –basic and/or additional –paid to a person living alone is not manifestly below the poverty threshold in the above sense (e.g. Conclusions 2004, Lithuania, Article 13§1).”

886. **European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 48/2008, Decision on the merits of 18 February 2009, §39**: “39. States may establish a link between access to this right and a willingness to seek employment or to receive vocational training. The Committee recalls in this respect its statement of interpretation on Article 13§1 in Conclusions XIV-1 (1998) that linking social assistance with willingness to look for work or undergo vocational training is in conformity with the Charter, provided that these conditions are reasonable and in keeping with the aim pursued, namely to find a lasting solution to the person’s problems in accessing the labour market. However, access cannot be made subject to time-limits, if the persons affected continue to meet the basic condition for
eligibility established by Article 13§1. Reducing or suspending social assistance benefits may only be in conformity with the Charter if they do not deprive persons in need of their means of subsistence.”

887. Conclusions XVIII-1 (2006), Spain: “The Committee refers to its case-law on the subject, namely that individual need is the only permissible condition for entitlement to social assistance and that the only ground for refusing, suspending or reducing such assistance is that adequate resources are available. Social assistance must therefore be granted for as long as the need persists.”

888. Conclusions I (1969), Statement of Interpretation on Article 13§1: op. cit.

889. Conclusions XV-1 (2000), Spain: “The fact that certain forms of social assistance are conditional on budgetary resources is not compatible with the Charter. Lastly, the setting of a minimum age limit of twenty-five years for the receipt of social assistance in most autonomous communities is not in conformity with Article 13 para.1 of the Charter.”


892. Conclusions XIX-2 (2009), Greece: “The Committee considers that in the absence of a precise legal threshold below which a person is considered in need or of a common core of criteria underlying the granting of benefits, a one-off allowance cannot be deemed to be a sufficient income guarantee for persons without resources. The Committee holds that the right to social assistance is not guaranteed as a statutory right. It reiterates its previous conclusion on this ground.”


894. Conclusions XVIII-1 (2006), Iceland: “The Committee notes that within the meaning of Article 13§1, “the appeal should be judged on the merits of the case” (General Introduction to Conclusions XIII-4 (1996)) and not merely on points of law. It considers that the possibility in Iceland of appealing to the courts against the decisions of the Appeals Committee is not sufficient because the courts normally only carry out a review of legality. The Committee therefore asked in its previous conclusion for information about safeguards to ensure the independence of members of the Social Services Appeals Committee other than those related to the length of their term of office and method of appointment. Having found no information in the report, the Committee repeats its question. It wishes to receive information that would enable it to determine whether the Social Services Appeals Committee is independent both from the executive and from the parties. It accordingly wishes to know what safeguards are in place to protect its members against outside pressure (rules on removal from office, revocation, instructions, requisite qualifications for members appointed by the Ministry of Social Affairs, etc.).”

895. Conclusions XVIII-I (2006), Hungary: “The Committee recalls that for the situation to comply with Article 13§1, applicants for social assistance must have a right of appeal against unfavourable decisions by the authorities. The appeal body must be independent […]”


899. Conclusions XVI-1 (2002), Ireland: “In the light of these explanations, the Committee considers that there is no guarantee of an effective right of appeal against unfavourable Regional Health Board decisions, in the absence of any real legal aid scheme. It considers that this situation is contrary to this provision of the Charter and should be rectified.”

901. **Conclusions VII (1981), Statement of Interpretation on Article 13§4**: “In response to one government’s observations regarding the category of persons covered by Article 13§4 and regarding the relevance of the principle of reciprocity to certain provisions of the Charter, the committee felt it necessary to state more completely its interpretation of the scope of this paragraph.

1. The committee noted first that the Charter was designed to be complementary to the European Convention on Human Rights (cf. Preamble). While the Convention covers all persons within the jurisdiction of a Contracting Party, the field of application of the Charter is limited to the nationals of the Contracting Parties: no other restriction is provided by the Charter. Neither instrument has any provisions for reciprocity, either general or specific.”

902. **Conclusions 2013, Serbia**: “The Committee recalls that foreigners who are nationals of the States Parties lawfully residing in the territory of another State Party and lacking adequate resources, must enjoy an individual right to appropriate assistance on an equal footing with nationals, without the need for reciprocity. It accordingly asks the next report explicitly to indicate what forms of social and medical assistance are available for foreign nationals of States Parties with temporary or permanent resident status in Serbia, as well as to refugees and stateless persons, including people that are de facto stateless because of the lack of documents. It reserves in the meantime its position on this issue.”

903. **Conclusions XVIII-1 (2006), Czech Republic**: “The Committee notes that under Article 13§1 of the Charter, any person lawfully residing in the territory of another state party to the Charter or the Charter must be entitled to social assistance, including benefits offering a minimum income. The definition of “residence” is left to national legislation and a length of residence condition may be applied so long as it is not manifestly excessive (see mutatis mutandis Conclusions XVII-2 (2005), Poland, Article 14§1). In this case, the Committee notes that under the aforementioned rules, foreign nationals’ eligibility for social assistance is subject to ten years’ continuous presence in the country. It considers that this period is manifestly excessive and that the situation is not in compliance with Article 13§1.”

904. **Conclusions XIV-1 (1998), Greece**: “As to the existence of any nationality condition for receiving the pension granted to uninsured persons over the age of sixty-five, the report states that the Ministry of Health issued clear instructions in 1990 that this benefit should be available to nationals of all Contracting Parties to the Charter who fulfilled the other conditions. In relation to assistance under Legislative Decree No. 57/1973, the report confirms that a circular was sent to all relevant authorities extending eligibility to all Contracting Party nationals resident in Greece.”

905. **Conclusions XVIII-1 (2006), Belgium**: “The Committee notes that foreigners who are nationals of States party to the Charter and the Charter which are not covered by community law or which have not concluded reciprocity agreements with Belgium may not receive the GRAPA when they have inadequate resources, particularly because they are not entitled to a retirement or survivor’s pension under the Belgian scheme. The Committee points out that any foreigner who is a national of a State Party to the Charter and Charter and is lawfully resident in Belgium must be treated on the same footing as nationals and receive the GRAPA when they satisfy the other conditions for it to be granted. The Committee therefore considers that the situation is discriminatory and that it is not in conformity with Article 13§1.”

906. **Conclusions XVIII-1 (2006), Germany**: “The Committee considers that the information provided by the Government fails to demonstrate that foreign nationals are granted the assistance referred to in section 30 BSHG on an equal footing with German nationals because it has not established that the authorities do not apply different criteria according to nationality when examining claimants’ personal circumstances. It therefore maintains its conclusion that the situation is not in conformity.”

907. **Conclusions XVIII-1 (2006), Denmark**: “The right to continued assistance, including the right to protection against repatriation on the sole ground of being in need of social assistance, is not
ensured on equal terms to nationals of all Contracting Parties. [...] The right to assistance allowance is conditional on the applicant having resided in the Kingdom of Denmark for a total of seven years within the last eight years. The condition is not applicable to EU or EEA nationals insofar as their entitlement may follow from Community law. Applicants who do not fulfil this condition will if they are in need be entitled to the starting allowance, which is paid at a significantly lower rate (see infra). Although the residence requirement in principle applies equally to Danish nationals and foreign nationals (except, where applicable, EU/EEA nationals), the Committee considers that the requirement in practice restricts access of foreign nationals to assistance to a much larger extent. It therefore amounts to indirect discrimination, which is not in conformity with the Charter."

908. *Médecins du Monde – International v. France, Complaint No. 67/2011, Decision on the merits of 11 September 2012*, §176: “176. As stated above (see §173) the universal sickness coverage (*couverture maladie universelle* - CMU) is not applicable to the migrant Roma having resided in France lawfully or worked there regularly for less than three months. The Committee considers that this constitutes an unjustified difference in treatment with nationals.”


910. Conclusions XIV-1 (1998), Statement of Interpretation on Article 13: “The Committee considers that the link between the two instruments resides in the area of repatriation only, otherwise the reference to the convention in the text of the Charter would be redundant because the social and medical assistance which must be granted to foreigners covered by Article 13 is set down by the Charter itself: in case of want, they are entitled, in the same way as nationals, to adequate social assistance and, in case of illness, to the care necessitated by their condition. As the Committee emphasised in Conclusions XIII-4 (1996), the scope of this obligation varies according to the category of foreigner:

- nationals of Contracting Parties who work regularly or reside lawfully within the territory of another Contracting Party have an individual right to social and medical assistance on the same basis as nationals under Article 13§1;
- as regards those who are lawfully within the territory of a Contracting Party without residing there, the adequate assistance which they may claim should take the form of at least an emergency aid enabling them to deal with an immediate state of need (shelter, food, urgent care and clothing), their presence being essentially temporary.

The scope of the reference to the 1953 Convention is, therefore, as follows: if a Contracting Party to the Charter repatriates nationals of other Contracting Parties who are lawfully within its territory without residing there on the ground that they are in need of assistance, it must respect the provisions of the 1953 Convention on repatriation which can be applied to them, i.e. Articles 7b and c, 8, 9 and 10. As the Committee has stated in the general introduction to Conclusions XIII-4 (1996), nationals of other Contracting Parties who work regularly or reside legally within the territory of another Contracting Party cannot be repatriated on the sole ground that they are in need of assistance. As long as their legal residence or regular work continues, they enjoy equal treatment laid down in the Appendix. Where such persons are migrant workers, they are also protected by Article 19 para. 8, which would not permit expulsion on the ground of needing assistance.”

911. Conclusions XIV-1 (1998), Norway: “On the question of the assistance entitlements of non-nationals, the report states that foreigners who apply to enter Norway for the purpose of family reunion may, in some cases, be permitted to do so only where their family will support them financially. Such persons may not claim social assistance, and, if their family ceases to support them, their residence permit may be withdrawn. The Committee stresses that by virtue of the Appendix to the Charter, nationals of the other Contracting Parties who are lawfully resident or working regularly in Norway must be entitled to social and medical assistance on the same basis as nationals. The withdrawal of a residence permit in the circumstances described in the report
would amount to repatriation on the sole ground that the person concerned is in need of assistance."

**Article 13§2**

912. *International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 8 September 2004, §32:* "32. The Committee holds that legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter."

913. *Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §§66, 73-75:*

66. When human dignity is at stake, the restriction of the personal scope should not be read in such a way as to deprive migrants in an irregular situation of the protection of their most basic rights enshrined in the Charter, nor to impair their fundamental rights, such as the right to life or to physical integrity or human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §28).

73. With regard to Article 13§4 in particular, the Committee recalls that emergency social assistance should be provided under the said provision to all foreign nationals without exception (Conclusions 2003, Portugal). Also migrants having exceeded their permitted period of residence within the jurisdiction of the State Party in question have a right to emergency social assistance (Conclusions 2009, Italy). The beneficiaries of the right to emergency social assistance thus include also foreign nationals who are present in a particular country in an irregular manner (Conclusions 2013, Malta).

74. The Committee observes in this connection that the complaint concerns the provision of the food, water, shelter and clothing to adult migrants in an irregular situation. It considers the issues at hand to be closely linked to the realisation of the most fundamental rights of these persons, as well as to their human dignity.

75. Pursuant to the above, Article 13§4 applies to migrants in an irregular situation.

914. *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Cpmplaint No. 86/2012, decision on the merits of 2 July 2014, §141*

141. With regard to Article 13§4, the Committee recalls that emergency social assistance should be provided under the said provision to all foreign nationals without exception (Conclusions 2003, Portugal). Also migrants having exceeded their permitted period of residence within the jurisdiction of the state party in question have a right to emergency social assistance (Conclusions 2009, Italy).

915. *Conclusions 2013, Statement of Interpretation on Article 13§1 and 13§4* "In view of clarifying the specific scope of Article 13§4 in terms of persons protected, the Committee recalls that the general rule concerning the personal scope of the Charter – according to which persons covered by the provisions of the Charter "include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned" – has to be interpreted and applied, according to paragraph 1 of the Appendix to the Charter, "without prejudice to Art. 13, paragraph 4". Under this paragraph of Article 13, States Parties undertake to apply the provisions referred to in paragraphs 1, 2 and 3 of Article 13 "on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953". The Committee recalls that, according to Article 1 of the 1953 European Convention, each of the Contracting Parties undertakes "to ensure that nationals of the other Contracting Parties who are lawfully present in any part of its territory to which this Convention
applies, and who are without sufficient resources, shall be entitled equally with its own nationals and on the same conditions to social and medical assistance [...] provided by the legislation in force from time to time in that part of its territory”.

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

Therefore, the Committee considers that States having accepted not only Article 13§1 but also Article 13§4 are under an obligation to provide adequate medical and social assistance to persons in need (as provided for by the provisions of paragraphs 1 to 3 of Article 13) on an equal footing with their own nationals to nationals of other Parties who lawfully resident or working regularly within their territory, or otherwise lawfully present within their territories. With respect to the latter category of persons, i.e. nationals of other States Parties not lawfully resident nor working regularly but otherwise lawfully present within the territory of the State, any restrictions or limitations that States may impose on the enjoyment of this right should accord with the requirements of the European Convention on Social and Medical Assistance and the provisions of Article 31 (original Charter)/ Article G (revised Charter).

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

For this reason, the Committee considers that by virtue of the provisions of Article 13§1 of the Charter, which state that any person who is without adequate resources be granted adequate assistance and, in case of sickness, the care necessitated by his condition, States Parties are under an obligation to provide foreign migrants who are in an irregular situation of stay in the territory of the State with urgent medical assistance and such basic social assistance as is necessary to cope with an immediate state of need (accommodation, food, emergency care and clothing). As a result, it will consider issues in respect of this obligation within the framework of Article 13§1 of the Charter, rather than under Article 13§4 as was previously its practice. This statement of interpretation will be applied when examining the next reports on Article 13 in 2017,”
916. **Conclusions XVIII-1 (2006), Croatia:** “The Committee would also point out that under Article 13§2, any discrimination against persons receiving assistance which might result directly or indirectly from an express provision must be eliminated (Interpretative statements on Article 13, Conclusions I (1969) and General Introduction to Conclusions XIII-4 (1996)). It asks for the next report to describe the situation in law and in practice.”

917. **Conclusions I (1969), Statement of Interpretation on Article 13§2:** *op.cit.*

(…) Even greater advances seem to have been made when it comes to Paragraph 2 of Article 13, which makes it compulsory for those states accepting it to eradicate from their legislation any remnants of social and political discrimination against persons receiving assistance. The compilers of the Charter were anxious that necessitous persons should not be prevented from exercising their civil and political rights in full or from taking up certain kinds of employment and office. Persons receiving assistance were not to be regarded as second-class citizens, merely because they were unable to support themselves. (…)

918. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§2:** *op.cit.*

“(…) B — Exercise of political and social rights by persons receiving social and medical assistance (Article 13 para. 2)

The Committee stated in its first Conclusions that this provision obliges “those states accepting it to eradicate from their legislation any remnants of social and political discrimination against persons receiving assistance” and that the compilers of the Charter wished to ensure that “persons receiving assistance were not to be regarded as second-class citizens, merely because they were unable to support themselves”.

This requirement implies that Contracting Parties must eradicate any discrimination against persons receiving assistance which might result from an express provision, such as a legislative text. During this cycle, the Committee had occasion to remind Denmark of this objective. It noted that Article 29, paragraph 1, of the 1953 Constitution on voting rights stated that “it shall be laid down by Statute to what extent [...] public assistance amounting to poor relief within the meaning of the law shall entail disenfranchisement”. It asked how this provision had been applied. In addition, the Committee noted that the ban on discrimination with respect to persons receiving assistance was expressly guaranteed.

The Committee has taken note that the legislation of some Contracting Parties contains a compulsory residence requirement for entitlement to social services in general or to benefit from social and medical assistance in particular. It has expressed its concern over this situation in so far as it could have a greater effect on persons actually or potentially dependent on assistance, who might not necessarily have sufficient resources to establish a place of residence. The Committee therefore asks the Contracting Parties to provide information in their next reports on this point and on any planned steps to improve this situation. In this respect the Committee noted with interest the changes in Belgium brought about by the Act of 12 January 1993 containing a programme for greater social solidarity, to be implemented through Public Social Assistance Centres (PSACs). The PSACs are henceforth to grant social assistance and the minimum subsistence income to homeless persons staying within the municipal territory without being entered on the population registers.

More generally, the Committee pays attention to any measure taken in order to ensure that persons receiving social and medical assistance are able to exercise their political and social rights. In this cycle it has therefore asked for updated information on this point. (…) […] In order to take those elements in account, the Committee has decided henceforth to deal with the situation of nationals of other Contracting Parties lawfully resident or working regularly in their territory under paragraphs 1, 2 and 3 of Article 13 and with the situation of nationals of the other Contracting Parties lawfully present in the territory of a Contracting Party without residing there under Article 13§4. This method affects the definition by the Committee of the material scope of the provisions of Article 13 as regards nationals of other Contracting Parties. […]
2. Article 13 para. 2

Nationals of Contracting Parties working regularly or residing legally in the territory of another Contracting Party must not, in accordance with Article 13 para. 2 (see above B), suffer any diminution of their political or social rights on the sole ground that they are receiving assistance. The assessment of a possible discrimination on this basis must of course be made in the light of the political rights these foreigners may claim under domestic law, it being understood that foreigners with a certain length of residence may enjoy more extensive rights.[…]

919. Conclusions 2002, Slovenia: “According to the Slovenian report, receipt of social assistance benefits does not lead to any diminution in political or social rights. It refers to Article 14 of the Constitution, which enshrines the principle of equality before the law. The Committee asks whether these provisions are interpreted in practice in such a way as to prevent the use of material living conditions, social status or any other personal circumstances (for example, state of health) as justification for restriction with regard to civic or social rights.”

920. Conclusions 2006, Bulgaria: “[The Committee] specifies that it would like to know whether the granting of social assistance is subject to holding an identity document and/or a residence document in the municipality paying the benefits. If so, the Committee asks whether measures have been taken to facilitate effective access by undocumented persons or persons of no fixed abode to social assistance benefits under the same conditions as any other Bulgarian citizen.”

921. Conclusions XVIII-1 (2006), Malta: “The Committee has previously noted that the European Convention Act as amended by Act XXI of 2002 ensures that there is no discrimination in the enjoyment of political and social rights in Malta. The Act incorporates the European Convention on Human Rights (ECHR) into domestic law and includes a non-discrimination clause (Article 14). The Committee considers that the incorporation of the European Convention on Human Rights (ECHR) into Maltese law, in particular Article 14 of the ECHR, effectively contributes to the implementation of Article 13§2 as regards rights protected by the ECHR. However the scope of Article 13§2 is wider as it prohibits discrimination both direct and indirect in relation to all civil, political, social and economic rights, including in relation to rights not guaranteed by the ECHR. It therefore seeks confirmation that discrimination on the grounds that a person is in receipt of social assistance is prohibited in relation to all rights.”

922. Conclusions XVI-2 (2003), Hungary: “The Committee asks what are the constitutional, statutory or other provisions guaranteeing the full entitlement to civil and political rights of people receiving social or medical assistance under Article 13§2 of the Charter, independently from their material living conditions, their social status and any other fact relating to their private life (for instance: health conditions). It also asks how these provisions are applied in practice, in particular, whether the persons concerned are granted an effective protection against discriminatory measures particularly with regard to their access to employment and to public services.”

924. **Conclusions 2013, Bosnia and Herzegovina**: “The Committee recalls that Article 13§3 concerns specifically free of charge services offering advice and personal assistance to persons without adequate resources or at risk of becoming so.”

925. **Conclusions I (1969), Statement of Interpretation on Article 13**: “[…] This refusal to exclude from society persons receiving assistance is to be related to the purely provisional nature of such assistance, as reflected in the terms of the Charter. The Contracting Parties must do all they can, in fact, to remove or alleviate want once it has arisen, as they must try to prevent want from arising (Paragraph 3). Like several other provisions in the Charter, Article 13 is thus progressive in that it binds the states accepting it to set up an effective system of assistance, but also to ensure that such assistance gradually becomes unnecessary, until it completely disappears - the ultimate aim.

The Committee had to deal with a delicate problem of interpretation in connection with this paragraph. The field of application of Paragraph 3 of Article 13 appeared at one stage in the elaboration of the Charter to overlap with that of Article 14. At first sight, the two provisions might seem to duplicate each other, since the measures referred to in Paragraph 3 of Article 13 generally come within the sphere of the social welfare services which are the subject of Article 14. This possibility is not to be ruled out a priori, in fact, since the Contracting Parties only have to accept a certain proportion of the Charter provisions. The Committee took the view, in the case in point, in the light of the "travaux préparatoires", the wording of Paragraph 3 of Article 13 and its context, that this provision concerned only advisory services for persons without or liable to be without adequate resources, Article 14 being concerned with social welfare services in general.

The Committee felt that the obligation stated in Paragraph 3 of Article 13 was much more precise and more restricted than that in Article 14. The gist of the matter is that, although both texts are concerned with the way in which social services are organised, Article 14 is a general provision while Paragraph 3 of Article 13 is special. The Committee came to the conclusion that the manner in which the Contracting Parties implemented the two provisions needed to be assessed separately. On the basis of this assessment, a Contracting Party could be deemed to be complying with the requirements of Article 14, even if its social services did not meet all the requirements of Article 13, Paragraph 3. Again, the fact of complying with Paragraph 3 of Article 13 did not necessarily mean that the requirements of Article 14 were being fulfilled. […]”

926. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 13**: “[…] C — Advice and help in case of want (Article 13§3): Contracting Parties which have accepted Article 13§3 are required to provide that everyone may receive, through the appropriate services, all advice and personal help that may be required to prevent, remove or alleviate personal or family want. It completes Article 13§1 as it makes compulsory the provision of social welfare services in favour of persons in need, giving them information and help in order to enable them to exercise effectively their right to social and medical assistance.

This provision concerns only social services providing advice or help to persons without or liable to be without adequate resources. Accordingly Article 13§3 is a special provision which is more precise than Article 14§1, which is concerned with social welfare services in general. The Committee considers it important to stress this distinction so that the governmental reports under Article 13§3 provide information concerning, in particular, social welfare services for persons without, or liable to be without, adequate resources.

The Charter does not require these services to be specific and separate from the social welfare services of Article 14. Specific care is to be given, however, to persons without, or liable to be without adequate resources.
In order to be able to assess compliance of national situations with Article 13§3, the Committee needs regular updated information on the following:

- the main social welfare services as provided for under this provision, the way these services operate and are organised, including their geographical distribution;
- the number, qualifications and duties of the staff employed, including voluntary staff;
- funding provided for those services.

Services must be adequate in view of the needs. In this respect, having noted the significant increase in the number of social and medical assistance recipients in several Contracting Parties, the Committee asks that the next reports provide information on the on the adequacy of the number of social workers employed in providing personal advice and help for persons without, or liable to be without adequate resources and on the other hand on the increasing needs in this area.

The effectiveness of the social welfare services provided for in Article 13§3 also depends on their accessibility to users. In order to determine whether these services are accessible enough, the Committee needs information on their geographical distribution and on information given to users on the social and medical assistance services available.

The Committee considers the effective implementation of Article 13§3 to be an important condition for ensuring the right of every person to social and medical assistance. […]

[...] In order to take those elements in account, the Committee has decided henceforth to deal with the situation of nationals of other Contracting Parties lawfully resident or working regularly in their territory under paragraphs 1, 2 and 3 of Article 13 and with the situation of nationals of the other Contracting Parties lawfully present in the territory of a Contracting Party without residing there under Article 13§4. This method affects the definition by the Committee of the material scope of the provisions of Article 13 as regards nationals of other Contracting Parties. […]

[...] Nationals of Contracting Parties working regularly or residing legally within the territory of another Contracting Party must have access to advice and personal help offered by social services on the same conditions as nationals in accordance with Article 13 para. 3 (see above C).[…]."

927. **Conclusions 2005, Statement of Interpretation on Article 14§1**: “The right to benefit from social welfare services provided for by Article 14§1 requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment. The Committee reviews the overall organisation and functioning of social services under Article 14§1.

Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). Issues such as childcare, child minding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Co-ordination measures to fight poverty and social exclusion are dealt with under Article 30 of the Revised European Social Charter, while social housing services and measures to combat homelessness are dealt with under Article 31 of the Revised European Social Charter.

The provision of social welfare services should concern all those in need, in particular the vulnerable groups and individuals who have a social problem. Groups which are vulnerable – children, the family, the elderly, people with disabilities, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners – should be able to avail themselves of social services in practice. Since many of these categories are also dealt with by more specific provisions of the Charter, under Article 14 the Committee reviews the overall availability of such services and refers to those other provisions for the detailed analysis of the services afforded. This overall review follows the criteria
mentioned below as regards effective and equal access to, and quality of the services delivered as well as issues of rights of clients and participation.

The right to social services must be guaranteed in law and in practice. Effective and equal access to social services implies that:

- The general eligibility criterion regulating access to social services is the lack of personal capabilities and means to cope. The goal of welfare services is the well-being, the capability to become self-sufficient and the adjustment to the social environment of the individual;
- An individual right of access to counselling and advice from social services shall be guaranteed to everyone likely to need it. Access to other kind of services can be organised according to eligibility criteria, which shall be not too restricted and at any event ensure care in case of urgent need;
- The rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies must be available for those who wish to complain about social welfare services and there must be a right to appeal to an independent body where allegations of discrimination and violation of human dignity are made;
- Social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge;
- The geographical distribution of these services shall be sufficiently wide;
- Recourse to these services must not interfere with people's right to privacy, including protection of personal data.

Social services must have resources matching their responsibilities and the changing needs of users. This implies that:

- staff shall be qualified and in sufficient numbers;
- decision–making shall be as close to users as possible;
- there must be mechanisms for supervising the adequacy of services, public as well as private.


929. Conclusions XIV-1 (1998), Statement of Interpretation on Article 13: “[…] The Committee observes that the term “social assistance”, as used in Article 13§1, should not be limited to the payment of a subsistence allowance. As it has already pointed out in the general introduction to Conclusions XIII-4 (1996), the ultimate aim in any system of social assistance must be to work towards a situation where assistance is no longer required. In other words, the system of social assistance must embrace an integrated strategy of alleviation of poverty and empowerment of individuals to regain their place as full members of society, through the means most appropriate to their personal circumstances, wishes and ability, and customary in the society where they live. In most cases, employment opportunities, together with vocational training or re-training, constitute the core element in any such strategy.

Article 13§3 expressly obliges Contracting Parties to ensure that adequate services are available to the public to offer advice and help to persons experiencing or threatened with deprivation. It is an essential complement to the obligation laid down under Article 13§1. Thus, compliance with both provisions is contingent on the existence and effective operation of a social assistance system in each state which is based on the integrated approach outlined above.

In many cases, an individual must comply with certain conditions (such as to be available for work, to undergo vocational training, etc.) in order to receive assistance payments. The Committee observes that in so far as such conditions are reasonable and fully consistent with the objective of providing a long-lasting solution to the problems of deprivation experienced by the individual, they are not inconsistent with the Charter. However, the right of appeal which attaches to entitlement to benefits must also apply to such conditions. […]"
Article 13§4


Firstly, in relation to the personal scope of Article 13§4: This is defined by the Charter itself. Article 13§4 covers specifically “nationals of other Contracting Parties lawfully within their territories”. The Appendix to the Charter adds that “Without prejudice to […] Article 13§4, the persons covered by Articles 1 to 17 include foreigners only in so far as they are nationals of Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned […]”.

The Committee applies these texts in the following way:

- Article 13§4 extends the scope of the first three paragraphs. Moreover, it derogates from the Appendix and, by its wording, applies to nationals of other Contracting Parties to the Charter who are lawfully within the territory of a Contracting Party without residing there.
- Accordingly, two categories of foreigners are covered by Article 13:
  - Those who are covered by the Appendix to the Charter, that is, nationals of Contracting Parties who are lawfully resident or work regularly within the territory of the Contracting Party concerned (including refugees within the meaning of the Geneva Convention of 28 July 1951 as per item 2 of the Appendix to the European Social Charter);
  - And those who without lawfully residing or working regularly within the territory of the Contracting Parties concerned, are, as provided for by the terms of Article 13§4, lawfully within the territory.

In Conclusions XIII-4 (1996), the Committee decided to reflect this analysis of the text in its examination of the personal scope of each paragraph of Article 13, leaving examination of the situation of Contracting Party nationals who are lawfully within the territory of another Contracting Party without residing there to paragraph 4.

Therefore, under Article 13§4, the Contracting Parties to the Charter undertake to respect their obligations under the European Convention on Social and Medical Assistance, within the limits set down below, in relation to these persons.

The definition of the personal scope of Article 13§4 is not to be found in the convention. In addition to the clear wording of Article 13§4, the Appendix to this provision states that Contracting Parties who are not parties to the 1953 Convention may accept Article 13§4 “provided that they grant to nationals of other Contracting Parties a treatment which is in conformity with the provisions of the said convention”. This text finds meaning only in the above reasoning.

Secondly, with respect to the scope of the reference in Article 13§4 to the 1953 Convention:
- The Committee observes that the 1953 Convention lays down two essential obligations on each state which ratifies it: to ensure that nationals of other contracting parties to the convention who are lawfully present in the territory and “who are without sufficient resources, shall be entitled equally with its own nationals and on the same conditions to social and medical assistance” (Article 1); and not to repatriate a national of another contracting party, lawfully resident within its territory, “on the sole ground the he is in need of assistance” (Article 6). Article 7 permits certain derogations to the latter obligation.

- The Committee considers that the link between the two instruments resides in the area of repatriation only, otherwise the reference to the convention in the text of the Charter would be redundant because the social and medical assistance which must be granted to foreigners covered by Article 13 is set down by the Charter itself; in case of want, they are entitled, in the same way as nationals, to adequate social assistance and, in case of illness, to the care necessitated by their condition. As the Committee emphasised in Conclusions XIII-4 (1996), the scope of this obligation varies according to the category of foreigner:

  - nationals of Contracting Parties who work regularly or reside lawfully within the territory of another Contracting Party have an individual right to social and medical assistance on the same basis as nationals under Article 13 para. 1;
  - as regards those who are lawfully within the territory of a Contracting Party without residing there, the adequate assistance which they may claim should take the form of at least an emergency aid enabling them to deal with an immediate state of need (shelter, food, urgent care and clothing), their presence being essentially temporary.

The scope of the reference to the 1953 Convention is, therefore, as follows: if a Contracting Party to the Charter repatriates nationals of other Contracting Parties who are lawfully within its territory without residing there on the ground that they are in need of assistance, it must respect the provisions of the 1953 Convention on repatriation which can be applied to them, i.e. Articles 7b and c, 8, 9 and 10.

As the Committee has stated in the general introduction to Conclusions XIII-4 (1996), nationals of other Contracting Parties who work regularly or reside legally within the territory of another Contracting Party cannot be repatriated on the sole ground that they are in need of assistance. As long as their legal residence or regular work continues, they enjoy equal treatment laid down in the Appendix. Where such persons are migrant workers, they are also protected by Article 19 para. 8, which would not permit expulsion on the ground of needing assistance.

In light of these comments, the Committee takes the view that its reference in the above-mentioned general introduction to Appendices I and II of the 1953 Convention only serve, on an indicative and subsidiary basis, to enable it to be aware of the social assistance obligations of certain Contracting Parties under the convention.”

937. Conclusions VII (1981), Statement of Interpretation on Article 13§4: “In response to one government’s observations regarding the category of persons covered by Article 13§4 and regarding the relevance of the principle of reciprocity to certain provisions of the Charter, the Committee felt it necessary to state more completely its interpretation of the scope of this paragraph.

1) The Committee noted first that the Charter was designed to be complementary to the European Convention on Human Rights (cf. Preamble). While the Convention covers all persons within the jurisdiction of a Contracting Party, the field of application of the Charter is limited to the nationals of the Contracting Parties: no other restriction is provided by the Charter. Neither instrument has any provisions for reciprocity, either general or specific.

2) Though the Charter permits that States may not accept all its provisions, it is clear from paragraph 1 of the Appendix, that a state has to apply the provisions it has accepted to nationals of all the other states which have ratified the Charter, independently of the fact that these states
have not accepted the same provisions. Nevertheless, paragraph 1 of the Appendix is without prejudice, inter alia, to the provisions of Article 13§4. It seems therefore necessary to clarify its meaning.

3) In fact, Article 13§4 provides that its paragraphs 1 to 3 should be applied by the states in conformity with the obligations arising under the European Convention on Social and Medical Assistance of 11 December 1953. It is suggested that this provision could give rise to an interpretation according to which the obligations arising under Article 13§4 would apply in regard to the states which have not accepted Article 13§4 only if they are parties to the above Convention. It would follow that the nationals of a state which has not ratified that Convention and which has not accepted Article 13§4 would not be able to benefit from the guarantees included in this provision in the States having accepted it.

4) It is to be observed in this respect that the nature of the reference in this provision of the Charter to the European Convention on Social and Medical Assistance should be considered in the light of the provisions in Part II of the Appendix of the Charter concerning this Article. The existence of this provision shows that the ratification of the Charter and the acceptance of Article 13§4 impose an obligation on all such states to grant treatment in conformity with the Convention on Social and Medical Assistance even if they have not ratified this Convention. It follows that the obligations arising from Article 13§4 with respect to nationals of another State bound by the Charter are not conditional upon the reciprocal application of the 1953 Convention or the acceptance by this State of Article 13§4.

5) In conclusion, it clearly appears therefore that the reference to this Convention under Article 13§4 of the Charter aims solely at determining the obligations "ratione materiae" arising under this Article. The phrase “without prejudice to... Article 13, paragraph 4" in paragraph 1 of the Appendix (which concerns the scope of the Charter in terms of persons protected) serves solely to indicate that the words “lawfully resident or working regularly within” do not limit the wider scope of application of Article 13§4 which extends to all those “lawfully within”.

938. Conclusions XIV-1 (1998), United Kingdom: “The Committee notes from the report of the United Kingdom that the persons covered by this provision, i.e. nationals of other Contracting Parties to the Charter who are lawfully within the state without residing there, are subject to the habitual residence test already criticised under Article 13 para. 1 if they seek social assistance. As the presence of such persons in the country is essentially temporary, the existence of this condition practically excludes them from seeking social assistance. The exception which is made for nationals of European Union or European Economic Area states who enjoy the status of "worker" under European Community law is not relevant here, as Article 13 para. 4 only covers persons who are lawfully present in the country, without either residing or regularly working there. Accordingly, the Committee finds that the United Kingdom fails to comply with this provision of the Charter.”

939. European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §171

171. Pursuant to Article 13§4 of the Charter, no conditions on the length of presence on the territory of the state party in question can be set on the right to emergency assistance and those concerned must be provided with assistance to cope with an immediate state of need. For this purpose, accommodation, food, emergency medical care and clothing should be provided. While an individual’s need must be sufficiently urgent and serious to entitle them to assistance under Article 13§4, this criterion must not be interpreted too narrowly (Conclusions 2013, Montenegro).

940. Conclusions XIV-1 (1998), Netherlands: “The Committee notes from the report of the Netherlands that nationals of Contracting Parties which are not bound by the 1953 Convention on Social and Medical Assistance, lawfully present in the country without residing there, only receive assistance under the National Assistance Act for “very urgent reasons”. This refers to situations “of a life-threatening nature or which may result in permanent serious injury or permanent disability”. The
The Committee considers that the situation in the Netherlands is too restrictive to comply with the Charter. Contracting Parties are not obliged to grant normal social assistance benefits to the persons covered by this provision, but they are required to provide temporary assistance, of an appropriate nature, where such persons are faced with an immediate and serious state of need.

The Dutch authorities take the view that, as regards repatriation of non-nationals on the sole basis of being in need, the limitations imposed by the 1953 Convention only apply to foreigners who reside in the state, and not to the category of foreigners covered by Article 13§4 of the Charter. The Committee cannot accept this reasoning and refers to its comments on the subject in the general introduction.

941. **Conclusions XX-2 (2013), Czech Republic:** “In this context, the previous report referred to the provisions concerning Extraordinary immediate assistance and indicated that foreigners finding themselves in an extraordinary situation of need may receive social assistance, including one-off benefits, temporary accommodation and food. In response to the Committee’s request for details on this issue, the report details the conditions upon which such extraordinary immediate assistance can be delivered which, according to the report, include foreign nationals in irregular situation, when they are victims of trafficking, prostitution, abduction etc.

The Committee recalls that Article 13§4 concerns foreign nationals who are lawfully present in the country but do not have resident status and those who are unlawfully present. Under this provision, states are not required to apply to these categories of foreigners the guaranteed income arrangements under their social protection systems. However, they are required to provide non-resident foreign nationals — whether legally present or not — emergency social and medical assistance (accommodation, food, emergency care and clothing) to cope with an urgent and serious situation of need (without interpreting too narrowly the “urgency” and “seriousness” criteria). In this connection, the Committee notes that the information provided in the report clarifies that emergency social assistance is available to certain categories of non-resident foreigners, but it does not allow to establish that it is available to all foreign nationals of a member state which is party to the Charter, when they are legally present without being resident and when they are in an irregular situation, but not as “victims” for the purpose of Extraordinary immediate assistance. Accordingly, the Committee does not find it established that emergency social assistance (accommodation, food and clothing) is available to all non-resident foreign nationals of other states parties, whether lawfully present in the territory or not.

As regards medical assistance, the Committee has previously noted that any person present in the Czech Republic, irrespective of status, is entitled to medical assistance in cases where the health and life of the person is at risk (Conclusions XIX-2 (2013)). It asks the next report to confirm that such assistance is provided free of charge.

Conclusion: The Committee concludes that the situation in the Czech Republic is not in conformity with Article 13§4 of the 1961 Charter on the ground that it is not established that emergency social assistance is available to all non-resident foreign nationals of other States Parties, irrespective of their status.”

942. **Médecins du Monde – International v. France, complaint No. 67/2011, Decision on the merits of 11 September 2012, §178:** “178. The Committee recalls that Article 13§4 confers on foreign nationals the right to emergency social and medical assistance. States are required to provide appropriate short-term assistance to those in immediate and urgent need (such assistance may involve the provision of accommodation, food, emergency medical care and clothing). The beneficiaries of this right to emergency social and medical assistance include foreign nationals who are lawfully present within the territory of a given state but do not have resident status, as well as foreign nationals unlawfully present in the country (Conclusions 2009, Andorra, Article 13§4).”
943. **Conference of European Churches (CEC) v. the Netherlands** Complaint No. 90/2013, decision on the merits of 1 July 2014, §105 “105. The Committee firstly recalls that under Article 13§4 of the Charter, the States Parties have undertaken to provide appropriate short-term assistance to persons in a situation of immediate and urgent need (Conclusions 2013, Malta). For this purpose, accommodation, food, emergency medical care and clothing should be provided. While an individual’s need must be sufficiently urgent and serious to entitle them to assistance under Article 13§4, this criterion must not be interpreted too narrowly. No conditions on the length of presence on the territory of the State Party in question may be set on the right to emergency assistance (Conclusions 2013, Montenegro).

944. **European Federation of national organisations working with the Homeless (FEANTSA) v. the Netherlands**, Complaint No. 86/2012, decision on the merits of 2 July 2014, §171: “Pursuant to Article 13§4 of the Charter, no conditions on the length of presence on the territory of the state party in question can be set on the right to emergency assistance and those concerned must be provided with assistance to cope with an immediate state of need. For this purpose, accommodation, food, emergency medical care and clothing should be provided. While an individual’s need must be sufficiently urgent and serious to entitle them to assistance under Article 13§4, this criterion must not be interpreted too narrowly (Conclusions 2013, Montenegro).”

945. **Conclusions XIII-4 (1996), Statement of Interpretation on Article 13**: […] The Committee considers that Article 13 para. 4 extends the scope of the first three paragraphs and covers not only foreigners who are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, but also those who are simply staying in the territory of another Contracting Party without residing (including refugees within the meaning of the Geneva Convention of 28 July 1951). To date therefore, the situation of all nationals of other Contracting Parties in relation to social and medical assistance has been examined by the Committee under Article 13§4, and the situation of nationals under paragraphs 1 to 3 of Article 13. The Committee is however anxious to stress that the wording of the appendix to the Charter — “without prejudice to ... Article 13§4 ...” — does not refer to Article 13 in its entirety but only to paragraph 4, thus implying firstly, that paragraphs 1 to 3 are applicable in accordance with the appendix, meaning that the Contracting Parties must grant equal treatment to nationals of other Contracting Parties lawfully resident or working regularly in their territory, and secondly, that Article 13§4, through the exception in the appendix and according to the wording of paragraph 4 itself, applies also to the nationals of the other Contracting Parties who are lawfully present in the territory of a Contracting Party without legally residing there.

In order to take those elements in account, the Committee has decided henceforth to deal with the situation of nationals of other Contracting Parties lawfully resident or working regularly in their territory under paragraphs 1, 2 and 3 of Article 13 and with the situation of nationals of the other Contracting Parties lawfully present in the territory of a Contracting Party without residing there under Article 13§4. This method affects the definition by the Committee of the material scope of the provisions of Article 13 as regards nationals of other Contracting Parties.

[...] With regard to the scope of assistance which has to be granted to those lawfully present in the territory of a Contracting Party without regularly working or lawfully residing, the Committee stresses that as their stay is essentially temporary, the most appropriate form of assistance would be emergency aid to enable them to cope with an immediate state of need (accommodation, food, emergency care and clothing). In this way the grant of a guaranteed minimum income to someone who is only temporarily staying in the territory of a Contracting Party cannot be regarded as assistance under Article 13 para. 4.

The Committee considers in addition that the appendices I and II to the European Convention on Social and Medical Assistance of 1953 (Appendix I, containing the legislation on assistance
applicable in each Contracting Party; Appendix II, containing the reservations formulated by the Contracting Parties) should be taken into account in an assessment of the compliance of national situations with the commitments entered into under this provision, as the wording of paragraph 4 itself provides.

Furthermore, the Committee recalls that appropriate assistance granted to someone staying in the territory of a Contracting Party is to be provided until the repatriation, if applicable, of the person concerned, which may be permitted but strictly in accordance with the limitations and conditions stipulated by the 1953 Convention. In this respect the Committee stresses that Article 13 para. 4 refers to the convention principally for the purpose of determining the Contracting Parties’ substantive obligations with regard to repatriation. The 1953 Convention prohibits repatriation solely on grounds of need for assistance, except within the limitations and conditions laid down by this instrument, which may be regarded as specific to the Convention in comparison with the commitments entered into under the Charter. Therefore the Committee recalls regularly that according to the wording of the Convention, Contracting Parties may have recourse to repatriation only with great moderation and asks in particular during this cycle whether any recourse is had to repatriation of nationals of Contracting Parties lawfully in the territory of another Contracting Party without residing there on the sole ground that they need assistance and, if so, whether and on which basis the conditions prescribed by Articles 6 to 10 of the 1953 Convention are observed.”


947. Conclusions 2013, Sweden: “Taking into account the obligation to pay for medical treatment, the Committee requests how the right of people without resources to have access to the health care needed is guaranteed in practice, in the light of any relevant example or data.”

948. Conclusions XIV-1 (1998), Iceland: “The report states that non-resident foreigners who seek medical care are expected to pay for any services they receive. On the other hand, it also states that hospitals and doctors are obliged to treat the sick, irrespective of their ability to pay. The Committee recalls that this provision requires the Contracting Parties to ensure that if such persons are without resources, they will be provided with emergency care without charge.”

949. Défense des enfants international v. Belgium (DEI), complaint No. 69/2011, Decision on the merits of 23 October 2012, §128: “128. The Committee firstly confirms the right of migrant minors unlawfully in a country to receive health care extending beyond urgent medical assistance and including primary and secondary care, as well as psychological assistance. Concerning the access to the health system and to health care in general, the Committee refers to paragraphs 116 to 118 under Article 11.”

950. Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §106: 106. It also recalls that emergency social assistance should be supported by a right to appeal to an independent body (Conclusions 2004, the Netherlands).”

951. European Federation of national organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187: “With regard to the right to appeal in matters concerning the granting of emergency assistance, the Committee notes that no arguments provided by the Government establish the efficiency of this right in practice. It therefore takes note of the arguments by the complainant organisation, according to which this right to a judicial review is not effective in practice. The Committee considers a functioning appeal mechanism before an independent judicial body as crucial for the proper administration of shelter distribution. It likewise holds that it is for the Government to ensure that this right is made effective also in practice.”

952. Conclusions XIII-4 (1996), Statement of Interpretation on Article 13: op cit

953. Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4: op cit

954. Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4: op cit

955. Conclusions VII (1981), Statement of Interpretation on Article 13§4: op cit

956. Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4: op cit
Article 14 The right to social welfare services

Article 14§1

957. Conclusions 2005, Bulgaria: "The right to benefit from social welfare services provided for by Article 14§1 requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment. The Committee reviews the overall organisation and functioning of social services under Article 14§1."

958. International Federation for Human Rights (FIDH) v. Belgium, complaint No. 75/2011, decision on the merits of 18 March 2013 "110. Under Article 14§1 of the Charter, access of persons with disabilities to social welfare services can be regarded as equal and effective if the State Party offers varied and multiple methods of care for these people by the community and if the number and quality of the social welfare services actually provided correspond as closely as possible to the specific, practical, individual needs of the persons concerned so that a free choice can be made by the users concerned and, above all, by their families, provided that they act on behalf of these persons and not instead of them."

959. Conclusions 2009, Statement of Interpretation on Article 14§1: "Article 14§1 guarantees the right to general social welfare services. The right to benefit from social welfare services must potentially apply to the whole population (...). The provision of social welfare services concerns everybody who finds themselves in a situation of dependency, in particular the vulnerable groups and individuals who have a social problem. The Committee therefore verifies that social services are available to all categories of the population who are likely to need them. It has identified the following groups: children, the elderly, people with disabilities, young people in difficulty and young offenders, minorities (migrants, Roma, refugees, etc.), the homeless, alcoholics and drug addicts, battered women and former detainees. The list is not exhaustive as the right to social welfare services must be open to all individuals and groups in the community. It does, however, give an idea of the groups in which the Committee systematically takes an interest because of their more vulnerable situation in society."

960. Conclusions 2005, Bulgaria: "Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). Issues such as childcare, child-minding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Co-ordination measures to fight poverty and social exclusion are dealt with under Article 30 of the Revised European Social Charter, while social housing services and measures to combat homelessness are dealt with under Article 31 of the Revised European Social Charter."

961. Conclusions 2005, Bulgaria:

"The right to social services must be guaranteed in law and in practice. Effective and equal access to social services implies that:

- The general eligibility criterion regulating access to social services is the lack of personal capabilities and means to cope. The goal of welfare services is the well-being, the capability to become self-sufficient and the adjustment to the social environment of the individual;
- An individual right of access to counselling and advice from social services shall be guaranteed to everyone likely to need it. Access to other kind of services can be organised according to eligibility criteria, which shall be not too restricted and at any event ensure care in case of urgent need;"
The rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies shall be available in terms of complaints and a right to appeal to an independent body in urgent cases of discrimination and violation against human dignity;

Social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge;

The geographical distribution of these services shall be sufficiently wide;

Recourse to these services must not interfere with people’s right to privacy, including protection of personal data.

Social services must have resources matching their responsibilities and the changing needs of users. This implies that:

- staff shall be qualified and in sufficient numbers;
- decision–making shall be as close to users as possible;
- there must be mechanisms for supervision the adequacy of services, public as well as private.”

962. Conclusions 2009, Statement of Interpretation on Article 14§1: “Under Article 14§1 the Committee reviews rules governing the eligibility conditions to benefit from the right to social welfare services (effective and equal access) and the quality and supervision of the social services as well as issues of rights of beneficiaries and their participation in the establishment and maintenance of social welfare services (Article 14§2). Persons applying for social welfare services should receive any necessary advice and counselling enabling them to benefit from the available services in accordance with their needs.

The other provisions of the Charter dealing with social services for specific target groups, including those falling within the scope of Article 13§3, concern – as noted above – services “with a narrowly specialised objective”. When these various provisions have not been accepted by a State Party the Committee proceeds to a summary and less exacting examination of the situation with regard to social services for the specific target groups concerned under Article 14 (in so far as this article has been accepted).”

Article 14§2

963. Conclusions 2005, Statement of Interpretation on Article 14§2, see e.g. Conclusions 2005, Bulgaria: "Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services. This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include the voluntary sector, private individuals, and private firms. The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. It also verifies that the Parties continue to ensure that services are accessible on an equal footing to all and are effective, in keeping with the criteria mentioned in Article 14§1. Specifically, Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the clients as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

Article 14§2 also requires States to encourage individuals and organisations to play a part in maintaining services. The Committee looks at action taken to strengthen dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user–groups in bodies where the public authorities are also
represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.”

964. **Conclusions 2005, Bulgaria:** “Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services. This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The “individuals and voluntary or other organisations” referred to in paragraph 2 include the voluntary sector, private individuals, and private firms.

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Article 14§2 also requires States to encourage individuals and organisations to play a part in maintaining services. The Committee looks at action taken to strengthen dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user–groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.”
Article 15 The rights of disabled persons to independence, social integration and participation in the life of the community

965. International Association Autism-Europe (IAAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48: “48. As emphasised in the General Introduction to its Conclusions of 2003 (p. 10), the Committee views Article 15 of the Revised Charter as both reflecting and advancing a profound shift of values in all European countries over the past decade away from treating them as objects of pity and towards respecting them as equal citizens – an approach that the Council of Europe contributed to promote, with the adoption by the Committee of Ministers of Recommendation (92) 6 of 1992 on a coherent policy for people with disabilities. The underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community”. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights. This explains why education is now specifically mentioned in the revised Article 15 and why such an emphasis is placed on achieving that education “in the framework of general schemes, wherever possible”. It should be noted that Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. It thus clearly covers both children and adults with autism.”

966. Conclusions 2003, Statement of Interpretation on Article 15: “In respect of Article 15 of the Revised Social Charter, the Committee considers that this provision reflects and advances the change in disability policy that has occurred over the last decade or more away from welfare and segregation and towards inclusion and choice. In light of this, the Committee emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15 of the Charter. It is fortified in its views on Article 15 with reference to Article E on non-discrimination.”


968. Conclusions XIV-2 (1998), Statement of Interpretation on Article 15: “The same applies for disabled nationals of other Contracting Parties to the Charter lawfully resident or regularly working in the territory of the Contracting Party concerned, who should in accordance with the Appendix to the Charter have access to the same treatment as disabled nationals of the state, not only by law (see for example the conclusions for Finland) but also in practice.”

Article 15§1

969. Conclusions 2012, Ireland: “The Committees recalls that under Article 10 of the Charter it regards vocational training as encompassing all types of higher education including university education. It considers that this interpretation applies, mutatis mutandis, to Article 15.”

971. **European Action of the Disabled (AEH) v. France, complaint No. 81/2012, Decision on the merits of 11 September 2013, §78** “In relation to the current complaint, the Committee reiterates that Article 15§1 of the Charter makes it an obligation for States Parties to provide education for persons with disabilities, together with vocational guidance and training, in one or other of the pillars of the education system, in other words mainstream or special schools. It adds that the priority to be given to education in mainstream establishments, which is referred to explicitly in the article, is subject to a conditionality clause, which if interpreted as it ordinarily would be and with due regard for the context and purpose of the provision, indicates to the public authorities that in order to secure the independence, social integration and participation in the life of the community of persons with disabilities through their education, they must take account of the type of disability concerned, how serious it is and a variety of individual circumstances to be examined on a case-by-case basis. Consequently, Article 15§1 of the Charter does not leave States Parties a wide margin of appreciation when it comes to choosing the type of school in which they will promote the independence, integration and participation of persons with disabilities, as this must clearly be a mainstream school.”

972. **European Action of the Disabled (AEH) v. France, complaint No. 81/2012, decisions on the merits of 11 September 2013, §§ 80-81:**

“The priority given to mainstream schools for the education of children and adolescents with autism

80. The Committee takes note of the definition of autism given by WHO (in §20, above), which regards it not as a temporary disease, which could therefore be cured, but as a disability. If it is assumed that the stable and permanent nature of all disabilities (whether mental, cognitive – as is the case here – or somatic) means that the person concerned must be educated in citizenship, then human assistance must be arranged for all or part of their schooling. Such human assistance is often the prerequisite for children or adolescents with autism to take full advantage of their schooling and progress with and among other children and adolescents.

81. The Committee would point out that in general, states have a wide margin of appreciation in the way in which they implement the Charter (European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 37/2006, decision on the merits of 3 December 2007, §14). However, where the persons affected by the priority to be given to mainstream schools, as the means most liable of securing the independence, integration and participation of persons with disabilities, are children and adolescents with autism, Article 15§1 implies that states are required to provide the human assistance needed for the school career of the persons concerned. The margin of appreciation applies only to the means that states deem most appropriate to ensure that this assistance is provided, bearing in mind the cultural, political or financial circumstances in which their education system operates (see, mutatis mutandis, ECHR Grand Chamber judgment of 22 May 2012, Scoppola v. Italy, application No. 126/05, §83). However, this is subject to the provision that, at all events, the choices made and the means adopted are not of a nature or are not applied in a way that deprives the established right of its effectiveness and turns it into a purely theoretical right (European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §55).”

973. **Conclusions XX-1 (2012), Austria:** “The Committee emphasises that education and training are the essential foundation to obtain a position in the open labour market and to be able to lead a self-determined life. Young disabled people with an education below the upper secondary level will be per se subject to various disadvantages on the employment market. The Committee recalls that States must take measures in order to enable integration and guarantee that both mainstream and special schools ensure adequate teaching. Furthermore, States must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.”

974. **MDAC v. Belgium, Complaint No. 109/2014, Decision on the merits of 16 October 2014, §66:**

“In the instant case, the Committee finds that the eligibility requirements for admission to mainstream education according to the M-Decree, in particular as stipulated in Article 37
undecies §§1 and 2, are based on the notion of integration rather than inclusion. The Committee considers that there is integration when pupils are required to fit the mainstream system, whereas inclusion is about the child’s right to participate in mainstream school and the school's obligation to accept the child taking account of the best interests of the child as well as their abilities and educational needs as a primary consideration.”

975. European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, Decision on the merits of 11 September 2013, §111: “111. In the Committee’s view, the predominance of guidance, education and vocational training in the overall system provided for by Article 15 to secure the citizenship rights of people with disabilities would be rendered void of all meaning if the specialised institutions referred to in paragraph 1 of the article failed to ensure, through their internal organisation and/or their working methods, that guidance, education and vocational training were given priority over the other functions and duties that they may be required to perform under national law.”

976. Conclusions 2012, Russian Federation: “The Committee observes that to assess the effective equal access of children and adults with disabilities to education and vocational training, it systematically should be informed of the following key figures:
- total number of persons with disabilities, including the number of children;
- number of students with disabilities following respectively mainstream and special education and vocational facilities;
- the percentage of students with disabilities entering the labour market following mainstream or special education or/and training.”

977. Conclusions 2008, Lithuania: “The Committee highlights that it needs to be systematically informed of: (...) the number of persons with disabilities (children and adults) living in institutions.”

978. Conclusions 2008, Lithuania: “The Committee highlights that it needs to be systematically informed of: - (...) any relevant case law and complaints brought to the appropriate bodies with respect to discrimination on the ground of disability in relation to education and training.”

979. Conclusions 2007, Statement of interpretation on Article 15§1: “Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two.”

980. European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, Decision on the merits of 11 September 2013, §78: “78. In relation to the current complaint, the Committee reiterates that Article 15§1 of the Charter makes it an obligation for States Parties to provide education for persons with disabilities, together with vocational guidance and training, in one or other of the pillars of the education system, in other words mainstream or special schools. It adds that the priority to be given to education in mainstream establishments, which is referred to explicitly in the article, is subject to a conditionality clause, which if interpreted as it ordinarily would be and with due regard for the context and purpose of the provision, indicates to the public authorities that in order to secure the independence, social integration and participation in the life of the community of persons with disabilities through their education, they must take account of the type of disability concerned, how serious it is and a variety of individual circumstances to be examined on a case-by-case basis. Consequently, Article 15§1 of the Charter does not leave States Parties a wide margin of appreciation when it comes to choosing the type of school in
which they will promote the independence, integration and participation of persons with disabilities, as this must clearly be a mainstream school.”

981. **Conclusions 2008, Andorra:** “The Committee recalls that Article 15§1 of the Revised Charter requires persons with disabilities to be integrated into mainstream facilities to the maximum extent possible – special facilities should be the exception – and it requires states to provide evidence that this is the case or at least that substantial efforts are being made to achieve this.”


983. **European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, Decision on the merits of 11 September 2013, §85:** “85. The Committee considers assistance at school a particularly important means of being able to keep children and adolescents with autism in mainstream schools, although it acknowledges that this method of promoting social integration through education is not the only possible way of achieving the aim of sending children with autism to mainstream schools.”

984. **Conclusions 2005, Cyprus:** “The Committee considers that the explicit reference to “education” in Article 15§1 of the Charter brings important aspects of the right to education for children with disabilities within the remit of that sub-paragraph. Already under Article 15§1 of the 1961 Charter, the Committee had assessed general education schemes to test them for their level of inclusiveness and had held that States were required to make tangible progress towards the development of inclusive education systems. In so far as Article 15§1 of the Charter explicitly mentions “education”, the Committee considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education.”

**Article 15§2**

985. **Autism-Europe v. France, op cit, §53** “53... When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.”

986. **Conclusions XX-1 (2012), Czech Republic:** “The Committee recalls that the State must ensure equal and effective access to employment to persons with disabilities.”

987. **Conclusions I (1969), Statement of Interpretation on article 15§2:** “The Committee interpreted this paragraph, which requires States to take adequate measures for the placing of disabled persons, as covering both physically and mentally handicapped persons.”

988. **Conclusions 2012, Cyprus:** “The Committee highlights that it also needs to systematically be provided with updated figures concerning the total number of people with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures, those seeking employment, those that are unemployed as well as the general rate of progression of disabled persons from sheltered employment to the ordinary labour market.”
989. Conclusions 2003, Slovenia: “The Committee had previously decided under the 1961 Social Charter that non-discrimination legislation is required in order create genuine equality of opportunities in the open labour market. A fortiori, this reasoning also applies to Article 15§2 of the Revised Social Charter.”

990. Conclusions 2012, Russian Federation: “Under Article 15§2, anti-discrimination legislation is required in order to create genuine equality of opportunities in the open labour market.”

991. Conclusions XIX-1 (2008), Czech Republic: “Moreover, the Committee reiterates that under Article 15§2, anti-discrimination legislation must include the adjustment of working conditions (reasonable accommodation) and confer an effective remedy on those who are found to have been unlawfully discriminated.”

992. Conclusions 2007, Statement of Interpretation on article 15§2: “There must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational disease.”

993. Conclusions XIV-2 (1998), Belgium: “Article 15§2 does not require the establishment of a quota system; on the other hand, if such a system is applied, the Committee reserves the right to examine its effectiveness.”

994. Conclusions XVII-2 (2005), Czech Republic: “The Committee recalls that people working in sheltered employment facilities where production is the main activity, must enjoy the usual benefits of labour law on the open labour market and in particular the right to fair remuneration and respect for trade union rights.”

**Article 15§3**

995. Conclusions 2005, Norway: “The Committee wishes to receive information on how cultural activities such as exhibitions, performances, etc are made accessible to persons with disabilities. It also wishes to be informed about the promotion, organisation and funding of cultural and sporting activities for the disabled.”

996. Conclusions 2007, Slovenia: “Article 15§3 requires:

- the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated;
- the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.”

997. Conclusions 2012, Estonia: “In the meantime, the Committee reiterates that Article 15§3 requires explicit non-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been treated unlawfully. Such legislation may consist of general anti-discrimination legislation, specific legislation or a combination of the two.”

998. Conclusions 2003, Italy: “Article 15§3 requires that persons with disabilities and their representative organisations should be consulted in the design, and ongoing review of such positive action measures and that an appropriate forum should exist to enable this to happen.”

999. Conclusions 2008, Statement of Interpretation on Article 15§3: “To give meaningful effect to this undertaking:
- Mechanisms must be established to assess the barriers to communication and mobility faced by persons with disabilities and identify the support measures that are required to assist them in overcoming these barriers.
- Technical aids must be available either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary’s means. Such aids may for example take the form of prostheses, walkers, wheelchairs, guide dogs and appropriate housing support arrangements.
- Support services, such as personal assistance and auxiliary aids, must be available, either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary’s means.”

1000. Conclusions 2005, Estonia: “The report further states that libraries, day centres and boards for persons with disabilities provide access to the internet free of charge or for a reasonable price. The Committee asks for further information on measures to promote access to new information technology and telecommunications.”

1001. Conclusions 2003, Slovenia: “The Use of Slovenian Sign Language Act which will allow deaf persons to use Slovenian sign language as their first language and will accord it equality/parity with spoken Slovenian was due to come into force in 2002. The Committee finds this to be in conformity with the Charter”

1002. Conclusions 2003, Italy: “[The Committee] considers that all newly constructed or renovated public buildings and facilities, and buildings open to the public should be physically accessible.”

1003. Conclusions 2003, Italy: “Article 15§3 requires the needs of persons with disabilities to be taken into account in housing policies. The Committee wishes to know whether the needs of persons are taken into account in the construction of new housing, both public and private and whether financial assistance is available for the adaptation of existing housing.”
Article 16 Family social rights

1004. Conclusions 2011, Azerbaijan: “As the notion of the “family” is variable according to the different definitions in domestic law, the Committee considers it necessary to know how this notion is defined with a view to verifying that it is not unduly restrictive. The Committee therefore asks that the next report indicate how the “family” is defined in domestic law.”

1005. Conclusions 2006, Statement of Interpretation on Article 16: “The Committee examines the means used by states to ensure the social, legal and economic protection of the various types of families in the population, especially single parent families, with a particular emphasis on vulnerable families, including Roma ones. States can choose such means freely, with the proviso that they must not jeopardise the effective protection of Roma families.”

1006. European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on admissibility of 10 October 2005, §9: “The Committee considers that the fact that the right to housing is stipulated under Article 31 of the Charter, does not preclude a consideration of relevant housing issues arising under Article 16 which addresses housing in the context of securing the right of families to social, legal and economic protection. In this context and with respect to families, Article 16 focuses on the right of families to an adequate supply of housing, on the need to take into account their needs in framing and implementing housing policies and ensuring that existing housing be of an adequate standard and include essential services.”

1007. European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, §24: “24. The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural. It is also of central importance to the family. The Committee recalls its previous case law to the effect that in order satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.”

1008. European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §41: “The Committee notes with regard to Article 31§2 that States Parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available (see Conclusions 2003, Article 31§2, France, p. 225, Italy, p. 345, Slovenia, p. 557, and Sweden, p. 653). The law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided.”

1009. Conclusions 2011, Turkey, Article 31§2. “Forced eviction is the deprivation of housing which a person occupied due to insolvency or wrongful occupation (Conclusions 2003, France). Under Article 31§2 States Parties must set up procedures to limit the risk of eviction (Conclusions 2005, Sweden). In view of the importance of the right to housing, which is an aspect of individuals’ personal security and well-being, the Committee attaches great importance to the relevant procedural safeguards (see Conclusions 2005, Sweden; see, mutatis mutandis, European Court of Human Rights, Connors v. United Kingdom, judgment of 27 May 2004, §92). The Committee recalls that in order to comply with Article 31§2 of the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;”
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

Furthermore, when evictions do take place, they must be:
- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the rights of the persons.

The Committee also recalls that when an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 51). Furthermore, the Committee observes that a person or a group of persons, who cannot effectively benefit from the rights provided by the legislation, may be forced to adopt reprehensible behaviour in order to satisfy their needs. However, this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights (ERRC v. Bulgaria, § 53).

1010. Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the merits of 25 June 2010, §115: “115. The Committee reiterates that “Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31”

1011. Conclusions 2011, Azerbaijan: “The Committee points out that Articles 16 and 31, though different in personal and material scope, partly overlap in several areas relating to the right of families to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31.”

1012. European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, §51: “51. The Committee considers that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned. The Committee considers that on these three grounds the situation is not satisfactory.”

1013. Conclusions XIII-3 (1995), Turkey: “In this regard, the Committee also took note of the observations of the Turkish Government in relation to the questions posed in the previous conclusion as regards the evacuation and destruction of villages in south east Turkey. The Committee also took note of the report of the European Commission of Human Rights in a case brought before the European Court of Human Rights in December 1995 (Application No. 21893/93, AKDIVAR and Others v. Turkey). This report, which had been made public, concerned the evacuation and destruction of a village in the south east by the security forces on 10 November 1992 (during the reference period) and was drawn up following several inquiries carried out on the spot. The facts established in the instant case allowed the Commission on Human Rights to find inter alia that the state had failed to take measures in order to rehouse or to provide substantial financial assistance to villagers whose dwellings had been burned down. In
view of all the above elements, the Committee wished the government to indicate the measures taken in south east Turkey to provide decent accommodation within the meaning of Article 16 of the Charter to villagers whose dwellings were destroyed and who were forced to seek refuge in the large cities.”

1014. Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the merits of 25 June 2010, §§39-40: “39. Furthermore, with regard to the Roma in particular, the European Court of Human Rights takes into account the fact that:

“As regards access to housing for Roma families, the Committee has held that “as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community”.

40. The Committee will also bear in mind these important features.”

1015. European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, §19-25: “19. The Committee emphasises that one of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion. This requirement is exemplified in the proscription against discrimination in the Preamble and in its interaction with the substantive rights of the Charter.

20. This imperative to respect difference, avoid discrimination and social exclusion, was recently the subject of an important judgment given by the European Court of Human Rights, (Connors v United Kingdom of 27 May 2004 at para 84) where it stated that:

“The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (Buckley judgment cited above, pp. 1292-95, §§ 76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see Chapman, cited above, § 96 and the authorities cited, mutatis mutandis, therein)” (at para 84).

21. The Committee’s case law has responded in a like manner on the question of how human difference should be appropriately accommodated. In its decision in Collective Complaint No. 13 which involved the interaction between Article E and Articles 15 (The right of persons with disabilities to social integration and participation in the life of the community) and 17 (The right of children and young persons to social, legal and economic protection) it stated:

“The Committee recalls, as stated in its decision Complaint No 1/1998 (International Commission of Jurists v. Portugal, §32), that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact their choices will have for groups with heightened vulnerabilities ……”


22. The Committee notes that if it is possible to subject the receipt of social rights to the fulfilment of a certain number of conditions, the conditions must not be such that is impossible in the majority of cases to satisfy them, with the effect that the realisation of the rights is impeded.

23. The imperative to avoid social exclusion, respect difference and not to discriminate applies to all groups of Roma; itinerant and settled.
24. The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural. It is also of central importance to the family. The Committee recalls its previous case law to the effect that in order satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence.[2] Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.

25. The implementation of Article 16 as regards nomadic groups including itinerant Roma, implies that adequate stopping places be provided, in this respect Article 16 contains similar obligations to Article 8 of the European Convention of Human Rights.”

1016. European Roma Right Centre (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, § 53-59

“53. The Committee firstly recalls the obligations stemming from Article 16 of the Charter regarding the right of families to housing as it applies to nomadic or semi nomadic groups such as Travellers.

54. The Committee emphasises that one of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion.

55. The imperative to avoid social exclusion, respect difference and not to discriminate applies to all groups of Travellers, nomadic and settled.

56. The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural. It is also of central importance to the family. In order satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling, which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction (see below paragraphs 135-137).

57. The implementation of Article 16 as regards nomadic groups implies that adequate stopping places be provided, in this respect Article 16 contains similar obligations to Article 8 of the European Convention of Human Rights (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, § 25)


59. This means that, for the situation to be compatible with the treaty, states parties must:

a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;

b. maintain meaningful statistics on needs, resources and results;

c. undertake regular reviews of the impact of the strategies adopted;

d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

e. pay close attention to the impact of the policies adopted on each of the categories of persons
concerned, particularly the most vulnerable (European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, Decision on the merits of 5 December 2007, § 54).

1017. **Conclusions 2011, Azerbaijan:** “The Committee notes that as Azerbaijan has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.”

1018. **Conclusions XVII-1 (2004), Turkey:** “The report indicates that the General Directorate of Social Services and Child Protection (SHÇEK) is responsible for the establishment and the running of childcare, including inspection. Childcare is provided by Crèches and Daily Care Centres (for 0 to 6 years old) and Children’s Club (from 7 to 12 years of age). Childcare structures can be public or private. According to the report, there are 12 public crèches and daily care centres run by SHÇEK gathering for about 540 children. 500 additional children attend temporary structures established after the 1999 earthquake. Private registered institutions (1,179) offer their service to some 17,430 children. Childcare is free both in public and private structures for low income families benefiting about 542 children. The Committee observes from other sources that, in 1998, about 4.5% of the children aged 3 to 6 were attending pre-school education, or that in 1999/2000, the enrolment rates were 10% in pre-school education. Taking into consideration that, according to official sources there are about 3.2 million children aged 0-4 years, the Committee finds the situation not to be in conformity with the Charter because of the manifestly inadequate provision of childcare places.”

1019. **Conclusions 2006, Statement of Interpretation on Article 16:** “To ensure that the views of families are taken into account when family policies are drawn up, the Committee asks whether all the civil organisations representing families are consulted.”

1020. **Conclusions XVI-1 (2002), United Kingdom:** “The report indicates that property law in Northern Ireland is not entirely free of sex discrimination. As detailed in the report of the Law Reform Advisory Committee for Northern Ireland (LRAC) on matrimonial property, the common law presumption of advancement discriminates against the male spouse, while the common law rule on housekeeping money discriminates against the female spouse. According to the report, the continued existence of these rules prevents the United Kingdom from ratifying Protocol No. 7 to the European Convention on Human Rights. The LRAC has recommended that both of these rules be abolished in order to bring the United Kingdom fully into line with international standards. The Committee considers that these recommendations should be acted on, as the United Kingdom is already required to ensure full sexual equality in matrimonial property under Article 16 of the Charter.”

1021. **Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1:** “The Committee considers that any restrictions or limitations of custodial rights of parents’ should be based on criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family.”

1022. **Conclusions 2011, Statement of Interpretation on Articles 16 and 17§1:** “The Committee recalls that any restrictions or limitations of custodial rights of parents’ should be based on adequate and reasonable criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of child and the rehabilitation of the family (Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1). The Committee underlines that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, it considers that the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.
The Committee furthermore holds that when placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child’s re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.”

1023. Conclusions 2006, Statement of Interpretation on Article 16: “The Committee examines the conditions governing access to family mediation services, which help settle disputes and ensure that future relations between parents and between them and their children are not unduly damaged, whether such services are free of charge and cover the whole country, and how effective they are.”

1024. Conclusions 2015, Austria: “The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for a description of mediation services. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided. The Committee notes that part of the cost of mediation is met by the couple, on the basis of their combined income and the number of children. The average subsidy is €1,000, with the couple contributing €200. It asks the next report to indicate what assistance is available for families in case of need.”

1025. Conclusions 2006, Statement of Interpretation on Article 16: “... the Committee examines whether women are offered protection, both in law (appropriate measures – including restraining orders - and punishments for perpetrators, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (recording and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims). The Committee assesses these issues in the light of the principles laid down in Recommendation Rec (2002)5 of the Committee of Ministers of the Council of Europe on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe.”

1026. Conclusions 2006, Statement of Interpretation on Article 16: “The Committee examines the means used by states to ensure the social, legal and economic protection of the various types of families in the population, especially single parent families, with a particular emphasis on vulnerable families, including Roma ones. States can choose such means freely, with the proviso that they must not jeopardise the effective protection of Roma families.”

1027. Conclusions 2006, Statement of Interpretation on Article 16: “To ensure consistency between the conclusions on Articles 12, 13 and 16, the Committee has decided to apply the “median equivalised income” indicator, as calculated by Eurostat in relation to the at-risk-of-poverty threshold, to Article 16 as well.”

1028. Conclusions 2006, Estonia: “The Committee considers that, to comply with Article 16 of the Revised Charter, child allowance must represent an adequate income supplement representing a significant percentage of the median equivalised income.”
1029. **Conclusions XIV-1 (1998), Sweden:** “Since family allowances are non-contributory social security benefits, the Committee accepts, by analogy with Article 12 para. 4, that the Contracting Parties, in order to prevent abuses, require beneficiaries to be resident in the country for a certain period before they qualify for benefits. It reserves the right, however, to determine whether the required period of residence is in proportion with the desired result. In this case the Committee considers it reasonable to require one of the parents to have been resident in the country for six months.”

1030. **Conclusions XIV-1 (1998), Sweden:** *ibidem*

1031. **Conclusions XVIII-1 (2006), Denmark:** “All families with children under 18 receive a basic family allowance. However, under the terms of the consolidated Family benefits and advance payment of the child allowance Act of 2000, ordinary child allowances (in the case of single and retired parents) and supplementary allowances (single parents) are subject to a one-year residence requirement. Special child allowances (for children who have lost one or both parents or when paternity has not been determined) are subject to a residence requirement of three years. The Committee holds that these lengths of residence requirements are excessive and considers that the situation is not in conformity with the Charter.”

1032. **Conclusions XVI-1 (2002), Statement of Interpretation on Article 16:** “With respect to Article 16 the Committee took note of the detailed arguments provided by certain governments in reply to the question asked in the general introduction to Conclusions XV-1 (2000) on the non-payment of family benefit for children who do not reside in the country which pays the benefit. In the light of the arguments presented, the Committee has decided no longer to address this issue in its conclusions relating to Article 16.”
Article 17 Children and young persons’ social, legal and economic rights

1033. **Conclusions XV-2 (2001), Statement of Interpretation on Article 17:** “Cycle XV-2 is the first time for a number of supervision cycles that the Committee has had the opportunity to examine Articles 7§10 and 17 for all Contracting Parties. The Committee has therefore endeavoured to develop and clarify its interpretation of these provisions. It has done so in the light of the case-law developed under other international treaties as regards the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights. It has also taken into account developments in national legislation and practice as regards the protection of children.

As the scope of Articles 7§10 and 17 is to a large extent overlapping, the Committee has decided, with respect to the Contracting Parties having accepted both provisions to deal with the following issues under Article 7§10:
- Protection of children against moral dangers at work and outside work;
- Involvement of children in the sex industry and in begging.

The following issues will mainly be dealt with under Article 17:
- Establishment of parentage and adoption;
- Children and the law;
- Children in public care;
- Protection of children from ill-treatment and abuse.

The Committee has decided to deal with the various aspects of Article 17 relating to the protection of mothers under Article 16 with respect to Contracting Parties having accepted both provisions.

Preventative measures in the fields of drug addiction and alcoholism, will be considered mainly under Article 11.”

1034. **World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, §§61-63:** “61. The Committee sets out its reasoning on the substance of the issue below, but by way of preliminary remarks the Committee recalls that when it stated the interpretation to be given to Article 17 in 2001 (see infra), it was influenced by an emerging international consensus on the issue and notes that since this consensus is stronger. As regards its reference to the UN Convention on the Rights of the Child, the Committee recalls that this treaty is one of the most ratified treaties, and has been ratified by all member states of the Council of Europe including Ireland, and therefore it was entirely appropriate for it to have regard to it as well as the case law of the UN Committee on the Rights of the Child.


63. The Committee furthermore recalls that the Charter is a living instrument which must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments. In its interpretation of Article 17 the Committee refers, in particular to, a. Article 19 of the United Nations Convention on the Rights of the Child as interpreted by the Committee on the Rights of the Child.”

1035. **Conclusions XVII-2 (2005), Malta:** “The Committee recalls that it previously considered the situation in Malta not to be in conformity with the Charter on the grounds that children born outside marriage are discriminated against in matters of succession, and inequalities also exist between children of a first and second marriage. As the report indicates that there has been no change to this situation, the Committee concludes that the situation in Malta is not in conformity with Article 17 of the Charter.”
1036. **Conclusions 2003, France:** “The Committee previously stated that it considered that the right of a child to know his origins was not adequately protected in certain situations in France; namely where the mother of a child has requested that her identity should be kept secret during the birth and declaration of the birth (“accouchement sous X”) and where parents who place their child in care request that their identity remain secret. New legislation on this issue entered into force in 2001; the law on Access to origins for adoptees and children under the guardianship of the State (“L’accès aux origines des personnes adoptées et des pupilles de l’Etat”). This legislation permits where the mother agrees, for her identity to be revealed. A new body, the National Council for Access to Personal Origins (Cnaop) has been created in order to facilitate this (to find the mother and seek her permission for her identity to be revealed). However, despite this, the Committee notes that the legislation creates no right for a child to know his origins in these circumstances, and should the mother refuse to allow her identity to be revealed the matter cannot be pursued further. The Committee asks whether the over-ruling of the mother’s decision might become possible in the future.”

1037. **Conclusions 2003, France:** “The Committee had noted that the minimum age for marriage was 15 years for females and 18 years for males and had questioned the reasons for this difference. According to the report this situation is to be modified and the minimum age is to be 18 years (with certain exceptions) for both males and females.”

1038. **Conclusions 2011, Ukraine:** “The Committee notes the difference in the minimum legal age of marriage of 18 for men and 17 for women and asks what are the reasons for such differentiation and whether it is envisaged to equalise the minimum age of marriage for women and men.”

1039. **Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Collective Complaint No. 41/2007, decision on the merits of 3 June 2008, §34:** “34. The Committee begins by pointing out that both the first and the second paragraphs of Article 17 of the Revised Charter guarantee children’s right to education. The Committee considers that Article 17§2 applies fully in this case as it covers all children and hence concerns children with intellectual disabilities. The Committee recalls in this respect that:

“Therefore Article 17 as a whole requires states to establish and maintain an education system that is both accessible and effective. In assessing whether the system is effective the Committee will examine under Article 17; ... whether, considering that equal access to education should be guaranteed for all children, particular attention is paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty etc. and whether necessary special measures have been taken to ensure equal access to education for these children” (Conclusions 2003, Bulgaria, Article 17§2).

“States need to ensure a high quality of teaching and to ensure that there is equal access to education for all children, in particular vulnerable groups” (Conclusions 2005, Bulgaria, Article 17§2).

1040. **Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1** : “The Committee considers that any restrictions or limitations of custodial rights of parents’ should be based on criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family. In this respect the Committee interprets Article 17 in the light of the case law developed under Article 8 of the European Convention on Human Rights. It asks states to provide information in their reports on the criteria for the restriction of custody or parental rights and on the extent of such restrictions. The Committee furthermore holds that it should only be possible to take a child into custody in order to be placed outside his/her home if such a measure is based on adequate and reasonable criteria laid down in legislation. In order to assess whether national situations meet these requirements, the Committee needs information on the criteria for taking children into public care in order to place them in a foster home or an institution. It also needs information on such matters
as the right of children to meet persons of importance for them, such as their parents and siblings during a placement period, etc.

However, in this context the Committee also underlines the positive obligation of the states concerned to take measures, such as foster family placement, to protect children against dangers to which they may be exposed by their families or close surroundings.”

1041. **Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1**: “Children taken into public care shall as far as possible be placed within such a distance to their natural family that they can maintain links with it, unless considered undesirable for the child (Resolution (77)33 on placement of children adopted by the Committee of Ministers on 3 November 1977 (point 2.11)). The Committee moreover considers that siblings should be kept together as far as possible (cf. judgment of the European Court of Human Rights in the case of Olsson v. Sweden of 24 March 1988).

The Committee finds that the aim of the states’ involvement in the upbringing and protection of children, must be to rehabilitate the biological family as far as this is possible, taking the child’s interests into consideration.

The Committee is of the opinion that long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. In this respect it refers to Article 20 of the UN Convention on the Rights of the Child and to Resolution (77)33 on placement of children adopted by the Committee of Ministers on 3 November 1977 (point 2.13). It considers that long term placement of very young children in residential units should be avoided as much as possible. The organisation of public care of children should reflect these priorities, the aim being to place a significant share of the children concerned in foster families or in institutions which resemble the family model.

In order to assess national situations, the Committee requires information on how many children have been taken into care, (how many are placed outside their home, how many are placed in foster families and how many are placed in institutions. The Committee also requires information on the selection of foster families, the training and monitoring of foster families and on the support that is given to them.

Children placed in institutions shall be entitled to the highest possible degree of satisfaction of their developing emotional needs and their physical well-being as well as to special protection and assistance. In order to be considered as adequate institutions shall provide a life of human dignity for the children placed there and shall provide conditions promoting their growth, physically, mentally and socially. A unit in a child welfare institution shall be of such size as to resemble the home environment. The Committee requires Contracting Parties to provide detailed information permitting it to establish whether these criteria are fulfilled.”

1042. **Conclusions 2005, Republic of Moldova**: “The Committee recalls that, in order to comply with Article 17§1 of the Charter, children placed in institutions should be entitled to the highest possible degree of satisfaction of their developing emotional needs and their physical well-being as well as to special protection and assistance. In order to be considered as adequate institutions shall provide a life of human dignity for the children placed there and shall provide conditions promoting their growth, physically, mentally and socially. A unit in a child welfare institution shall resemble the home environment and shall not accommodate more than 10 children. The Committee asks the next report to provide information on the size of units in child welfare institutions.”

1043. **Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1**: “Fundamental rights and freedoms such as right to integrity, privacy, secrecy of mail and telephone conversations, protection of property and contacts with persons close to the child shall be guaranteed in legislation also for children living in institutions. Only the restrictions necessary for the security, physical and mental health and development of the child or the health and security of the others
are admissible. The conditions for any restrictions to the freedom of movement and for isolation as a disciplinary measure or punishment, should also be laid down in legislation and be limited to what is necessary for the purpose of the upbringing of the young person.”

1044. Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1: “The Committee moreover considers that national legislation must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child’s closest family. With respect to other restrictions for example for children living in institutions, there should be an opportunity for them or their tutor’s to complain about the conditions in the institution. The Committee underlines that Contracting Parties must provide for an adequate supervision of the child welfare system and in particular of the institutions involved.”

1045. Conclusions 2005, Lithuania: “It asks whether there are specific procedures for children to complain about the care and treatment in institutions.”

1046. Conclusions XIX-4 (2011), Statement of Interpretation on Articles 16 and 17: “The Committee underlines that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, it considers that the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.

The Committee furthermore holds that when placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child’s re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.”

1047. Association for the protection of all children (APPROACH) Ltdv. Belgium, Complaint No 98/2013, decision on the merits of 20 January 2015:

1048. Conclusions 2011, Ireland: “As regards the age of criminal responsibility, the Committee previously wished to be informed whether the Children Bill of 1999 which proposed raising the age of criminal responsibility from 7 to 12 years entered into force. In this regard, the Committee notes from another source 4, that in the Children Act 2001, the age of criminal responsibility was raised from 7 to 12 years with a rebuttable 20 presumption that the minimum age of responsibility is 14. However, according to the same source, this part of the Children Act was transferred to the Criminal Justice Act 2006 in which the age of criminal responsibility was lowered to 10 years for serious crimes. The Committee further notes from the report of the Commissioner for Human Rights that the general age of criminal responsibility in Ireland is 12 years. However, an exception is made for 10 and 11-year-old children charged with the most serious offences on the statute book (murder, manslaughter, rape or aggravated sexual assault), who face trial in the Central Criminal Court. According to the Commissioner, proceedings can only be taken against a child under the age of 14 with the consent of the Director of Public Prosecutions, but the current rigid exception makes it possible to charge a very young child with the most severe crimes in an ordinary criminal court not specially equipped to deal with children. The Committee recalls that in the meaning of Article 17§1 of the Charter the age of criminal responsibility must not be too low even for very serious crimes. Therefore, the Committee holds that the situation in not in conformity with the Charter on this ground.”
Conclusions 2011, United Kingdom: “In its previous conclusion the Committee held that the age of criminal responsibility was manifestly too low. In this connection the report reiterates that this age remains at 10 years in England, Wales, Northern Ireland and Isle of Man. As regards Scotland, according to the report, the Criminal Justice and Licensing Bill was introduced into Parliament in 2009, which includes measures to raise the age of criminal responsibility from 8 to 12. The Committee wishes to be informed about these developments. In the meantime it holds that the age of criminal responsibility at 10 years remains manifestly too low and therefore the situation is not in conformity with the Charter.”

Conclusions 2005, France: “The maximum duration of pre-trial detention may last up to two years for children between the ages of 16 and 18 and one year for children between the ages of 13 and 16 for serious crimes. The maximum duration of pre-trial detention is one year for children between the ages of 16 and 18 and two months for children between the ages of 13 and 16 for offences punishable up to ten years imprisonment. In 2002, there were a total of 3,429 minors in pre-trial detention.”

Conclusions 2011, Denmark: “In its previous conclusion the Committee asked how many times the period of 4 weeks of pre-trial detention or solitary confinement could be extended. It notes from the report that the pre-trial detention can be imposed of eight months when the accused in charged with an offence that may carry a sentence under the law of imprisonment for six years or more. However, if the court finds that very special circumstances are involved, this period may be further extended. The Committee considers that 8 months, extendable, of pre-trial detention is excessive and therefore not in conformity with the Charter.”

Conclusions 2011, Norway: “In reply to its question whether young offenders are always separated from adults, the Committee from the additional information provided by the Government that there is a reason why the age of criminal responsibility in Norway is 15 years. Between the ages of 15 and 18 offenders are criminally responsible and subject to the ordinary provisions of criminal law, but with certain modifications due to their young age. Under applicable law, the maximum penalty, also for minors, is imprisonment for a term of 21 years. In practice, however, prison sentences of that length are not used. The Committee considers that a prison sentence of 21 years for a minor is excessive and therefore not in conformity with the Charter.”

Conclusions 2011, Belgium: “The Committee recalls that in the meaning of Article 17§1 minors should only exceptionally be remanded in custody and only for serious offenders and should in such cases be separated from adults. Young offenders should not serve their sentence together with adult prisoners. The Committee considers that the possibility of relinquishment of jurisdiction which allows for minors to be treated as adults and serve their sentence with adults is contrary to the Charter.”

Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1: “The Committee holds that the procedure with respect to children and young persons must be suitable for them and that they must be afforded the same procedural guarantees as adults, although proceedings involving minors should be conducted rapidly. Moreover, minors should as a rule not be held on remand in custody, and if so only for serious offences and for a short duration. Furthermore, minors should in such case be kept separate from adults. The Committee is moreover of the opinion that prison sentences should only exceptionally be administered to young offenders. It refers to the various alternative measures mentioned in Recommendation No. R(87)20 on social reactions to juvenile delinquency adopted by the Committee of Ministers on 17 September 1987. Prison sentences for young offenders should only be for a short duration and the length of the sentence must be laid down by a court. The Committee is furthermore of the view that young offenders should not serve their sentence together with adult prisoners. In conclusion, the Committee underlines the importance of enabling young offenders to maintain contact with their family, inter alia by placing them as close to the family as possible and by allowing them to receive correspondence and visits.”
1055. **International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, § 36:** "36. Article 17 of the Revised Charter is further directly inspired by the United Nations Convention on the Rights of the Child. It protects in a general manner the right of children and young persons, including unaccompanied minors, to care and assistance. Yet, the Committee notes that:

a) medical assistance to the above target group in France is limited to situations that involve an immediate threat to life;

b) children of illegal immigrants are only admitted to the medical assistance scheme after a certain time."

1056. **Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§70-71:** "70. Article 17§1.c requires that States take the appropriate and necessary measures to provide the requisite protection and special aid to children temporarily or definitively deprived of their family’s support. The Committee observes that as long as their unlawful presence in the Netherlands persists, the children at stake in the instant case, are deprived of their family’s support in that by law (see section 10 of the Aliens Act) they may not claim entitlement to the benefits or facilities which would inter alia secure them shelter.

71. In this respect, the Committee holds that the obligations related to the provision of shelter under Article 17§1.c are identical in substance with those related to the provision of shelter under Article 31§2. Insofar as the Committee has found a violation under Article 31§2 on the ground that shelter is not provided to children unlawfully present in the Netherlands for as long as they are in its jurisdiction, the Committee also finds a violation of Article 17§1.c of the Revised Charter on the same ground."

1057. **European Federation of National Organisations working with the Homeless (FEANSA) v. Netherlands, Complaint No.86/2012, Decision on the merits of 2 July 2014, §50 :**"50. The Committee similarly recalls that the obligations related to the provision of shelter under Article 17 are identical in substance with those under Article 31§2 (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2003, decision on the merits of 20 October 2009, §71)."

1058. **Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §73:** "73. The Committee refers to the content of Article 17, which concerns the aid to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such aid. The Committee also recalls the importance of paragraph 1 (b) of Article 17, because failure to apply it would obviously expose a number of children and young persons to serious risks to their lives or physical integrity.

1059. **Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82 :**82. In the light of the above, the Committee considers that the fact that the Government has, since 2009, no longer guaranteed accompanied foreign minors unlawfully present in the country any form of accommodation in reception centres (through either through the FEDASIL network or other alternative solutions) breaches Article 17§1 of the Charter. The persistent failure to accommodate these minors shows, in particular, that the Government has not taken the necessary and appropriate measures to guarantee the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity. Similarly, the fact that at least 461 unaccompanied foreign minors were not accommodated in 2011 and the problems posed by inappropriate accommodation in hotels lead the Committee to the conclusion that the Government failed to take sufficient measures to guarantee non-asylum seeking, unaccompanied foreign minors the care and assistance they need, thereby exposing a large number of children and young persons to serious risks for their lives and health.
1060. European Committee for Home Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2014, decision on the merits of 24 January 2018


1062. Conclusions 2003, Statement of interpretation on Article 17, France: “The text of Article 17 of the Charter has been revised considerably, in some respects in order to reflect the approach of the Committee under this provision of the 1961 Charter (e.g. reference to mothers has been omitted and now includes legal protection as well as social and economic). Paragraph 1 a now contains a reference to the right to education and paragraph 2 guarantees the right to free primary and secondary education.

Therefore Article 17 as a whole requires states to establish and maintain an education system that is both accessible and effective. In assessing whether the system is effective the Committee will examine under Article 17:

- whether there is a functioning system of primary and secondary education;
- the number of children enrolled in school as a percentage of the number of children of the relevant age;
- the number of schools;
- class sizes;
- the teacher pupil ratio;
- whether there is a mechanism to monitor the quality of education delivered both in public and private schools and to ensure a high quality of teaching;
- whether education is compulsory in general until the minimum age for admission to employment;
- whether there is a fair geographical distribution of schools in particular between rural and urban areas;
- whether, considering that equal access to education should be guaranteed for all children, particular attention is paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty etc. and whether necessary special measures have been taken to ensure equal access to education for these children;
- the cost of education, whether basic education is free of charge, whether there are hidden costs such as books uniforms, whether these are reasonable, and whether assistance is available to limit their impact;
- The number of children dropping out, not completing compulsory education or failing compulsory education, rate of absenteeism, measures taken to encourage school attendance and to reduce dropping out.”

1063. Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Collective Complaint No. 41/2007, decision on the merits of 3 June 2008, §34: “34. The Committee begins by pointing out that both the first and the second paragraphs of Article 17 of the Revised Charter guarantee children’s right to education. The Committee considers that Article 17§2 applies fully in this case as it covers all children and hence concerns children with intellectual disabilities. The Committee recalls in this respect that: “Therefore Article 17 as a whole requires states to establish and maintain an education system that is both accessible and effective. In assessing whether the system is effective the Committee will examine under Article 17: ... whether, considering that equal access to education should be guaranteed for all children, particular attention is paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty etc. and whether necessary special measures have been taken to ensure equal access to education for these children” (Conclusions 2003, Bulgaria, Article 17§2).
“States need to ensure a high quality of teaching and to ensure that there is equal access to
education for all children, in particular vulnerable groups” (Conclusions 2005, Bulgaria, Article
17§2).

1064. Conclusions 2011 Slovakia: “The Committee recalls that under Article 17§1 equal access to
education must be ensured for all children, in this respect particular attention should be paid to
vulnerable groups such as children from minorities, children seeking asylum, refugee children,
children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of
their liberty, etc. Where necessary special measures should be taken to ensure equal access to
education for these children. However, the Committee recalls that special measures for Roma
children should not involve the establishment of separate schools or classes reserved for this
group.

Amnesty International highlighted that the School Act prohibits “all forms of discrimination, mainly
segregation”, but does not include concrete, targeted and effective measures to eliminate the
discrimination faced by Roma in the area of education. Amnesty International also mentioned that
this Act does not remove the concept of “socially disadvantaged children”, which led to the de
facto placement of Roma children in special schools and classes.

The Committee holds that despite the absence of discriminatory treatment in the legislation, the
practice shows that Roma children are disproportionately represented in special classes.
Therefore it considers that this situation amounts to a breach of the Charter.”

educational needs) and chronic ailments, the Committee notes that on the one hand the Public
Education Act 1991 provides for the establishment of specialized schools and auxiliary units for
the education of these children, while on the other hand the law on the Protection, Rehabilitation
and Social Integration of Disabled Persons 1996 appears to favour integration. The Committee
recalls that integrated education for children with disabilities and special needs should be the
norm. It notes that according to the observations of the Bulgarian Helsinki Committee1 very few
children have so far been integrated and apparently only children with impaired hearing. There
are, according to these observations, 138 special schools in Bulgaria (including socio-
pedagogical boarding houses and reformatory boarding schools) which provided education for a
total of 16346 children, however only 618 children completed primary education and only
199°completed secondary education in 2000/01. Further according to the observations of the
Bulgarian Helsinki Committee children with intellectual disabilities living in institutions under the
responsibility of the Ministry of Labour and Social Policy receive virtually no education or training.

The Committee notes that the situation is not in conformity with the Charter, as children with
disabilities are not guaranteed an effective right to education.”

1066. European Action of the Disabled (AEH) v. France Complaint No. 81/2012, decision on the
merits of 11 September 2013, §§24-30: “24. On this subject, while the initial and continue
vocational training of persons with autism is covered both by Article 10, which applies to all
people, and by Article 15, which applies to persons with disabilities, the purpose of the two
articles, though complementary, is different.
25. The aim of Article 10 is to ensure that effective and appropriate vocational training is provided
for the entire population. Paragraphs 1 and 3 of this article establish the rule that everyone
(including persons with disabilities but not just them) must have access to vocational training, with
due regard for their “needs”. To a certain extent therefore these provisions are regarded as being
dependent on individual needs or on the general needs of the labour market; they also relate
mainly to the means of access to vocational training.
26. As to Article 15, the Committee would point out that the authors of the Charter made
significant changes to the substance of Article 15 compared to the text of the 1961 Charter.
27. The explanatory report on the revised Charter describes the new scope of Article 15 as
follows:

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“63. The protection of the disabled afforded by this Article has been extended as compared to that afforded by Article 15 of the Charter [of 1961], as it no longer applies only to vocational rehabilitation but to the right of persons with disabilities to independent social integration, personal autonomy and participation in the life of the community in general. The words ‘effective exercise of the right to independence’ contained in the introductory sentence to the provision imply, inter alia, that disabled persons should have the right to an independent life.

64. Under this provision Parties must aim to develop a coherent policy for persons with disabilities. The provision takes a modern approach to how the protection of the disabled shall be carried out, for example by providing that guidance, education and vocational training be provided whenever possible in the framework of general schemes rather than in specialised institutions, an approach which corresponds to that of Recommendation No. R (92) 6 of the Committee of Ministers of the Council of Europe. It not only provides the possibility, but to a large extent obliges Parties to adopt positive measures for the disabled.”

28. According to the wording of Article 15 itself, its aim is to secure the “right of persons with disabilities to independence, social integration and participation in the life of the community”. Each paragraph of Article 15 comes together to achieve this objective.

29. Consequently, Article 15 treats vocational training of persons with disabilities as one of the means of achieving the “ultimate” aims of independence, integration and participation.

30. For this reason, the Committee will examine the complainant organisation’s complaints under Article 15.”

1067. Statement of interpretation on Article 17§2, 2011 : “As regards the issue as to whether children unlawfully present in the State Party are included in the personal scope of the Charter within the meaning of its Appendix, the Committee refers to the reasoning it has applied in its Decision on the Merits of 20 October 2009 of the Complaint No. 47/2008 Defence for Children International (DCI) v. the Netherlands (see, inter alia, §§ 47 and 48) and holds that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child's life would be adversely affected by the denial of access to education. The Committee therefore holds that States Parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education as any other child.”

1068. Médecins du Monde - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §128: “128. The Committee considers access to education as crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2, General Introduction, Conclusions 2011, §10).”

1069. Conclusions 2003, Bulgaria: “Therefore Article 17 as a whole requires states to establish and maintain an education system that is both accessible and effective. In assessing whether the system is effective the Committee will examine under Article 17:

- whether there is a functioning system of primary and secondary education;
- the number of children enrolled in school as a percentage of the number of children of the relevant age;
- the number of schools;”
- class sizes;
- the teacher pupil ratio;
- whether there is a mechanism to monitor the quality of education delivered and to ensure a high quality of teaching in both public and private schools;
- whether education is compulsory in general until the minimum age for admission to employment;
- whether there is a fair geographical distribution of schools in particular between rural and urban areas;
- whether, considering that equal access to education should be guaranteed for all children, particular attention is paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty etc. and whether necessary special measures have been taken to ensure equal access to education for these children;
- the cost of education, whether basic education is free of charge, whether there are hidden costs such as books and uniforms, whether these are reasonable and whether assistance is available to limit their impact;
- the number of children dropping out, not completing compulsory education or failing compulsory education, rate of absenteeism, measures taken to encourage school attendance and to reduce dropping out.

1070. **Conclusions 2003, Bulgaria:** “[…] the cost of education, whether basic education is free of charge, whether there are hidden costs such as books and uniforms, whether these are reasonable and whether assistance is available to limit their impact;”

1071. **Conclusions 2011, Republic of Moldova:** “In this connection the Committee notes from the report that in 2010 185 children not attending school were identified, one of the reasons being the precarious material state of their families. According to the report assistance is provided to poor families in purchasing school materials, food and clothes”

1072. **Conclusions 2003, Bulgaria:** […]
- the number of children dropping out, not completing compulsory education or failing compulsory education, rate of absenteeism, measures taken to encourage school attendance and to reduce dropping out.

[...] The Committee wishes to know for the next reference period the enrolment rate in compulsory education, the number of dropouts and repetitions.

1073. **European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France Complaint No. 82/2012, decision on the merits of 19 March 2013, §31:** “31. Furthermore, under Article 17§2 of the Charter, measures must be taken to encourage school attendance, to actively reduce the number of children dropping out or not completing compulsory education and to lower the rate of absenteeism (Conclusions 2003, Bulgaria). Here again, states parties have a margin of appreciation when devising and implementing measures to combat truancy. Article 17§2 implies that all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued.”
Article 18 The right to work in a gainful occupation in the territory of other Parties

Article 18§1

1074. Conclusions X-2 (1990), Austria: “In order to be better able to judge whether the present regulations are applied in a spirit of liberality, the Committee would like to find in the next Austrian report a reply to the following questions:
- How many work permit applications are lodged by young second-generation immigrants?
- How many such applications are rejected?
As regards access to employment for immigrant workers’ spouses, allowed into Austria for the purpose of family reunification, about whom no information is provided in the report, either of a statistical nature or regarding the applicable rules, the Committee would like to find in the next report replies to the following questions:
- What are the rules governing access to employment in Austria for immigrant workers’ spouses allowed into the country for the purpose of family reunification?
- How many work permit applications are lodged by such persons?
- How many such applications are rejected?”

1075. Conclusions XIII-1 (1993), Sweden: “Having noted that in the Government’s opinion the liberalisation of regulations required under this provision should affect only those foreign workers already in the country, the Committee would like the Government to clarify its position in this respect. Whilst recalling that the provisions of Article 18 do not cover regulations governing the entry of foreigners to the territory of the Contracting Party, the Committee felt it could not accept an interpretation which would undermine its aim, which is “to ensure the effective exercise of the right to exercise a gainful activity in the territory of another Contracting Party,” by restricting the benefits of liberalisation to only those nationals of other Contracting Parties already in the country.
The Committee considered it necessary to stress that regulations preventing nationals of another Contracting Party who were not in the country from applying for the grant of a work permit (other than a short term permit) owing to the combined effects of the various rules on entry, length of stay, residence and the exercise of a gainful activity would be not be in keeping with this provision of the Charter even where regulations governing foreign residents have been liberalised sufficiently in other respects.”

1076. Conclusions XVII-2 (2005), Spain: “The Committee recalls that the assessment of the degree of liberality used in applying existing regulations is based on figures showing the granting and refusal rates for work permits for first-time as well as for renewal applications with respect to nationals of Contracting Parties. In the absence of such data in respect of the reference period there is no evidence that existing regulations with regard to the right to engage in a gainful occupation in Spain are applied in a spirit of liberality. The Committee wishes to be provided with the corresponding data in the next report.”

1077. Conclusions 2012, Statement of Interpretation of Article 18§1 and 18§3:” Article 18 requires each State Party to ensure to the nationals of any other Party the effective exercise of the right to engage in a gainful occupation in its territory, by applying existing regulations in a spirit of liberality (§1), and by liberalising regulations governing the employment of foreign workers (§3). As the Committee has already observed, economic or social reasons might justify limiting access of foreign workers to the national labour market. This may occur, for example, with a view to addressing the problem of national unemployment by means of favouring employment of national workers.
The Committee considers to be also in conformity with Article 18§§1 and 3, the fact that a State Party, in view of ensuring free movement of workers within a given economic area of European States, such as the EU or the EEA, gives priority in access to the national labour market not only to national workers, but also to foreign workers from other European States members of the same area. An example of such a situation can be found in the application of the so called “priority
workers’ rule, provided for by the EU Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment. This Resolution states inter alia that EU Member States will consider requests for admission to their territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower, or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State’s regular labour market.

In this regard the Committee notes, however, that in order not to be in contradiction with Article 18 of the Charter, the implementation of such policies limiting access of third-country nationals to the national labour market, should neither lead to a complete exclusion of nationals of non-EU (or non-EEA) States parties to the Charter from the national labour market, nor substantially limit the possibility for them of acceding the national labour market. Such a situation, deriving from the implementation of “priority rules” of the kind just mentioned, would not be in conformity with Article 18§1 of the Charter, since it would prove an insufficient degree of liberality in applying existing regulations with respect to the access to the national labour market of foreign workers of a number of States Parties to the Charter. It would also be contrary to Article 18§3, since the State in question would not comply with its obligation to progressively liberalise regulations governing the access to the national labour market with respect to foreign workers of a number of States Parties to the Charter."

Article 18§2

1078. Conclusions IX-1 (1990), United Kingdom:

1079. Conclusions XVII-2 (2005), Finland: “The Committee recalls that with regard to the formalities to be completed in connection with the application for the granting of a work permit, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin.”

1080. Conclusions XVII-2 (2005), Germany: “The Committee also asked for confirmation whether there are still two distinct procedures for the issuance of work and residence permits in place in Germany which it had previously held as not being in line with the requirement for simplification of procedures under Article 18§2 of the Charter.”

1081. Conclusions XVII-2 (2005), Portugal: “The Committee asked in its last conclusion on Article 18§2 what is the average time between submission of an application for a work permit and the issuing of that permit. The report states in this respect that the average time frame for the granting of both work/residence visa for employees as well as self-employed is two months. The Committee considers that this time frame complies with Article 18§2 of the Charter. However, it wishes to receive clarification as to whether this period includes the time necessary to obtain the prior advisory opinion of the Foreign and Frontiers Service as well as the approval of the Institute for the Development and Inspection of Working Conditions if needed.” “... The Committee noted in its last conclusion on Article 18§2 that the sum to be paid for a permanent residence permit is high and asked for the Government’s comments on how the payment of such sum is justified. The report does not contain information in this respect but merely stresses that the fees charged for visa and permits have remained the same since 1998. The Committee further recalls that it has previously held (Conclusions XV-2, p. 72, Austria) that it does not see any justification for charging a fee, even though modest, at the application stage and asks the Government to explain why it continues to make such a charge.”
According to Article 18§2 of the Charter, with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. The Committee observes that in order to comply with such an obligation, States must, first of all, not set an excessively high level for the dues and charges in question, that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful occupation, and employers from seeking to employ foreign workers. In addition, States have to make concrete efforts to progressively reduce the level of fees and other charges payable by foreign workers or their employers. States are required to demonstrate that they have taken measures towards achieving such a reduction. Otherwise, they will have failed to demonstrate that they serve the goal of facilitating the effective exercise of the right of foreign workers to engage in a gainful occupation in their territory.

Article 18§3

The information on Article 18 paragraphs 1 to 3, contained in the 5th report of the Federal Republic of Germany did not make it possible for the committee to confirm its previous decision and this for the following reasons:

1. Though the German Government states, in its 5th report, that the ban on the recruitment of foreign workers does not apply to nationals of the states party to the Charter, the same would not appear to be the case in the Länder, where preferential treatment seems to be granted only to nationals of the European Communities.

2. Assuming that migrant workers are entitled to a work permit, its validity would seem to be limited to one year and to one firm, a state of affairs which the committee, following its established practice, cannot consider as demonstrating a spirit of liberality.

3. The geographical restrictions imposed on migrant workers in their choice of residence - which affect the exercise of their right to engage in a gainful occupation in the territory of a Contracting State other than their own - do not seem to meet the requirements of these paragraphs of Article 18 of the Charter.

With these considerations in mind, the Committee defined the interpretation of the relevant paragraphs in Article 18 as follows:

1. Any regulation which de jure or de facto restricts an authorisation to engage in a gainful occupation to a specific post for a specific employer cannot be regarded as satisfactory. To tie an employed person to an enterprise by the threat of being obliged to leave the host country if he loses that job, in fact constitutes an infringement of the freedom of the individual such that it cannot be regarded as evidence of “a spirit of liberality” or of liberal regulations. Moreover, economic or social reasons might justify restricting the employment of aliens to specific types of jobs in certain occupational and geographical sectors, but not the obligation to remain in the employment of a specific enterprise.

2. “Liberal” regulations should normally make it possible for the foreign worker gradually to have access to activities other than those he was authorised to engage in when entering the host country, and to be perfectly free to do so after a certain period of residence or of activity in his occupation. In the Committee’s view, this interpretation of the provisions of Article 18 could not, in any way, be regarded as prejudicing the provisions of the European Convention on Establishment, as laid down in the Appendix to the Charter.

3. The letter and spirit of Article 18 mean that the situation of national of States bound by the Charter should gradually become as far as possible like that of nationals.
Conclusions 2012, Statement of interpretation on Article 18§3

Conclusions XI-1, Netherlands

Statement of interpretation on Article 18§3, 2012

Statement of interpretation on Article 18§3, 2012

Article 18§4

Conclusions XI-1 (1991), The Netherlands: “The Committee noted from the Netherlands report that an interim Passport Act had come into force on 17 January 1988 and that it would apply until the approval of the Passport Bill, thereby providing a legislative basis for restrictions on the right of nationals to leave the country. Nine situations warranting restrictions on this right are provided for by the Act.

Eight of them concern cases of criminal delinquency, maintenance obligations, debts to the State, bankruptcy, military obligations and security, and are founded on the presumption that the person’s departure from the country might permit the person concerned to evade his obligations or might jeopardise the security of the Netherlands or allied States (Section 7). The Committee held that these cases related to the public interest or to national security and were therefore not contrary to Article 18§4.”

Conclusions 2005, Cyprus: “Article 13 paragraph 2 of the Constitution of the Republic of Cyprus stipulates that every person has the right to leave the territory of the Republic permanently or temporarily subject to reasonable restrictions imposed by law.

According to the report, nationals of the Republic of Cyprus may be prevented from leaving the country on the following grounds as stipulated, *inter alia*, under the Children’s Act and the National Guard Laws:

– an arrest warrant or a court order are pending with respect to the person;
– the person is legally liable for the care and maintenance of a child or children under the age of sixteen years and wants to leave the country without the child or children in which case the Director of Social Welfare Services is under an obligation to prevent the person from leaving the country unless this person can provide evidence that the child or children are not likely to become dependent of public funds or be exposed to moral danger or neglect;
– the person has been called for military service unless a special license is granted by the Minister of Defence.

While the Committee finds that these are the kind of restrictions authorised by Article G of the Charter, it nevertheless asks for the regulatory criteria or basis for a rejection to leave the country in these cases. Furthermore, the Committee would like to know whether nationals of the Republic of Cyprus may be prevented from leaving the country on any other grounds than those mentioned in the report.”
Article 19 The right of migrant workers and their families to protection and assistance

1092. Conclusions I (1969), Statement of Interpretation on Article 19§1: “This paragraph is one of those provisions under Article 19 that apply both to the nationals of any given Contracting State who are located in the territory of another or who wish to go there and to any nationals of a state who are moving out of it or wish to do so for the same reasons. The Committee finds that, as a general rule, the governments that have accepted this paragraph appear to have taken appropriate measures for meeting its requirements but to have done so for the benefit of either one or the other of the two categories of persons, not for both categories at the same time.”

1093. Conclusions III (1973), Cyprus: “The Committee concluded that Cyprus did not satisfy the obligation under this provision of the Charter and expressed the view that more should be done by the government of this State to ensure that immigrants and emigrants to and from Cyprus have accurate, reliable information at their disposal concerning, for example, employment prospects and conditions, housing, education, health services, etc.”

1094. Conclusions XIV-1 (1998), Greece: “This paragraph of the Charter requires Contracting Parties to take steps to prevent misleading propaganda relating to emigration and immigration. Propaganda is taken to mean information about employment and other prospects for and conditions of work which could mislead migrant workers. The report makes no reference to any specific measures in this area. The Committee therefore again asks for the next report to include information on the measures taken to counter misleading propaganda relating to emigration and immigration (such as provisions for sanctions under the Criminal Code).”

1095. Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§138-140: “138. During the public hearing and in the written responses provided by the Government, reference was made to the agreement (12 June 2008) by the Italian Council of Journalists’ Association of a Code of Conduct (“Rome Charter”) on reporting, in a balanced and accurate manner, on asylum and migration issues. The Committee takes note of this new instrument, drafted by the Journalists’ Association and the Italian National Press Federation in collaboration with the UNCHR. Even admitting the difficulty of striking the right balance between the freedom of the press and the protection of others in cases of dissemination of racist remarks (see, mutatis mutandis, European Court of Human Rights, Jersild v. Denmark, judgment of 23 September 1994), the Committee finds that the Government has not taken all appropriate steps against misleading propaganda by means of legal and practical measures to tackle racism and xenophobia affecting Roma and Sinti. 139. The Committee considers that statements by public actors such as those reported in the complaint create a discriminatory atmosphere which is the expression of a policy-making based on ethnic disparity instead of on ethnic stability. Thus, it holds that the racist misleading propaganda against migrant Roma and Sinti indirectly allowed or directly emanating from the Italian authorities constitutes an aggravated violation of the Revised Charter. 140. In the light of the foregoing, the Committee holds that the use of xenophobic political rhetoric or discourse against Roma and Sinti constitutes a violation of Article E taken in conjunction with Article 19§1 of the Revised Charter.”

1096. Conclusion XV-1 (2000), Austria: “The Committee is of the opinion that the fight against misleading propaganda is not entirely effective unless it includes measures to combat racism and xenophobia. These measures should target national populations and combat, inter alia, the spread of stereotypical views according to which migrants are likely to be violent criminals, given to drug abuse and prone to illness.”
1097. Conclusions III (1973), Cyprus: “While the Committee noted that, in Cyprus, all travellers, irrespective of nationality or profession, enjoy the same facilities as regards departure, travel, reception, health services etc, it nevertheless expressed the hope of receiving details of these facilities in the third Cyprus report, as well as statistics on the numbers of migrant workers entering and leaving Cyprus. In this connection, it felt it appropriate to emphasise that, except where the general measures taken to facilitate the departure, travel and reception of travellers are of an exceedingly high standard, the satisfaction of the obligation arising under this provision normally involves the taking of special measures for the benefit of migrant workers.”

1098. Conclusions IV (1975), Statement of interpretation on Article 19§2

1099. Conclusions IV (1975), Germany: “With regard to the reception of such workers and their families, the fourth German report only gives specific information with regard to placement and integration into the workplace; on other aspects of reception, the report only described the generally available advice and assistance services for migrant workers, and not how these services ensured appropriate reception of migrant workers and their families in overcoming problems (for example, of short-term accommodation, illness, shortage of money) at the time and point of arrival and immediately afterwards. Pending this information, the Committee was obliged to maintain its previous conclusion that the Federal Republic could only provisionally be held to fulfil this undertaking.”

1100. Conclusions IV (1975), Statement of interpretation on Article 19§2

1101. Conclusions XIV-1 (1998), Belgium: “The Committee points out that the term “social services”, as used in Article 19 para. 3, covers all public or private organisations which make life easier for migrant workers and their families, help them to adapt to their new environment and at the same time facilitate relations between migrant workers and any member their family who have remained in their country of origin. Co-operation therefore entails such public and/or private services working together.”

1102. Conclusions XV-1 (2000), Finland: “The Committee recalls that the previous Finnish report referred to co-operation in different forms between the social services (conferences, exchanges of information and statistics, etc.), and that closer co-operation existed with the social services of Nordic countries. The Committee considers that this information is not sufficient to permit it to assess the situation and, in particular, to determine whether inter-service co-operation allows migrant workers to resolve any personal and family difficulties. Co-operation of this nature is useful, for example, where the migrant worker who has left their family in the country of origin fails to send money home or needs to be contacted for another family reason, or where the migrant worker has returned to his country but still has to receive unpaid wages or benefits, or needs to deal with any outstanding matters in the country of employment. The Committee therefore asks the Finnish authorities to confirm that in such situations there can be co-operation between the social services of the countries concerned.”

1103. Conclusions III (1973), Italy: “While concluding provisionally that Italy continues to satisfy the obligation under paragraph 4 of Article 19, the Committee wished to learn whether or not any housing assistance measures in Italy, such as loans, housing allowances etc, were restricted to Italian nationals or in any way withheld from migrant workers in Italy. It would also like to learn whether steps have been taken to eliminate all levels of discrimination in practice against migrant workers in the fields covered by this paragraph of the Charter, of conditions of employment and work (including pay), training in the course of employment and promotion etc; and whether migrant workers, nationals of other Contracting Parties and resident in Italy, enjoy the rights provided for under Articles 1 to 17 of the Charter on a basis of equality with Italian nationals.”
1104. **European Federation of national organisations working with the Homeless (FEANTSA) v. the Netherlands, decision on the merits of 2 July 2014, §§ 202-203**: “The Committee recalls that under Article 19§4, the States Parties are required to pursue a positive and continuous course of action towards more favourable treatment of migrant workers (Conclusions I, 1969, Italy).

203. It is not enough for a Government to prove that no discrimination exists in law alone, but the Government is obliged to prove, in addition, that no discrimination is practiced in fact or to inform the supervisory organs of the practical measures taken to remedy it (Conclusions 1973, Statement of interpretation on Article 19§4).”

1105. **Conclusions 2015, Statement of interpretation on Article 19§4**: “The Committee recalls that in its decision in Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v Sweden, Complaint No. 85/2012, decision on the merits of 3 July 2013 at para. 134, it stated as follows:

“[T]he Committee recalls that posted workers are workers who, for a limited period, carry out their work in the territory of a State other than the State in which they usually work, which is often their national State. The Committee is aware that, in terms of length and stability of presence in the territory of the so-called “host State”, as well as of their relationship with such State, the situation of posted workers is different from that of other category of migrants workers, and in particular from the situation of those foreign workers who go to another State to seek work and to be permanently embedded there. Nonetheless, the Committee considers that, for the period of stay and work in the territory of the host State, posted workers are workers coming from another State and lawfully within the territory of the host State. In this sense, they fall within the scope of application of Article 19 of the Charter and they have the right, for the period of their stay and work in the host State to receive treatment not less favourable than that of the national workers of the host State in respect of remuneration, other employment and working conditions, and enjoyment of the benefits of collective bargaining (Article 19§4, a and b).”

The Committee therefore asks for information concerning the legal status of posted workers and what legal and practical measures are taken to ensure their equal treatment in matters of employment, trade union membership and collective bargaining.

The Committee notes that States are responsible for the regulation in national law of the conditions and rights of workers in cross-border postings. It notes that the situations of posted workers are often distinct from that of other migrant workers; however it is also clear that in some circumstances they share many of the same characteristics. The Committee recalls that states must respect the principles of non-discrimination laid down by the Charter in respect of all persons subject to their jurisdiction. It thus considers that in order to conform with the requirements of the Charter, any restrictions on the right to equal treatment for posted workers, which are imposed due to the nature of their sojourn, must be objectively justified by reference to the specific situations and status of posted workers, having regard to the principles of Article G of the Revised Charter (Article 31 of the 1961 Charter).”

1106. **Conclusions VII (1981), United Kingdom**: “The committee has already concluded in regard to Article 10, paragraph 1, that any exclusion from access to vocational training based on discrimination against foreign workers, nationals of Contracting Parties bound by the Charter, be it only a discrimination concerning a part of them, is incompatible with the Charter. The scope of paragraph 4 of Article 19 is, in accordance with the committee’s case-law, wide enough to cover all vocational training and any exclusion therefore from access to such training is contrary to the Charter.”

1107. **Conclusions XIII-3 (1995), Turkey**: “As regards membership of trade union organisations and the enjoyment of the benefits of collective bargaining, the Committee took note that Article 5 of the Trade Union Act (No. 2721) prohibited aliens from becoming founding members of a trade union. It considered that membership of a trade union should also cover the right for foreign workers to become a founding member, in the same way as nationals. It considered therefore that the restriction contained in Turkish legislation was incompatible with this paragraph in so far
as it applied to the nationals of Contracting Parties to the Charter. The Committee wished to be informed of any measure that the Turkish Government might take to remedy this situation. In view of these restrictions as regards membership of trade union organisations, the Committee concluded that Turkey did not fulfil its undertaking under Article 19§4 of the Charter.

1108. Conclusions 2011, Statement of interpretation on Article 19§4b: “Under Article 19§4b the States Parties undertake to secure for migrant workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining. The Committee has consistently held that by way of the expression "membership of trade unions" Article 19§4b guarantees not only the right to join a trade union, but also to participate in trade union activities, including the right to be founding member of a trade union (see, inter alia, Conclusions XIV-1 (1998), Turkey).”

1109. Conclusions XIX-4 (2011), Luxembourg: “According to the report, the Freedom of Movement and Immigration Act of 29 August 2008 has made a fundamental change to the situation of non-EU nationals. Before this legislation came into force, nationals of non-EU member states needed a valid work permit (type A to C) if they wanted paid employment. However, the new act has incorporated the work permit into the residence permit. As a result, there are no longer A, B or C type permits but simply residence permits of varying duration according to length of stay in Luxembourg. As a result the legislation on employee representation on works councils and committees will have to be amended before the next elections to these bodies, in 2013. The report states in this connection that a working group is currently charged with drawing up proposals for reforming the dialogue between employers and employees and it goes without saying that these will be discussed with the social partners before any draft legislation is tabled in parliament. The Committee notes the developments described in the report but also notes that the legislation and practice regarding employee representation in works councils and committees remains unchanged. It therefore concludes that the situation is still not in conformity with Article 19§4 of the 1961 Charter because certain categories of workers cannot be elected to joint works councils.”

1110. European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, Decision on the merits of 19 October 2009, §§111-113: “111. In its submissions, the Government states that many of the Roma in France are illegal immigrants. The Committee notes that some are indeed in this situation and therefore they do not fall prima facie within the scope of Article 19§4c. However, it is also undisputed that this population includes Roma migrant workers from other States Parties who are in a legal situation and therefore enjoy the rights set out in Article 19§4c. 112. The Committee has already ruled on the housing rights situation of Travellers in this decision under Article 31. Its findings in this regard also apply to Roma migrants residing legally in France. It consequently considers that the findings of a violation of Article 31 amount to a finding that there has also been a breach of Article 19§4c (ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §§ 35 and 41). 113. The Committee finds that the situation constitutes a violation of Article 19§4c of the Revised Charter.”
1111. Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the merits of 25 June 2010, §§145-147: “145. In its submissions, the Government states that many of the Roma and Sinti in Italy are in an illegal situation. The Committee notes that some are indeed in this situation and therefore they do not fall prima facie within the scope of Article 19§4c. However, it is also undisputed that this population includes Roma and Sinti migrant workers from other States Parties who are in a legal situation and therefore enjoy the rights set out in Article 19§4c.

146. The Committee has already ruled on the situation of Roma and Sinti and their right to housing in this decision under Articles E and 31. Its findings in this regard also apply to Roma and Sinti migrants and their families residing legally in Italy.

147. The Committee holds that the finding of a violation of Article E taken in conjunction with Article 31 as far as the right to housing is concerned amounts to a finding of violation also of Article E taken in conjunction with Article 19§4c.”

1112. Conclusions IV (1975), Norway: “According to the report under consideration, the law discriminates indirectly between Norwegians and foreigners in respect of the purchase of real estate. To the extent that this discrimination affected access by foreigner to housing, it would be contrary to Article 19§4.”

1113. Conclusions III (1973), Italy: “While concluding provisionally that Italy continues to satisfy the obligation under paragraph 4 of Article 19, the Committee wished to learn whether or not any housing assistance measures in Italy, such as loans, housing allowances etc, were restricted to Italian nationals or in any way withheld from migrant workers in Italy.”

1114. European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No 86/2012, decision on the merits of 2 July 2014, §204. “204. The right to equal treatment provided in Article 19§4(c) can furthermore only be effective if there is a right of appeal before an independent body against the relevant administrative decisions (Conclusions 2000, Finland).”

1115. Conclusions 2015, Slovenia

1116. Conclusions II (1971), Norway: “The second report of the Norwegian Government mentions a change in tax legislation, which came into force on 1 January 1970. Since the new legislation does not apply to the period covered by the report, the Committee need not take it into account and there is no reason not to confirm (see Conclusions I, pp. 85 and 216) that Norway fulfils its undertakings under paragraph 5. Nevertheless, more details would enable the Committee to judge whether the new provisions satisfy the rule of equality of taxation between workers, as laid down in the Charter; the Committee hoped to find them in the third Norwegian report.”

1117. Conclusions XIX-4 (2011), Greece: “The report states that according to the provisions of Article 1, of Act No. 1078/1980 and the document No. 080792/1428/0013/POL.1162/1989 issued by the Ministry of Finance, “the exemption for the purchase of a first family house is provided to Greek nationals living in Greece, but also to expatriates from Turkey, North Hepeirus, Cyprus and the countries of the former Soviet Union, who are permanently residing in Greece. Further, this exemption is provided for foreign nationals of EU member States who are permanently residing and working in Greece” (Opinion of the State’s Legal Council 865/1991, 1013762/80/A0013/POL1034/1992). The report also refers to Opinion No. 491/11-7-2001 of the State’s Legal Council, as accepted by the Deputy Minister of Finance, which establishes that foreigners (apart from citizens of EU member States and the above-mentioned expatriates), as well as recognised political refugees, do not benefit from the tax exemption in respect of the acquisition of their first family house. Moreover, it is pointed out that under the provisions of the Geneva Convention and according to the opinion of the State's Legal Council, the Greek State has no obligation to extend the above-mention exemption to recognised political refugees. With this in mind, the Committee considers that in the reference period the situation in Greece is not in conformity with Article 19§5 of the 1961 Charter on the ground that, independently from
their status, not all migrant workers from States parties to the Charter benefit from the tax exemption for the acquisition of a first family house.”

1118. Conclusions VIII (1984), Statement of Interpretation on Article 19§6: “The concept of “dependent” persons should be understood, under this provision of the Charter, as being that of persons who depend, for their existence, on their family, in particular because of economic reason or, as the case may be, for such reasons as continuation of education without remuneration or of reasons of health.”

1119. Conclusions XVI-1 (2002), Greece: “In reply to a question from the Committee the report states that Article 29§1 of the Act No. 2910/2001 on immigration explicitly stipulates that only contagious diseases listed in the World Health Organisation’s health regulations can be an obstacle to the granting of an application for family reunification. The Committee considers that this condition is in conformity with Article 19§6.”

1120. Conclusions XV-1 (2000), Finland: “Although there were no cases in practice of refusal on health grounds, the Committee draws the attention of the Finnish authorities to the requirements of Article 19 para. 6. Refusals on these grounds should be restricted to specific illnesses which are so serious as to jeopardise public health. These illnesses are those subject to quarantine listed in the World Health Organisation’s International Sanitary Regulation No. 2 of 25 May 1951, or other serious infectious or contagious illnesses such as tuberculosis or syphilis. The Committee also accepts that drug addiction or very serious psychological disorders may justify the refusal of family reunion, providing, however, that the authorities ascertain on a case-by-case basis that these illnesses or disorders are likely to threaten public order or security.”

1121. Conclusions 2011, Statement of Interpretation on Article 19§6: “a) the length of residence requirement for migrant workers wishing to be joined by members of their family. In this connection, the Committee has always considered (cf. Conclusions I, Germany), taking account of the provisions of the European Convention on the Legal Status of Migrant Workers (ETS No. 93), that a length of more than one year is excessive and, consequently, in breach of the Charter.”

1122. Conclusions I (1969), Germany: “The Committee noted that residence permits are only granted to members of the family of migrant workers if the workers have been resident in the Federal Republic for at least three years. In those circumstances the Committee found that it was not in a position to decide whether or not the Federal Republic of Germany satisfies its undertaking under this paragraph and hoped to find additional information in the Federal Government’s second biennial Report.”

1123. Conclusions 2011, France: “(a) States may require a certain length of residence of migrant workers before their family can join them. A period of a year is acceptable under the Charter. (Conclusions I (1969), Germany). In this respect, the Committee considers that France’s eighteen-month residence requirement is excessive and therefore it is not in conformity with the Charter.”

1124. Conclusions 2011, Cyprus: “(a) States may require a certain length of residence of migrant workers before their family can join them. A period of a year is acceptable under the Charter. (Conclusions I (1969), II (1971), Germany). In this respect, the Committee considers that Cyprus’ two-years residence requirement is excessive and therefore it is not in conformity with the Charter.”

1125. Conclusions IV (1975), Norway: “Despite having studied the fourth Norwegian report, the Committee did not find the information which it needed to conclude that Norway fulfilled the undertaking arising from paragraph 6 of Article 19. Indeed, there seemed to be a certain contradiction between:
   – the requirement that evidence be given of accommodation for a family, as a precondition for its admission to Norway on the one hand, and
the absence of practical measures to assist migrant workers in finding suitable housing or
solve the housing problem in general, on the other.
Accordingly, the Committee could only confirm its previous verdict that Norway did not fulfil its
undertaking, despite the importance which seemed to be attached in Norway to the principle of
uniting families.”

1126. Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements :

The Committee recalls that restrictions on family reunion which take the form of requirements for
sufficient or suitable accommodation to house family members should not be so restrictive as to
prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that
states are entitled to impose such accommodation requirements in a proportionate manner so as to
protect the interests of the family. Nevertheless, taking into account the obligation to facilitate
family reunion as far as possible under Article 19§6, States Parties should not apply such
requirements in a blanket manner which precludes the possibility for exemptions to be made in
respect of particular categories of cases, or for consideration of individual circumstances.
The Committee considers that restrictions on the exercise of the right to family reunion should be
subject to an effective mechanism of appeal or review, which provides an opportunity for
consideration of the individual merits of the case consistent with the principles of proportionality
and reasonableness.”

1127. Conclusions XVII-1 (2004), Netherlands: “The Committee considers that the level of means
required to bring in the family should not be so restrictive as to prevent any family reunion. It can
be concluded from Dutch legislation and practice, that a migrant worker who receives welfare
support is prevented from exercising the right to family reunion. The Committee observes that this
restriction could have the effect of discouraging applications for family reunion in respect of
dependents rather than facilitating the process as required by Article 19§6.”

1128. Conclusions 2011, Statement of interpretation on Article 19§6: “b) the exclusion of social
assistance from the calculation of the income of a migrant worker who has applied for family
reunion (in connection with the criteria relating to available means).
The Committee notes that the Court of Justice of the EU (CJEU) has already limited the possibility
provided by the above-mentioned Directive to restrict family reunification on the ground of
available income (see CJEU judgment of 4 March 2010, case Chakroun, C-578/ 08, paragraph
48).
The Committee recalls in this respect that migrant workers who have sufficient income to provide
for the members of their families should not be automatically denied the right to family reunion
because of the origin of such income, in so far as they are legally entitled to the benefits they may
receive.
In view of the above and of the relevant case-law of the European Court of Human Rights
(ECtHR) - see judgment of 19 February 1996, Gül v. Switzerland, No. 23218/94 – the Committee
considers that the above-mentioned exclusion is such as to prevent family reunion rather than
facilitating it. It accordingly constitutes a restriction likely to deprive the obligation laid down in
Article 19§6 of its substance and is consequently not in conformity with the Charter.”

1129. Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration
tests:” The Committee acknowledges that States may take measures to encourage the
integration of migrant workers and their family members. It notes the importance of such
measures in promoting economic and social cohesion.
However, the Committee considers that requirements that family members pass language and/or
integration tests or complete compulsory courses, whether imposed prior to or after entry to the
State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6
of the Charter where they:
a) have the potential effect of denying entry or the right to remain to family members of a migrant
worker, or
b) otherwise deprive the right guaranteed under Article 19§6 of its substance, for example by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments:"

1130. Conclusions XVI-1 (2002), Netherlands, Article 19§8: “The right to family reunion provided for in Article 19§6 must be regarded as conferring on each of its beneficiaries a personal right of residence distinct from the original right held by the migrant worker.”

1131. Conclusions 2015, Statement of interpretation on Articles 19§6 and 19§8: “The Committee considers that upon a proper construction of the text of the Charter, the possibility of the expulsion of the family members of a migrant worker is more properly dealt with under Article 19§6 on the facilitation of family reunion, rather than under Article 19§8 which concerns only the expulsion of a migrant worker. It therefore decides henceforth to assess whether the expulsion of family members of a migrant worker is in conformity with the Charter under Article 19§6.”


1133. Conclusions I (1969), Italy, Norway, United-Kingdom: “On examination of the reports submitted by the Governments of Italy, Norway and the United Kingdom, the Committee found that these states are fulfilling the undertaking deriving from Paragraph 7 of Article 19. These reports contain nothing to suggest the existence in those countries of any discrimination between nationals and aliens in the field covered by this paragraph.”

1134. Conclusions I (1969), Germany: “With respect to the first Report submitted by the Government of the Federal Republic of Germany, the Committee was bound to hold that the Report did not deal with the right of access to the courts - including legal aid - available to foreigners except in connection with contracts of employment. In view of the interpretation given above and of the general scope of Article 19, the Committee found that this information was not sufficient. In those circumstances it was unable to decide whether or not the Federal Republic of Germany was fulfilling its undertaking under this paragraph. It therefore hoped to receive additional information in the Federal Government’s second biennial Report, especially about the right of access to the courts available to foreign workers in the other fields covered by article 19.”

1135. Conclusions 2011, Statement of interpretation on Article 19§7: “The Committee considers that migrant workers residing or working lawfully in the territory of the States parties must benefit from both a treatment not less favourable than that of nationals, and a treatment which takes account of their specific conditions. To this end, the Committee considers that any migrant worker residing or working lawfully within the territory of a state party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings.”

1136. Conclusions VI (1979), Cyprus: “The committee was pleased to note that by the enactment of the Aliens and Immigration (Amending) Law 54/1976, Cyprus legislation had been brought in line with the Charter in that it prohibited the expulsion of migrant workers unless they endangered national security or offended against the public interest or morality. In these circumstances the committee was able to change its previous negative stand and conclude that Cyprus satisfied the requirements of this provision of the Charter.”
1137. Conclusions 2015, Statement of interpretation on Article 19§8: “The Committee has previously interpreted Article 19§8 as obliging ‘States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality’ (Conclusions VI, Cyprus, p. 126.) Such expulsions can only be in conformity with the Charter if they are ordered by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Expulsion orders must be proportionate, taking into account all aspects of the non-nationals’ behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual’s connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body.”

1138. Conclusions V (1977), Germany: “When examining the laws and regulations mentioned in the 5th German report, the committee noted that migrant workers in the Federal Republic of Germany who were found to have - or were suspected of having - certain diseases (epidemic diseases subject to notification or contagious venereal diseases) could be expelled if “special protective measures did not suffice, in such cases, to prevent the health of third parties from being endangered”. The German Government, explaining the reason for this measure, drew attention to the fact that protection of the health of third parties was, in all the above-mentioned cases, a “public health” measure and that the purpose, in this instance, was to avoid a threat to the “public interest”, a concept appearing in Article 19§8. The committee could not accept such assimilation of quite distinct concepts. Article 19§8, provided for exceptions to the prescribed rule only where the persons concerned “endangered national security or offended against public interest or morality”; the concept of a threat to “public health”, which had not been added here as in the case of other provisions, was one which could not be considered in terms of the Social Charter as included in the concept of “public interest” and which, in any event, would not justify expulsion except in the case of a refusal to undergo appropriate treatment. That being so, the committee was bound to conclude that, in this regard, the Federal Republic of Germany was not fulfilling its undertaking, unless it was shown that the law and regulations concerned were not applicable to nationals of the other Contracting Parties.”

1139. Conclusions V (1977), Italy: “The committee was informed, in the Italian Governments 5th report, of the existence of a new Act (No. 152 of 22 May 1975), Article 25 of which stipulates, inter alia as follows: “Subject to the restrictions deriving from international conventions, foreigners who, when asked to do so by the public security authorities, are unable to produce proof of sufficient licit means of subsistence in Italy, may be expelled from the state in the conditions provided for in Article 150 (2) and (5) of the consolidated text (testo unico) of the PS Act approved by RD.No. 773 of 18 June 1931, subject to the provisions of Article 152 of the same text...” As these provisions do not appear, at first sight, to be compatible with Article 19, paragraph 8 of the Charter unless the expression “subject to the restrictions deriving from international conventions” refers also to the Charter, the committee hopes to find in the 6th Italian report a reply to the question whether the Italian authorities regard the European Social Charter as being among the conventions referred to in the said Act. Pending this reply, the committee is obliged to make its previous decision provisional.”
European Roma and Travellers Forum v. France, complaint No. 64/2011, decision on the merits of 24 January 2012:

55. Under the national legislation in force (the CESEDA, as amended by Act No. 2011-672 of 16 June 2011 – see § 18 above), any European Union citizen may reside in France under conditions that vary according to the length of stay and the aim being pursued by the individual concerned. For instance, any European Union citizen can stay in France for more than three months on condition that he/she carries on an occupation in France (Article L. 121-1, paragraph 1) or has "sufficient resources" for him/herself and his/her family to ensure that they do not become a burden on the social assistance system, as well as sickness insurance (Article L. 121-1, paragraph 2), or he/she is enrolled in an educational or vocational training establishment and also has "sufficient resources" so as not to become a burden on the social assistance system, as well as sickness insurance (Article L. 121-1, paragraph 3). These persons' family members are also entitled to stay for more than three months on condition that their presence does not constitute a threat to public order (Article L. 121-3). Lastly, on condition that they do not become an unreasonable burden on the social assistance system, EU citizens and their family members are entitled to stay in France for a maximum of three months, without any other formality than those that apply for admission to national territory (Article L. 121-4-1).

56. It follows from the above provisions that a decision to expel European Union nationals from French territory may be taken in two cases: if, for lack of resources, these persons are likely to become a burden on the social assistance system or if their presence may constitute a threat to public order.

57. Neither the Forum nor the Government has produced any decision issued with regard to a Romanian or Bulgarian national of Roma origin living in France and requiring him/her to leave French territory. A decision of this kind would have allowed the Committee to know the legal basis applied by the relevant authorities.

58. In any case, the question to be answered by the Committee is whether, beyond the applicable law, the practice is in conformity with the Charter.

59. In this regard, the Committee observes that the Roma of Romanian and Bulgarian origin living in France are, indeed, to a large extent not economically active. According to many sources they wish to find employment but are unable to do so. For this reason they lead a hand to mouth existence, surviving with the extremely low income they obtain partially through begging (see RomEurope, National Human Rights Collective bringing together 21 non-governmental organisations particularly competent in the field of support for and protection of the Roma population living in France, in “Promoting access to fundamental rights for Roma migrants – the 2010 revendications of the Collective RomEurope” at www.romeurope.org). It is also for this reason, combined with the inadequate housing supply, that they are forced to live on illegal camp sites.

60. This situation however cannot be regarded as likely systematically to place an excessive burden on social assistance budgets. Nor can the occasional instances of theft, aggressive begging or unlawful occupation of the public domain or private property be systematically deemed to constitute a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" (Article L. 521-5 paragraph a) of the CESEDA, in fine) that could justify their expulsion.

61. The Committee takes due account in this connection of the Lille Administrative Court's decision of 27 August 2010 to annul four removal orders issued against Roma of Romanian origin. Although the above-mentioned provision of Article L. 521-5 paragraph a) of the CESEDA, in fine, was not yet in force, the court held that the unlawful occupation of a site belonging to the Lille metropolitan area authority "did not in itself, in the absence of special circumstances, pose a sufficiently serious threat for a fundamental interest of society" (see § 17 above).

62. The Government also does not establish, despite its repeated assertions, that the expulsion measures adopted by the French authorities were decided taking into account the individual characteristics of the persons being expelled and were not systematically targeted at Roma of Romanian and Bulgarian origin.
63. It was these considerations that led to the decision on the merits of 28 June 2011 in Complaint Centre on Housing Rights and Evictions (COHRE) v. France, No. 63/2010, concerning a period predating that covered by the present complaint. The Committee is not unaware that, unlike the ministerial circular of 5 August 2010, which was annulled by the Conseil d'Etat, the new circular of 13 September 2010 that the Conseil d'Etat did not hold to be unlawful no longer expressly targets the Roma. The operations carried out during the period concerned by this complaint nonetheless had the same characteristics as those that took place in the earlier period.

64. At a press conference on 21 July 2011, the RomEurope denounced the fact that, throughout the previous twelve months, administrative decisions requiring individuals to leave French territory had been “distributed en masse” and “the statistics prove that they were issued principally against Roma” (see http://www.romeurope.org ). In addition, the document that Human Rights Watch submitted to the European Commission in July 2011 (see pp. 10 and 11 of the document cited in § 54) reported a number of cases of expulsion of Romanian and Bulgarian citizens from France, “the vast majority of whom were Roma”, after the dismantling of camp sites of Lyon, Créteil, Saint-Denis, Fontenay-sous-Bois and La Courneuve.

65. These observations, which are not contested in the Government's submissions, show that, in exercising the powers it holds under national law, the Government did not respect the proportionality principle required by the Charter and highlighted by the Committee on several occasions (International Movement ATD Fourth Word (ATD) v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 164-168). Under this principle the burden of coverage of the persons concerned by the social assistance system would have to be excessive, or even unreasonable, for an expulsion measure to be necessary, so as to relieve the state of this burden.

66. In the light of the above, the Committee concludes that the administrative decisions whereby, during the period under consideration, Roma of Romanian and Bulgarian origin were ordered to leave French territory, where they were resident, are incompatible with the Charter in that they were not founded on an examination of their personal circumstances, did not respect the proportionality principle and were discriminatory in nature since they targeted the Roma community."

1141. Conclusions V (1977), United Kingdom: “The committee considered, however, that Article 15 of the 1971 Immigration Act whereby no appeal could be made to an independent body against a decision to deport a worker, the national of another Contracting State lawfully resident in the United Kingdom, for political reasons, national security or relations between the United Kingdom and other countries, could not be regarded as consistent with Article 19, paragraph 8 of the Charter.”


1143. Conclusions 2011, Statement of Interpretation on Article 19§8: “Article 19§8 of the Charter prohibits the expulsion of migrant workers lawfully residing within the territory of a State Party, except where they endanger national security or offend against public interest or morality. The legislation of a number of countries has already gone beyond this requirement by providing that neither may expulsion be imposed, even where the right to reside is forfeited especially in connection with circumstances of unemployment, upon migrant workers who have previously resided lawfully in their territory for a certain time and/or entered into marriage there or had offspring.

Both in these countries and in those whose legislation embodies no provision of this kind, several types of problem are posed by the situation of migrant workers who, being without employment, are ineligible for renewal of their residence permits and thereby at risk of removal from the territory:

1. Firstly, if they have conferred the right of residence on a spouse and/or children, loss of their own right of residence cannot affect their family members’ independent rights of residence, which may have a longer term of validity than their own, a contagious effect, so the Committee has consistently held.
2. Secondly, for as long as a migrant workers’ family members hold a right of residence it must not be possible to remove even a foreigner, who has personally lost this right except where they endanger national security or offend against public interest or morality; such is the implication of Article 8 of the European Convention for the Protection of Human Rights as often interpreted by the ECtHR, especially by the decisions in the cases of Berrehab v. Netherlands of 21 June 1988 and Mengesha Kimfe and Agrau v. Switzerland of 2010. The Berrehab decision found that the “economic well-being of the country” was not apt to justify the expulsion or removal of a foreigner whose daughter also resided in the territory of the state wishing to take this measure. The Kimfe and Agrau decisions disallow the same ground with regard to a restricted residence measure in two different cantons imposed on two spouses whose removal does not seem feasible at least for some time.

3. Thirdly, the impossibility of expelling or removing a migrant worker which follows either from a State Party’s undertakings pursuant to the Charter or from choices specific to that state and enshrined in its legislation, presupposes that the migrant worker is not placed in a situation of non-law as regards residence, i.e. holds the necessary documents to travel both in the country and beyond its borders and to obtain the social benefits which can be claimed by migrant workers whose situation is in order.”

4. Lastly, national legislation should reflect the legal implications of Article 18§1 of the Charter read in conjunction with Article 19§8 as informed by the case-law of the ECHR, in keeping with the developments which, for several decades now, have transformed migratory trends. Foreign nationals who have been resident for a sufficient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country’s needs, should be covered by the rules that already protect other foreign nationals from deportation. In order to assess the current practices of States Parties to the Charter, either in accordance with their legislation or in parallel with it, the Committee therefore invites the States to notify it of their usual practices in this respect.”

1144. Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the merits of 25 June 2010, §§155-158: “155. According to the European Court of Human Rights: “collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group. That does not mean, however, that where the latter condition is satisfied the background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with Article 4 of Protocol No. 4”. (…) in those circumstances and in view of the large number of persons of the same origin who suffered the same fate as the applicants, the Court considers that the procedure followed does not enable it to eliminate all doubt that the expulsion might have been collective.” (Conka v. Belgium, no. 51564/99, judgment of 5 February 2002, §§ 59 and 61)

156. The Committee considers that the same interpretation is valid for the Revised Charter.

157. In the light of the above, even if according to the Italian legislation on aliens any expulsion might be taken only on an individual basis and no collective expulsion might be allowed, the Committee finds that the practices permitted by the contested “security measures” are evidenced by the fact that the so-called “emergenza rom” offers a collective basis to proceed in identical abstract terms to these collective expulsions. Furthermore, the doubt that the expulsion is collective is reinforced in the present complaint because it is to be placed in the framework of the “piano strategico emergenza rom” and in the context of the above violations of the Revised Charter already found by the Committee.

158. In the instant case the Committee considers that the contested “security measures” represent a discriminatory legal framework which targets Roma and Sinti, especially by putting them in a difficult situation of non access to identification documents in order to legalise their
residence status and, therefore, allowing even the expulsion of Italian and other EU citizens (for example, Roma from Romania, Czech Republic, Bulgaria or Slovakia)."


69. As to the submissions of the Government that the Roma who were expelled from French territory “were in the country illegally”, and that “the aim was to maintain law and order and safeguard internal security”, the Committee considers that these are not consistent with the use of standard forms of orders to leave French territory with identical content, with no account taken of individual circumstances or how long those concerned had been in France. To the contrary, these expulsions were based on considerations relating to prevention and ethnic origin. The Government has not even substantiated its claim that the the Roma of Romanian and Bulgarian origin, the expulsion of whom is the subject of this complaint, were in the country unlawfully, having regard to the transitional provisions of the Act of Accession to the European Union of Romania and Bulgaria and the rights of entry and residence of citizens of the European Union and members of their families, as governed by Directive 2004/38/EC.

70. Moreover, the implementation of the circular of 5 August 2010 represents a shift in the policy of the French authorities as compared with the circular of 24 June 2010, which stated that: “The mere occupation, on a collective basis, of a plot of land with no authorisation or title of ownership, or the mere existence of a camp site or the actions of a group of persons not individually identified, cannot be taken to constitute a collective threat. Article 27(2) § 2 of Directive 2004/38/EC clarifies the notion of a threat to public order, in the light of the case-law of the Court of Justice of the European Union: the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.”

71. The Committee notes that, according to the circular of 5 August 2010, a threat to public order results from the mere existence of unlawful Roma camps. The Committee considers that this does not constitute an adequate justification in terms of protection of public order.

72. Finally, the Government justifies the measures taken against Roma of Romanian and Bulgarian origin in the summer of 2010, by invoking the “voluntary” nature of their return, under the auspices of the humanitarian repatriation assistance programme provided for in the circular of 7 December 2006.

73. The Committee considers that in practice these so-called “voluntary” returns are disguised forms of forced collective expulsions, given that:

- The returns in question were “accepted” under the conditions laid down in the circular of 5 August 2010, that is subject to the constraint of forced eviction and the real threat of expulsion from France.
- In particular, the willingness to accept financial assistance of € 300 per adult and € 100 per child reveals a “situation of destitution or extreme uncertainty” (as the Government itself puts it in its submissions on the merits) in which the absence of economic freedom poses a threat to the effective enjoyment of their political freedom to come and go as they choose.

74. The Committee therefore finds it impossible to conclude that given these conditions, the returns were accepted voluntarily.

75. In connection with Roma from central and eastern Europe, in its aforementioned fourth report ECRI pointed out that they were particularly affected by the “policy of setting targets” for the removal of non-citizens from France, and continued: “they underline that as a consequence they are specially affected by the humanitarian return procedure applicable to nationals of EU member states. This procedure, which was introduced in 2006, consists in proposing assistance for the return of foreigners in a state of destitution or extreme precariousness, whether or not they are legally resident in French territory. The authorities stress the voluntary nature of such returns and the assistance given to the persons concerned. However, reports have denounced the system’s ineffectiveness, in particular because
EU nationals can return to French territory, and some have already done so, and, above all, because returns are not genuinely voluntary in nature. Some migrant Roma who leave the country under these circumstances reportedly do so under pressure and not on a voluntary basis.

Moreover, the Government has produced no evidence of real co-operation with the Romanian or Bulgarian authorities to manage these repatriations.

The European Court of Human Rights considered unacceptable any waiver of the right not to be subjected to racial discrimination as such a waiver “would be counter to an important public interest” (D.H. and others v. Czech Republic, judgment of 13 November 2007, para. 204, as well as Orsus v. Croatia, judgment of 16 March 2010, para. 178).

The Committee considers that the same reasoning applies in this case, and that Roma consented to repatriation under constraint and against a background of racial discrimination. Since the Roma of Romanian and Bulgarian origin were forced to give their consent, therefore, they cannot be assumed to have waived their right to freedom of movement and their right of residence under Article 19§8 of the Revised Charter, rights that are also considered fundamental in EU law (Article 45 of the Union’s Charter of Fundamental Rights).

The Committee therefore concludes that the expulsion of Roma to Romania and Bulgaria in the summer of 2010 constitutes a violation of Article E in conjunction with Article 19§8 of the Revised Charter.

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51. The Committee recalls that Article 19§8, which obliges States to prohibit by law the expulsion of migrants lawfully residing in their territory, admits exceptions where they are a threat to national security, or offend against public interest or morality (Conclusions VI (1979), Cyprus).

52. Given the obligation deriving from the Charter whereby states must observe, within its scope of application, the two essential elements of the rule of law that are the existence of a legal basis and the right of access to a court (Syndicat occitan de l’éducation v. France, Complaint No. 23/2003, decision on the merits of 8 September 2004, § 26), the Committee considers that Article 19§8 requires, firstly, that substantial safeguards accompany any administrative measure to expel foreign nationals (Conclusions IV (1975), United Kingdom) and, secondly, that states ensure that those foreign nationals who are subject to an expulsion measure are entitled to challenge this decision before a court or another independent body, even where national security, public interest or morality are at stake (Conclusions IV (1975), United Kingdom).

53. In view of the Government's observation that the European Commission considers the Act of 16 June 2011 governing the expulsion of European Union nationals, and in particular the above-mentioned Article L. 521-5 of the CESEDA, to be compatible with European Union law, in particular Directive 2004/38/EC of the European Parliament and of the Council on freedom of movement of citizens of the Union, which this Act moreover transposes into national law, the Committee recalls that it is not for it to assess a national situation's conformity with EU law, but merely its conformity with the Charter, including where an EU directive is transposed into national law (Confédération Générale du Travail (CGT) v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010, § 33).

54. In this regard, the Committee notes that, following the submission in July 2011 to the European Commission by the non-governmental organisation Human Rights Watch of a document concerning the incompatibility with EU law of recent expulsions of Roma of Romanian and Bulgarian origin (document available on http://www.hrw.org/node/101964), a Commission spokesperson declared that the issue of expulsions of nationals of EU member states fell “exclusively within the jurisdiction of member states” and, consequently, within the member states' obligations under international law, including those arising from the Charter (European Daily Bulletin, No. 10464, 1 October 2011, p. 14).

55. Under the national legislation in force (the CESEDA, as amended by Act No. 2011-672 of 16 June 2011 – see § 18 above), any European Union citizen may reside in France under conditions that vary according to the length of stay and the aim being pursued by the individual concerned. For instance, any European Union citizen can stay in France for more than three months on condition that he/she carries on an occupation in France (Article L. 121-1, paragraph 1) or has
“sufficient resources” for him/herself and his/her family to ensure that they do not become a burden on the social assistance system, as well as sickness insurance (Article L. 121-1, paragraph 2), or he/she is enrolled in an educational or vocational training establishment and also has “sufficient resources” so as not to become a burden on the social assistance system, as well as sickness insurance (Article L. 121-1, paragraph 3). These persons' family members are also entitled to stay for more than three months on condition that their presence does not constitute a threat to public order (Article L. 121-3). Lastly, on condition that they do not become an unreasonable burden on the social assistance system, EU citizens and their family members are entitled to stay in France for a maximum of three months, without any other formality than those that apply for admission to national territory (Article L. 121-4-1).

56. It follows from the above provisions that a decision to expel European Union nationals from French territory may be taken in two cases: if, for lack of resources, these persons are likely to become a burden on the social assistance system or if their presence may constitute a threat to public order.

57. Neither the Forum nor the Government has produced any decision issued with regard to a Romanian or Bulgarian national of Roma origin living in France and requiring him/her to leave French territory. A decision of this kind would have allowed the Committee to know the legal basis applied by the relevant authorities.

58. In any case, the question to be answered by the Committee is whether, beyond the applicable law, the practice is in conformity with the Charter.

59. In this regard, the Committee observes that the Roma of Romanian and Bulgarian origin living in France are, indeed, to a large extent not economically active. According to many sources they wish to find employment but are unable to do so. For this reason they lead a hand to mouth existence, surviving with the extremely low income they obtain partially through begging (see RomEurope, National Human Rights Collective bringing together 21 non-governmental organisations particularly competent in the field of support for and protection of the Roma population living in France, in “Promoting access to fundamental rights for Roma migrants – the 2010 revendications of the Collective RomEurope” at www.romeurope.org). It is also for this reason, combined with the inadequate housing supply, that they are forced to live on illegal camp sites.

60. This situation however cannot be regarded as likely systematically to place an excessive burden on social assistance budgets. Nor can the occasional instances of theft, aggressive begging or unlawful occupation of the public domain or private property be systematically deemed to constitute a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society” (Article L. 521-5 paragraph a) of the CESEDA, in fine that could justify their expulsion.

61. The Committee takes due account in this connection of the Lille Administrative Court's decision of 27 August 2010 to annul four removal orders issued against Roma of Romanian origin. Although the above-mentioned provision of Article L. 521-5 paragraph a) of the CESEDA, in fine, was not yet in force, the court held that the unlawful occupation of a site belonging to the Lille metropolitan area authority “did not in itself, in the absence of special circumstances, pose a sufficiently serious threat for a fundamental interest of society” (see § 17 above).

62. The Government also does not establish, despite its repeated assertions, that the expulsion measures adopted by the French authorities were decided taking into account the individual characteristics of the persons being expelled and were not systematically targeted at Roma of Romanian and Bulgarian origin.
63. It was these considerations that led to the decision on the merits of 28 June 2011 in
Complaint Centre on Housing Rights and Evictions (COHRE) v. France, No. 63/2010, concerning
a period predating that covered by the present complaint. The Committee is not unaware that,
unlike the ministerial circular of 5 August 2010, which was annulled by the Conseil d'Etat, the new
circular of 13 September 2010 that the Conseil d'Etat did not hold to be unlawful no longer
expressly targets the Roma. The operations carried out during the period concerned by this
complaint nonetheless had the same characteristics as those that took place in the earlier period.

64. At a press conference on 21 July 2011, the RomEurope denounced the fact that, throughout
the previous twelve months, administrative decisions requiring individuals to leave French territory
had been "distributed en masse" and "the statistics prove that they were issued principally against
Roma" (see http://www.romeurope.org ). In addition, the document that Human Rights Watch
submitted to the European Commission in July 2011 (see pp. 10 and 11 of the document cited in
§ 54) reported a number of cases of expulsion of Romanian and Bulgarian citizens from France,
"the vast majority of whom were Roma", after the dismantling of camp sites of Lyon, Créteil,
Saint-Denis, Fontenay-sous-Bois and La Courneuve.

65. These observations, which are not contested in the Government's submissions, show that, in
exercising the powers it holds under national law, the Government did not respect the
proportionality principle required by the Charter and highlighted by the Committee on several
occasions (International Movement ATD Fourth Word (ATD) v. France, Complaint No. 33/2006,
decision on the merits of 5 December 2007, §§ 164-168). Under this principle the burden of
coverage of the persons concerned by the social assistance system would have to be excessive,
or even unreasonable, for an expulsion measure to be necessary, so as to relieve the state of this
burden.

66. In the light of the above, the Committee concludes that the administrative decisions whereby,
during the period under consideration, Roma of Romanian and Bulgarian origin were ordered to
leave French territory, where they were resident, are incompatible with the Charter in that they
were not founded on an examination of their personal circumstances, did not respect the
proportionality principle and were discriminatory in nature since they targeted the Roma
community.

67. The Committee therefore holds that there is a violation of Article E of the Charter taken in
conjunction with Article 19§8."

1147. Médecins du Monde - International v. France, Complaint No. 67/2011, decision on the
merits of 9 November 2012, §§ 112-117:

"112. The Committee recalls that a decision on an expulsion may be made only on the basis of a
reasonable and objective examination of the particular situation of each individual (see Centre on
Housing Rights and Evictions (COHRE) v. Italy, complaint No. 58/2009, decision on the merits of
25 June 2010, §§ 155-156). The Committee considers that the possibility to appeal against the
expulsion decision before courts is not sufficient to fulfil this obligation.

113. The Committee notes that only a small proportion of migrant Roma of Romanian and
Bulgarian origin seem to be legally residing in France. No distinction seems, however, to be made
among the migrant Roma of Romanian and Bulgarian origin on the basis on the legality of their
residence in France upon their expulsion. In fact, neither Médecins du Monde nor the
Government provide documents demonstrating that the legal residence status in France of the
person expelled is taken into consideration. In particular, the length of residence within the
territory is not mentioned in the orders to leave the country.

114. The Committee emphasises that Article 19§8 is a provision imposing an obligation of result,
guaranteeing the right to protection for each individual of the affected group. Furthermore, the
Committee considers that in cases where a fundamental right such as the right of residence is at
stake, the burden of proof lays on the Government, i.e. that it is up to the Government to
demonstrate that a person does not reside legally on its territory (in the instant case for longer
than three months), and not up to the person in question. The Government states, having
submitted no evidence thereof, that each expulsion measure is adopted following an examination
assessing the personal circumstances of the applicant. It appears, on the contrary, that expulsion procedures have been launched without any evidence of the person having entered the French territory for longer than for a period of three months (see Human Rights Watch, France’s Compliance with the European Free Movement Directive and the Removal of Ethnic Roma EU Citizens. A Briefing Paper Submitted to the European Commission in July 2011, which shows that, out of 198 orders to leave the country served on Romanian Roma and examined between August 2010 and May 2011, 71 (i.e. 35.85%) contained no evidence of the individual having entered France over three months prior to the adoption of the order). The Committee notes that, as a consequence, there had been no real individual examination of the situations but, in fact, collective expulsions.

115. Since the authorities do not themselves examine the legal situation of the migrant Roma at the end of their residence in France, the Committee considers that the present complaint offers the possibility of applying the rule mentioned in §112 above to cover all migrant Roma of Romanian and Bulgarian origin, affected by an expulsion procedure from the French territory.

116. In this context, the Committee recalls its previous decision on the merits in complaint No. 64/2011 (European Roma and Travellers Forum (ERTF) v. France) adopted on 24 January 2012 where it held that there were a violation of Article E taken in conjunction with Article 19§8 (see §§51-67).

117. The Committee considers, basing its consideration on the case file, that there has been no change in the situation since that decision. Consequently, it holds that there is a violation of Article E taken in conjunction with Article 19§8.”

1148. Conclusions XIII-1 (1993), Greece: “The Committee noted that, according to the regulations concerning transfer of earnings and savings outside the territory that no limit is imposed as to the amount which may be transferred either during residence or upon departure and that the regulations apply equally to migrant workers permanently resident within the territory and Greek nationals.

[...]
The Committee concluded that Greece was in conformity with this provision of the Charter.”

1149. Conclusions 2011, Statement of interpretation on Article 19§9: “The right of migrant workers to transfer their earnings and savings includes the right to transfer moveable property in their possession.”

1150. Conclusions I (1969), Norway: “The Committee noted that the first report submitted by the Government of Norway contains an indication that self-employed migrant workers there enjoy only the facilities provided under Paragraph 6 of Article 19. Apart from the Committee having been unable to judge, even as regards that paragraph, whether or not Norway is fulfilling the undertaking deriving there from (see above), the Committee was obliged to conclude that Norway did not fulfil the undertaking deriving from Paragraph 10 of this article. It considered, therefore, that the Norwegian Government should be recommended to adopt national regulations conforming to the requirements of this paragraph.”

1151. Conclusions 2002, France: “In general terms, the Committee stresses that the teaching of the national language of the host country is the main means of integrating migrant workers and their families into normal employment and society as a whole. It considers that Contracting Parties should facilitate the learning of the national language by (a) children of school age and (b) migrant workers themselves and members of their families who are no longer of school age.”

1152. Conclusions 2011, Norway: “The report states that the standard costs for 300 hours language training in Norwegian varies between 15 000 and 30 000 Norwegian Crowns (NOK) (roughly between €2000 and €4000 ) depending who offers it. It is common that both municipalities and study organizations give courses. If immigrants cannot meet the costs they have to apply for social assistance within municipalities. However, the right to participate in training free of charge applies with some exceptions to those between 16 and 55 years who have been granted asylum, a residence permit on humanitarian
grounds, collective protection or a family immigration permit linked to a person in any of these groups, asylum seekers staying in reception centres. Immigrants between 55 and 67 years of age have a right, but no obligation, to participate in language training. The 300 lessons of training must be completed within the first three years in Norway and all lessons have to be completed within the first five years. The Committee considers that the requirement to pay such substantial fees cannot be considered to be in conformity with the Revised Charter. It interprets the obligation in Article 19§11 to "promote and facilitate" as requiring states to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible. However it asks whether all those unable to pay the fees by their own means will receive social assistance.

1153. Conclusions 2002, France: “In general terms, the Committee stresses that the teaching of the national language of the host country is the main means of integrating migrant workers and their families into normal employment and society as a whole. It considers that Contracting Parties should facilitate the learning of the national language by (a) children of school age and (b) migrant workers themselves and members of their families who are no longer of school age.”

1154. Conclusions 2002, Italy: “The Committee considers that the system described here is likely to promote and facilitate, as far as practicable, the teaching of migrant workers' mother tongues to their children. However, it asks for the next report to supply additional information on the number of children concerned, the number of languages taught, how such teaching is financed and whether a minimum number of children is required before such classes can be organised.”

1155. Conclusions 2011, Armenia: “The addendum to the report states due to the fact there is little migration to Armenia there are no programmes or activities for the teaching of the migrant worker’s mother tongue to the children of migrant workers. The Committee must therefore conclude that the situation is not in conformity with the Charter in this respect.”

1156. Conclusions 2011, Statement of interpretation on Article 19§12: “In respect of Article 19§12 the Committee considers that the teaching of a migrant worker’s mother tongue to his or her children contributes to the preservation of the cultural identity of all the migrants concerned while promoting a psychological and mental balance. The Committee considers that the more that is done to preserve cultural identity as a reference point in the daily lives of migrants and in particular their children, without prejudice to the customs, lifestyle and traditions of the host societies, the more migrants assert themselves firstly as persons having and owing rights and obligations and secondly as active members of society rather than bystanders at odds with their cultural identities. For this reason the Committee is of the view that the States should undertake to promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations.”
Article 20 The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

1157. Conclusions 2002, Statement of Interpretation on Article 20, “For States which have accepted both Article 1§2 and Article 20, the Committee examines under the later the general framework for guaranteeing equality between women and men (equal rights, specific protection measures, situation of women in employment and training schemes, measures to promote equal opportunities). As a result it does not deal specifically with discrimination based on sex under Article 1§2.”

1158. Conclusions 2012 Statement of Interpretation on Article 20 Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.

1159. Conclusions 2002, Italy, “The report states that “the matters indicated do not fall within the scope of the provision under examination”. The Committee points out that in as much as it concerns the implementation of equal treatment and equal opportunities, social security comes within the scope of Article 20 of the Charter. It draws the attention of the Italian authorities to the wording of the appendix to Article 20, according to which social security matters may be excluded from the scope of Article 20. It therefore considers that the Italian Government was entitled to make a declaration when ratifying the Charter to the effect that social security matters were excluded, but that it did not exercise this right.”

1160. Conclusions XIII-5 (1997), Sweden, Article 1 of the Protocol: “The Committee underlines that under Article 1 of the Protocol, the Parties are obliged to protect workers not only from direct discrimination on grounds of gender but also from the indirect discrimination that may result from the fact that the number of women or men is larger in a certain category of workers with less favourable conditions, such as part-time workers.”

1161. Syndicat national des professions du tourisme v. France, Complaint No. 6/1999, Decision on the merits of 10 October 2000, §25: “A difference in treatment between people in comparable situations constitutes discrimination in breach of the Charter if it does not pursue a legitimate aim and is not based on objective and reasonable grounds.”

1162. Conclusions XVI-1 (2002), Greece, Article 1§2: “In its previous conclusion, the Committee found that the maximum quota of 20% applied to the admission of women to the police college under Act No. 2226/94 constituted direct discrimination based on sex is contrary to Article 1§2 of the Charter. […] limiting the number of women eligible for police training could be justified under Article 31 of the Charter. The Committee then has to establish whether the restriction on the right to equal treatment is necessary in a democratic society to protect public interest or national security. Such a restriction might also be justified where sex is a decisive criterion due to the nature of the activities concerned or the conditions under which they are exercised. […] The Committee notes that this situation results in women’s exclusion from the majority (85%) of police duties, exhaustively listed in Act No. 2713/99. It finds nothing in this “argument” - a simple description of the nature of the duties - that adequately justifies the need to restrict these duties to
men on the grounds permitted by the Charter. The Committee considers that arguments based on men’s greater muscular capacity (the report also mentions quickness, endurance, courage and composure as being more characteristic of men than of women) and on the carrying and/or use of firearms (mentioned in the previous report) are not sufficient to show that excluding women really helps to achieve the outcome sought. “

1163. Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol: “Article 1 of the Protocol affirms the right to equality of opportunity and equal treatment in the field of employment and occupation, without discrimination based on sex, which entails greater commitments than those set down under the terms of the Charter, in particular Articles 1§2, 4§3 and 8.
Acceptance of Article 1 of the Protocol entails the following obligations for States:
– the obligation to promulgate this right in legislation;
– the obligation to take legal measures designed to ensure the effectiveness of this right. In this regard, the Committee referred its case law according to which such measures must provide for the nullity of clauses in collective agreements and individual contracts which are contrary to the principle, for adequate appeal procedures where the right has been violated and for the effective protection of workers against any retaliatory measures (dismissal or other measures) taken as a result of their demand to benefit from the right.
– the obligation to define an active policy and to take practical measures to implement it.
The Committee took account of all of these elements in order to evaluate the situation in law and in practice in the four areas specified at points a, b, c, and d of paragraph 1 of Article 1 of the Protocol. (…)
The Committee requested that each state indicate explicitly whether or not it excluded from the scope of Article 1 of the Protocol social security matters as well as provisions concerning unemployment benefit, old age benefit and survivor’s benefit.
The dynamic nature of this provision led the Committee to assess the situation existing at a given moment, taking into account the progress achieved and ongoing efforts.”

1164. Conclusions XV-2 (2001), Addendum, Slovak Republic, Article 1 of the Additional Protocol: “By accepting this provision, states undertake to promulgate the rights concerned in legislation (Conclusions XIII-5 (1997)). With respect to each of the above areas, the Committee considers that Slovak law sets out the right to equal treatment in very general terms only.”

1165. Conclusions XVII-2 (2005), Netherlands (Aruba), Article 1 of the Additional Protocol: “The Committee notes that Article 1 of the Protocol require states not only to provide for equal treatment but also to protect women and men from discrimination in employment and training. This means that they are obliged to enact legislation explicitly imposing equal treatment in all aspects.”

1166. Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol: op. cit

1167. Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol: “[…] not only clauses in collective agreements but also clauses in employment contracts which are contrary to the principles laid down in Article 1 of the Protocol may be rendered null and void.”

1169. Conclusions 2004, Romania: “The Committee recalls that Article 20 of the Charter implies a modification of the burden of proof in favour of workers who believe that they have been the victims of a discriminatory measure. It therefore asks what the applicable rules are under the above-mentioned laws and what the practice of the courts is.”

1170. Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol: “An alleviation of the burden of proof in cases of alleged gender discrimination is also required. Where persons who consider that the principle of equal treatment as guaranteed by this provision has not been applied to them establish, before a court or other competent authority, facts from which discrimination may be presumed to exist, it shall then be for the respondent to prove that the apparent discrimination is due to objective factors unrelated to any discrimination based on sex and thus does not constitute any contravention of the principle of equal treatment.”

1171. Syndicat SUD Travail et Affaires Sociales v. France, Complaint No. 24/2004, Decision on the merits of 8 November 2005, §34: “The Committee notes that from the point of view of effective application of rules on protection against discrimination the purpose of rules on alleviation of the burden of proof is to enable courts to deal with discrimination in the light of the effects produced by a rule, act, or practice. The Committee observes that it is the administrative courts that are the competent courts in discrimination cases involving civil servants, as well as public servants without tenure and employees of ANPE. It also observes that the administrative courts apply an “inquisitorial procedure” in which issues of burden of proof may present themselves differently from in adversarial litigation. However, the Committee is forced to note that it is unable to see that for the categories of employees concerned in the present context French law contains statutory provisions geared to guarantee the alleviation of the burden of proof consistent with the requirements of Article 1§2 of the Charter. The Government has adduced no evidence or submitted no reference to any statutory text or case law to show that the situation in law is in accordance with the obligations incumbent on it pursuant to Article 1§2.”

1172. Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol: “It is, furthermore, an essential requirement that under the law of Contracting Parties clauses in collective agreements and employment contracts contravening the principles of non-discrimination must be held to be null and void. The Committee considers that it is instrumental that a court or other competent authority be empowered to waive the application of a stipulation whether it is included in an individual employment contract or a collective agreement, where the former finds that it infringes the principles of equality laid down by law. In addition, to ensure that the observance of equality may be more efficiently exercised, it would be advisable for states to introduce measures of a kind likely to discourage employers from applying, even through lack of knowledge of them, clauses which are null and void. These measures could take the form of the introduction of a statutory legal provision rendering any such stipulation null and void, the possibility for a court to declare this nullity by a decision applicable erga omnes, the introduction of a specific right for trade unions to take legal action in these matters, including the right to act as an intervener in individual litigation, or the possibility of class action on the part of persons in whose interest it would be to have this nullity declared. The Committee asks the states to supply information in their reports on the existence of any such measures or of any other mechanisms which may have a similar effect.”

1173. Conclusions 2012 Albania Article 1§2: “The Committee considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed. The Committee asks whether there are limits to the amount of compensation that may be awarded in discrimination cases”

1174. Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol: “Also, states must ensure through legislation that adequate safeguards exist against discrimination and retaliatory measures. Legislation must provide for the rectification of the situation concerned — in the case of dismissal, reinstatement — and compensation for any
financial loss incurred during the intermediate period. Where such a remedy is not possible, financial compensation instead may be acceptable, but only if it is sufficient to deter the employer and compensate the worker. Legislation may also provide for other sanctions against an employer who is guilty of such discrimination."

1175. Conclusions XVII-2 (2005), Finland, Article 1 of the Additional Protocol: “The Committee recalls that, to be in conformity with Article 1 of the Protocol, national law must ensure that sufficient compensation is provided for the victim of discrimination, that is to say through:
– reinstatement in or retention of employment in the event of unlawful or unfair dismissal, and compensation for any pecuniary damage suffered;
– payment of compensation in proportion to the damage suffered, i.e. covering pecuniary and non-pecuniary damage, if the employee does not wish to return to his or her job or it is impossible for the employment relationship to continue;
– the ending of discrimination and the award of compensation in proportion to the damage suffered in all other cases (see, in particular, Conclusions XIII-5 (1997); Conclusions XVI-1 (2002)).”

1176. Conclusions 2012 (Article 1§2) Albania op cit.


1178. Conclusions XVI-2 (2003), Greece, Article 1 of the Additional Protocol: “The Committee has examined the equal rights situation in Greece over the reference period 1999-2000 from the standpoint of Articles 1§2 (elimination of all forms of discrimination in employment) and 4§3 (right to equal pay). On the basis of its conclusions regarding the first of these provisions (Conclusions XVI-1 (2002)), it has concluded that the situation is not in conformity with Article 1 of the Protocol since "the restrictions on the admission of women to the police college and the corresponding exclusion of women from 85 % of police duties constitute direct discrimination based on sex that has not been shown to be necessary in a democratic society to protect the public interest or national security or to be justified by the nature of the activities in question". The Committee understands that a draft act to remedy the situation has been adopted outside the reference period and it asks to be kept informed of developments in the next report.”


1180. Conclusions 2012 Bosnia Hezegovina: "However the Committee noted under Article 8 (see conclusions 2011) that women are prohibited from working in underground mining. Section 52 of the Labour Act of the Federation of Bosnia and Herzegovina prohibits the employment of women in mines except women performing management which does not require manual work or women performing health and social protection jobs, as well as women working in education who must spend time in underground parts of mines, or those who must enter underground parts of mines to perform non-manual works. A similar prohibition regarding the employment of women in mines exists in Section 78 of the Labour Law of the Republika Srpska and Section 76 of the Labour Act of the District of Brcko. It concludes that such a prohibition is not in conformity with Article 20.

1181. International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32: “Finally, the Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. In this regard, it considers that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (see for example Conclusions XIII-3 (1995)). It considers that the Labour Inspectorate has a decisive role to play in effectively implementing Article 7 of the Charter.”
1182. **Conclusions XVII-2 (2005), Netherlands (Antilles and Aruba), Article 1 of the Additional Protocol:** “The report also states that Article 7 of the International Covenant on Economic, Social and Cultural Rights offers a basis for the courts to enforce women’s and men’s right to equal pay for work of equal value. It cites in support a Supreme Court decision of 7 May 1993. However, the Committee notes that the wording of Article 7 of the Covenant differs too much from the Charter (Article 4§3 – right to equal pay for work of equal value) to be considered adequate for the purposes of Article 1 of the Protocol.”

1183. **Conclusions XVII-2 (2005), Greece, Article 1 of the Additional Protocol:** “The Committee considers that gender mainstreaming, as recommended in particular by the Committee of Ministers of the Council of Europe, should form part of a strategy covering all aspects of the labour market, including remuneration, career development and occupational recognition, and extending to the education system. The Committee will consider progress made in this area when it next assesses the situation under Article 1 of the Protocol.”

1184. **Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol:** “Article 1 para. 3 of the Additional Protocol explicitly allows the adoption of measures aimed at removing de facto inequalities. Hence, the domestic law of Contracting Parties cannot be framed so as to exclude measures of positive action in favour of one gender if called for by the prevailing situation. The Committee recalls, moreover, that states have an obligation to define active policies and to take measures to implement them, and thus the rights concerned under Article 1, in practice.

In respect of all four areas specified in Article 1, the Committee wishes to receive detailed information on the situation in practice. It needs information on the employment situation for both sexes — ie., on the numbers of men and women who are in employment, unemployed, working part-time or on fixed term contracts, or other forms of temporary contracts.

It also needs information on access to and participation in vocational guidance, training, retraining and rehabilitation. In this context it wishes to be informed, inter alia, of the extent to which women train for jobs which have traditionally been occupied by men and vice versa.

The Committee further requires information on differences in terms of employment and working conditions, including remuneration, that may exist in practice, with an indication of the differences between full-time workers on permanent contracts and part-time workers or workers on fixed-term contracts or other forms of temporary contracts. Finally, the Committee needs information on differences in career advancement between the sexes in the various sectors of the economy.

Moreover, in order to enable the Committee to evaluate the adequacy of the active policies pursued by the Parties to the Protocol to achieve equal opportunities and equal treatment in employment, they must give an account of the practical measures they have undertaken to this end.”

1185. **Conclusions 2002, Romania:** “The Committee stresses the importance of adopting affirmative measures to reduce the differences between women and men and to achieve de facto equality between the sexes in accordance with Article 20 of the Charter. Considering that the fulfilment of this obligation is progressive by nature, and bearing in mind the situation which applies in practice to women in employment and education systems in Romania, the Committee will assess the conformity of the situation with the Charter in the light of the efforts made to attain this standard during the next reference period.”
Article 21 The right to information and consultation

1186. Conclusions XIII-3 (1995), Finland: “The Committee noted that the requirements of Article 2, workers’ rights "within the undertaking" and the definition of an undertaking given in the section of the Appendix relating to Articles 2 and 3 (paragraph 3) entailed pursuit of financial gain and the power for the undertaking to determine its own market policy. It followed from the text that, in the public sector, only state-owned companies, or some of those companies, were obliged to allow workers the benefit of the right to information and consultation.

1187. European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 40/2007, decision on the merits of 23 September 2008, § 42: “As regards the alleged violation of Articles 21 and 22 of the Revised Charter, the Committee points out that these provisions guarantee the right of workers to information and consultation and the right to take part in the determination and improvement of their working conditions and working environment within the undertaking. Pursuant to the Appendix, Part II, to the Revised Charter, the term “undertaking” is understood as referring to “a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy”. Consequently, even though Articles 21 and 22 may apply to workers in state-owned enterprises, public employees are as a whole not covered by these provisions (Conclusions XIII-5 (1997), Norway).”

1188. Conclusions XIX-3 (2010), Croatia: “As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 2 of the Additional Protocol of the Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 2 of the Additional Protocol of the Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgment of the European Court of Justice of 18 January 2007 (Confédération générale du travail (CGT) and Others, Case C-385/05).”


1190. Conclusions 2010, Belgium: “The Committee recalls that the works council has to be provided with economic and financial information comprising all aspects of the functioning of the undertaking such as, inter alia, the development of sales activities, customers’ orders, productivity, costs and employment. The works council also has the right to be informed and consulted in due course on the employment policy of the enterprise and may submit questions and express opinions on decisions and proposals envisaged by the employer in this respect prior to their implementation. The employer is obliged to provide information on the employment structure of the undertaking and on envisaged changes of such structure such as planned dismissals on economic grounds etc. Consultations further take place with respect to, inter alia, measures that might change the organisation of work or the working conditions within the undertaking as well as on measures regarding the training of employees, on collective redundancies, etc.”

1191. Conclusions 2003, Romania: “The Committee asks whether all employees or their representatives have a legal capacity to trigger an administrative action against their employer and whether they have a subsequent right of appeal before a court.”

1192. Conclusions 2005, Lithuania: “The Committee asks whether there are other kinds of sanctions and whether workers or their representatives are entitled to some kind of compensation in case of a violation.”
Article 22 The right to take part in the determination and improvement of the working conditions and working environment

1193. Conclusions 2005, Estonia: “As the Committee has noted in its conclusion under Article 21 of the Charter, as far as health and safety are concerned, employees are represented by working environment councils or by working environment representatives depending on the size of the undertaking. In undertakings employing less than 10 people, employees are in direct contact with the employer.

[...]

The Committee considers that the situation in Estonia is in conformity with Article 22 of the Charter as far as employees’ participation in the protection of health and safety is concerned.”

1194. Conclusions 2007, Italy: “The Committee asked two consecutive times for information on how employee participation in the organisation of social and socio-cultural services and facilities within the undertaking takes place. The Committee recalls in this context that Article 22 of the Revised Charter does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established. Since the report again does not provide the corresponding details, the Committee considers that nothing establishes that the situation is in conformity with the Revised Charter in this respect.”

1195. Conclusions 2007, Armenia: “The report states that workers’ participation concerns all of the areas covered by Article 22, such as the determination and improvement of the working conditions, work organisation and working environment, the protection of health and safety within the undertaking, the organisation of social and socio-cultural services within the undertaking and the supervision of the observance of regulations on these matters.”

1196. Conclusions 2003, Bulgaria: “The Committee notes that those employers who infringe their obligations under the above-mentioned provisions may face criminal sanctions. It asks whether workers or their representatives have a right to lodge a complaint or file suit before competent courts where their rights have been infringed.”

1197. Conclusions 2003, Slovenia: “The Committee notes that individual and collective dispute over the implementation of the right of workers to take part in the determination and improvement of their working conditions, work organisation and working environment as well as the protection of their health and safety may be brought before labour and social courts and ultimately before the Supreme Court of the Republic of Slovenia. It further notes that employers who fail to comply with their obligations in this respect may be sanctioned by fines of no less than 250,000 Slovenian Tolars (1,084 €).”
Article 23 The rights of elderly persons to social protection

1198. Conclusions XIII-3 (1995), Statement of Interpretation on Article 23: “Article 4 of the Protocol establishes a fundamental right: the right of elderly persons to social protection which responds to an increased need on account of the ageing of the population. The novelty of this right, not just in relation to the Charter but to other existing international instruments, deserves special mention since it represents the first international norm specifically protecting elderly persons. The measures envisaged by this provision, by their objectives as much as by the means of implementing them, point towards a new and progressive notion of what life should be for elderly persons, obliging the Parties to devise and carry out coherent actions in the different areas covered. The dynamic character of Article 4 led the Committee to assess the existing situation at a given moment, taking into account the progress achieved and ongoing efforts.”

1199. Conclusions 2009, Andorra: “As regards the protection of elderly persons from discrimination outside employment, the Committee recalls that Article 23 requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services. The European Older People's Platform and other sources point to the existence of pervasive age discrimination in many areas of society throughout Europe (health care, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities) which leads the Committee to consider that an adequate legal framework is a fundamental measure to combat age discrimination in these areas. The report provides no information on this matter, the Committee therefore asks if anti-discrimination legislation (or an equivalent legal framework) to protect elderly persons outside the field of employment exists, or whether the authorities plan to legislate in this area. The Committee asks for information on the legal framework related to assisted decision making for the elderly, and, in particular, whether there are safeguards to prevent the arbitrary deprivation of autonomous decision making by elderly persons.”

1200. Conclusions 2013, Statement of Interpretation, Article 23: “The Committee considers that there should be a national legal framework related to assisted decision making for the elderly guaranteeing their right to make decisions for themselves unless it is shown that they are unable to make them. This means that elderly persons cannot be assumed to be incapable of making their own decision just because they have a particular medical condition or disability, or lack legal capacity. An elderly person’s capacity to make a particular decision should be established in relation to the nature of the decision, its purpose and the state of health of the elderly person at the time of making it. Elderly persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own. In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by elderly persons, also in case of reduced decision making capacity. It must be ensured that the person acting on behalf of elderly persons interferes to the least possible degree with their wishes and rights.”

1201. Conclusions 2009, Andorra Article 23: “The Committee recalls that elder abuse is defined in the Toronto Declaration on the Global Prevention of Elder Abuse (2002) as ‘a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person’. It can take various forms: physical, psychological or emotional, sexual, financial or simply reflect intentional or unintentional neglect. The World Health Organization (WHO) and the International Network of the Prevention of Elder abuse (INPEA) have recognised the abuse of older people as a significant global problem. Hundred thousands of older people in Europe encounter a form of elder abuse each year. They are pressed to change their will, their bank account is plundered, they are pinched or beaten, called names, threatened and insulted and sometimes they are raped or sexually abused otherwise.”
The Committee wishes to know what the Government is doing to evaluate the extent of the problem, to raise awareness on the need to eradicate elder abuse and neglect, and if any legislative or other measures have been taken or are envisaged in this area.

1202. Conclusions 2013 Statement of Interpretation Article 23 “When assessing adequacy of resources of elderly persons under Article 23, the Committee will take into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life. The emphasis remains on pensions, contributory or non-contributory, but other complementary cash benefits available to elderly persons will also be considered. These resources will then be compared with the median equivalised income in the country concerned. It is recalled that the Committee’s task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.”

1203. Conclusions 2003, France: “Although Article 23§1b only refers to the provision of information about services and facilities, the Committee considers paragraph 1b of Article 23 as presupposing the existence of services and facilities. It has decided to examine information not only relating to the provision of information about these services and facilities but about the services and facilities themselves under this provision as opposed to under Article 14 of the Charter.

The report provides information on home help services, which are in France a legal social security benefit. They are provided by public and private bodies and financed by the départements and retirement insurance funds (the largest being the CNAVTS Caisse Nationale d’Assurance Vieillesse des Travailleurs Salariés) although a contribution may be payable by the recipient of the services. In 1999, there were 306,868 recipients of home help financed by the CNAVTS and in 2000 there were 61 000 beneficiaries of home help financed by the départements.

The Committee wishes to receive further information on the content of the services provided under the guise of home help, as it appears that it includes day care provided in special centres, and further information on the fees payable by the user.

It also asks for further information on specialised day care provision for persons with dementia and related illnesses and on services such as information, training and respite care for families caring for elderly persons, in particular highly dependent persons. The Committee wishes to know whether financial assistance (carer’s allowance) is available for persons caring for an elderly person.”

1204. Conclusions 2009, Andorra, Article 23 “It also asks how the quality of services is monitored and if there is a procedure for complaining about the standard of services”

1205. The Central Association of Carers in Finland v. Finland complaint no 71/2011 decision on the merits of 4 December 2012 §53 “The Committee concludes that insufficient regulation of fees for service housing and service housing with 24-hour assistance combined with the fact that the demand for these services exceeds supply, does not meet the requirements of Article 23 of the Charter insofar as these:

- Create legal uncertainties to elderly persons in need of care due diverse and complex fee policies. While municipalities may adjust the fees, there are no effective safeguards to assure that effective access to services is guaranteed to every elderly person in need of services required by their condition.

- Constitute an obstacle to the right to “the provision of information about services and facilities available for elderly persons and their opportunities to make use of them” as guaranteed by Article 23b of the Charter.”
1206. **Conclusions 2005, Slovenia:** “The report specifies that the so-called “sheltered homes” currently appear to be the most popular new form of housing for the elderly. They are funded by public-private partnership ventures and some entirely by private investors. The report further states that legislation is currently under consideration regulating the availability and technical standards for sheltered homes. The Committee wishes to receive further information on the adoption of this legislation in the next report and in particular on the minimum standards for the services and care provided. It also wishes to know whether the observation of these standards is subject to control by an independent inspection mechanism. According to the report, the majority of elderly persons in Slovenia live in private (mostly owner occupied) dwellings. In reply to the Committee’s question, the report states that the National Housing Programme and future programmes of institutions such as the National Housing Fund, the Municipal Housing Funds and the Real Estate Fund are or will be paying special attention to the development of financial instruments to enable the elderly to obtain loans and grants to adapt their dwellings to their needs.

The report also states that the concept of “lifetime adaptable housing” has been given consideration by universities and research institutions but has only partially been implemented in practice. The Committee wishes to receive information on the extent of practical implementation of this concept in the next report.”

1207. **Conclusions 2013, Andorra, Article 23:** “According to the report, the Department of Housing of the Ministry of Health, Welfare, Family and Housing provides elderly persons with financial aid towards the costs of the rent. The Committee previously asked whether there were any public financing mechanisms (loans, grants, etc) available to elderly persons for home renovation/adjustment works. It emphasised that general progress or improvements on the housing situation of elderly persons should be provided in future reports, for example, as regards access to social housing or how safety, adequate living conditions and basic amenities are ensured for dwellings occupied by elderly persons. No information was provided on this matter in the last report or in the current one. Committee therefore reiterates its questions and that in the absence of a reply in the next report, there will be nothing to prove that the situation is in conformity on this point.”

1208. **Conclusions 2003, France, Article 23:** “The Committee recalls from its conclusions under Article 11 of the 1961 Charter that a universal health care scheme was introduced in France in 2000 and that free supplementary cover is provided on a means tested basis. It also recalls that the patient must pay a proportion of the cost of care and medicines. It wishes to know in this respect the proportion of the costs borne by elderly persons.

The Committee found little specific information in the report on health care services (outside of institutions) for elderly persons; it wishes to receive in the next report information on:
- health care programmes and services (in particular primary health care services) specifically aimed at the elderly;
- guidelines on health care for elderly persons if any;
- mental health programmes for persons with dementia and related illnesses;
- palliative care services for the elderly.

1209. **Conclusions 2003, Slovenia, Article 23:** “No information was provided in the report on the inspection system for Old People’s Homes, the Committee considers that any inspection system should be independent of the entity that establishes or manages the residential facility and asks whether steps are envisaged to create an independent inspection mechanism or whether such a system exists.

It further wishes to receive information on the following topics:
- requirements of staff qualifications and training and wage levels;
- guidelines on the care of persons suffering from dementia or related illnesses;
– policies on the right of persons to participate in the organisation of the life of the institution;
– can persons be compulsorily placed in such institutions? What is the procedure?
– guidelines on the use of physical restraints in institutions;
– guidelines on the social and cultural amenities to be provided in institutions.”

1210. **Conclusions 2003, France:** “The Committee considers that any inspection system should be independent of the entity that establishes or manages the residential facility and asks whether steps are envisaged to create an independent inspection mechanism to examine in particular, the quality of care.

The Committee wishes to receive information on the following topics:

– requirements of staff qualifications, training and wage levels;
– can persons be compulsorily placed in such institutions? What is the procedure?
– guidelines on the social and cultural amenities to be provided in institutions;
– how the rights to personal dignity and privacy are guaranteed in institutional facilities.

**Complaints about services and care**

The Committee wishes to receive further information on the procedures for complaining about the availability of services and care and/or the standard of the service, care or treatment in both residential and non-residential facilities.”

1211. **Conclusions XX-2 (2013) Czech Republic (Article 4§1):** “The Committee previously noted that demand for places in retirement homes exceed places available, the Committee asks the next report to provide updated information on the number of persons in institutional care (nursing homes or retirement homes) and the number of persons waiting for places.

As regards inspections the Committee previously considered that the system in place in the Czech Republic did still not guarantee a sufficient degree of independence, and therefore asked if there were any plans to establish an independent body with the authority to visit homes to monitor standards and check for signs of abuse and neglect.

According to the report in order to enhance the independence of inspection from January 1, 2012, state inspections powers were transferred from the Regional Offices to the Labour Office, a Government agency with regional branches which falls under the Ministry of Labour and Social Affairs, so it does not have direct links to the provision of social services.

Independent monitoring of the compliance with human rights, namely findings on good or bad treatment of clients in social services, is carried out by the Ombudsman. The Ombudsman is the national preventive mechanism which the Czech Republic agreed to adopt under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The role of the Ombudsman is to carry out systematic preventive visits to all sites and facilities, where “persons deprived of their liberty are or may be located.”

The Committee asks whether the Ombudsman visits both nursing homes and retirement homes. It also requests information on the regularity of inspections by both bodies.”
Article 24 The right to protection in cases of termination of employment

1212. Conclusions 2003, Statement of Interpretation on Article 24: “Article 24 of the Charter obliges states to establish regulations with respect to termination of employment for all workers who have signed an employment contract. To assess whether the regulations applied in cases of termination of employment are in conformity with Article 24, the Committee’s examination will be based on:

- the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24a and the Appendix to Article 24);
- penalties and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24b).

The Committee recalls that a series of Charter and Charter provisions require increased protection against termination of employment on certain grounds:

- Articles 1§2, 4§3 and 20: discrimination
- Article 5: trade union activity
- Article 6§4: strike participation
- Article 8§2: maternity
- Article 15: disability
- Article 27: family responsibilities
- Article 28: worker representation.

Most of these grounds are also listed in the Appendix to Article 24 as non-valid reasons for termination of employment. However, the Committee will continue to consider national situations’ conformity with the Charter with regard to these reasons for dismissal in connection with the relevant provisions. Its examination of the increased protection against termination of employment for reasons stipulated in the Appendix to Article 24 will thus be confined to ones not covered elsewhere in the Charter, namely “filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities” and “temporary absence from work due to illness or injury”.

The Committee considers that national legislation should include explicit safeguards against termination of employment for “the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities” (the Appendix as it relates to Article 24). Indeed, safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals, particularly in the form of dismissal, is essential in any situation in which a worker alleges a violation of the law (see mutatis mutandis Articles 1§2 and 4§3). In the absence of any explicit statutory ban, states must be able to show how national legislation conforms to the requirements of the Charter.”

1213. Conclusions 2003, Italy: “The Committee recalls that under the Appendix to Article 24 of the Charter only workers engaged for a specified period of time or a specified task, undergoing a period of probation or engaged on a casual basis may be excluded from protection against termination of employment. However, the examination of the increased protection against termination of employment for reasons stipulated in the Appendix to Article 24 will thus be confined to ones not covered elsewhere in the Charter, namely “filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities” (the Appendix as it relates to Article 24). Indeed, safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals, particularly in the form of dismissal, is essential in any situation in which a worker alleges a violation of the law (see mutatis mutandis Articles 1§2 and 4§3). In the absence of any explicit statutory ban, states must be able to show how national legislation conforms to the requirements of the Charter.”

1214. Conclusions 2012, Cyprus: “In its previous conclusion (Conclusions 2008) the Committee held that the situation was not in conformity with the Charter as law excluded from protection against dismissal employees who have not completed a continuous period of 26 weeks with their employer regardless of their qualifications. It notes from the Governmental Committee report (TS-G (2010) 5) as well as from the report that there have been no changes in this regard as Cyprus..."
believes that the probationary period of six months is not excessive and is of a reasonable
duration.
As there have been no changes to the situation, the Committee reiterates its previous finding of
non-conformity on the ground that the employees who have not been employed with their
employer for a continuous period of 26 weeks are not entitled to protection against dismissal”.

1215. Conclusions 2012, Ireland: “The Committee recalls that under Article 24 of the Charter all
workers who have signed an employment contract are entitled to protection in the event of
termination of employment. According to the Appendix to the Charter, certain categories of
workers can be excluded, among them workers undergoing a period of probation.
The Committee notes from the report that some categories of employees are not covered by the
Unfair Dismissal legislation, such as: employees with less than one year’s continuous service;
employees who had reached the normal retiring age; employees working for a close relative in a
private house or farm; members of the Garda Síochána and the Defence Forces; persons
undergoing training by the National Training and Employment Authority; managers of local
authorities.
As regards exclusion of employees undergoing a period of probation, according to the report, for
this exclusion to apply, a written employment contract must be in place and the duration of the
probation must be one year or less and be specified in the employment contract. An employee
must have been in the same employment for at least a year in order to bring a claim for unfair
dismissal. However, an employee with less than 12 months’ continuous service can still bring a
claim for unfair dismissal if the dismissal resulted from trade union membership or any matters
connected with pregnancy or birth.
In this regard, the Committee recalls that under Article 24 exclusion of employees from protection
against dismissal for six months or 26 weeks during the probationary period is not reasonable if
applied indiscriminately, regardless of the employee’s qualification (Conclusions 2005, Cyprus).
The Committee considers that one year period of exclusion is manifestly unreasonable and
therefore the situation in Ireland is not in conformity with the Charter on this ground.
As regards exclusion of employees having having reached the normal retiring age from the
protection of the Unfair Dismissals legislation, the Committee holds that such exclusion is
contrary to the Charter as it goes beyond what is permitted by the Appendix to the Charter.
Therefore, the situation is not in conformity on this ground”.

1216. Conclusions 2012, Turkey: “As regards termination of employment on economic grounds, the
Committee wishes to know the national courts’ interpretation of the law and their leading
decisions and judgments as regards the extent to which reasons are regarded in practice as
justifying dismissal. It asks whether the courts have the competence to review a case on the facts
underlying the economic reasons or just on points of law”.

1217. Conclusions 2003, France: “According to the Labour Code, termination of employment is
deemed to be on economic grounds (economic redundancy) when employees are dismissed not
for personal reasons but because of the abolition of or changes to their posts or their refusal to
accept substantial modifications to their employment contracts in response to financial difficulties
or technological changes (Section L. 321-1, sub-paragraph 1).
If a post is abolished it must not be subsequently filled . The abolition of posts may result in a
reduction in the number of jobs in a particular category because of over manning, the
incorporation of the relevant duties into another post or the sharing out of tasks among other
persons . The closure of an establishment and the transfer of its activities to another site may
also lead to job losses .
Employees’ refusal to accept changes to their contracts following a restructuring of their
undertaking may justify termination of employment if the restructuring has a necessary impact on
employment.
More generally, the grounds for economic redundancy will only be considered to be serious if it is impossible for those concerned to continue to be employed in the undertaking. The Court of Cassation requires undertakings to attempt to find them alternative employment, based on their obligation to fulfil employment contracts in good faith. For example, if the real reason for termination of employment is a change to a contract resulting from technical innovations it will be considered to constitute economic redundancy and will only be deemed to be serious if the employer offers the employees concerned other posts suited to their abilities or training to carry out the original post in its new form.

Economic redundancies must be based on financial difficulties or technological changes. The courts have also acknowledged that reorganisation in a firm's interests may also constitute economic grounds for termination of employment.

The Committee asks whether legislation and case law is limited when considering the concept of economic redundancy, merely to take account of difficulties experienced by the undertaking or whether it also includes consideration of other strategic company practices”.

1218. Conclusions 2003, Statement of Interpretation on Article 24: The Committee considers that national legislation should include explicit safeguards against termination of employment for “the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities” (the Appendix as it relates to Article 24). Indeed, safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals, particularly in the form of dismissal, is essential in any situation in which a worker alleges a violation of the law (see mutatis mutandis Articles 1§2 and 4§3). In the absence of any explicit statutory ban, states must be able to show how national legislation conforms to the requirements of the Charter.

1219. Conclusions 2012, Ukraine: “As regards temporary absence from work due to illness or injury, the Committee recalls that under Article 24 a time limit can be placed on protection against dismissal in such cases. Absence from work can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee. Additional protection must be offered, where necessary, for victims of employment injuries or occupational diseases. The Committee notes from the report that according to Article 40 of the Code of Labour Laws absence from work for more than four consecutive months due to sick leave (temporary incapacity to work), excluding maternity and birth, is considered as a valid ground for dismissal, unless the legislation provides for a longer term of authorised absence for certain diseases. The Committee asks what is the time limit placed on protection against dismissal in such cases”.

1220. Conclusions 2012, Statement of Interpretation on Article 24: The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term ‘termination of employment’ means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.

The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.
1221. **Conclusions 2012, the Netherlands:** “In its previous conclusion the Committee asked whether Dutch law provided for termination of the employment relationship on the grounds of age. It notes from the report that there is no statutory requirement to terminate an employment contract when the employee reaches pensionable age. The age at which an individual is entitled to receive state pension benefit i.e. the pensionable age, is 65.

The Equal Treatment in Employment (Age Discrimination) Act provides that dismissal which relates to the termination of an employment relationship because the person concerned has reached pensionable age under the General Old Age Pensions Act, is not prohibited. If a collective labour agreement or individual employment contract lacks a pensionable age clause, the employment contract will remain valid (until notice of termination is given). If a collective labour agreement or individual employment contract sets an age limit that is lower than the pensionable age, there must be an objective justification for discriminating on the basis of age.

According to the report, there is a broad support in society for applying the pensionable age as a limit and it coincides with the age limit set in the social security legislation. According to the Equal Treatment in Employment Act, discrimination on this basis of age is appropriate because it is the means by which the envisaged aim can be achieved. It is proportionate because upon reaching pensionable age the individual is no longer required to work in order to acquire income as he is entitled to the state pension. Finally, there is no good alternative to age discrimination. It is therefore a necessary means.

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term ‘termination of employment’ means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.

The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

The Committee thus holds that the situation in the Netherlands is not in conformity with the Charter as the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified”.

1222. **Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, Decision on the merits of 2 July 2013, §§ 86, 89, 97, 99:** “86. […] The Committee observes that the Seamen’s Act does not oblige any employer to terminate contracts of employment, but abolishes the protection of an employee against such a termination.”

“89. The Committee observes that as no other grounds than age are required in national law for the justification of dismissal, the contested provision clearly falls within the scope of application of Article 24.”

“97. […] No specific evidence has been submitted to the Committee demonstrating how the age-limit of 62 years corresponds to essential professional requirements imposing the earlier retirement of seamen in the present-day conditions. The Committee holds accordingly that the age-limit is not based on objective grounds. Moreover, it has not been shown that the desired aims could not have been attained by less intrusive means. The Committee therefore holds that the age-limit in question disproportionately affects the rights of the seamen within its scope of
application and that no valid reasons within the meaning of Article 24 are required in the Seamen’s Act for the termination of employment.”

“99. The Committee holds that the contested provision enables dismissal directly on grounds of age and does therefore not effectively guarantee the seamen’s right to protection in cases of termination of employment. This is the situation irrespective of whether the seaman in question will be entitled to pension following the termination of his employment relationship.”

1223. Conclusions 2008, Statement of Interpretation on Article 24: The Committee applies its general stance on the burden of proof also in relation to cases of termination of employment other than those based on discrimination while examining Article 24 of the Revised Charter.

1224. Conclusions 2012, Slovak Republic: “The Committee recalls that Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.

The Committee notes from the report that under Article 77 of the Labour Code an employee may challenge in court the validity of the termination of an employment relationship by notice up to two months from the claimed date of termination of the employment relationship. Under Article 79 of the Labour Code if an employer’s termination of an employee’s employment by notice or with immediate effect or during a probationary period is invalid and if the employee has notified the employer that he or she insists that the employer continue to employ him or her, the employment relationship shall not end unless the court finds that the employer cannot reasonably be required to continue to employ the employee. During the period of legal proceedings the employer is obliged to pay the employee wage compensation. The employee is entitled to compensation equal to his/her average earnings from the date when he or she notified the employer that he or she insists on the continuation of employment to the time when the employer enables him or her to continue work or a court rules that the employment relationship is terminated.

An employer shall be obliged to pay an employee wage compensation for 12 months in the event that a court decision on the invalid termination of an employment relationship is issued after more than 12 months. If the court’s decision on the invalid termination of the employment relationship is issued earlier, only wage compensation for this shorter period shall be payable.

An employer may pay an employee wage compensation for a period longer than 12 months but the provisions of Section 79(2) of the Labour Code also allow the employer to request that the court proportionately reduce or refuse to award this wage compensation.

In this connection the Committee recalls that under Article 24 employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation is appropriate if it includes reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body. Therefore, the Committee holds the maximum compensation of 12 months is inadequate and the situation is not in conformity with the Charter”.

1225. Conclusions 2003, Bulgaria: “The Committee considers with regard to Article 24 of the Charter that when a dismissal is ruled to be null and void and an employee's reinstatement is ordered, or the employment relationship is held to have been uninterrupted, such decisions must at a minimum be accompanied by an entitlement to receive the wage that would have been payable between the date of the dismissal and that of the court decision or effective reinstatement. The Committee therefore considers that in Bulgaria, the maximum compensatory payment of six months’ wages cannot be considered as adequate with respect to Article 24.”

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1226. Conclusions 2012, Finland: “The Committee notes that the Finnish legislation does not provide for the possibility of reinstatement in case of unlawful dismissal. It recalls that Article 24 requires that such a possibility must be guaranteed by legislation. Therefore, the Committee considers that the situation is contrary to the Charter”.

1227. Conclusions 2012, Turkey: “The Committee recalls that Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee”.

1228. Conclusions 2012, Slovenia: “In its previous conclusion the Committee asked whether compensation in case of unlawful dismissal was subject to a ceiling. It notes in this regard that in 2007 the provision of Article 118 of the Employment Relationship Act was amended by establishing the amount limit for the indemnity that should direct the judicial decision on the indemnity in a concrete case instead of reference to general provisions of civil law. If the court establishes that the termination by an employer is illegal and the worker does not wish to continue the employment relationship, it can, in accordance with Article 118 of the Employment Relationship Act, on the worker’s proposal, establish the duration of the employment relationship, at most until the decision of the Court of First Instance, and recognise the worker’s period of employment, other rights from the employment relationship and proper pecuniary indemnity up to a maximum amount of 18 of his/her monthly salaries, paid in the last three months before the termination of the employment contract.

In this connection, the Committee recalls that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee asks whether damages for non-pecuniary loss can be recovered through other legal avenues”.

1229. Conclusions 2012, Finland: “In its previous conclusion the Committee held that the situation in Finland was not in conformity with Article 24 of the Charter on the ground that the compensation for unlawful termination of employment was subject to an upper limit.

According to the report, the causal relationship between unjustified termination of employment and the loss incurred by the employee is deemed to have been broken when two years have elapsed from the termination, if not earlier. The amount of compensation is always determined individually based on consideration of all the circumstances pertaining to the case.

The Committee notes from the report of the Governmental Committee to the Committee of Ministers1 regarding Article 1§2 that in addition to the compensation of a minimum of 3 and maximum of 24 months’ pay, the victim may also seek redress under other legislation such as the Non-Discrimination Act, the Act on Equality Between Women and Men or the Tort Liability Act, provided that the special requirements in regard to these Acts are met.

According to the representative of Finland, Finnish legislation does not establish a ceiling for compensation; it only defines the maximum amount of the time over which the employer is responsible for the damages caused by his/her unjustified actions. It provides a system where the victim has several possibilities of seeking redress and which are not mutually exclusive; an
employer may be obliged to pay the employee a sum of 24 months’ pay and compensation under the Tort Liability Act (material losses and suffering).

In this connection, the Committee recalls that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee wishes to be informed of cases, if any, where the employee has successfully sought compensation under the Tort Liability Act in case of unlawful dismissal". 
Article 25 The right to protection of their claims in the event of the insolvency of their employer

1230. Conclusions 2003, France: Article 25 of the Revised Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer. States having accepted this provision benefit from a margin of appreciation as to the form of protection of workers' claims and so Article 25 does not require the existence of a specific guarantee institution. However, the Committee wishes to emphasise that the protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should also apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings.

1231. Conclusions 2012, Ireland: “The Committee further recalls that protection must be provided to workers also in situations where the employer's assets are insufficient to justify the opening of formal insolvency proceedings (Conclusions 2003). In this regard it notes from the above source that the Insolvency Payments Scheme does not cover the cases where a business shuts down without becoming legally insolvent. For an employee to come within the Scheme, an employer must be legally insolvent under the legislation under which the Scheme operates. If a business shuts down without becoming legally insolvent the employer remains responsible for the payment of employees' pay and other entitlements. The Committee asks what guarantees exist for workers that their claims will be satisfied in such cases and what would be the amount of claims satisfied”.

1232. Conclusions 2008, Slovenia: “Under the ZJSRS employers are deemed to be insolvent if bankruptcy proceedings have been initiated against them, or if the decision confirming the compulsory preparation of a financial recovery package has become legally enforceable. However, the protection of workers' claims extends to situations where the enterprise's assets do not warrant the opening of formal insolvency proceedings. Section 19 of the ZJSRS guarantees unpaid wages for the last three months prior to the termination of employment and unpaid compensation for paid absences within the same three months up to a maximum of three times the statutory minimum wage (522 € in January 2007).

1233. Conclusions 2012, Statement of Interpretation on Article 25: The Committee has consistently held that the term "insolvency" includes both situations in which formal insolvency proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of his creditors and situations in which the employer's assets are insufficient to justify the opening of formal proceedings (see for example Conclusions 2003). In this respect the Committee wishes to make it clear that a privilege system, on its own, cannot be regarded as an effective form of protection in the meaning of Article 25. While a privilege system may amount to effective protection in cases where formal insolvency proceedings are opened, this is not so in situations where the employer no longer has any assets. It serves no purpose to have a privilege when there are no assets to divide among creditors and consequently States Parties must provide for an alternative mechanism to effectively guarantee workers' claims in those situations.

1234. Conclusions 2012, Albania: “In its previous conclusion the Committee asked whether employee protection also applied when businesses ceased operations without being able to honour their commitments but had not been formally declared insolvent nor placed in receivership. According to the report, the workers are in such cases entitled to take their claims to the court.
The Committee has consistently held that the term “insolvency” includes both situations in which formal insolvency proceedings have been opened relating to an employer’s assets with a view to the collective reimbursement of his creditors and situations in which the employer’s assets are insufficient to justify the opening of formal proceedings (see for example Conclusions 2003).

In this respect the Committee wishes to make it clear that a privilege system, on its own, cannot be regarded as an effective form of protection in the meaning of Article 25. While a privilege system may amount to effective protection in cases where formal insolvency proceedings are opened, this is not so in situations where the employer no longer has any assets. It serves no purpose to have a privilege when there are no assets to divide among creditors and consequently States Parties must provide for an alternative mechanism to effectively guarantee workers’ claims in those situations.

Therefore, the Committee holds that the situation is not in conformity with the Charter as there is no alternative to the privilege system, which in it itself does not provide effective guarantee of protection of workers’ claims in situations where the employer no longer has any assets”.

1235. Conclusions 2003, Bulgaria: “The Committee notes that workers’ claims arising from the employment relationship are ranked fourth after mortgage obligations, foreclosure on property and bankruptcy costs. The Committee does not consider that the privilege system in this form has been shown to amount to effective protection equivalent to a guarantee institution and the situation is therefore not in conformity with Article 25 of the Charter.”

1236. Conclusions 2003, Sweden: “However, it wishes to know what is the normal or average duration of the period when a claim is lodged until the worker is paid. It also requests an estimate of the overall proportion of workers’ claims which are satisfied by the wage guarantee and/or the privilege system.”

1237. Conclusions 2012, Lithuania: “According to the report, the number of applications for bankruptcy proceedings has significantly increased during the reference period, amounting to 957 in 2008 and 1,844 in 2009. They have slightly decreased in 2010, amounting to 1,636. Due to an increased number of applications, the duration of time from the submission of an application and the transfer of money to employees increased from four months in 2008 to twelve months 2010. In 2010 1,093 applications were examined and 20,439 employees received allowances. The Committee considers that the average period of twelve months is excessive and therefore, the situation is not in conformity with the Charter”.

1238. Conclusions 2012, Serbia: “According to the report, the Fund shall proceed to the payment within 15 days after the relevant final decision has been submitted, pursuant to the law stipulating bankruptcy procedures. In 2010, 4,885 requests were submitted for claims of which 2,384 were satisfied. The Committee finds that the rate at which claims are satisfied is low. It asks what is the most common reasons for a refusal to satisfy a claim”.

1239. Conclusions 2012, Slovakia: “The Committee recalls that under Article 25 the workers claims to be covered by the employer in case of insolvency shall not be less than three months under a privilege system and eight weeks under a guarantee system. Besides, the employer is also obliged to pay for claims in respect of other types of paid absence (holidays, sick leave), at not less than three months under a privilege system and eight weeks under a guarantee system. States may limit the protection of workers’ claims to a prescribed amount but the limit set must be of an acceptable level. The Committee has previously held that three times the average monthly wage of the employee to be an acceptable level (Conclusions 2005, Estonia). In this connection, the Committee notes from the report that the guarantee insurance benefit will cover at most three months in the last 18 months of the employment relationship before the start of the employer’s insolvency. The Committee asks what is the amount paid to satisfy other claims (holiday pay due as a result of work performed during the year in which the insolvency occurred, other types of paid absence).
1240. **Conclusions 2012, Turkey:** “Article 9 of the Regulation, entitled “Procedures and Principles Regarding the Payment” states that the “Worker Claim Record” must cover the period prior to the employer’s becoming insolvent and the employee must have worked in the same workplace for at least one year immediately preceding the employer’s becoming insolvent. The Committee holds that exclusion of employees having worked less than one year for the same employer from protection against insolvency of their employer is contrary to the Charter. Therefore, it holds that the situation is not in conformity with Article 25”.

1241. **Statement on Article 25 2008** Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship. However, it is for the Committee to determine on each occasion whether the nature of the employment relationship warrants such an exclusion. Under no circumstances may this be a reason for the exclusion of part-time employees and employees on fixed-term or other temporary contract.
Article 26 The right to dignity at work

Article 26§1

1242. Conclusions 2003, Bulgaria: "As a preliminary observation, the Committee stresses that sexual harassment is not necessarily a form of discrimination based on gender but always qualifies as a breach of equal treatment determined by an insistent preferential or retaliatory attitude, directed towards one or more persons, or by an insistent attitude of other nature which may harm their dignity or their career".

1243. Conclusions 2005, Moldova "As a preliminary observation, the Committee notes that sexual harassment qualifies as a breach of equal treatment manifested mainly by an insistent preferential or retaliatory conduct of a sexual nature, directed towards one or more persons which may harm their dignity or their career".

1244. Conclusions 2007, Statement of Interpretation on Article 26: “The Committee recalls that, irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination. And this independently from the fact that not all harassment behaviours are acts of discrimination, except when this is presumed by law”.

1245. Conclusions 2005, Republic of Moldova: The Committee concludes that the situation in Moldova is not in conformity with Article 26§1 of the Revised Charter on the grounds that neither Moldovan legislation nor any other regulatory or administrative measure provides for the necessary preventive and reparatory means to effectively protect employees against sexual harassment and there is no indication in the report of any practical application of the existing laws by public authorities or courts that would provide such protection.

1246. Conclusions 2005, Lithuania: “The Committee would also like to receive information whether and to what extent employers’ and workers’ organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace”.

1247. Conclusions 2003, Italy: “The Committee recalls that Article 26§1 also requires States Parties to take appropriate preventive measures in order to combat this phenomenon. In particular, they should inform workers about the nature of the behaviour in question and the available remedies”.

1248. Conclusions 2003, Bulgaria: “The Committee considers that the effectiveness of the legal protection against sexual harassment depends on the interpretation given, for each applicable legal provision, by national courts. It therefore requests that future reports provide conclusive information on relevant and well-established case law”.

1249. Conclusions 2005, Moldova: “The Committee considers that there is no need for a state's legislation to make express reference to harassment where that state's law encompasses measures making it possible to afford employees effective protection against the various forms of discrimination”.

1250. Conclusions 2007, Statement of Interpretation on Article 26: “The Committee considers that there is no requirement for a state’s legislation to make express reference to harassment where that state’s law encompasses measures making it possible to afford employees effective protection against these phenomena. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights”.

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1251. **Conclusions 2014, Finland:** The Committee asks whether employers may be held liable when sexual harassment occurs in relation to work, or on premises under their responsibility, but it is suffered or perpetrated by a third person, not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.

1252. **Conclusions 2007, Statement of Interpretation on Article 26:** “It further considers that, from the procedural standpoint, effective protection of employees may require a shift in the burden of proof to a certain extent, making it possible for a court to find in favour of the victim on the basis of sufficient prima facie evidence and the conviction of the judge or judges”.

1253. **Conclusions 2014, Azerbaijan:** The Committee recalls that, in order to allow effective protection of victims, civil law procedures require a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges.

1254. **Conclusions 2005, Moldova:** “The Committee notes that there are no provisions under civil or administrative law under which victims of sexual harassment may sue their employer or colleagues and seek compensation for material and moral damages before civil or administrative courts or seek reinstatement in the event of unlawful dismissal in the context of sexual harassment cases”.

1255. **Conclusions 2005, Lithuania:** “The Committee wishes to receive information on the scale of the damages available in order to assess whether they may be regarded as sufficiently reparatory for the victim and a sufficient deterrent for the employer”.

1256. **Conclusions 2007, Slovenia:** “The Committee points out that compensation must be sufficient to make good the victim’s pecuniary and non-pecuniary damage and act as a deterrent to the employer”.

1257. **Conclusions 2003, Bulgaria:** “The Committee asks whether reinstatement is also available where the employee has been pushed to resign given the unfriendly environment determined by the sexual harassment. It further requests additional information on the rules governing tort liability, in particular on the nature and scale of damages that may be granted to victims of sexual harassment”.

**Article 26§2**

1258. **Conclusions 2003, Bulgaria:** “Article 26§2 of the Charter is the first international provision to establish a fundamental right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. Parties are required to take all necessary preventive and reparatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them in the workplace or in relation to their work, since these actions constitute a humiliating behaviour”.

1259. **Conclusions 2007, Statement of Interpretation on Article 26:** “The Committee recalls that, irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination. And this independently from the fact that not all harassment behaviors are acts of discrimination, except when this is presumed by law”.

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1260. **Conclusions 2007, Statement of Interpretation on Article 26:** “The Committee considers that there is no requirement for a state’s legislation to make express reference to harassment where that state’s law encompasses measures making it possible to afford employees effective protection against these phenomena. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights”.

1261. **Conclusions 2005, Republic of Moldova:** Finally, the Committee recalls that Article 26§2 also requires States Parties to take appropriate preventive measures in order to combat harassment at the workplace. In particular, they should inform workers about the nature of the illegal behaviour and the available remedies. It notes that the report does not provide any elements in this respect and requests that relevant information be provided in the next report. The Committee wishes in particular to receive information on the implementation of any preventive measures with the aim of raising awareness of the problem of harassment at the workplace.

1262. **Conclusions 2003, Slovenia:** “It considers that under Article 26§2, States Parties are required to promote awareness, information and prevention of harassment at work among workers, employers, their respective organisations and, as far as possible, the general public”.

1263. **Confederazione Generale Italiana del Lavoro (CGIL) c. Italie, réclamation No 91/2013, décision sur le bien-fondé du 12 octobre 2015, §295:** “The Committee also notes the following information:

“In addition, at the above-mentioned hearing by the Chamber of Deputies, Doctor Scassellati further clarified “[w]e are 30 gynaecologists at St. Camillus, including the Chief Physician, of whom only three are non-objectors. Over the last four years we have been under continuous attack. We are the clinicians who have decided to defend a law of the state. Thus, in my opinion, conscientious objection constitutes the most serious aspect of the problem. We should talk about it, since those who terminate pregnancies are steadily decreasing and constantly have to justify their work”.

1264. **Conclusions 2007, Statement of Interpretation on Article 26:** “The Committee considers that there is no requirement for a state’s legislation to make express reference to harassment where that state’s law encompasses measures making it possible to afford employees effective protection against these phenomena. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights”.

1265. **Conclusions 2005, Republic of Moldova:** The Committee recalls that States Parties to the Revised Charter having accepted Article 26§2 shall ensure an adequate legal protection of employees against distinctly negative and offensive actions or conduct at work. This protection shall include the right to challenge the offensive behaviour before an independent body, the right to obtain adequate compensation and the right not to be discriminated for having pursued the respect of these rights.

1266. **Conclusions 2003, Sweden:** “In this respect, it asks whether employers have the same obligations with regard to persons, other than employees and job applicants, who might suffer harassment from personnel under their responsibility or at premises under their responsibility from persons not employed by them such as customers, visitors, clients, guests, etc.”

1267. **Conclusions 2014, Finland:** The Committee recalls in this respect that it must be possible for employers to be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibilities, when a person not employed by them (independent contractors, self-employed workers, visitors, clients, etc.) is the victim or the perpetrator.
1268. Conclusions 2007, Statement of Interpretation on Article 26: “It further considers that, from the procedural standpoint, effective protection of employees may require a shift in the burden of proof to a certain extent, making it possible for a court to find in favour of the victim on the basis of sufficient prima facie evidence and the conviction of the judge or judges”.

1269. Conclusions 2014, Azerbaijan: The Committee recalls that in order to allow effective protection of victims in harassment cases, civil law procedures require a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges.

1270. Conclusions 2014, Azerbaijan: Under Article 26§2 of the Charter, victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim’s pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or forced to resign for reasons linked to moral (psychological) harassment. Pointing out that the effectiveness of the legal protection against moral (psychological) harassment depends on how the domestic courts interpret the law as it stands, the Committee repeats its request for relevant examples of case law in the field of moral (psychological) harassment.
Article 27 The right of workers with family responsibilities to equal opportunities and treatment

Article 27§1

1271. Conclusions 2005, Statement of Interpretation on Article 27§1a, Estonia: “The Committee recalls that the aim of Article 27§1a of the Charter is to provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. It underlines that persons with family responsibilities may face difficulties on the labour market due to their family responsibilities. Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular in the field of vocational guidance, training and re-training.”

1272. Conclusions 2003, Sweden: “The Committee observes that the aim of Article 27§1 of the Charter is to provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. It underlines that the disadvantage of such people lies within the very nature of family responsibilities, which exclude people not only from an employment relation but, what is most important, from professional life; they often do not have time to monitor labour market developments and take measures in order to stay competitive on it. To be able to return to professional life, they need special assistance in terms of vocational guidance and training.

On the other hand however, if the standard employment services (those available to everyone) are well developed, than the lack of extra services for people with family responsibilities cannot be regarded as a human right violation. Since under Articles 10§3 and 10§4 the Committee expressed no objections as to the level of Swedish standard training and employment services, it raises no concern over the quality of vocational guidance and training offered to people with family responsibilities.”

1273. Conclusions 2005, Statement of Interpretation on Article 27§1b, Estonia: “The Committee recalls that the aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security. Measures need to be taken to implement this provision, especially measures concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment.”

1274. Conclusions 2005, Lithuania: “It further notes that pursuant to Article 46 of the Act on Safety and Health at Work, upon agreement of the employee and the employer part-time work may be agreed to. If requested by inter alia a pregnant woman, a nursing mother, a woman or single parent raising a child (children) under 14 years of age or a disabled child under 16 years of age, or a person nursing a sick family member, part-time work schedule must be agreed to. The Committee notes that there is no obligation to agree to part-time work for a father who is not single. The Committee considers this to constitute discrimination and can therefore, not be considered to be in conformity with Article 27§1 of the Charter combined with Article E.”

1275. Conclusions 2005, Statement of Interpretation on Article 27§1c, Estonia: “The Committee recalls that the aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities.”

1276. Conclusions 2005, Italy: “The Committee asks information on whether Italian legislation provides for arrangements enabling parents to reduce or cease their professional activity because of serious illness of a child.”
Article 27§2

1277. **Conclusions 2011, Armenia:** “[The Committee] recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision.

The Committee further recalls that Article 27§2 requires States to provide the possibility for either parent to obtain parental leave. Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an individual right to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent.

All categories of employees are entitled to parental leave. At the request of an employee, leave for childcare is granted until the child reaches the age of three. This leave may also be taken by the father of the child, stepmother, stepfather, or any relative who is in charge of the child (Article 173 of the Labour Code).

As regards payment during parental leave, the report merely states that this is done in the manner prescribed by legislation. The Committee asks for more concrete information on this point, namely, if the employee receives income/wages during the period of parental leave, and if so, how much. The Committee considers in this respect that remuneration of parental leave (be it continuation of pay or via social assistance/social security benefits) plays a vital role in the take up of childcare leave, in particular for fathers or lone parents “

1278. **Conclusions 2011, Armenia:** *op. cit.*

1279. **Conclusions 2011, Armenia:** *op. cit.*

1280. **Conclusions 2011, Armenia:** *op. cit.*

1281. **Conclusions 2015, Statement of Interpretation on Article 27§2:** “Under Article 27§2 of the Charter the States Parties are under a positive obligation to encourage the use of parental leave by either parent. States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave. The modalities of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modalities of payment, the level shall be adequate.”

1282. **Conclusions 2015, Statement of Interpretation on Article 27§2:** *op. cit.*

Article 27§3

1283. **Conclusions 2003, Statement of Interpretation on Article 27§3, Bulgaria:** “According to the Appendix to the Revised European Social Charter, the notion of "family responsibilities" is to be understood as obligations in relation to dependent children and also other members of the immediate family who need care and support. The purpose of Article 27§3 is to prevent these obligations from restricting preparation for and access to working life, exercise of an occupation and career advancement.”
1284. **Conclusions 2007, Finland**: “The Committee recalls that Article 27§3 of the Revised Charter requires that courts or other competent bodies are able to order reinstatement of an employee unlawfully dismissed and/or a level of compensation that is sufficient both to deter the employer and proportionate to the damage suffered by the victim (…) The Committee concludes that the situation in Finland is not in conformity with Article 27§3 of the Revised Charter on the ground that legislation makes no provision for the reinstatement of workers unlawfully dismissed on grounds of their family responsibilities.”

1285. **Conclusions 2005, Estonia**: “The Committee recalls that Article 27§3 of the Charter requires that courts or other competent bodies are able to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim. Therefore limits to levels of compensation that may be awarded are therefore not in conformity with the Charter.”

1286. **Conclusions 2011, Statement of interpretation on Articles 8§2 and 27§3**: “Ceiling on compensation for unlawful dismissal”. The Committee holds that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.”
Article 28 The right of workers’ representatives to protection and facilities in their function

1287. Conclusions 2003, Bulgaria: “Article 28 of the Charter guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises, inter alia, a similar right in respect of trade union representatives.”

1288. Conclusions 2003, Bulgaria: “According to the Appendix of Article 28, the term “workers representatives” means persons who are recognised as such under national legislation or practice. States may therefore establish different kind of workers’ representatives other than trade union representatives.”

1289. Conclusions 2003, France: “The Labour Code provides for the protection of worker representatives: According to the report, these are staff representatives (Section L 421-1), members of works councils (Section L 431-1), members of committees on health, safety and working conditions, and worker representatives on company boards. These workers cannot be dismissed for reasons connected, even marginally, to their mandate. The protection lasts for the duration of their mandate plus an additional period of between 3 months and 5 years depending on the type of mandate. Unsuccessful candidates in workplace elections also benefit from employment protection for 6 months.

An employer who seeks to terminate the employment of a worker representative is required to consult the works council. For the termination to take effect, authorisation must be sought from the labour inspectorate, which will investigate to ensure that the grounds alleged are genuine and bear no relation to the worker’s mandate. If authorisation is granted, the worker may appeal either to the administrative or civil courts. In the former case, while there is no shifting of the burden of proof to the worker, the court is entitled to consider all evidence before it and conclude accordingly. If the worker brings an action before the civil courts alleging discrimination on the part of the employer, the burden of proof will shift to the latter once the worker establishes facts from which it may be presumed that there has been direct or indirect discrimination. Worker representatives employed on fixed-term contracts enjoy equivalent protection, since the contract may only expire if the labour inspectorate consents.

In addition to protection against dismissal, the terms and conditions of the employment of worker representatives are protected. Such workers cannot be compelled to accept changes in their employment contracts that would hinder the exercise of their mandate. Dismissal of a worker representative without the authorisation of the labour inspectorate is null and void and constitutes an offence for which the employer may be fined. The worker is entitled to seek reinstatement and to receive compensation for loss of earnings. If the employer fails to reinstate, the worker also may claim damages for non-compliance with the statutory protection and for unlawful dismissal.

The Committee considers that French law affords adequate protection to worker representatives for the purpose of Article 28.”

1290. Conclusions 2010, Statement of Interpretation on Article 28: “The Committee considers that the protection afforded to worker representatives should extend for a period beyond the mandate. The Committee recalls that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59). To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office.”
1291. Conclusions 2010, Bulgaria: “The Committee recalls that the Labour Code enumerates a number of particular cases in which trade union representatives may be dismissed subject to prior approval of the relevant trade union organisation such as in the event of termination of the employer’s business. In all other cases dismissal of trade union representatives is unlawful and this protection against dismissal applies for a period of six months following expiry of the trade union representative’s mandate.”

1292. Conclusions 2010, Norway: “The Committee refers to its interpretative statement in the General Introduction on the duration of protection for workers’ representatives and wishes to be informed as to how long the protection for worker representatives lasts after the cessation of their functions and what remedies are available to worker representatives who are dismissed unlawfully.”

1293. Conclusions 2007, Bulgaria: “Pursuant to Article 344 of the Labour Code, an employee may lodge a complaint with the competent court alleging that a dismissal was unlawful and may request reinstatement and compensation for the period he or she was not employed due to the unfair dismissal. According to Article 225§1 of the Labour Code, the compensation is calculated on the basis of the individual’s gross income and is limited to a maximum of six months’ earnings. The Committee considered in its previous conclusions on Article 5 of the Revised Charter (Conclusions 2004 and 2006, Bulgaria) that where an unfair dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. In the particular case of termination of employment on the ground of trade union activities, it considered that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement. Since this is not the case in Bulgarian law, the Committee held that the situation is not in conformity with Article 5 of the Revised Charter and thus also finds the situation not to be in conformity with Article 28 of the Revised Charter.”

1294. Conclusions 2010, Statement of Interpretation on Article 28: “The Committee considers that protected workers must be granted the following facilities: paid time off to represent employees, financial contributions to work councils, the use of premises and materials for works councils, as well as other facilities mentioned by the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their functions, access for workers representatives or other elected representatives to all premises, where necessary, the access without any delay to the undertaking’s management board if necessary, the authorisation to regularly collect subscriptions in the undertaking, the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities). The Committee also considers that participation in training courses on economic, social and union issues should not result on a loss of pay. Training costs should not be borne by the workers’ representatives.”

1295. Conclusions 2010, Statement of Interpretation on Article 28: op cit
Article 29 The right to information and consultation in collective redundancy procedures

1296. Conclusions 2003, Statement of Interpretation on Article 29: “Article 29 of the Charter guarantees workers’ representatives the right to be informed and consulted in good time by employers who are planning collective redundancies. The collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm’s activity.

This obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers’ representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached. For this purpose, all relevant documents must be supplied before consultation starts: reasons for the redundancies, planned social measures, criteria for being made redundant, order of redundancies.

The right to be informed and consulted must be backed by guarantees to ensure that consultation actually takes place. If an employer fails to respect his obligations, provision must be made for minimum administrative or judicial proceedings before the redundancies take effect, to ensure that they do not take place until the obligation to consult has been fulfilled. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of individual employees to contest the lawfulness of their being made redundant is examined with reference to Article 24 of the Charter.”

1297. Conclusions 2014, Azerbaijan: Article 63 of the Labour Code regulates termination of employment due to collective redundancy – that is, termination affecting several workers within a period of time and decided for reasons which have nothing to do with individual workers. Collective redundancy is defined as termination of employment of more than 50% of all employees in an enterprise with 100-500 employees, 40% in an enterprise of 500-1000 employees and 30% in an enterprise with more than 1000 employees at the same time or at separate times within three months.

The Committee considers that the definition of redundancies is restrictive and asks what is the coverage of employees concerned, i.e. the percentage of employees working in enterprises with more than 100 employees in proportion to all employees.

1298. Conclusions 2003, Sweden: “Employers’ general obligation to inform and negotiate derives from sections 11, 12 and 19 of the Co-Determination Act and concerns any employee organisation with which an employer has reached a collective agreement. Employers who are not bound by collective agreements are also required to negotiate with all affected employees’ organisations on all matters relating to redundancy resulting from insufficient work or the total or partial transfer of an undertaking (section 13).

Taking into account that in 1997 more than 83% of Swedish workers were members of trade unions, according to the statistics provided by the National Statistical Committee of Sweden, the Committee considers that the situation in Sweden is in conformity with Article 29 of the Charter in this respect.”

1299. Conclusions 2014, Statement of Interpretation on Article 29: In order to give effect to the requirements of Article 29, national law must thus provide for the following guarantees.

When employers implement information and consultation procedures preceding collective redundancies, employees should be represented by persons acting on behalf of all workers employed in the workplace. Such representatives may be either bodies operating in the employer’s enterprise (for example, trade unions or workers’ councils) or ad hoc representatives appointed to take part in this processes. National law should ensure that employees may appoint representatives even when they are not otherwise represented in the context of a particular
workplace by a trade union or other representative body. Such representatives should represent all employees who may be potentially subject to collective redundancies and should not suffer any negative consequences as a consequence of their activities in this regard.

1300. **Conclusions 2014, Statement of Interpretation on Article 29**: Article 29 of the Charter requires that state parties establish an information and consultation procedure which should precede the process of collective redundancies. Its provisions are directed — on the one hand — towards ensuring that workers are made aware of reasons and scale of planned redundancies, and — on the other hand — towards ensuring that the position of workers is taken into account when their employer is planning collective redundancies, in particular as regards the scope, mode and manner of such redundancies and the extent to which their consequences can be avoided, limited and/or mitigated.

1301. **Conclusions 2003, Statement of Interpretation on Article 29**: op cit

1302. **Conclusions 2014, Georgia**: The Committee considers that even though Section 11 of the Trade Union Act stipulates the obligation of the employer to notify about collective redundancies, it does not guarantee the right of workers and their representatives to be consulted in good time before the redundancies take place. Therefore, the situation is not in conformity with Article 29

1303. **Conclusions 2014, Statement of Interpretation on Article 29**: The information and consultation process should be directed towards not only the possible avoidance or minimisation of the scope of collective redundancies, but also at mitigating their consequences. It should therefore cover the possibility of undertaking actions aimed at retraining and redeployment of the workers concerned. As part of this process, employers should be required to cooperate with administrative authorities or public agencies which are responsible for the policy counteracting unemployment, by for example notifying them about planned collective redundancies and/or cooperating with them in relation to retraining employees who are made redundant or providing them with other forms of assistance with a view to obtaining a new job.”

1304. **Conclusions 2005, Lithuania**: “The Committee considers that in order for there to be an adequate dialogue between employer and workers’ representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, all relevant documents must be supplied before consultation starts. To that end, prior information must cover not only the reasons, time period and category of workers concerned, but also proposed social measures, criteria for dismissals and the order of dismissals. As this is not the case in Lithuania, the Committee considers that the situation is not in conformity with Article 29 of the Charter in this regard.”

1305. **Conclusions 2007, Sweden**: Trade unions may seek damages for non-pecuniary damage where an employer has failed to respect the consultation requirements. No other consequences ensue as a result of failure to respect prior consultation procedures. The Committee recalls that it has stated that under the Revised Charter consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfill their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met (ibid.).

The Committee notes that there is no right for employee representatives/trade unions to seek an order requiring an employer to inform and consult his/her employees prior to redundancies taking place. Therefore the Committee concludes that the situation is not in conformity with the Revised Charter.

1306. **Conclusions 2003, Statement of Interpretation on Article 29, op. cit.**
Article 30 The right to protection against poverty and social exclusion

1307. Statement of interpretation of Article 30, Conclusions 2003, see e.g. Conclusions France:
By introducing into the Revised Charter a new Article 30, the Council of Europe member states considered that living in a situation of poverty and social exclusion violates the dignity of human beings. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion Article 30 requires States parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach.

The measures taken in pursuance of the approach must promote access to social rights, in particular employment, housing, training, education, culture and social and medical assistance. The Committee emphasizes that this list does not exhaust the areas in which measures must be taken to address the multidimensional poverty and exclusion phenomena. The measures should strengthen entitlement to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. As long as poverty and social exclusion persist they should also represent an increase in the resources deployed to realise social rights.

Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. In this respect the Committee systematically reviews the definitions and measuring methodologies applied at the national level and the main data made available.

1308. Statement of interpretation of Article 30, Conclusions 2003, see e.g. Conclusions France:

1309. Statement of interpretation of Article 30, Conclusions 2013. “The Committee has reiterated that living in a situation of poverty and social exclusion violates the dignity of human beings and that Article 30 of the Revised Charter requires States Parties to give effect to the right to protection against poverty and social exclusion by adopting measures aimed at preventing and removing obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance (Statement of interpretation on Article 30, Conclusions 2003).

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

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

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

The Committee also considers necessary to recall that “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (International Commission of Jurists v. Portugal, Complaint No. 1/1999, decision on the merits of 9 September 1999, para. 32). In light of this approach, it considers that assessments of the Committee concerning Article 30, like those concerning the other substantial provisions of the Charter, must be based on this human rights approach, which has been recently reaffirmed by the Guiding Principles on extreme poverty and human rights (submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona and adopted by the United Nations Human Rights Council on 27 September 2012) and which has consistently been applied by the Committee (Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107, Defence for Children International v. The Netherlands, Complaint No. 69/2011, decision on the merits of 23 October 2013, para. 81).

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

- Concerning the first dimension, the Committee has focused on poverty as involving “deprivation due to a lack of resources” (Statement of interpretation on Article 30, Conclusions 2005), which can arise inter alia from the failure of States Parties to fulfil the obligation “to ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population” (DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, par. 100; violation of Article 11); to provide a minimum income to persons in need (ERRC v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009; violation of Article 13), or to adopt a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion (International Movement ATD

- Concerning the second dimension, the Committee has held that “Under Article 30, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation” (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107; violation of Article E in conjunction with Article 30). The Committee had also already considered that “the reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes on a special importance. In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by article 30” (ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, para. 99).

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

In this context, by reaffirming this human rights approach, the Committee emphasizes the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31), without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty.

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

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

1310. Conclusions 2005, Slovenia. “The Committee recalls that, in order to comply with Article 30 of the Charter, adequate resources are one of the main elements of the overall strategy to fight social exclusion and, therefore, requires the necessary resources to be allocated to attain the objectives of the strategy. The Committee asks to be regularly informed about the situation in this respect”.
1311. Statement of interpretation of Article 30, Conclusions 2003, see e.g. Conclusions France: 
\textit{op cit}

1312. ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009 §93: 
“[The Committee considers that living in a situation of social exclusion violates the dignity of 
human beings. With a view to ensuring the effective exercise of the right to protection against 
social exclusion, Article 30 requires States Parties to adopt an overall and co-ordinated approach, 
which should consist of an analytical framework, a set of priorities and measures to prevent and 
remove obstacles to access to fundamental rights. There should also be monitoring mechanisms 
involving all relevant actors, including civil society and persons affected by exclusion. This 
approach must link and integrate policies in a consistent way (Conclusions 2003, Article 30, 
France, p. 214).]

1313. Statement of Interpretation of Article 30, see Conclusions 2005 France: 
The report indicates 
that the number of persons below the poverty line stabilised in the period 1996-2000, the poverty 
rate diminished by 0.9% in 2001. The poverty rate indicator corresponds to the proportion of 
individuals living below the poverty line, which is fixed in France at 50% of the median equivalised 
income. The Committee notes from Eurostat that, in the period 1999-2001, 15% of the population 
was at risk of poverty, that is, households whose income was below 60% of the median 
equivalised income, this rate was 24% before social transfers. It also notes from another source1 
that, in 1999, and before social transfers, the poverty rate was 21.6% and 15.6% respectively for 
a threshold of 60% and 50% of the median equivalised income. After social transfers, these 
values were, respectively, 12.3% and 6.4%, thereby demonstrating the effectiveness of social 
transfers in reducing deprivation.

It follows from the above figures that there has been no significant reduction in poverty during the 
period of reference and that the groups most vulnerable to poverty and exclusion remain the 
same: unemployed, working poor, children under the age of 18, large and single-parent families, 
unskilled young people, asylum seekers and travellers. In reply to the Committee’s question, the 
report indicates that, in 2001, poverty affected 36.5% of single parent families, 33% of large 
families and that 25.2% of children under the age of 18 lived in poor households. After social 
transfers, these figures were, respectively, 13.1%, 8.4% and 7.6%. Unemployment is the main 
but not the only cause of poverty.

As regards the number of recipients of the guaranteed minimum income indicator, the report 
indicates that, following to a decrease during the period 1996-2000, it was increasing again in 
2002. The Committee notes from another source2 that, in 2002, there were about 930 000 such 
recipients. In 1999 the working-poor numbered about 1 million (poverty threshold at 50% of the 
median equivalised income).

1314. Statement of Interpretation of Article 30, Conclusions 2003: \textit{op cit}

1315. General Introduction to Conclusions 2009: Comment on the application of the Charter in the 
context of the global economic crisis

15. The Committee notes that during the reference period of the current reporting cycle the 
economic climate in Europe was still generally favourable and many governments were 
expanding their social safety nets. However, the severe financial and economic crisis that broke 
in 2008 and 2009 has already had significant implications on social rights, in particular those 
relating to the thematic group of provisions “Health, social security and social protection” of 
the current reporting cycle. Increasing level of unemployment is presenting a challenge to social 
security and social assistance systems as the number of beneficiaries increase while tax and 
social security contribution revenues decline.
16. In this context, the Committee recalls that under the Charter the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.

17. From this point of view, the Committee considers that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.

18. The Committee also recalls that 2010 is the European Year for Combating Poverty and Social Exclusion, focusing on promoting solidarity, social justice and social inclusion. One of the key priorities of the European Year is to recognise the fundamental right of people in a situation of poverty and social exclusion to live in dignity and to play a full part in society. In this context the Committee wishes to reiterate that the right to protection against poverty and social exclusion is one of the fundamental rights protected under the revised Charter. Concerted efforts of states to accept and secure this right are therefore pertinent.

1316. GENOP-DEI and ADEDY v. Grèce, Complaint No. 65/2011, decision on the merits of 23 May 2012, para. 17: “The Committee considers that what applies to the right to health and social protection should apply equally to labour law and that while it may be reasonable for the crisis to prompt changes in current legislation and practices in one or other of these areas to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter.”

1317. COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107: “Under Article 30, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation.”

1318. Defence for Children International v. The Netherlands, Complaint No. 69/2011, decision on the merits of 23 October 2013, para. 81: “The Committee considers that immediate assistance is essential and allows assessing material needs of young people, the need for medical or psychological care in order to set up a child support plan. In the same spirit, the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona and adopted by the United Nations Human Rights Council on 27 September 2012 state:

“§32. Given that most of those living in poverty are children and that poverty in childhood is a root cause of poverty in adulthood, children’s rights must be accorded priority. Even short periods of deprivation and exclusion can dramatically and irreversibly harm a child’s right to survival and development. To eradicate poverty, States must take immediate action to combat childhood poverty.”

“§34. Poverty renders children, in particular girls, vulnerable to exploitation, neglect and abuse. States must respect and promote the rights of children living in poverty, including by strengthening and allocating the necessary resources to child protection strategies and programmes, with a particular focus on marginalized children, such as street children, child soldiers, children with disabilities, victims of trafficking, child heads of households and children living in care institutions, all of whom are at a heightened risk of exploitation and abuse.”

1319. DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, par. 100: “With specific regard to Article 11, the Committee points out that paragraph 1 requires States
Parties to take appropriate measures to remove the causes of ill-health and that, as interpreted by the Committee, this means, inter alia, that States must ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population.”

1320. **International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, paras. 169-170** : “169. The Committee considers that it follows from its conclusion in respect of Article 31 that the policy in respect of housing for the poorest is insufficient. Therefore, it finds a lack of a co-ordinated approach to promote the effective access of persons who live or risk living in a situation of extreme poverty to housing.

170. The committee therefore holds that the situation amounts to a violation of Article 30.”

1321. **COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107** : “Under Article 30, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation.”

1322. **ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, para. 99** : “The Committee notes that the measures taken to adopt an overall and co-ordinated approach to combating social exclusion must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance. It should be noted that this is not an exhaustive list of the areas in which it is necessary to take initiatives in order to address the multidimensional phenomena of exclusion (Conclusions 2003, Article 30, France, p. 214). The Committee considers that the reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes a special importance. In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by article 30.”

1323. **EUROCEF v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, para. 59** : “Admittedly, as is stated in the complaint, family allowances can form a substantial share of the income of persons living below the poverty threshold. In this respect, the possibility of being placed in uncertain economic and social circumstances through the partial withdrawal of family allowances may result in a reduction of the economic and social protection of families under Article 16 (see above). However, as such, this measure cannot be seen to undermine the coordinated approach of the protection against poverty and social exclusion that should be afforded under Article 30 of the revised Charter.”
Article 31 The right to housing

1324. European Roma Rights Center (ERRC) v. Bulgaria, Complaint n°31/2005, decision on the merits of 18 October 2006, §35: “The Committee considers that the effective enjoyment of certain fundamental rights requires a positive intervention by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. States enjoy a margin of discretion in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources (mutatis mutandis most recently European Court of Human Rights, Ilascu and others v. Moldova and Russia, judgment of 8 July 2004, § 332). Nonetheless, "when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources” (Autism-Europe v. France, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 53).”

1325. Ibid.

1326. International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §§ 58-60: “The Government argued strongly in its written submissions and at the hearing that the Charter's provisions on the right to housing, in particular Article 31, only imposed on states an obligation of means. In other words, so long as suitable measures were taken with a view to securing the right to housing, the situation would be in conformity with the Charter. The Committee agrees that the actual wording of Article 31 of the Charter cannot be interpreted as imposing on states an obligation of "results”. However, it notes that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32). This means that, for the situation to be in conformity with the treaty, states party must:
   a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
   b) maintain meaningful statistics on needs, resources and results;
   c) undertake regular reviews of the impact of the strategies adopted;
   d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
   e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

1327. International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §61: “In connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein (Autisme Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53)."
Article 31§1

1328. International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §63: “The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity. However statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs.”

1329. Conclusions 2003, France: “The Committee considers that “adequate housing” means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by the law”.

1330. Conclusions 2003, Italy: “Parties shall guarantee equal treatment with respect to housing on the grounds of Article E of the Charter. Equal treatment must be assured to the different groups of vulnerable persons, particularly low-income persons, unemployed, single parent households, young persons, persons with disabilities including mental health problems, persons internally displaced due to wars or natural disasters etc. The principle of equality of treatment and non-discrimination covers not only paragraph one but the rest of Article 31 as well.”

– a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity; etc and if specific dangers such as, for example, the presence of lead or asbestos are under control.
– over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.
– security of tenure means protection from forced eviction and other threats, and it will be analysed in the context of Article 31§2.”

1332. Conclusions 2003, France: “According to the Committee, the standards of adequate housing shall be applied not only to new constructions, but also gradually, in the case of renovation to the existing housing stock. They shall also be applied to housing available for rent as well as to housing occupied by their owners.”

1333. Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39 and 40: “Furthermore, with regard to the Roma in particular, the European Court of Human Rights takes into account the fact that: “(…) as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority (…). They therefore require special protection. (…) special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (…) not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community” (Orsus v.Croatia, judgment of 16 March 2010, §§ 147-148). The Committee will also bear in mind these important features.”

1334. European Roma Rights Center (ERRC) v. France, Complaint No. 51/2008, Decision on the merits of 19 October 2009, §§ 38, 39, 49: “The Committee notes that legislation on stopping places for Travellers was adopted in 2000 (the Reception and Accommodation of Travellers Act, No. 2000-614 of 5 July 2000). This legislation requires municipalities with over 5,000 residents to prepare a plan for the setting up of permanent camp sites for Travellers. The Committee notes, however, that so far, the Act has only been implemented in a minority of the municipalities concerned. In its submissions, the Government acknowledges the delay in implementing the départememt plans for the reception of Travellers and estimates that by the end of 2007, 50% of the total number of spaces were missing. The Committee observes that the failure to implement the aforementioned legislation adequately compels Travellers to make use of illegal sites, exposing them to the risk of forcible eviction under the 2003 Internal Security Act. […] It notes in this regard that, according to the memorandum produced by the Human Rights Commissioner
following his visit to France in 2008, there is a shortage of available spaces. Eight years after the Act of 5 July 2000, only 32% of the requisite places had been created by 31 December 2007. [...] The Committee notes, nonetheless, that not all the stopping places meet the required sanitary norms. In his memorandum, the Council of Europe Commissioner for Human Rights observes that in some cases, sites are created outside urban areas or near to facilities which are major sources of nuisance (such as electrical transformers or very busy roads), making them difficult – if not dangerous – to use, particularly for families with young children. The Committee therefore considers that some stopping places effectively fall short of the statutory requirements regarding sanitation and access to water and electricity as set out in the legislation.”

1335. **European Roma Rights Center (ERRC) v. Portugal, Complaint No. 61/2010, Decision on the merits of 30 June 2011, §48:** “The Committee considers that segregated neighbourhoods for Roma have to a large extent been created by the action of municipalities. Roma have been re-housed by municipalities in such neighbourhoods in a higher proportion than the general population with housing needs. Moreover, there are also examples of discriminatory practices by local authorities, such as the construction of a concrete wall to separate the Roma in Beja (§ 42), the cutting of water in Vidigueira (§ 36) or the precarious municipal houses of the Roma community in Sobral de Adiça, lacking electricity, water or sanitation (§ 39). The Committee therefore considers that implementation of re-housing programmes by municipalities have often led to segregation of Roma, and, have on other occasions been tainted by discrimination, without finding lasting solutions to the deteriorating residential conditions in informal Romani neighbourhoods. The situation is therefore also in breach of Article E taken in conjunction with Article 31§1 on this ground.”

1336. **Conclusions 2003, France:** “The Committee considers that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard urban development rules and maintenance obligations for landlords. Public authorities must also guard against the interruption of essential services such as water, electricity and telephone.”

1337. **European Roma Rights Center v. Italy, Complaint n° 27/2004, decision on the merits of 7 December 2005, §26:** “The Committee recalls that “even if under domestic law local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, states parties to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised” (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29). Thus, ultimate responsibility for policy implementation, involving at a minimum oversight and regulation of local action, lies with the Italian state. Moreover, as a signatory to the Revised Charter and the party against which complaints are lodged, the Government must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.”

1338. **European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint n° 39/2006, decision on the merits of 5 December 2007, §79:** “As regards the responsibility for adequate housing, the Committee has persistently pointed out over the last years that general supervision was absent at national level (see Conclusions 2005, Article 31§1, France). In addition, it finds that the adoption and implementation at the regional and local level of regulations aimed at improving the quality of dwellings is not always ensured in practice and varies between the departments.”
1339. **Conclusions 2003, France:** “The Committee considers that effectiveness of the right to adequate housing implies its legal protection. This means that tenants or occupiers must have access to affordable and impartial judicial or other remedies.”

1340. **European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint n° 39/2006, decision on the merits of 5 December 2007, §80-81:** “A final shortcoming identified by the Committee concerns the legal protection of the right to adequate housing (the occupiers’ right of appeal). On the basis of information from the High Committee for the housing of disadvantaged persons – consultative body to the Prime Minister – the Committee notes the inefficacy of means of redress, which most often result in a compensatory payment or reduction in rent. Furthermore, it notes that tenants are reluctant to start proceedings against their landlord because they do not know their rights and are afraid of losing their home if they take the landlord to court.

The Committee therefore holds that insufficient progress as regards the eradication of substandard housing and the lack of proper amenities of a large number of households constitute a violation of Article 31§1 of the Revised Charter.”

**Article 31§2**

1341. **Conclusions 2003, Italy:** “The Committee considers as homeless those individuals not legally having at their disposal a dwelling or other forms of adequate shelter.”

1342. **Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §138:** “According to Article 31§2 of the Charter, shelters are required to meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting in order to ensure that the dignity of the persons sheltered is respected. Another basic requirement is the security of the immediate surroundings (DCI v. the Netherlands, cited above, § 62).”

1343. **European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §106:** “106. It recalls that under the Charter, homeless persons are those who legally do not have at their disposal a dwelling or another form of adequate housing in terms of Article 31§1(Conclusions 2003, France).”

1344. **Conclusions 2005, Lithuania:** “The Committee considers that the parties must prevent categories of vulnerable people from becoming homeless. This requires states to introduce a housing policy for all disadvantaged groups of people to ensure access to social housing”

1345. **Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §136:** “136. Under Article 31§2, States Parties have undertaken to take measures to reduce homelessness with a view to gradually eliminating it. Reducing homelessness requires the introduction of emergency measures, such as the provision of immediate shelter. It likewise requires measures to help the homeless to overcome their difficulties and to prevent them from returning to a situation of homelessness (Conclusions 2003, Italy).”

1346. **European Roma Rights Center (ERRC) v. Bulgaria, Complaint N° 31/2005, decision on the merits of 18 October 2006, §54:** “The Committee finds that the legislation allowing, *inter alia*, the legalisation of illegal constructions did exist (2001 Territorial Planning Law), but that it set conditions too stringent to be useful in redressing the particularly urgent situation of the housing of Roma families (respect of constructions’ safety and hygiene rules, official documents attesting property, residence in the district for more than five years), situation which is also recognised by the Government. Moreover, the Committee considers that it follows from the fact that illegal Roma settlements have been existing for many years and that, though not uniform, provision of public services, as electricity, was ensured and inhabitants charged for it, that state authorities acknowledged and tolerated *de facto* the actions of Roma (*mutatis mutandis* European Court of
Human Rights, Oneryildiz v. Turkey, judgment of 30 November 2004, Appl. No. 48939/99, § 105 and §§127-128). Accordingly, though state authorities enjoy a wide margin of discretion as to the taking of measures concerning town planning, they must strike the balance between the general interest and the fundamental rights of the individuals, in the particular case the right to housing and its corollary of not making individual becoming homeless."

1347. **Conclusions 2003, Sweden**: “Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. Legal protection for persons threatened by eviction must include, in particular an obligation to consult with the affected parties in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions carried out at night or during winter and provide legal remedies and offer legal aid to those who are in need to seek redress from the courts. Compensation for illegal evictions must also be provided. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.”

1348. **European Roma Rights Center (ERRC) v. Greece, Complaint no.15/2003, decision on the merits of 8 December 2004, §51**: "The Committee considers that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned. The Committee considers that on these three grounds the situation is not satisfactory.”

1349. **European Roma Rights Center (ERRC) v. Bulgaria, Complaint no.31/2005, decision on the merits of 18 October 2006, §52**: "It also recalls that “States Parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available (see Conclusions 2003, Article 31§2, France, p. 225, Italy, p. 345, Slovenia, p. 557, and Sweden, p. 653). The law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided" (ERRC v. Italy, Complaint No. 27/2005, decision on the merits of 7 December 2005, § 41).”

1350. **Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §§138**: op.cit.

1351. **Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 62**: “As to living conditions in a shelter, under Article 31§2 the Committee holds that they should be such as to enable living in keeping with human dignity (FEANTSA v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 108-109). In this regard the Committee refers to the Recommendation of the Commissioner for Human Rights of the Council of Europe on the implementation of the right to housing (June 2009) where he claims that “the starting point to reduce homelessness should be (...) to guaranty that all people, regardless of circumstance, are able to benefit from housing that corresponds with human dignity, the minimum being temporary shelter. The requirement of dignity in housing means that even temporary shelters must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating. The basic requirements of temporary housing include also security of the immediate surroundings. Nevertheless, temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing, once the minimum requirements are met. The housing of people in reception camps and temporary shelters which do not satisfy the standards of human dignity is in violation of the aforementioned requirements.”
1352. European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint n° 39/2006, decision on the merits of 5 December 2007, §107: “Another deficiency in the French system is the shortage of places in emergency shelters. The Committee observes that many of the requests for this type of assistance remain unfulfilled. Most of the calls processed by the 115 emergency telephone concern a request for emergency shelter or for housing, but these services are only partly able to meet the requests. The Committee therefore considers that the shortage of places in shelters for the homeless, as well as the insufficiency of arrangements at municipal level for day reception and overnight accommodation capable of suitting different situations, illustrate the underlying failure of State policy in this field, and that the situation does not comply with the conditions required by the Revised Charter.”

1353. European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint n° 39/2006, decision on the merits of 5 December 2007, §§108-109: “As regards living conditions in sheltering facilities, the Committee believes these should be such as to enable living in keeping with human dignity, and that support should be routinely offered to help the persons within the facilities to attain the greatest possible degree of independence. It also recalls that the temporary provision of accommodation, even decent accommodation, cannot be considered a satisfactory solution, and people living under such conditions must be offered housing of an adequate standard within a reasonable time.

In this regard, the Committee finds that in general lines the reception facilities for persons in very insecure circumstances could be improved in France. There is too much of a fallback on makeshift or transitional forms of accommodation which are inadequate both in quantitative and qualitative terms, and which offer no definite prospect of access to normal housing. The Committee considers it would be positive if the conversion of homeless shelters into around-the-clock structures became a general practice. It also considers that any offer of accommodation in them should lead in the short or medium term to an independent housing solution.”

1354. Conclusions 2015? Statement of Interpretation on Article 31§2: “The Committee considers that eviction from shelters without the provision of alternative accommodation must be prohibited.”

1355. Conclusions 2003, Italy: “The Committee considers that Article 31§2 obliges Parties to gradually reduce homelessness with a view to its elimination. Reducing homelessness implies the introduction of measures, such as provision of immediate shelter and care for the homeless and measures to help such people overcome their difficulties and prevent a return to homelessness”.

1356. Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §140: “140. With regard to persons accommodated in emergency shelters, who are regularly resident or regularly working within the territory of the State Party concerned, the Committee recalls that the provision of shelter, however adequate, cannot be considered a lasting solution. They thus must be offered either long-term accommodation suited to their circumstances or housing of an adequate standard as provided by Article 31§1 within a reasonable time (Conclusions 2011, Andorra).”

1357. Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 47: “The Committee considers that the right to shelter is closely connected to the right to life and is crucial for the respect of every person’s human dignity. The Committee observes that if all children are vulnerable, growing up in the streets leaves a child in a situation of outright helplessness. It therefore considers that children would adversely be affected by a denial of the right to shelter.

1358. Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §§128-129: “128. The Committee recalls that eviction from shelter of persons present within the territory of a State Party in an irregular manner should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness, which is contrary to the respect for their human dignity. States are not obliged to
provide alternative accommodation in the form of permanent housing within the meaning of
Article 31§1 for migrants in an irregular situation (DCI v. the Netherlands, cited above, § 63).

129. The Committee further reiterates that a national situation is not in conformity with Article
31§2 of the Charter, where the right to shelter is not guaranteed to persons irregularly present,
including children, for as long as they are within the jurisdiction of the state (Conclusions 2011,
Ukraine).”

1359. European Federation of National Organisations working with the Homeless (FEANTSA) v.
the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §61: “The
Committee further reiterates that a national situation is not in conformity with Article 31§2 of the
Charter, where the right to shelter is not guaranteed to persons present in an irregular manner,
including children, for as long as they are within the jurisdiction of the state (Conclusions 2011,
Ukraine). Pursuant to the above, Article 31§2 applies to migrants in an irregular situation.”

1360. European Federation of National Organisations working with the Homeless (FEANTSA) v.
the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §60,110:
“60. It recalls in particular that eviction from shelter of persons present within the territory of a
State Party in an irregular manner should be banned as it would place the persons concerned,
particularly children, in a situation of extreme helplessness, which is contrary to the respect for
their human dignity. States are not obliged to provide alternative accommodation in the form of
permanent housing within the meaning of Article 31§1 for migrants in an irregular situation (DCI v.
the Netherlands, cited above, §63).
110. However, as regards those irregularly present within the territory of a state party, there is no
obligation on States to provide them with alternative accommodation. Eviction from shelter should
accordingly be banned, as it would place the persons concerned, particularly children, in a
situation of extreme helplessness that is contrary to the respect for their human dignity (DCI v. the
Netherlands, cited above, §63).”

Article 31§3

1361. Conclusions 2003, Sweden: “The Committee considers housing to be affordable when the
household can afford to pay the initial costs (deposit, advance rent), the current rent and/or other
costs (utility, maintenance and management charges) on a long-term basis and still be able to
maintain a minimum standard of living, as defined by the society in which the household is
located”.

1362. FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September
2009, § 72: “The Committee considers that, in order to establish that measures are being taken to
make the price of housing accessible to those without adequate resources, States Parties to the
Charter must show not the average affordability ratio required of all those applying for housing,
but rather that the affordability ratio of the poorest applicants for housing is compatible with their
level of income, something that is clearly not the case with former holders of the Housing Right, in
particular elderly persons, who have been deprived not only of this right, but also of the
opportunity to purchase the flat they live in, or another one, on advantageous terms, and of the
opportunity to remain in the flat, or move to and occupy another flat, in return for a reasonable
rent.”

1363. Conclusions 2003, Sweden: “Parties are required...to adopt appropriate measures for the
construction of housing, in particular social housing.”

1364. International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the
merits of 5 December 2007, §§ 98-100: “However, the Committee notes that even if all these
objectives were achieved, that is 591 000 new social housing units were built by 2009, there
would still apparently be a considerable shortfall compared with needs, insofar as needs can be
measured by the amount of applications made for access to social housing. There would also
appear to be no clear policy mechanism in place to ensure that due priority is given to the
provision of housing for the most deprived members of the community, and that the assessment of the needs of the most deprived is built into the programme of providing social housing.

Moreover in answer to questions raised at the public hearing the Government, which has not directly responded in its written submissions to ATD Fourth World’s arguments concerning housing for the most disadvantaged, stated that the apparent trend towards the construction of more expensive social housing could be explained by the fact that they were responding to a broad range of demand. The provision of such housing was concerned not only with the most disadvantaged but also with a wide spectrum of the population in need of decent housing on account of short-term financial difficulties or local housing crises.

The Committee considers that the implementation of this policy does not by itself constitute a sufficient step or a sufficient justification for the ongoing manifest inadequacy of the existing policy mechanisms for ensuring due priority for the provision of social housing for the most socially deprived. The situation therefore constitutes a violation of Article 31§3.”

1365. International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §131: “In addition, the system of legal redress for people who are denied social housing, is also subject to serious shortcomings, namely: the mediation commissions foreseen by the Act to examine applications which are pending after an excessive waiting time have only been created in a minority of municipalities. The Committee considers that this remedy is not sufficiently efficient, and therefore that the situation on this point is not in conformity with Article 31§3 of the Revised Charter.”

1366. Conclusions 2003, Sweden: “Parties are required…to introduce housing benefits for the low-income and disadvantaged sectors of the population”.

1367. Conclusions 2003, Sweden: “[…the Committee] asked whether the housing allowance was an individual right, that is whether all qualifying households received it in practice and remedies were available for those who were refused it”.

1368. International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §§ 149-155: “As regards housing for Travellers, the Committee refers to Committee of Ministers Recommendation No. (2005) 4 on improving the housing conditions of Roma and Travellers in Europe, which states, inter alia, that Member States should ensure that, within the general framework of their housing policies, integrated and appropriate housing policies targeting Roma and Travellers are developed.

The Committee also recalls that as regards evictions these must be justified and carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation should be made available (see Conclusions 2003, Article 31§2, France). When confronted with Roma or Traveller settlements of undefined legal status, public authorities should make every effort to seek solutions acceptable for all parties, in order to avoid situations in which Roma and Travellers are in danger of being excluded from access to services and amenities to which they are entitled as citizens of the state where they live.

The Committee notes that legislation on settlements/stopping places for Travellers was adopted in 2000 (the Reception and Accommodation of Travellers Act, No. 2000-614 of 5 July 2000). The legislation requires municipalities with over 5,000 residents to prepare a plan for the setting up of permanent camp sites for Travellers. However, the Committee also notes that the Act has only implemented in a minority of the municipalities concerned. The Government in its written submissions acknowledges that there is a delay in the implementation of the departmental
schemes for the reception of Travellers and estimates that there is a deficit of around 41 800 places. The Committee finds that the delay in implementing the above-mentioned Act is regrettable, since it compels Travellers to make use of illegal sites and therefore exposes them to the risk of forcible eviction under the 2003 Act on internal security.

In this respect, the Committee notes from a recent joint statement by Council of Europe Commissioner for Human Rights Thomas Hammarberg and UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari, that there has been an increasing number of complaints on the abuse of housing rights of Roma in several European countries, including in France. Most of the complaints are related to evictions of Roma communities and families which have been carried out in violation of human rights standards especially as regards the right to adequate housing and privacy, procedural guarantees and remedies.

The Committee notes that a 2005 report by the Conseil National de l'Habitat (CNH) (National Council for Housing) on the “Fight against discrimination in access to housing” confirms that the great majority, if not all, discriminatory practices on access to housing are based on nationality or origin of applicants (the name, or racial/ethnic features of the applicant being decisive factors for a refusal). The Committee furthermore notes from another source that there have been a number of cases of eviction of Roma in which the response of the French authorities has been alleged to be not in conformity with human rights standards, namely the clearing of around 600 Roma gypsies from a shantytown where they had been living for more than a year in the north Paris suburb of Saint-Denis in September 2007. The source indicates that the families were moved in a "very brutal way", at least 400 of them had disappeared and would probably resurface in other shanties north of Paris with no electricity or water.

In general, the Committee observes that the Government has not provided any substantial counter arguments to the complainant organisation’s analysis and that its own submissions often contain a certain number of arguments which point to the inability or persisting failure of the local authorities to redress the problems that exist in respect of the housing of Traveller groups. Despite the efforts of central and local authorities in this area and the positive results that have been achieved at times, there appears to have been a long period during which local authorities and the State have failed to take into account to a sufficient degree the specific needs of the Roma/Traveller community.

The Committee therefore holds that the deficient implementation of legislation on stopping places for Travellers constitutes a violation of Article 31§3 of the Revised Charter in conjunction with Article E.”
ARTICLE E – non discrimination

1369. Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52: "52. The Committee observes further that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court of Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the Thlimmenos case [Thlimmenos c. Grèce [GC], no 34369/97, CEDH 2000-IV, § 44]), the principle of equality that is reflected therein means treating equals equally and unequals unequally. In particular it is said in the above mentioned case: “The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”
In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality.
In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.”

1370. Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51: "51. The Committee considers that the insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the various substantive rights contained therein. It further considers that its function is to help secure the equal effective enjoyment of all the rights concerned regardless of difference. Therefore, it does not constitute an autonomous right which could in itself provide independent grounds for a complaint. It follows that the Committee understands the arguments of the complainant as implying that the situation as alleged violates Articles 15§1 and 17§1 when read in combination with Article E of the Revised Charter. Although disability is not explicitly listed as a prohibited ground of discrimination under Article E, the Committee considers that it is adequately covered by the reference to “other status”. Such an interpretative approach, which is justified in its own rights, is fully consistent with both the letter and the spirit of the Political Declaration adopted by the 2nd European conference of ministers responsible for integration policies for people with disabilities (Malaga, April, 2003), which reaffirmed the anti-discriminatory and human rights framework as the appropriate one for development of European policy in this field.”


1373. IPFEN v. Italy, Complaint No, 87/2012, decision on the merits of 10 September 2013, §190-194: “190. Two primary forms of discriminatory treatment are alleged to exist in this complaint: (i) discrimination on the grounds of territorial and/or socio-economic status between women who have relatively unimpeded access to lawful abortion facilities and those who do not; (ii) discrimination on the grounds of gender and/or health status between women seeking access to lawful termination procedures and men and women seeking access to other lawful forms of medical procedures which are not provided on a similar restricted basis. The Committee considers that these different alleged grounds of discrimination are closely linked together and constitute a claim of ‘overlapping’, ‘intersectional’ or ‘multiple’ discrimination, whereby certain categories of women in Italy are allegedly subject to less favorable treatment in the form of impeded access to lawful abortion facilities as a result of the combined effect of their gender, health status, territorial location and socio-economic status: the complainant organisation in essence alleges that since women who fall into these vulnerable categories are denied effective
access to abortion services as a consequence of the failure of the competent authorities to adopt the necessary measures which are required to compensate for the deficiencies in service provision caused by health personnel choosing to exercise their right of conscientious objection, this constitutes a discrimination.

191. Based on the information provided by the complainant organisation and not contradicted by the government, the Committee notes that, as a result of the lack of non-objecting medical practitioners and other health personnel in a number of health facilities in Italy, women are forced in some cases to move from one hospital to another within the country or to travel abroad (see paragraphs 110, 130, 141 and 147 above); in some cases, this is detrimental to the health of the women concerned. Therefore, the Committee holds that the women concerned are treated differently than other persons in the same situation with respect to access to health care, without justification.

192. In this regard, the Committee also notes that the motions approved by the Italian Senate and Chamber of Deputies in June 2013 confirm that some pregnant women are obliged to travel to other regions of Italy and even abroad to seek abortion treatment as a result of the high level of objecting health personnel in the hospitals situated close to their usual place of residence, while there seems to be a re-emergence of clandestine abortions, in particular among immigrant women (see paragraph 57 above).

193. The Government does not provide specific information that contradicts the claims set out in the two previous paragraphs, or which in the alternative demonstrates that its alleged failure to make measures to ameliorate the less favorable treatment suffered by the women falling into the vulnerable categories described above can be objectively justified. The Committee considers that the Government’s argument that abortion is a service whose cost is fully covered by the “National Health Service” does not refute the complainant organisation’s reasoning that women have to move to other regions or abroad to have access to abortion services. If a service is not available in practice, it is irrelevant whether it is for free or has to be paid for. Furthermore, women denied access to abortion facilities may have to incur substantial economic costs if they are forced to travel to another region or abroad to seek treatment. In this regard, the time factor is also crucial: women who are denied access to abortion facilities in their local region may in effect be deprived of any effective opportunity to avail of their legal entitlement to such services, as the tight time-scale at issue may prevent them from making alternative arrangements.

The Committee thus holds that this situation constitutes a violation of Article E of the Charter read in conjunction with Article 11.”

1374. **IPFEN v. Italy, Complaint No, 87/2012, decision on the merits of 10 September 2013, §190-194. Op cit.**

1375. **IPFEN v. Italy, Complaint No, 87/2012, decision on the merits of 10 September 2013, §190-194. Op cit.**

1376. **Fellesforbundet for Sjøfolk (FFFS) v. Norway, complaint No 74/2011, decision on the merits of 2 July 2013, §§ 116-117 :** “116. This aspect of the right to earn one’s living in an occupation freely entered upon is also consistent with one of the primary objectives of Article 23, which is to enable elderly persons to remain full members of society and, consequently, to suffer no ostracism on account of their age. From this point of view, the Committee has considered that the right to take part in society’s various fields of activity should be granted to everyone active or retired, including measures to allow or encourage elderly persons to remain in the labour force (Conclusions XIII-5, Finland, p. 305). Such measures include prolonging their retirement age or taking early retirement in order to take up another job or to become self-employed. The related instruments adopted by the Parliamentary Assembly of the Council of Europe (see paragraphs 24-27 above) are in line with the Charter in this field.

The Committee refers to its findings under Article 24, according to which the arguments advanced as grounds for the age-limit did not amount to a sufficient justification in present-day conditions (see paragraph 96) for the difference in treatment, the effect of which is to deprive qualified personnel from continuing in the occupation of their choosing for as long as employees in other occupations. On the same grounds, it considers that the age-limit disproportionally affects the seamen who come within the scope of application of the contested legislation and considers that
under Article 1§2, this difference in treatment constitutes discrimination contrary to the right to non-discrimination in employment guaranteed under the said Article.

117. In view of the above, the Committee holds that the established discrimination amounts to a violation of the effective right of a worker to earn one’s living in an occupation freely entered upon, as provided for under Article 1§2 of the Charter.”


1378. **European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §36:** “36. The Committee recalls that Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in absence of objective and reasonable justifications (see paragraph 1 of the Appendix), any group with particular characteristics, including Roma, benefit in practice from the rights in the Charter. On the contrary, by persisting with the practice of placing Roma in camps the Government has failed to take due and positive account of all relevant differences, or adequate steps to ensure their access to rights and collective benefits that must be open to all.”

1379. **Associazione Nazionale Giudici di Pace v. Italy, Complaint No 102/2013, decision on the merits of 5 July 2016, § 74-76:** “74. The Committee notes that pursuant to Section 1, paragraph 1 letter a) of Royal Decree No. 12/41, Justices of the Peace are lay judges who, as members of the judiciary, administer justice and have jurisdiction in civil and criminal matters. It recalls that the situation of persons who perform the duties of Justice of the Peace must be examined, not with regard to their legal status or labelling under domestic law, but in an autonomous manner and depending on the duties assigned; hierarchical authority; and tasks performed, the latter being determinant in this regard (European Council of Police Trade Union (CESP) v. France, Complaint No. 101/2013, decision on the merits of 27 January 2016, §§54-59). It notes that the Justices of the Peace’s mission is to contribute to the administration of justice and to exercise jurisdiction. Their similarities with tenured judges have increased with regard to recruitment; jurisdiction; income taxation; and with their budgetary and personal management, to the extent that the Supreme Court of Cassation (Civil Branch, United Sections, Order No. 21582 quoted above) describes them as judges who are “mid-way between lay and professional judges”. They are fully integrated in the civil and criminal court staff under the 2014 Performance Plan established by the Department of judiciary organisation, personnel and services in the Ministry of Justice.

75. Considering the duties assigned, the tasks performed and their integration within the judiciary, the Committee finds that persons who perform the duties of Justice of the Peace are functionally equivalent to tenured judges with regard to Article 12§1 of the Charter, regardless of whether Justices of the Peace are termed professional or lay judges under domestic law.

76. The Committee notes that Recommendation CM/Rec(2010)12, whose provisions also apply to non-professional judges, except where it is clear from the context that they do not apply to them (§2), recommends maintaining a reasonable remuneration in case of sickness, maternity or paternity leave, as well as paying a retirement pension which should be in a reasonable relationship to the level of remuneration (§54). “

1380. **Confédération française démocratique du travail (CFDT) v. France, Complaint No 50/2008, decision on the merits of 9 September 2009, §39:** “39. The states party enjoy a certain “margin of appreciation” in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see the Rasmussen judgment cited above, ibid., p. 15, §40), but it is ultimately for the Committee to decide whether the difference lies within this margin.”
1381. **European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §41:** “41. The Committee recalls that in its decision on the right to housing of Roma in Italy it held that “equal treatment implies that Italy should take measures appropriate to Roma's particular circumstances to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless” (ERRC v. Italy, Complaint No. 27/2005, decision on the merits of 7 December 2005, § 21). It further developed the state’s positive obligation with respect to access to social housing where it found Italy in violation of the Charter because of “its failure to take into consideration the different situation of Roma or to introduce measures specifically aimed at improving their housing conditions, including the possibility for an effective access to social housing” (ERRC v. Italy, Complaint No. 27/2005, decision on the merits of 7 December 2005, § 46).”

1382. **Associazione Nazionale Giudici di Pace v. Italie, Complaint No 102/2013, decision on the merits of 5 July 2016, § 82:** “82. The Government puts forward a series of grounds to justify the differential treatment, in particular the selection procedure, the fixed term in office, part-time work, honorary service or remuneration by compensation and the fact that persons who perform the duties of Justice of the Peace are appointed as service providers while tenured judges and the other categories of lay judges such as the giudici onorari aggregati perform their duties in a stable, continuous and exclusive manner. The Committee considers that these arguments concern mere modalities of work organisation and do not constitute an objective and reasonable justification of the differential treatment of persons whose functional equivalence has been recognised.”

1383. **Associazione sindacale « La Voce dei Giusti » v. Italie, Complaint No 105/2014, decision on the merits of 18 October 2016, §74:** “74. However, the aim and purpose of the Charter being a human rights protection instrument is to protect rights not merely theoretically, but also in fact (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32). Therefore, even where a legitimate aim is present and grounds are permitted, differential treatment in matters of access to vocational training cannot be legitimate if it undermines the effective exercise of the right to vocational training guaranteed under Article 10§3 a) and b) of the Charter.”

1384. **Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §52:** “52. The Committee recalls its case law regarding disputes about discrimination in matters covered by the Revised Charter, adopted in the framework of reporting procedure, that the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. It also applies to the collective complaints procedure. The Committee therefore relies on the specific data sent to it by the complainant organisation, such as its statistics which show unexplained differences. It is then for the Government to demonstrate that there is no ground for this allegation of discrimination.”
ARTICLE F - Derogations in time of war or public emergency

ARTICLE G – Restrictions

1385. Syndicat des Agrégés de l’Enseignement Supérieur (SAGES) v. France, Complaint No. 26/2004, decision on the merits of 15 June 2005 § 31. « 31. Article G provides for the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted. This provision corresponds to the second paragraph of Articles 8 to 11 of the European Convention on Human Rights. It cannot lead to a violation as such.

1386. Syndicat des Agrégés de l’Enseignement Supérieur (SAGES) v. France, Complaint No. 26/2004, decision on the merits of 15 June 2005 § 33. « 33. However, these two provisions must be taken into consideration when examining the conformity of national situations with any substantive provision of the Charter”

1387. Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 83: “ 83. The Committee recalls that Article 31 indeed opens up a possibility for States to restrict rights enshrined in the Charter. Given the severity of the consequences of a restriction of these rights, especially for society's most vulnerable members, Article 31 lays down specific preconditions for applying such restrictions. Furthermore, as an exception applicable only under extreme circumstances, restrictions under Article 31 must be interpreted narrowly. Restrictive measures must have a clear basis in law, i.e. they must have been agreed upon by the democratic legislature, and need to pursue one of the legitimate aims defined in Article 31§1. Additionally, restrictive measures must be "necessary in a democratic society", they must be adopted only in response to a "pressing social need" (Conclusions XIII-1, Netherlands, Article 6§4, see also European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, §207 and seq.).

1388. Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 85. “ 85. While, in a democratic society, it is in principle for the legislature to legitimize and define the public interest by striking a fair balance between the needs of all members of society, and while it from the point of view of the Charter has a margin of appreciation in doing so, this does not imply that the legislature is totally free of any constraints in its decision-making. Under public international law, States having ratified human rights treaties such as the 1961 Charter are bound to respect the obligations thereby undertaken including when defining the public interest. More particularly, obligations undertaken cannot be abandoned without appropriate guarantees of a level of protection which is still adequate to meeting basic social needs. It is for the national legislature to balance the concerns for the public purse with the imperative of adequately protecting social rights.

1389. Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 87. “ 87. Nevertheless, the Committee considers that States cannot divest themselves of their obligations by surrendering the power to define what is in the public interest to external institutions (see mutatis mutandis IKA-ETAM v. Greece, Complaint No. 76/2012, op.cit., §§50-52). In transposing restrictive measures into national law, legal acts must ensure proportionality between the goals pursued and their negative consequences for the enjoyment of social rights. Consequently, even under extreme circumstances the restrictive measures put in place must be appropriate for reaching the goal pursued, they may not go beyond what is necessary to reach such goal, they may only be applied for the purpose for which they were intended, and they must maintain a level of protection which is adequate.”
1390. Conclusions XIII-1, The Netherlands, Article 6§4: “The Committee recalled its case law according to which "in accordance with the Appendix to Article 6 para. 4 of the Charter, each Contracting Party may regulate the exercise of the right to strike by law, provided that any further restriction can be justified under the terms of Article 31. This latter provision ensures that the rights and principles enshrined in Part I of the Charter and their effective exercise provided for in Part II cannot be made subject to restrictions or limitations not justified under Parts I and II, except where they are prescribed by law and necessary in a democratic society for the protection and the rights and freedoms of others or for the protection of the public interest, national security, public health or morals."

1391. European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, §§ 207 - 214. “207. Accordingly, the Committee is called upon to resolve the question of whether a prohibition on the right to strike by members of the police force, as a means of pursuing a legitimate aim such as those outlined in the previous paragraph, is necessary in a democratic society. The Committee notes that the states parties adopt different approaches on this issue. This reflects the diversity of the internal regimes in force in those states, where the functions and tasks of the police vary, as do the national practices with regard to the manner of and frequency in which the right to strike is made use of. The effects of granting the right to strike to the police upon the public interest may equally vary according to the internal legal systems. For these reasons, it falls to states, within their margin of appreciation, to decide, in light of the circumstances of a given national system, whether a restriction upon the right to strike of the police for a certain part of the police force is truly necessary with a view to achieving the legitimate objective pursued.

208. From this perspective, in its submissions (pages 37-38) the respondent Government intends to justify that “precluding the Gardaí from striking is strictly necessary in pursuit of legitimate purposes”, by arguing that Ireland “has only one police force”, that it “relies upon the Gardaí to perform functions that might not be performed by the police force in other jurisdictions in the context of immigration control” and that it “relies upon the Gardaí for policing and for state security more generally”.

209. The Committee however observes that, in spite of the specific internal organisation of the police force and the “integral role” of the Gardaí in national security mentioned above, the reasons provided by the Government do not demonstrate the existence of a concrete pressing social need. Indeed, the Government has not justified that the legitimate purpose of maintaining national security may not be achieved by establishing restrictions on the exercise of the right to strike (such as requirements relating to the mode and form of industrial action) rather than by imposing an absolute prohibition.

210. From this point of view, Section 8 of the Industrial Relations Act not only amounts to a restriction but to a complete abolition of the right to strike. In this regard, the Committee has held that “[…] national legislation which prevents a priori the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards would not be in conformity with Article 6§4 of the Charter, as it would infringe the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers. In this context, within the system of values, principles and fundamental rights embodied in the Charter, the right to collective bargaining and collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers.” (Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012; decision on the admissibility and merits of 3 July 2013, §120).

211. Since this applies in respect of restrictions on the exercise of the right to strike for the purpose of improving conditions of work beyond a given minimum level, it a fortiori applies also for every absolute prohibition of the right to strike established a priori by law. In other words, the Committee holds that restrictions on human rights must be interpreted narrowly. As a consequence, in the context of the regulation of the collective bargaining rights of police officers, states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action.
212. Thus, in this case, the margin of appreciation of the state party is restricted, because the abolition of the right to strike affects one of the essential elements of the right to collective bargaining, as provided for in Article 6 of the Charter, and without which the content of this right becomes void of its very substance and is therefore deprived of its effectiveness.

213. In the situation at issue in this complaint, the Government as previously noted has not presented such a compelling justification for the imposition of the absolute prohibition on the right to strike set out in Section 8 of the 1990 Industrial Relations Act. As a result, the Committee considers that this statutory provision is not proportionate to the legitimate aim pursued and, accordingly, is not necessary in a democratic society.

214. The Committee consequently holds that the prohibition of the right to strike of members of the police force amounts to a violation of Article 6§4 of the Charter.

1392. Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 87 op cit

1393. Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 90 “90. The Committee has found no evidence, especially from the side of the Government, that a thorough balancing analysis of the effects of the legislative measures has been conducted by the authorities, notably of their possible impact on the most vulnerable groups in the labour market nor are there any indications that a genuine consultation has been carried out with those most affected by the measures. It follows that there has been no real examination or consideration of possible alternative and less restrictive measures (see mutatis mutandis IKA-ETAM v. Greece, Complaint No. 76/2012, op.cit., §79-80).

ARTICLE H – Relations between the Charter and domestic law or international agreements

1394. Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §35 : “35. The Committee interprets the Charter in the light of the rules set out in the Vienna Convention on the Law of Treaties of 23 May 1969, among which its Article 31§3(c), which indicates that account is to be taken of “any relevant rules of international law applicable in the relations between the parties”. Indeed, the Charter cannot be interpreted in a vacuum. The Charter should so far as possible be interpreted in harmony with other rules of international law of which it forms part, including in the instant case those relating to the provision of adequate shelter to any person in need, regardless whether s/he is on the State’s territory legally or not.”

1395. International Federation of Human Rights Leagues (FIDH) v. France; Complaint No. 14/2003, decision on the merits of 8 September 2004, §26 : “26. The present complaint raises issues of primary importance in the interpretation of the Charter. In this respect, the Committee makes it clear that, when it has to interpret the Charter, it does so on the basis of the 1969 Vienna Convention on the Law of Treaties. Article 31§1 of the said Convention states: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

1396. Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, 1st July 2014 §§ 68-69: “68. The Charter is furthermore and in as far as possible to be interpreted in harmony with other rules of international law of which it forms part (DCI v. the Netherlands, cited above, §35; International Federation of Human Rights Leagues (FIDH) v. France; Complaint No. 14/2003, decision on the merits of 8 September 2004, §26).
69. In this respect, the Committee equally refers to Article H of the Charter (Relations between the Charter and domestic law or international agreements), according to which the provisions of the Charter shall not prejudice the provisions of any multilateral treaties, under which more favourable treatment would be accorded to the persons protected.

1397. **Confédération générale du travail (CGT) v. France**, Complaint No. 55/2009, decision on the merits of 23 June 2006, §33: “33. In this regard, the Committee has already stated that it is neither competent to assess the conformity of national situations with a directive of the European Union nor to assess compliance of a directive with the European Social Charter. However, when member states of the European Union agree on binding measures in the form of directives which relate to matters within the remit of the European Social Charter, they should – both when preparing the text in question and when transposing it into national law – take full account of the commitments they have taken upon ratifying the European Social Charter. It is ultimately for the Committee to assess compliance of a national situation with the Charter, including when the transposition of a European Union directive into domestic law may affect the proper implementation of the Charter.”

1398. **Syndicat de défense des fonctionnaires v. France**, Complaint No. 73/2011, Decision on the merits of 12 September 2012, §29: “29. However, when member states of the European Union agree on binding measures in the form of directives which relate to matters within the remit of the European Social Charter, they should – both when preparing the text in question and when transposing it into national law – take full account of the commitments they have taken upon ratifying the European Social Charter. It is ultimately for the Committee to assess compliance of a national situation with the Charter, including when the transposition of a European Union directive into domestic law may affect the proper implementation of the Charter (Confédération générale du travail (CGT) v. France, Complaint No. 55/2009, decision on the merits of 23 June 2006, §33). This interpretation by the Committee is consistent with Article H of the Charter on the relations between the Charter and the domestic law or international agreements.”

**ARTICLE I – Implementation of the undertakings given**

1399. **International Commission of Jurists (CIJ) v. Portugal**, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32: “32. Finally, the Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. In this regard, it considers that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (see for example Conclusions XIII-3, pp. 283 and 286). It considers that the Labour Inspectorate has a decisive role to play in effectively implementing Article 7 of the Charter.”

1400. **Confederation of Swedish Enterprise v. Sweden**, Complaint No. 12/2002, decision on the merits of 15 May 2003, §§27-28: “27. It results from the combination of these provisions that when, in order to implement undertakings accepted under Article 5, use is made of agreements concluded between employers’ organisations and workers’ organisations, in accordance with Article I.b, States should ensure that these agreements do not run counter to obligations entered into, either through the rules that such agreements contain or through the procedures for their implementation.

28. The commitment made by the Parties, under which domestic legislation or other means of implementation under Article I, bearing in mind national traditions, shall not infringe on employers’ and workers’ freedom to establish organisations, implies that, in the event of contractual provisions likely to lead to such an outcome, and whatever the implementation procedures for these provisions, the relevant national authority, whether legislative, regulatory or judicial, is to intervene, either to bring about their repeal or to rule out their implementation.”
1401. *Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53* : "53. The Committee recalls, as stated in its decision relative to Complaint No. 1/1998 (International Commission of Jurist v. Portugal, § 32), that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings."

1402. Conclusions I

1403. Conclusions XIV-2, Norway


1. Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:
   a. laws or regulations;
   b. agreements between employers or employers’ organisations and workers’ organisations;
   c. a combination of those two methods;
   d. other appropriate means.

2. Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned.”

40. The Committee considers that, in view of the reference made in its very wording to the workers concerned, the application of Article I of the revised Social Charter cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

41. There is, therefore, no need to vary the conclusion reached at paragraph 38 above.”
ANNEX: the personal scope of the charter

1405. Conclusions 2004, Statement of Interpretation

1406. Conclusions 2015, Statement of Interpretation: the right of refugees under the Charter

1407. Conclusions 2013, Statement of interpretation on the rights of stateless persons under Charter

1408. Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 28-39 : “28. The Committee notes that, according to an argument put forward by States Parties in response to other complaints concerning the rights of foreign minors unlawfully present in the country (Defence for Children International v. the Netherlands, §8, and International Federation of Human Rights Leagues v. France, § 18), the implication of paragraph 1 of the Appendix to the Charter is that the persons concerned by this complaint (accompanied and unaccompanied foreign minors unlawfully present in a country) would not come within the personal scope of Article 17, as they are not nationals of other Parties “lawfully resident or working regularly” within the territory of the Party concerned. The Committee nonetheless points out that, the restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity (Defence for Children International v. the Netherlands, Complaint No. 47/2008, ibid, §19; International Federation of Human Rights Leagues v. France, ibid, §§ 30 and 31).

29. The Committee indeed considers that, beyond the letter of paragraph 1 of the Appendix, the restriction on personal scope contained therein should be interpreted – as is generally the case for any provision of an international treaty – in the light of the object and purpose of the treaty concerned and in harmony with other relevant and applicable rules of international law (Vienna Convention on the Law of Treaties, 23 May 1969, Article 31, paragraphs 1 and 3), including first and foremost the peremptory norms of general international law (jus cogens), which take precedence over all other international norms and from which no derogation is permitted (Vienna Convention on the Law of Treaties, 23 May 1969, Article 53).

30. Concerning the object and purpose of the Charter, the Committee reiterates that it is a human rights treaty which aims to implement at a European level, as a complement to the European Convention on Human Rights, the rights guaranteed to all human beings by the Universal Declaration of Human Rights of 1948. As the Committee already found (International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 27 and 29), the purpose of the Charter, as a living instrument dedicated to the values of dignity, equality and solidarity, is to give life and meaning in Europe to the fundamental social rights of all human beings. It is precisely in the light of that finding that the Committee considers – as the Government pointed out in its submissions – that a teleological approach should be adopted when interpreting the Charter, i.e. it is necessary to seek the interpretation of the treaty that is most appropriate in order to realise the aim and achieve the object of this treaty, not that which would restrict the Parties' obligations to the greatest possible degree (World Organisation against Torture v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, § 60). It is in point of fact this teleological approach that leads the Committee not to interpret paragraph 1 of the Appendix in such a way as to deny foreign minors unlawfully present in a country (whether accompanied or unaccompanied) the guarantee of their fundamental rights, including the right to preservation of their human dignity.

31. In addition, such a strict interpretation of the Appendix, which would deprive foreign minors unlawfully present in a country of the guarantee of their fundamental rights, would not be in harmony with the United Nations Convention on the Rights of the Child, which all member states of the Council of Europe have ratified. It is therefore justified for the Committee to have regard to this convention, adopting the interpretation given to it by the United Nations Committee on the Rights of the Child, when it rules on an alleged violation of any right conferred on children by the
Charter (see World Organisation against Torture v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, § 61).

32. In this connection, following the guidance of the Committee on the Rights of the Child, the Committee considers that in the present case the personal scope of the Charter must be determined according to the principle of the child's best interests. In this respect it notes that, according to General Comment No. 5 (document CRC/GC/2003/5, §§ 45-47) of the Committee on the Rights of the Child “Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions – by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children”.

33. Furthermore, this choice in applying the Charter follows from the legal need to comply with the peremptory norms of general international law (jus cogens) such as the rules requiring each state to respect and safeguard each individual's right to life and physical integrity. A strict interpretation of paragraph 1 of the Appendix, which would result in the non-recognition of the States Parties' obligation to guarantee foreign minors unlawfully present in their territory the enjoyment of these fundamental rights, would be incompatible with international jus cogens.

34. In the light of the latter observations and of the mandatory, universally recognised requirement to protect all children – requirement reinforced by the fact that the United Nations Convention on the Rights of the Child is one of the most ratified treaties at world level, the Committee considers that paragraph 1 of the Appendix should not be interpreted in such a way as to expose foreign minors unlawfully present in a country to serious impairments of their fundamental rights on account of a failure to give guarantee to the social rights enshrined in the revised Charter.

35. However, although the restriction of personal scope contained in the Appendix does not prevent the application of the Charter's provisions to unlawfully present foreign migrants (including accompanied or unaccompanied minors) in certain cases and under certain circumstances, the Committee wishes to underline that an application of this kind is entirely exceptional. It would in particular be justified solely in the event that excluding unlawfully present foreigners from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights (such as the right to life, to the preservation of human dignity, to psychological and physical integrity and to health) and would consequently place the foreigners in question in an unacceptable situation, regarding the enjoyment of these rights, as compared with the situation of nationals and of lawfully resident foreigners.

36. Since it is exceptional to apply the rights enshrined in the Charter to persons not literally included in the Charter's scope under paragraph 1 of the Appendix, the Committee considers that this category of foreigners (which includes accompanied or unaccompanied minors not lawfully present in a country) is not covered by all the provisions of the Charter, but solely by those provisions whose fundamental purpose is closely linked to the requirement to secure the most fundamental human rights and to safeguard the persons concerned by the provision in question from serious threats to the enjoyment of those rights.

37. Moreover, the risk of impairing fundamental rights is all the more likely where children - a fortiori migrant children unlawfully present in a country - are at stake. This is due to their condition as "children" and to their specific situation as "unlawful" migrants, combining vulnerability and limited autonomy. As a result, in particular, of their lack of autonomy children cannot be held genuinely responsible for their place of residence. Children are not able to decide themselves whether to stay or to leave. Furthermore, if they are unaccompanied, their situation becomes even more vulnerable and the State should be managed entirely by the State, which has a duty to care for children living within its territory and not to deprive them of the most basic protection on account of their "unlawful" migration status.
38. In the light of the above general observations, the Committee, referring specifically to Article 17 of the Charter and recalling its decisions (International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30-32; Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 34-38), considers that this provision is applicable to the persons concerned by this complaint. Article 17, in particular paragraph 1 thereof, requires States Parties to fulfil positive obligations relating to the accommodation, basic care and protection of children and young persons. Not considering that States Parties are bound to comply with these obligations in the case of foreign minors who are in a country unlawfully would therefore mean not guaranteeing their fundamental rights and exposing the children and young persons in question to serious threats to their rights to life, health and psychological and physical integrity and to the preservation of their human dignity.

39. Consequently, the Committee considers that the children and young persons concerned by this complaint come within the scope of Article 17 of the Charter.

1409. International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30 and 31: “30. As concerns the present complaint, the Committee has to decide how the restriction in the Appendix ought to be read given the primary purpose of the Charter as defined above. The restriction attaches to a wide variety of social rights in Articles 1-17 and impacts on them differently. In the circumstances of this particular case, it treads on a right of fundamental importance to the individual since it is connected to the right to life itself and goes to the very dignity of the human being. Furthermore, the restriction in this instance impacts adversely on children who are exposed to the risk of no medical treatment.

31. Human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and health care is a prerequisite for the preservation of human dignity.”

1410. Defence for Children International v. the Netherlands, Complaint No. 47/2008, ibid, §19: “Relying on the Committee’s decision on the merits in FIDH v. France (Complaint No. 14/2003, decision of 8 September 2004, §§ 26-32), DCI argues that, as medical assistance, housing also is a prerequisite for the preservation of human dignity and therefore legislation or practice which denies entitlement to housing to foreign nationals, even if they are on the territory unlawfully, should be considered contrary to the Revised Charter.”


29. Thus, the Charter must be interpreted so as to give life and meaning to fundamental social rights. It follows inter alia that restrictions on rights are to be read restrictively, i.e. understood in such a manner as to preserve intact the essence of the right and to achieve the overall purpose of the Charter.”

1412. World Organisation against Torture v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, § 60

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1414. International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30-32: “30. As concerns the present complaint, the Committee has to decide how the restriction in the Appendix ought to be read given the primary purpose of the Charter as defined above. The restriction attaches to a wide variety of social rights in Articles 1-17 and impacts on them differently. In the circumstances of this particular case, it treads on a right of fundamental importance to the individual since it is connected to the right to life itself and goes to the very dignity of the human being. Furthermore, the restriction in this instance impacts adversely on children who are exposed to the risk of no medical treatment.

31. Human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and health care is a prerequisite for the preservation of human dignity.

32. The Committee holds that legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter.”


1416. Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 34-38): “34. The Committee recalls that the Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights. It is a living instrument dedicated to certain values which inspired it: dignity, autonomy, equality, solidarity (FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 27) and other generally recognised values. It must be interpreted so as to give life and meaning to fundamental social rights (FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 29).

35. The Committee interprets the Charter in the light of the rules set out in the Vienna Convention on the Law of Treaties of 23 May 1969, among which its Article 31§3(c), which indicates that account is to be taken of “any relevant rules of international law applicable in the relations between the parties”. Indeed, the Charter cannot be interpreted in a vacuum. The Charter should so far as possible be interpreted in harmony with other rules of international law of which it forms part, including in the instant case those relating to the provision of adequate shelter to any person in need, regardless whether s/he is on the State’s territory legally or not.

36. The Committee considers that a teleological approach should be adopted when interpreting the Charter, i.e. it is necessary to seek the interpretation of the treaty that is the most appropriate in order to realise the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties (OMCT v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, § 60). It follows inter alia that restrictions on rights are to be read restrictively, i.e. understood in such a manner as to preserve intact the essence of the right and to achieve the overall purpose of the Charter (FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 27-29).

37. Moreover, as stated in its decision on the merits in FIDH v France (Complaint No. 14/2003, decision on the merits of 8 September 2004, § 30), the Committee reiterates that the restriction in paragraph 1 of the Appendix attaches to a wide variety of social rights and impacts on them differently. It further holds that such restriction should not end up having unreasonably detrimental effects where the protection of vulnerable groups of persons is at stake.

38. It results from the above mentioned considerations (A, B and C) that with regard to each alleged violation in the instant case, the Committee will thus preliminarily have to determine whether the right invoked is applicable to the specific vulnerable category of persons concerned, i.e. children unlawfully present in the Netherlands. Additionally, it shall do so mindful of its obligation to respect the best interests of the child principle.
1417. Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, § 38: “38. In the light of the above general observations, the Committee, referring specifically to Article 17 of the Charter and recalling its decisions (International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30-32; Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 34-38), considers that this provision is applicable to the persons concerned by this complaint. Article 17, in particular paragraph 1 thereof, requires States Parties to fulfil positive obligations relating to the accommodation, basic care and protection of children and young persons. Not considering that States Parties are bound to comply with these obligations in the case of foreign minors who are in a country unlawfully would therefore mean not guaranteeing their fundamental rights and exposing the children and young persons in question to serious threats to their rights to life, health and psychological and physical integrity and to the preservation of their human dignity.”

1418. Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009. §§ 41-45: “41. Like the European Court of Human Rights (“the Court”), the Committee acknowledges that States have the right under international law to control the entry, residence and expulsion of aliens from their territories (see mutatis mutandis European Court of Human Rights, Moustaquim v. Belgium, judgment of 18 February 1991, Series A no. 193, p. 19, § 43 and European Court of Human Rights, Beldjoudi v. France, judgment of 26 March 1992, Series A no. 234-A, p. 27, § 74). The Netherlands is thus justified in treating children lawfully residing and children unlawfully present in its territory differently.

42. Like the Court, the Committee however highlights that States' interest in foiling attempts to circumvent immigration rules must not deprive foreign minors, especially if unaccompanied, of the protection their status warrants. The protection of fundamental rights and the constraints imposed by a State's immigration policy must therefore be reconciled (see mutatis mutandis European Court of Human Rights, Mubilanzila Mayeka and Kaniki Mitunga v Belgium, judgment of 12 October 2006 § 81).

43. The Committee recalls that under Article 31§1 (the right to adequate housing), it holds that temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period of time (ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 35 and ERRC v. Bulgaria, Complaint No. 31/2005, decision on the merits of 6 December 2006, § 34). Adequate housing under Article 31§1 means a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (see Conclusions 2003, Article 31§1, France and FEANTSA v. France, Complaint 39/2006, decision on the merits, 5 December 2007, § 76).

44. States' immigration policy objectives and their human rights obligations would not be reconciled if children, whatever their residence status, were denied basic care and their intolerable living conditions were ignored. As far as Article 31§1 of the Revised Charter is concerned, the Committee acknowledges that the denial of adequate housing, which includes a legal guarantee of security of tenancy, to children unlawfully present on its territory, does not automatically entail a denial of the basic care needed to avoid persons living in intolerable conditions. Moreover, to require that a Party provide such lasting housing would run counter the State's aliens policy objective of encouraging persons unlawfully on its territory to return to their country of origin.

45. Accordingly the Committee concludes that children unlawfully present on the territory of a State Party do not come within the personal scope of Article 31§1, which thus does not apply in the instant case.”
Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 46-48: “46. The Committee recalls that Article 31§2 (prevention and reduction of homelessness) is specifically aimed at categories of vulnerable people. It obliges Parties to gradually reduce homelessness with a view to its elimination. Reducing homelessness implies the introduction of emergency and longer-term measures, such as the provision of immediate shelter and care for the homeless as well as measures to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness (Conclusions 2003, Italy, Article 31 and FEANTSA v. France, Complaint 39/2006, decision on the merits, 5 December 2007, § 103).

47. The Committee considers that the right to shelter is closely connected to the right to life and is crucial for the respect of every person’s human dignity. The Committee observes that if all children are vulnerable, growing up in the streets leaves a child in a situation of outright helplessness. It therefore considers that children would adversely be affected by a denial of the right to shelter.

48. The Committee thus holds that children, whatever their residence status, come within the personal scope of Article 31§2.”