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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

September 2016

FOLLOW-UP TO DECISIONS ON THE MERITS OF COLLECTIVE COMPLAINTS

Findings 2016

This text may be subject to editorial revision

GENERAL INTRODUCTION

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the following countries: Croatia, Cyprus, Czech Republic, the Netherlands, Norway, Slovenia and Sweden were exempted from reporting on the provisions under examination in Conclusions 2016. These countries were instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

The document contains the Committee's findings in respect of the follow-up to the decisions concerned for each of these countries.

CROATIA

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In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Croatia was exempted from reporting on the provisions under examination in Conclusions 2016. Croatia was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

The following decisions were concerned:

- Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2008, decision on the merits of 22 June 2010;
- International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, decision on the merits of 30 March 2009.

Croatia did not submit any information.

In view of the lack of information, the Committee is unable to examine the situation and considers that the absence of information amounts to a breach of the reporting obligation entered into by Croatia under the 1961 Charter.

CYPRUS

CYPRUS

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Cyprus was exempted from reporting on the provisions under examination in Conclusions 2016. Cyprus was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

There were no decisions concerned in 2016.

CZECH REPUBLIC

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In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the Czech Republic was exempted from reporting on the provisions under examination in Conclusions 2016. The Czech Republic was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

The following decision was concerned:

- Association for the Protection of all Children Ltd. – (APPROACH) v. Czech Republic, Complaint No. 96/2013, decision on the merits of 20 January 2015.

The Committee's assessment appears below. It also appears in the HUDOC database.

Association for the Protection of all Children Ltd. (APPROACH) v. Czech Republic, Complaint No. 96/2013, decision on the merits of 20 January 2015

1. Decision of the Committee on the merits of the complaint

The Committee concluded that Article 17 of the 1961 Charter had been violated on the ground that not all forms of corporal punishment that is likely to affect the physical integrity, dignity, development or psychological well-being of children, were prohibited.

2. Information provided by the Government

The Government indicates in the information registered on 15 November 2015 that there have been no changes to the situation

3. Assessment of the follow-up

There has been no change to the situation. The Committee finds that it has not been brought into conformity with the 1961 Charter.

The Committee will next assess the situation on the basis of the information to be submitted in October 2016.

THE NETHERLANDS

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In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the Netherlands was exempted from reporting on the provisions under examination in Conclusions 2016. The Netherlands was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

The following decisions were concerned:

- Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014,
- 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,
- Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009.

The Committee's assessments appear below. They also appear in the HUDOC database.

The Committee found that the situation has been brought into conformity in respect of the following findings of violation:

- Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits 20 October 2009
    - Article 31§2
    - Article 17§1

Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014,

A. Violation of Article 13§4 on the grounds that adult migrants in an irregular situation without adequate resources are not guaranteed emergency assistance

1. Decision of the Committee on the merits of the complaint

The Committee considers that, even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country. The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article as a subjective right, to individuals in a highly precarious situation.

The Committee finds that the practical and legal measures denying the right to emergency assistance to adult migrants in an irregular situation without adequate resources constitutes a violation of the Charter.

2. Information provided by the Government

The Government stated in information registered on 2 November 2015 that at present, the Netherlands has a system for the reception and housing of current and former asylum seekers that ensures that no alien in the Netherlands is forced to live on the street.

Under the current system, asylum seekers are offered reception facilities during the asylum procedure. Those granted a residence permit are subsequently placed in local-authority housing. When an asylum application is denied, the migrant is granted a fixed period in which to leave the Netherlands (with government support). Migrants who have not done so by the end of this period are placed in restrictive accommodation (VBL) on the condition that they are willing to continue arranging their departure. If a migrant is not prepared to leave of his or her own accord, he or she is not placed in a VBL facility and the option of forced return is examined. If forced return is feasible, it is carried out (if necessary by means of detention). If however it is not feasible, and the migrant is not willing to cooperate in arranging to depart voluntarily, he or she will end up on the street. If this happens, the migrant can re-enter the system at any time by making arrangements to depart the Netherlands. This enables him or her to be placed in a VBL facility.

In addition to the facilities described above, families with minor children are placed in a family accommodation centre, even if they are not in the process of arranging their departure. This is because children cannot not be penalised for their parents' choices.

The Government sees room for improvement in this system, to increase the effectiveness of the return process. The following changes are proposed:

12-week VBL placement

Under the current system, migrants who from the outset cannot be expected to leave the Netherlands within 12 weeks are not granted access to a VBL facility, even if their inability to leave is beyond their control (e.g. because of administrative obstacles in their country of

origin). The authorities then lose track of migrants in this situation, even though they are willing to cooperate in arranging their departure. To overcome this problem, the Government has decided not to apply the 12-week deadline too strictly in cases where such flexibility might facilitate the migrant's departure. However, this explicitly does not imply that no time-limit will be set. If a migrant is not (or is no longer) making arrangements to leave the Netherlands, thus removing any prospect of voluntary departure, he or she will be required to leave the facility. Good case management on the part of the Repatriation and Departure Service (DT&V) will ensure that aliens in VBL facilities continue working towards their departure. If a migrant is unable to return to his or her country of origin even after devoting considerable time and effort to this cause, he or she may be eligible for a residence permit on the grounds of the no-fault criterion. If a migrant does not cooperate, he or she will be ejected from the facility.

Pre-VBL placement

Under the current system, migrants can only gain access to a VBL facility if they state in advance that they are willing to cooperate in arranging their departure. The Government has decided to modify this condition by introducing a preliminary phase. In practice, this means that migrants are initially given some breathing space, in which they only receive general information on return and are able to familiarise themselves with the facility. This is followed by a series of conversations aimed at encouraging them to cooperate in the return process. During these conversations, they are again informed about the prospects associated with their return. Migrants who are sincerely and demonstrably willing to return are transferred to the regular VBL facility in Ter Apel with a view to preparing for eventual departure. Those not willing to leave the Netherlands at the end of this period, are ejected from the facility. The length of this preliminary phase is limited to a few weeks in order to safeguard the effectiveness of the Government's return policy.

New facilities for pre-VBL placement

Several municipalities have provided emergency reception facilities for migrants in an irregular situation, invoking their duty of care or their responsibility for maintaining public order. Migrants in an irregular situation who are housed in such facilities are now partially outside the state's purview, and as a result, they are not covered by the Government's return policy. In order to resolve this undesirable situation, pre-VBL placements will be made available in various locations. Besides Ter Apel, these facilities will be limited to the Netherlands' five largest cities: Amsterdam, Rotterdam, The Hague, Utrecht and Eindhoven.

Under the direction of the DT&V, central government and the municipalities will jointly provide reception facilities to aliens in these five locations with a view to encouraging their willingness to return. The length of this preliminary placement is limited to a few weeks in order to safeguard the effectiveness of the Government's return policy.

Migrants who are willing to arrange their departure can pursue this track in the regular VBL facility in Ter Apel. Long-term reception for migrants in an irregular situation in the pre-VBL phase is therefore not an option, as it serves as a preparation for the actual departure process in the regular VBL facility. Central government and the municipalities will share responsibility for the aforementioned facilities, and government funding will depend on the rate at which migrants are successfully returned to their countries of origin. Outcomes will be

monitored on a monthly basis. After a year, an initial evaluation of the pre-VBL phase will be conducted to determine whether these facilities should continue operating.

Municipal referrals to the VBL

Thanks to the expanded scope for working towards (and coming to terms with) departure in a VBL setting, all municipalities will now have a practical option to refer migrants to one of these facilities as appropriate. If a municipality encounters migrants in an irregular situation, it can also notify the DT&V, which will collect and transfer the migrant to the pre-VBL facility in Ter Apel.

Preventing abuse

Because migrants are registered, they can be prevented from repeatedly using pre-VBL facilities in different locations when there is no genuine prospect of return.

Investing in voluntary return

The best way to improve return outcomes is to increase the percentage of voluntary return. To support these efforts the Government will invest additional funds in activities promoting voluntary return.

The Government has earmarked €15 million from its general funds for the above-mentioned changes to the VBL facility and the introduction of a pre-VBL phase. In addition, it will invest a further €5 million from its general funds in the return process and return-related projects. The Ministry of Foreign Affairs' migration and development budget (€4 million) will continue to be used for return-related projects and will be increased to €10 million per year.

3. Assessment of the follow-up

The Committee notes the information submitted by the Government and registered 2 November 2015.

The Committee notes the comments submitted by Amnesty International registered on 13 April 2016. It notes that according to Amnesty International the modifications to the current arrangements for providing emergency assistance to adult migrants without residence rights who have exhausted their appeals have not to date been implemented, as the Government and municipalities have not reached an agreement. Under the new proposals emergency assistance after a time will still be subject to sincere and demonstrable willingness to return.

Amnesty International refers to recent decisions of the Central Appeals Tribunal and the Council of State which found that making reception in a VBL conditional upon cooperation with the procedure for departure is acceptable.

It also refers to a Supreme Court decision which found that the Netherlands has a legal obligation to provide adequate facilities and care for children without a residence permit, if the parents do not have the financial resources. In response to this the Netherlands extended the reception facilities.

Amnesty International states that in practice since the Committee's decision the municipalities are implementing their own local policy. The number of municipalities offering reception facilities (usually in the form of overnight shelter) has increased since the

Committee's decision. However, this has resulted in a high degree of diversity in the existence of reception facilities, the level of services provided at these, and the conditions associated with them. An Amnesty International overview shows that in most municipalities, there is still always the possibility that migrants can end up on the street. Sometimes this is due to the lack of reception facilities in a certain municipality, or because they do not satisfy the conditions, or because the facilities offered are not suitable. Full (24-hour) reception is only available on a very limited basis in most municipalities, and is usually only meant for the most vulnerable people. The criteria for becoming eligible for 24-hour reception are not always clear and are usually restricted to medical aspects.

The Government has indicated it will respond to these comments in their next report on follow up to the collective complaints

The Committee notes that certain of the proposals outlined by the Government may improve the situation; the decision not to apply the 12 week deadline too strictly, the establishment of pre VBL facilities, for example.

However, it is unclear to the Committee that such proposals have in fact been implemented. Further, the Committee is unable to conclude on the basis of the information whether even if these proposals are implemented, that all migrants in an irregular situation without adequate resources will receive emergency assistance. The Committee finds that the situation has not yet been brought into conformity with the Charter.

The Committee notes that the Council of State of the Netherlands, in a decision issued on 26 November 2015, upheld a Government policy of making the provision of food and shelter to undocumented migrants conditional on their cooperation towards forced return. In the ruling, the Council of State asserted that the government "has the right, when providing shelter in so-called locations of limited freedom, to require rejected asylum-seekers to cooperate with their departure from the Netherlands".

The Committee will next assess the situation on the basis of the information to be submitted in October 2016.

B. Violation of Article 31§2 on the grounds adult migrants in an irregular situation without adequate resources are not guaranteed shelter

1. Decision of the Committee on the merits of the complaint

In light of the Committee's established case-law, shelter must be provided also to adult migrants in an irregular situation, even when they are requested to leave the country and even though they may not require that long-term accommodation in a more permanent housing be offered to them. The Committee again refers to its findings above under Article 13§4 and reiterates that the right to shelter is closely connected to the human dignity of every person regardless of their residence status. It considers that the situation, on the basis of which a violation has been found under Article 13§4, also amounts to a violation of Article 31§2.

2. Information provided by the Government

The Committee refers to the information provided above concerning the violation of Article 13§4 of the Charter.

3. Assessment of the follow-up

The Committee refers to its remarks above (see under A). The Committee finds that the situation has not yet been brought into conformity with the Charter.

It will next assess the situation on the basis of the information to be submitted in October 2016.

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

A. Violation of Article 31§2 on the grounds the legislation and practice of the Netherlands fail to ensure access to community shelter for the purpose of preventing homelessness and that the quality and quantity of shelters available to vulnerable groups do not fulfil the requirements of the Charter

1. Decision of the Committee on the merits of the complaint

1) Access to shelter

The Committee observes that the so-called community shelter is provided only to those who fulfil the criteria of the Social Support Act (WMO), that is, to applicants with multiple problems and a lack of self-sufficiency. In the non-binding guidelines issued by the Association of Netherlands Municipalities (VNG), this group of homeless persons is referred to as "the target group".

The Committee considers that the use of the local connection criteria restricts the access to community shelter.

The Committee observes, furthermore, that the Government aims to guarantee the access to community shelter by means of the nationwide access principle for those applicants, who do not fulfil the local connection criteria.

Pursuant to the Government's submissions of 9 September 2013, the Committee nevertheless considers it established that the nationwide access principle is not fully applied in practice. It notes that the Government has failed to supervise the provision of shelter by the responsible municipalities in a manner ensuring the provision of community shelter even in the lack of a local connection, as provided for in Section 20, subsection 6 of the WMO.

The Committee observes likewise that those accommodated in community shelters must fulfil any additional criteria in force for shelter distribution in the municipal area in question. It is undisputed that the additional criteria in question vary between the responsible municipalities.

The Committee observes that binding rules have not been issued to the responsible municipalities and to other providers of community shelters on the criteria for the granting of shelter. Similarly, no binding instructions have been issued on the distribution of responsibilities between the municipalities in cases where shelter is ultimately granted outside the municipality of first application.

The Committee further notes that pursuant to the survey referred to by the Government, the authorities acknowledge that the mechanism in force does not cover everyone with a valid claim for shelter.

According to the submissions of the parties, the governmental funding moreover only covers the provision of the community shelter to the target group.

The Committee notes that the municipalities may on their own initiative provide shelter also to those who do not fall within the target group. It observes, however, that neither party has provided information on a nation-wide practice to this end. The Committee is accordingly unable to establish that alternative shelter accommodation is available in sufficient numbers with regard to the estimated number of the homeless in the Netherlands, who remain outside the community shelter mechanism. It equally observes in this connection that no statistics are maintained on the estimated shelter demand.

Pursuant to the above observations, the Committee considers it established that a significant segment of the homeless is provided shelter neither in law, nor in practice. The Committee considers that it follows that the scope of the obligation to provide shelter has been restricted in an excessive manner.

The Committee further observes that nationals of the Netherlands, as well as all foreigners staying in the Netherlands in a regular manner, have a right to be offered more permanent housing than emergency shelter within a reasonable period under Article 31§2. With regard to this right, the Committee takes note of the Government's statement that social housing is indeed insufficiently available in certain areas, which is partially due to the general economic situation.

In view of the foregoing, the Committee considers that the legislation and practice of the Netherlands fail to ensure access to community shelter for the purpose of preventing homelessness.

2) The quality and quantity of shelter available to vulnerable groups

Insofar as the quantity of shelter available to vulnerable groups is concerned, the Committee first takes note of the measures taken for the purpose of ensuring access to shelter by women and women with children. Regardless of the significant steps taken, the Committee notes that according to FEANTSA, the number of special shelter places on offer for these groups remains insufficient.

It observes that the Government has not provided data establishing the sufficiency of shelter places reserved for the vulnerable groups, nor excluded that women may be sheltered in general shelters. The Committee additionally notes that only 35 of the 43 responsible municipalities maintain special women’s shelters. It further observes that both parties refer to an established, genuine need for additional family shelters. No specific information is moreover provided on the situation of children in shelters.

Pursuant to the information available to it, the Committee considers that the shelter provided for women and women with children fails to fulfil the requirements of Article 31§2 with regard to quantity.

With regard to the availability of shelter placements, the Committee observes that once 18 years old, persons concerned are also divided into those who fall within the target group and those who do not.

It observes that no information has been provided to the Committee on the situation of those young homeless people, who do not have multiple problems and thus are not eligible for a

placement in youth shelter. It therefore cannot establish, whether these adolescents are provided with sufficient shelter or not.

Finally, with regard to the quality of the shelters available to vulnerable groups, the Committee underlines that emergency shelters must always meet the safety requirements established by the Committee. The Committee also considers that States Parties should provide members of vulnerable groups in shelters that are adapted to the needs of those belonging to such groups, as well as ascertain the availability and suitability of special shelters.

It follows that the quality and quantity of shelters available to vulnerable groups do not fulfil the requirements of the Charter. Consequently, the Committee holds that there is a violation of Article 31§2 of the Charter.

2. Information provided by the Government

The Government stated in information registered on 2 November 2015, that under legislation applicable as of 1 January 2015, anyone requiring help with matters relating to income, work or social support (including homelessness) can contact a municipality, which has a duty – and the necessary resources – to give full consideration to such a request and offer appropriate support. Community shelter services may be one aspect of this. When examining requests for help and possible solutions, the municipality factors in the clients' ability to help themselves and the resources available within their own social network, as well as looking at other options, such as offering alternative housing. As with all other services available under the Social Support Act 2015 (WMO), municipalities receiving a request for shelter must be able to examine the applicant's own resources or what his or her own social network can offer.

The Committee's conclusion that nationwide access to community shelter services is not adequately guaranteed in practice is consistent with the State Secretary's own findings. Measures have been taken to address this.

A December 2014 progress report on community shelter services states that these services must be available right across the Netherlands as a safety net. The implementation practices of municipalities must comply with statutory requirements. This means that members of the public seeking support can contact a municipality that has been designated as a regional authority for shelters *(centrumgemeente)*. This does, however, require an effective transfer. Any decisions by the municipality should also guarantee members of the public the legal protection to which they are entitled.

The Association of Netherlands Municipalities (VNG) and the Dutch Federation of Shelters *(Federatie Opvang)* have organised a number of regional meetings and the guidelines for municipalities and institutions providing shelter have been tightened up. On 31 October 2014 the regional authorities for shelters decided to formalise the agreements contained in the guidelines in a voluntary agreement, which was signed by all municipal executives responsible for community shelter services in these regional authorities.

A fact sheet and admission criteria have been developed, which will be useful tools for ensuring that the right support measures are taken; the VNG is also working on an instrument to manage the relevant contacts. On the basis of a follow-up survey on

nationwide access in practice, to be carried out before the summer of 2015, progress in this area will be assessed and discussions will be held with members of the municipal executives concerned if such access cannot be guaranteed.

It is the responsibility of the municipalities and the regional authorities to provide adequate, suitable shelter for the relevant target groups. The facilities required for a particular group will be different for each municipality and will also depend on how much overall support is available within any given municipality. The State Secretary sees it as his responsibility to call the municipalities, the regional authorities and the institutions providing shelter to account if they fail to offer sufficient facilities or if their implementation practices do not meet the required standards.

If it should come to the State Secretary's attention that the regional authorities are persistently failing to provide enough shelters for women and young people, he would remind them of their responsibility in this area. So far, this has not been necessary.

The State Secretary has, however, concluded from the Committee's findings that it is crucial to have better statistics on the demand for community shelter services. Regarding the availability of data, as pointed out in the above-mentioned report of December 2014, the completion of the annual Community Shelter Services Monitor conducted as part of the action plan that ended in February 2014 prompted the State Secretary to enter into discussions with the parties concerned about how to build up a proper picture of homelessness at national and local levels and of the reach and impact of the support provided to combat it. The Netherlands Institute of Mental Health and Addiction (Trimbos Institute) is conducting another Community Shelter Services Monitor in 2015, covering 2014. Thereafter, the municipal Social Domain Monitor can be used to generate data on support programmes in terms of numbers and duration. This also reflects central and local government's wish to coordinate monitoring efforts as much as possible, with the exception of the Social Domain Monitor, which remains a municipal task. It has been agreed with the VNG that the possibility of including homelessness statistics in this Monitor will be explored. The Committee's findings are regarded as an extra incentive for reaching a consensus in this area.

Having national capacity statistics on shelter facilities is important, but it is even more crucial to have information about the services currently available at local or regional level and whether supply is perfectly tailored to demand. It has been agreed with the VNG that a regional policy plan for sheltered housing and shelters in the community (known as the 'Compass Approach') will be drawn up later this year for each regional authority. The State Secretary for Health, Welfare and Sport takes the view that this must include a description of the available and required services and has asked the VNG to devote particular attention to this point. The Ministry is subsidising a VNG support programme to facilitate the drafting process.

With regard to quality, the regional authorities for shelters are also primarily responsible for the capacity and quality of the facilities on offer and should reach agreements in this area with institutions that provide shelter. The Social Support Act 2015 does, however, also include quality requirements for providers; Section 3.1 requires them to ensure good-quality services and specifies a number of relevant aspects.

In December 2014 the State Secretary announced his intention to support the sector in its efforts to comply with the quality requirements. As part of the aforementioned Compass Approach, the VNG and the Federation of Shelters were therefore asked to develop quality standards for community shelter services, focusing particularly on children and young people. This document is now available, which will serve as a guide for defining a basic quality level.

3. Assessment of the follow-up

The Committee notes the developments in the situation. However, on the basis of the information available to it, it is unable to conclude that access to community shelter for the purpose of preventing homelessness is ensured and that the quality and quantity of shelters available to vulnerable groups fulfil the requirements of the Charter. The Committee finds that the situation has not yet been brought into conformity with the Charter.

The Committee notes the comments submitted by Amnesty International referred to in the follow-up to Conference of European Churches (CEC) v. Netherlands, complaint No. 90/2013, decision on the merits of 1 July 2011 above.

The Committee will next assess the situation on the basis of the information to be submitted in October 2016.

B. Violation of Article 13§1 and of Article 13§4 on the grounds the right to emergency assistance the right of adult migrants in an irregular situation and without adequate resources in the Netherlands is not guaranteed and that there is no right to appeal in matters concerning the granting of emergency assistance

1. Decision of the Committee on the merits of the complaint

The Committee has already noted under the reporting mechanism that all persons regularly residing in the Netherlands without adequate financial resources to meet their essential living cost have access to social assistance (Conclusions 2013, the Netherlands). It has nevertheless been unable to establish that all foreigners without resources, whether staying regularly in the Netherlands or not, would have a legal right to the satisfaction of their basic human material needs (food, clothing, shelter) in situations of emergency (Conclusions 2009; Conclusions 2013, the Netherlands).

It observes, with regard to the present complaint, that pursuant to the survey referred to by the Government, emergency shelter is not systematically made available to all categories of persons covered by Article 13 with a valid claim for shelter.

The Committee takes into account that the homeless who do not belong to the target group in general have at least one serious problem in addition to the fact of being homeless. It furthermore notes having received no information on a comprehensive, nation-wide practice of granting another type of shelter to this group of homeless. Shelter to this alternative group is furthermore not financed by the central Government.

Even though other forms of emergency assistance are available to those who do not fall within the target group, the Committee is unable to establish how recourse to the general social services or a debt reorganisation application would help to ensure immediate emergency housing to a homeless person.

Pursuant to the most recent national study, the national access principle has not been effectively applied in practice. The Committee considers that those unable to establish a local connection to a responsible municipality have at times not been provided with emergency shelter.

With regard to emergency shelter provided to migrants in an irregular situation, the Committee observes that according to the Government, such emergency protection is not provided in the overwhelming majority of cases. According to the Government, emergency shelters are furthermore reserved to those genuinely in serious and acute need. The Committee first observes that in light of its case-law, the aim as such is in keeping with Article 13.

The Committee likewise takes note of the reasons of immigration policy behind this situation, and recalls that pursuant to international law, States are indeed entitled to control the entry, residence and expulsion of aliens in their territory.

It is nevertheless unable to consider that the denial of emergency shelter to those individuals who continue to find themselves in the territory of the Netherlands was an absolutely necessary measure for achieving the aims of the immigration policy. No indications on the concrete effects of this measure have been referred to by the Government.

The Committee further holds that even when maintaining the current aims of migration policy, less onerous means remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country. The Committee cannot accept the necessity of halting the provision of such very basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a precarious situation.

It finds that the practical and legal measures denying the right to emergency assistance accordingly restrict the right of adult migrants in an irregular situation and without adequate resources in the Netherlands in a disproportionate manner.

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.

In the view of the above, the Committee holds that there is a violation of Article 13§§1 and 4 of the Charter.

2. Information provided by the Government

The Committee refers to the general information submitted by the Government described above (see § 2) in the respect to the previous complaint.

3. Assessment of the follow-up

On the basis of the information available to it, it is unable to conclude that all migrants in an irregular situation and others in need of shelter are granted it, nor that there exists a right of

appeal in cases where shelter is denied. The Committee therefore finds that the situation has not yet been brought into conformity with the Charter.

The Committee notes the comments submitted by Amnesty International referred to in the follow-up to Conference of European Churches (CEC) v. the Netherlands, complaint No. 90/2013, decision on the merits of July 2014 above.

The Committee will next assess the situation on the basis of the information to be submitted in October 2016.

C. Violation of 19§4c on grounds there is no right to appeal in matters concerning the accommodation of migrant workers and their families

1. Decision of the Committee on the merits of the complaint

Insofar as the right to appeal to an independent body in decisions relating to the distribution of accommodation to migrant workers and their families is concerned, the Committee refers to its findings under Article 13 and holds that the situation also amounts to a violation of Article 19§4c.

In the view of the above, the Committee holds that there is a violation of Article 19§4c of the Charter.

2. Information provided by the Government

The Committee refers to the general information submitted by the Government described above.

3. Assessment of the follow-up

On the basis of the information available to it, the Committee is unable to conclude that there exists a right of appeal in cases where shelter is denied. The Committee finds that the situation has not yet been brought into conformity with the Charter.

The Committee will next assess the situation on the basis of the information to be submitted in October 2016.

D. Violation of Article 30 on the grounds of failure to provide shelter

1. Decision of the Committee on the merits of the complaint

The Committee considers that in light of the findings made under Articles 31§2, 13§§1 and 4, as well as 19§4, it follows that the legislation and policy concerning the access to emergency shelter has brought about a situation where homeless persons in need of shelter are not offered shelter regardless of genuine need. The Committee considers that this is not in keeping with the obligation to prevent poverty and social exclusion.

It furthermore appears from the survey that measures to improve the coordination between the responsible municipalities were envisaged for addressing the situation. However, in light of the information at its disposal, the Committee finds that the coordination between the responsible authorities is currently insufficient for the purposes of Article 30.

The Committee therefore holds that there is a violation of Article 30 of the Charter.

2. Information provided by the Government

The Committee refers to the general information submitted by the Government described above.

3. Assessment of the follow-up

On the basis of the information available to it, the Committee is unable to conclude that everyone in need of shelter is granted it. It finds that the situation has not yet been brought into conformity with the Charter.

The Committee will next assess the situation on the basis of the information to be submitted in October 2016.

Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009

A. Violation of Article 31§2 on the grounds shelter is not provided to children unlawfully present in the Netherlands for as long as they are in its jurisdiction

1. Decision of the Committee on the merits of the complaint

On the basis of the above, the Committee concludes that States Parties are required, under Article 31§2 of the Charter, to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction. Any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children.

As this is not the case, the Committee holds that the situation in the Netherlands constitutes a violation of Article 31§2.

2. Information provided by the Government

The Government stated in the information registered on 2 November 2015 that the Supreme Court ruled on 21 September 2012 that the State had an obligation to protect the rights and interests of children in its jurisdiction, including children unlawfully present in the Netherlands (ECLI:NL:HR:2012:BW5238). The Supreme Court took the view that children could not be held responsible for their parents' behaviour. On the basis of this judgment the Netherlands expanded the reception facilities for families (Parliamentary papers II 2012/2013, 19367 No. 47/2008) and children – and their parents – are now provided with shelter so that they do not find themselves in an urgent humanitarian situation as a result of their parents' decisions.

When it is necessary to ensure forced removal families can be placed in the closed family centre, that opened in October 2014. They are only placed here as a last resort to realize return, under strict criteria and for in principle a maximum of two weeks. Furthermore, unaccompanied minors have a right to shelter until they reach the age of majority (Asylum Seekers and Other Categories of Aliens (Benefit) Order. To ensure that proper care is provided, unaccompanied minors will be placed under the care of the Central Agency for the Reception of Asylum Seekers who will place them with a foster family. As a last resort to realize return and only under strict criteria they can be placed in a closed family centre.

3. Assessment of the follow-up

The Committee takes note of the measures that have been taken in order to ensure that shelter is provided to children unlawfully present in the Netherlands for as long as they are in its jurisdiction.

The Committee considers that the situation has been brought into conformity with Article 31§2 of the Charter.

B. Violation of Article 17§1 on the grounds shelter is not provided to children unlawfully present in the Netherlands for as long as they are in its jurisdiction

1. Decision of the Committee on the merits of the complaint

In this respect, the Committee holds that the obligations related to the provision of shelter under Article 17§1c 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§1c of the Revised Charter on the same ground.

2. Information provided by the Government

The Committee notes the information submitted (see §2, p. 24 above).

3. Assessment of the follow-up

The Committee takes note of the measures that have been taken in order to ensure that shelter is provided to children unlawfully present in the Netherlands for as long as they are in its jurisdiction.

The Committee considers that the situation has been brought into conformity with Article 17§1c of the Charter.

NORWAY

NORWAY

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Norway was exempted from reporting on the provisions under examination in Conclusions 2016. Norway was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

The following decision was concerned:

- *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013.

The Committee's assessments appear below. They also appear in the HUDOC database.

***Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013**

A. Violation of Article 24 of the Charter

1. Decision of the Committee on the merits of the complaint

The Committee concluded that there was a violation of Article 24 of the Charter on the ground that Section 19, paragraph 1, subsection 7 of the Seamen's Act 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.

2. Information provided by the Government

The Committee notes from the information provided by the Permanent Representative of Norway to the Committee of Ministers (GR-SOC) at its meeting on 10 October 2013 that Section 19, paragraph 1 of the Seamen's Act of 30 May 1975 (No. 18) was repealed by the Act of 21 June 2013 (No. 102) relating to employment protection etc. for employees on board ships (Maritime Labour Act) (*Lov om stillingsvern mv. for arbeidstakere på skip*), which entered into force on 20 August 2013.

The Government indicates in the information registered on 9 November 2015 that pursuant to Section 5-12, paragraph 1 of the Maritime Labour Act, employment may first be terminated when the employee reaches 70 years of age. By exception, a lower age limit than 70 may be determined, provided that such differential treatment meets the requirements set out in Section 10-3, paragraphs 1 (just cause; no disproportionate intervention in relation to the person so treated; necessity for the performance of work or profession) or 2 (necessity for the achievement of a just cause; no disproportionate intervention in relation to the person so treated; no contravention to the prohibition against indirect discrimination, discrimination on the basis of age or discrimination against an employee who works part-time or on a temporary basis) of the Maritime Labour Act.

In parallel, the general age limit set out in Section 15-13a, paragraph 1 of the Working Environment Act was increased to 72 as of 1 July 2015.

3. Assessment of the follow-up

The Committee takes note of the repeal of Section 19, paragraph 1 of the Seamen's Act. It notes that Section 5-12, paragraph 1 of the Maritime Labour Act now provides that employment may be terminated at 70 years of age, while exceptionally allowing for a lower age limit if it is objectively justified and does not involve disproportionate interference, with reference to the exceptions from the prohibition against discrimination set out in Section 10-3, paragraph 2 of the Maritime Labour Act. It also notes that Section 15-13a, paragraph 1 of the Working Environment Act now sets the general retirement age at 72 years. While noting the new higher age limit of 70 years and while acknowledging that safeguards apply apply if termination takes place at a lower age limit than 70, the Committee on the basis of the information at its disposal does not see it clearly established that the new age limit of 70 is objectively and reasonably justified by a legitimate aim and that the means of achieving that aim are appropriate and necessary.

The Committee reserves its position pending more detailed information in this respect.

It will next assess the situation on the basis of the information to be submitted in October 2016.

B. Violation of Article 1§2 of the Charter

1. Decision of the Committee on the merits of the complaint

The Committee concluded that there was a violation of Article 1§2 of the Charter on the following ground that the age-limit set out in Section 19, paragraph 1, subsection 7 of the Seamen's Act disproportionally affects the seamen who come within the scope of application of this provision and constitutes discrimination.

2. Information provided by the Government

The Committee refers to the above information concerning the violation of Article 24 of the Charter.

3. Assessment of the follow-up

The Committee takes note of the repeal of Section 19, paragraph 1 of the Seamen's Act. It notes that Section 5-12, paragraph 1 of the Maritime Labour Act now provides that employment may be terminated at 70 years of age. It considers, however, that it is not clear whether this limit treats seamen equally with pilots and oil workers, or whether the difference in comparison with the general retirement age at 72 years of age set out in Section 15-13a, paragraph 1 of the Working Environment Act pursues a legitimate aim and is based on objective and reasonable grounds.

The Committee reserves its position pending receipt of more detailed information on these issues.

It will next assess the situation on the basis of the information to be submitted in October 2016.

SLOVENIA

SLOVENIA

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Slovenia was exempted from reporting on the provisions under examination in Conclusions 2016. Slovenia was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

The following decisions were concerned:

- Association for the Protection of all Children (APPROACH) Ltd v. Slovenia, Complaint No. 95/2013, decision on the merits of 5 December 2014;
- European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009.

The Committee's assessments appear below. They also appear in the HUDOC database.

Association for the Protection of all Children (APPROACH) Ltd. v. Slovenia, Complaint No. 95/2013, decision on the merits of 5 of December 2014

1. Decision of the Committee on the merits of the complaint

The Committee concluded that Article 17 of the Charter had been violated on the ground that not all forms of corporal punishment that is likely to affect the physical integrity, dignity, development or psychological well-being of a child, were prohibited.

2. Information provided by the Government

The Government stated in the information registered on 15 February 2016 that it intends to enact an explicit prohibition of corporal punishment of children within the family and other settings. In 2015, the Ministry of Labour, Family, Social Affairs and Equal Opportunities began drafting new legislation on the family and the protection of children's rights. An explicit prohibition of corporal punishment will be incorporated. This legislation will be submitted to Government during 2016.

In addition, the Government intends to legislate to explicitly prohibit corporal punishment of children in educational and training settings. Amendments to the Organisation and Financing of Education Act have been prepared by the relevant Ministry and will be submitted to Government in 2016.

3. Assessment of the follow-up

The Committee notes the positive developments, however as the situation at present remains unchanged, the Committee finds that the situation has not yet been brought into conformity with the Charter.

It will next assess the situation on the basis of the information to be submitted in October 2016.

European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009

A. Violation of Article 31§1 on the grounds of the failure to protect the right to housing

1. Decision of the Committee on the merits of the complaint

The Committee concluded that Article 31 of the Charter had been violated on the ground that as regards former holders of a “housing right” over flats that had been restored to their private owners, the combination of insufficient measures for the acquisition or access to a substitute flat, the evolution of the rules on occupancy and the increase in rents, are, after the Slovenian Government’s reforms, likely to place a significant number of households in a very precarious position, and to prevent them from effectively exercising their right to housing.

2. Information provided by the Government

The Government stated in the information registered on 15 February 2015 that following the Committee’s decision the Government appointed an inter-ministerial working group which was informed of the problems of tenants of denationalised dwellings.

The Minister responsible for housing appointed a new Housing Council in 2013; the Council is an advisory body which also includes representatives of the Association of Tenants of Slovenia. The Housing Council, inter alia actively participates in the drafting and adoption of the national housing programme, monitors the implementation national local housing policies, and drafts proposals for measures under the competency the ministry responsible for housing. The Association of Tenants of Slovenia actively participated in drafting a new National Housing Programme, which was sent the National Assembly for consideration and adoption.

In 2014, the Rules on the Rental for Non-Profit Dwellings (Uradni list RS, Nos. 14/04/34/04/62/02 11/09, 81/11/47/14) were amended to allow tenants in denationalized dwellings to obtain other rental homes considerably faster. Pursuant to these Rules, they are awarded a status that places them high on the priority list of applicants expecting to be allocated non-profit rental housing.

3. Assessment of the follow-up

The Committee notes the developments in the situation which are positive, however the Committee would need further information on measures to ensure that all those who held a “housing right” in a flat restored to its previous owners are not rendered homeless, for example, information on the number of tenants of denationalised dwellings who have not yet been rehoused, number on waiting lists etc. The Committee therefore finds that the situation has not yet been brought into conformity with the Charter.

It will next assess the situation on the basis of the information to be submitted in October 2016.

B. Violation of Article 31§3 on the grounds of the failure to provide affordable housing

1. Decision of the Committee

The Committee held that there was a violation of Article 31§3 due to a failure to demonstrate 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 a “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.

2. Information provided by the Government

The Government has submitted no information on the affordability of housing either for purchase or for rent available to former holders of a “housing right”.

3. Assessment of the follow-up

As no information has been provided on this specific point, the Committee finds that the situation has not yet been brought into conformity with the Charter.

The Committee will next assess the situation on the basis of the information to be submitted in October 2016.

C. Violation of Article E in conjunction with Article 31§3 on the grounds of discrimination between former holders of a “housing right” and other tenants of flats that were transferred to public ownership

1. Decision of the Committee

The Committee considers that the treatment accorded to former holders of a “housing right” in respect of flats acquired by the state through nationalisation or expropriation, and restored to their owners, is manifestly discriminatory in relation to the treatment accorded to other tenants of flats that were transferred to public ownership by other means, there being no evidence of any difference in the situation of the two categories of tenants, and the original distinction between the forms of public ownership in question, of which, moreover, they were not necessarily aware, being in no way imputable to them, and having no bearing on the nature of their own relationship with the public owner or administrator.

2. Information provided by the Government

The Committee notes the general information submitted (see ground A above). However, no specific information was provided by the Government on this aspect of the complaint.

3. Assessment of the follow-up

As no information has been provided on this specific point the Committee finds that the situation has not yet been brought into conformity with the Charter.

It will next assess the situation on the basis of the information to be submitted in October 2016.

D. Violation of Article 16 and Article E in conjunction with Article 16 on the grounds of discrimination between former holders of a “housing right” and other tenants of flats that were transferred to public ownership

1. Decision of the Committee on the merits of the complaint

The Committee considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31, taken alone or in conjunction with Article E, amount to a finding that there has also been a breach of Article 16, and of Article E in conjunction with Article 16.

2. Information provided by the Government

The Committee notes the general information submitted above.

3. Assessment of the follow-up

As no information has been provided on this specific point, the Committee finds that the situation has not yet been brought into conformity with the Charter

It will next assess the situation on the basis of the information to be submitted in October 2016.

SWEDEN

SWEDEN

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Sweden was exempted from reporting on the provisions under examination in Conclusions 2016. Sweden was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

The following decisions were concerned:

- 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;
- Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 22 May 2003.

The Committee's assessments appear below. They also appear in the HUDOC database.

The Committee finds that the situation has been brought into conformity in respect of the following finding of violation:

- Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 22 May 2003:
  - Article 5.

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

A. Violation of Article 6§2 of the Charter

1. Decision of the Committee on the merits of the complaint

The Committee concluded that there was a violation of Article 6§2 of the Charter on the ground that legislative restrictions and limitations in respect of posted workers do not promote the development of suitable machinery for voluntary negotiations between employers' and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

2. Information provided by the Government

The Government indicates in the information registered on 2 November 2015 that current legislation does not sufficiently safeguard the role of collective bargaining agreements, which may lead to unfair conditions in terms of competition, wages and employment conditions.

The Committee of Inquiry regarding posting of workers, which evaluated the changes to the Foreign Posting of Employees Act (1999:678) after the judgment of the Court of Justice of the European Union (Grand Chamber) of 18 December 2007 (Case No. C-341/05, *Laval un Partneri Ltd. / Svenska Byggnadsarbetareförbundet et al.*), was therefore assigned to consider legal amendments to strengthen the role of collective agreements as regards posting of workers. Proposals made in its report of 30 September 2015 include the appointment of a representative authorised to negotiate and conclude collective agreements upon request by a workers' organisation; permitting industrial action to negotiate a collective agreement for posted workers containing minimum conditions under applicable sectorial agreements or collective agreements containing special legal provisions for posted workers.

The Government intends to report on the follow-up given to these proposals. It welcomes the European Commission's intention to present a Labour Mobility Package including a revision of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (Posting of Workers Directive) by the end of 2016. It believes that an amendment of the Posting of Workers Directive could enable a substantial revision of current legislation, with a view to safeguarding the role of collective bargaining agreements; Swedish wages and conditions applying to all persons working in Sweden; and legislation promoting the application of terms agreed by the social partners in collective agreements. The Government is discussing with EU member States and the European Commission to that effect.

3. Assessment of the follow-up

In Conclusions 2015, the Committee considered that the statutory framework applicable to posted workers did not promote the development of suitable machinery for voluntary negotiations between employers and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements. It therefore concluded that the situation was not in conformity with Article 6§2 of the Charter.

In view of the information provided, the Committee finds that, with regard to posted workers, legislative restrictions and limitations still do not promote the development of suitable

machinery for voluntary negotiations between employers' and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

The Committee finds that the situation has not been brought into conformity with the Charter.

It takes note of the Government's action to bring the situation into conformity with Article 6§2 of the Charter.

It will next assess the situation on the basis of information to be submitted in October 2016.

B. Violation of Article 6§4 of the Charter

1. Decision of the Committee on the merits of the complaint

The Committee concluded that there was a violation of Article 6§4 of the Charter on the ground that Sections 5a and 5b of the Foreign Posting of Employees Act, as well as Section 41c of the Co-determination Act, do not adequately recognise the fundamental right to collective action.

2. Information provided by the Government

The Committee refers to the information provided above concerning the violation of Article 6§2 of the Charter.

3. Assessment of the follow-up

In Conclusions 2015, the Committee considered that the statutory framework applied to posted workers constituted a disproportionate restriction on the free enjoyment of the right of trade unions to engage in collective action, since it prevented trade unions taking action to improve the employment conditions of these workers. It therefore concluded that the situation was not in conformity with Article 6§4 of the Charter.

In view of the information provided, the Committee finds that Sections 5a and 5b of the Foreign Posting of Employees Act, as well as Section 41c of the Co-determination Act, still do not adequately recognise the fundamental right to collective action.

The Committee finds that the situation has not been brought into conformity with the Charter.

It takes note of the Government's action to bring the situation into conformity with Article 6§4 of the Charter.

It will next assess the situation on the basis of information to be submitted in October 2016.

C. Violation of Article 19§4a of the Charter

1. Decision of the Committee on the merits of the complaint

The Committee concluded that there was a violation of Article 19§4a of the Charter on the ground that the legislation in respect of remuneration and other working conditions does not secure for posted workers the same treatment guaranteed to other workers with permanent employment contracts.

2. Information provided by the Government

The Committee refers to the information provided above concerning the violation of Article 6§2 of the Charter.

3. Assessment of the follow-up

In Conclusions 2015, the Committee asked what procedure was available to workers claim the terms of pay and other employment conditions guaranteed under the Posting of Workers Directive; what action was available to the Government to enforce the provisions of the “lex Laval” that transposed the said Directive; and whether the same collective agreements and conditions of work applied to posted workers as to nationals in the same area of work. It reserved its position pending receipt of this information.

In view of the information provided, the Committee finds that the legislation in respect of remuneration and other working conditions still does not secure for posted workers the same treatment guaranteed to other workers with permanent employment contracts.

The Committee finds that the situation has not been brought into conformity with the Charter.

It takes note of the Government’s action to bring the situation into conformity with Article 19§4a of the Charter.

It will next assess the situation on the basis of information to be submitted in October 2016.

D. Violation of Article 19§4b of the Charter

1. Decision of the Committee on the merits of the complaint

The Committee concluded that there was a violation of Article 19§4b of the Charter on the ground that the lack of statutory provisions requiring foreign employers to appoint in Sweden a contact person entitled to negotiate and conclude agreements with Swedish trade unions does not secure for foreign workers lawfully within the territory of Sweden treatment no less favourable than that of Swedish nationals in respect of the enjoyment of the benefits of collective bargaining.

2. Information provided by the Government

The Committee refers to the information provided above concerning the violation of Article 6§2 of the Charter.

3. Assessment of the follow-up

In Conclusions 2015, the Committee asked to receive updated information on the work and/or findings of the Committee of Inquiry regarding posting of workers, and on any changes in law or practice regarding posted workers with regard to the membership in trade unions and the enjoyment of the benefits of collective bargaining. It reiterated its finding that the restriction placed on the right of posted workers to participate in collective action to improve their conditions above the basic level of the current collective agreement was in violation of Article 19§4b of the Charter.

In view of the information provided, the Committee finds that the lack of statutory provisions providing the requirement for foreign employers to appoint in Sweden a contact person entitled to negotiate and conclude agreements with Swedish trade unions still does not secure for foreign workers lawfully within the territory of Sweden treatment no less favourable than that of Swedish nationals in respect of the enjoyment of the benefits of collective bargaining.

The Committee finds that the situation has not been brought into conformity with the Charter.

It takes note of the Government's action to bring the situation into conformity with Article 19§4b of the Charter.

It will next assess the situation on the basis of information to be submitted in October 2016.

Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 22 May 2003

1. Decision of the Committee on the merits of the complaint

The Committee concluded that there was a violation of Article 5 of the Charter on the ground that pre-entry closed shop clauses set out in certain collective agreements reserving in practice employment for members of a certain union restrict workers' free choice as to whether or not to join one or other of the existing trade unions or to set up separate organisations of this type.

2. Information provided by the Government

The Committee takes note from the information provided by the Permanent Representative of Sweden to the Committee of Ministers at the 853rd meeting of the Ministers' Deputies on 24 September 2003 that certain collective agreements contained closed shop clauses and that negotiation between employers' and workers' organisations were under way so as to gradually phase out such clauses.

The Government indicates in the information registered on 2 November 2015 that there are no more closed shop clauses in any of the collective agreements.

3. Assessment of the follow-up

In Conclusions 2014, the Committee took note that there were no pre-entry closed shop clauses in the collective agreements of the electricity and painting sectors, and concluded that the situation was in conformity with Article 5 of the Charter.

These clauses have been eradicated from all collective agreements.

The Committee finds that the situation has been brought into conformity with the Charter.