European Social Charter | Charte sociale européenne

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

September 2017

FOLLOW-UP TO DECISIONS ON THE MERITS OF COLLECTIVE COMPLAINTS

Findings 2017

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, Croatia, Cyprus, Czech Republic, the Netherlands, Norway, Slovenia and Sweden were exempted from reporting on the provisions submitted for examination for the 2017 Conclusions. 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 had found a violation.

This document contains the Committee's findings concerning the follow-up of the decisions regarding each of these countries.

CROATIA

CROATIA

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. It was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee had found a violation.

These are the proposed decisions:

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

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

International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, decision on the merits of 30 March 2009

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

The Committee found a violation of Article 11§2 due to the discriminatory statements contained in the educational material used in the ordinary school curricula, in particular in the textbook entitled “Biology 3: Processes of life” which contained homophobic statements stigmatising homosexuals based on negative and scornful stereotypes concerning the sexual practices of all homosexuals. The Croatian authorities had 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.

2. Information provided by the authorities

In their 8th report, the authorities indicated that the Ministry of Education had withdrawn the textbook entitled “Biology 3: Processes of life” with the content complained of, which is no longer used in the Croatian education system, i.e. since the 2009/2010 school year, and that it is no longer mentioned in the catalogue of mandatory textbooks or in the supplementary teaching materials.

In particular, it is indicated that Article 4, paragraph 2, of the Act on primary and secondary school textbooks (Official Gazette No. 27/10, 57/11 and 101/13), provides that school textbooks shall not infringe the Constitution and shall respect human rights and fundamental freedoms.

The Ministry of Education, in co-operation with the Teacher Training Agency, pays particular attention to improving the teaching of generally accepted universal values and human rights in the Croatian education system.

3. Assessment of the follow-up

The Committee considers that the cause of the established violation arose from the use of the “Biology 3: Processes of life” textbook, which has been withdrawn by the Ministry of Education. The Committee also notes that the authorities have taken the necessary measures to ensure that the educational materials used in school curricula no longer contain discriminatory statements.

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

Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint n° 52/2008, decision on the merits of 22 June 2010

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

The European Committee on Social Rights unanimously concluded that Article 16 of the 1961 Charter had been violated. It was violated in light of the non-discrimination clause of the Preamble on the ground of:

a failure to implement the national housing (care) programme within a reasonable timeframe and

a failure to take into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular.

2. Information provided by the Government

The Government refers to the Regional Housing Program (RHP) which aims to provide permanent housing needs for the most vulnerable categories of refugees and internally displaced persons. It is a joint initiative of Bosnia and Herzegovina, Republic of Croatia, Montenegro and Serbia, based on the joint declaration signed by foreign ministers or the countries concerned on 7 November 2011 at the ministerial conference in Belgrade. The program is managed by the Council of Europe Development Bank (CEB).

The stated program will provide permanent housing solutions for the most vulnerable families which are given the freedom or choice on manner of permanent housing solution, through the integration in the country to which they fled or through the return to their country of origin.

In the Republic of Croatia, the Regional Housing Program is implemented through the existing Housing Program managed by the state Office for Reconstruction and Housing Care on the basis of the Act on Areas of Special State Concern (Official Gazette", No.: 86/08, 57/11, 51A/13, 148/13, 76/14, 147/14 and 18/15). According to the Government, State Office for Reconstruction and Housing Care performs administrative and other tasks related to the planning, preparation, and supervision of housing for refugees, displaced persons and returnees, former tenancy rights holders and other beneficiaries or housing programs. The report indicates that disgruntled applicants are allowed the right to use legal remedies filing an appeal to the State Office for Reconstruction and Housing Care.

The Republic of Croatia and CEB signed on 3 December 2013 the Framework Agreement which defines the legal framework for the use of funds from the RHP Fund. The Framework Agreement entered into force on 1 June 2014.

Through RHP in the Republic of Croatia it was originally planned to provide housing solutions for 3,541 families. or 8.529 persons, and for this purpose the necessary funds amounted to 119.7 million €. The planned contribution of the Republic of Croatia in the whole program amounts to 25% of financial resources, or 29.9 million €.

In the meantime, the Republic of Croatia became a member of the European Union and as such it is no longer eligible to financial allocation or the Regional Housing Program Fund in

the amount of 119 million €. For this reason, currently the Republic of Croatia is granted funding in the amount of 14 million € and it exclusively consist of direct donations of individual donors independently of the Regional Housing Program Fund and partly from the unexpended IPA funds.

The report indicates that within a framework of the Regional Housing Program the Republic of Croatia has so far been approved funding for six sub-projects through donation non-refundable funds with which it is planned to provide housing solutions for a total of 328 families.

3. Assessment of the follow-up

While taking note of the efforts made to more effectively regulate the area of housing in the Republic of Croatia, the Committee notes in the report that it is planned to provide housing solutions for a total of 328 families. The report does not indicate any fund nor establishes a final deadline to ensure housing for the remaining 3 213 families.

The Committee notes again the slow pace of the housing programme, and the lack of clarity as to when housing would be provided under it and reflect the needs of displaced families who wish to return to Croatia. An extensive period of time has elapsed since the housing programme was launched in 2003. In addition, displaced families who expressed their wish to return and applied for housing programme have been obliged to remain without security of tenure for an unreasonably long period of time due to the slow processing of applications. These factors taken together have ensured that for many displaced families who wish to return to Croatia, the absence of effective and timely offer of housing has for a long period of time constituted a serious obstacle to return.

As a consequence, the Committee recalls that that the housing programme has not been implemented within a reasonable timeframe. In this respect, the Committee asks the authorities to provide information on the effective remedies available to the families waiting for housing, by providing examples showing that remedies are effective in practice.

Moreover, the Committee recalls that it found that the failure to take into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular, constituted a violation of Article 16 of the 1961 Charter read in the light of the non-discrimination clause of the Preamble. The Government does not provide any information on ethnic Serbs displaced families. Therefore, the Committee asks again the authorities to provide information in this respect in the next report.

Therefore the Committee finds that the situation 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 2019.

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 2017. 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 2017.

CZECH REPUBLIC

CZECH REPUBLIC

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 2017. 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 states in the information registered on 31 October 2016 that in order to strengthen the protection of children under 15 years of age an amendment was made to Act No 200/1990 Coll., regulating contraventions, adopted in October 1, 2016. The amendment imposes an obligation to commence proceedings in a case of “an administrative delict or offence”, “ without a notice of motion” where the affected person is a child younger than 15 years. According to the Government this legislative change will enable more efficient sanctioning of contraventions against children (for example for offences less serious than bodily harm of a child). It will cover inter alia cases of corporal punishment, verbal abuse, insulting or humiliation of a child. The law increases the penalties for these offenses. The imposed fine can reach up to CZK 20 000 (763€) and in case of a repeated offence within a year to 30 000 CZK (1140€).

3. Assessment of the follow-up

The Committee takes note of the developments in Czech law, which seek to strengthen the protection of children from forms of violence. However, the Committee considers that the above mentioned amendment does not amount to a complete prohibition of all forms of corporal punishment likely to affect the physical integrity, dignity, development or psychological well-being of children.

Therefore the Committee finds that the situation 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 2019.

THE NETHERLANDS

THE NETHERLANDS

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 2017. 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.

In its Findings 2016, the Committee found that the situation had been brought into conformity with the Charter and decided to terminate the examination of the decision:

- 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 13§4 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 in its report registered on 31 October 2016 refers to the information submitted in its previous report (2015) and provides additional information.

The report reiterates that the current system ensures that no person irregularly present in the territory is forced to live on the street.

It states that the Netherlands' Government, in cooperation with municipalities, seeks to improve the effectiveness of its return policy within the current system.

The central government and the municipalities are negotiating an administrative agreement on the reception facilities for individuals irregularly present. The administrative agreement should set out the implementation of the "pre-VBL phase". [1]

The "regular" restrictive accommodation (VBL) facilities already provide shelter to persons in an irregular situation. In the VBL facilities, they receive assistance in arranging for their departure. These facilities also provide food, medical care and other services. A condition for staying in a VBL facility is that the person concerned must make a genuine effort to arrange for his or her departure. This condition does not apply in special circumstances, e.g. if it

[1] It could be recalled that under the old system , migrants could only gain access to a VBL facility if they state in advance that they are willing to cooperate in arranging their departure. The Government 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. 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.
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.

transpires that the person concerned cannot be held responsible for his/her refusal to cooperate on account of his/her mental state (see discussion of domestic case law below). No persons have as yet been admitted to the restrictive accommodation due to these special circumstances.

In addition to this, the report refers to domestic case law of two highest Netherlands' administrative courts on shelter for persons in an irregular situation. On 26 November 2015 both the Central Appeals Court and the Administrative Jurisdiction Division handed down rulings on the reception of unlawfully residing persons.

The Administrative Jurisdiction Division's judgment concerns the question of whether the State Secretary can oblige persons to cooperate in their departure from the Netherlands as a condition for being allowed to stay in a VBL.

The Administrative Jurisdiction Division held that neither article 8 of the ECHR nor the case law of the European Court of Human Rights (ECtHR) gives rise to a general obligation on the State to provide reception for a foreign adult residing lawfully or unlawfully in the Netherlands. Referring to the case law of the ECtHR, the Administrative Jurisdiction Division observed that in exceptional cases the State may be compelled under articles 3 and 8 of the ECHR to provide accommodation for foreign adults residing unlawfully in the Netherlands.

The Administrative Jurisdiction Division concurred with the State Secretary's view that the consequences of a foreign adult's choice to refuse to declare him/herself willing to cooperate in his/her departure – namely that the State Secretary then refuses to allow access to a VBL – is in principle his/her own responsibility if the person in question is residing unlawfully in the Netherlands and under section 61, paragraph 1 of the Aliens Act 2000 has a duty to leave the Netherlands of his/her own accord. However, from the point of view of due care, the State Secretary has to bear in mind that exceptional circumstances may apply which mean that he may not, a priori, attach the condition of cooperation in departure to the offer of accommodation. Such exceptional circumstances are present if it transpires that the person concerned cannot be held responsible for his/her refusal to cooperate on account of his/her mental state.

The Central Appeal Court's judgment concerns the question of whether the municipality of Amsterdam is permitted to refuse to grant reception facilities to unlawfully residing foreigners and refer them to a VBL for accommodation. In the judgment discussed in the previous paragraph, the Administrative Jurisdiction Division ruled that unless exceptional circumstances are present, attaching conditions to the provision of accommodation is not in breach of positive obligations under the ECHR and the European Social Charter to provide shelter. Consequently, in the view of the Central Appeals Court, the municipality of Amsterdam is not obliged to provide shelter under the Social Support Act. The Court pointed out that it is up to the State Secretary to decide, in line with the assessment framework as set out in the judgment of the Administrative Jurisdiction Division, whether in an exceptional

case access to a VBL should be granted without imposing the condition of cooperation in that person's departure from the Netherlands.

On 29 June 2016 the Administrative Jurisdiction Division held that the municipality of Amsterdam is not under a legal or international obligation to provide shelter to unlawfully residing persons when the State Secretary of Security and Justice already offers accommodation in a so-called liberty restricting measure (VBL) facility.

The report also refers to a decision of the European Court of Human Rights (ECtHR) in *Hunde v. the Netherlands* (17931/16)6. This case concerned a complaint from a failed asylum seeker under Articles 2 and 3 of the ECHR about the denial of shelter and social assistance. The applicant further complained that the requirement to cooperate in his own deportation in order to receive social assistance as an irregular migrant amounted to treatment contrary to his human dignity. The ECtHR declared the complaint manifestly ill-founded and inadmissible.

3. Assessment of the follow-up

The Committee previously noted that some of the proposals outlined by the Government in their previous report may improve the situation; the decision not to apply the 12 week deadline too strictly, the establishment of pre- VBL facilities, for example, (see Findings 2016).

However, it is again 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 will next assess the situation on the basis of the information to be submitted in October 2019.

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 2019.

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 fulfill 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 fulfill 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 fulfill 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 fulfill 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 fulfill 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 in its report registered 31 on October 2016, refers to the information submitted in its previous report (2015) and provided the following additional information:

Access to shelter

The State Secretary for Health, Welfare and Sport requested the Netherlands Institute of Mental Health and Addiction (Trimbos Institute) in 2015 to carry out a re-assessment of access to shelter to gain insight into the results of the measures taken aimed at improving access to shelter in practice. The results showed that access to shelter has improved considerably. However, it has not yet improved enough. Therefore the State Secretary has sent the local results of the re-assessment to the municipal councils and has asked for a reaction. These reactions were expected in autumn 2016. The State Secretary will follow the developments closely.

In 2016, the Netherlands' Ministry of Health, Welfare and Sports obtained information from the municipalities responsible for shelter about the most important developments in the sector. The number of people finding themselves homeless due to economic reasons is increasing. Families and young adults are part of this group. Municipalities are adjusting the traditional forms of shelter to the needs of this specific group, which consists mainly of housing and financial aid and not primarily of care. This is done in different ways, taking into account the local situation. Examples are the development of motels specifically for this group, offering support in shelters that are adjusted to their needs and by arranging agreements with housing corporations about the housing available for this group.

Quality

As requested, the Association of Netherlands Municipalities (VNG), the Federation of Shelters and other stakeholders have developed a set of quality standards for community shelter services, with specific standards for children and young people.

Monitoring

As a matter of principle all local and regional authorities responsible for shelter keep track of information about the number of requests for shelter and the number of clients moving in and out of shelter. This is important to note, since regional authorities are responsible for providing shelter and care to the homeless, under the control of the city councils. They keep track of this information in different forms, which is why it is not possible to simply aggregate these local numbers to a national one. Therefore, in partnership with the VNG the possibilities for improving aggregated information on shelter and homelessness will be explored in 2016.

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 fulfill the requirements of the Charter. 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 2019.

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 re-organisation 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 Government in its report registered on 31 October 2016, refers to the information submitted in its previous report (2015) and provided additional information on the situation – see above under Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, point A.

3. Assessment of the follow-up

On the basis of the information available to it, the Committee 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 will next assess the situation on the basis of the information to be submitted in October 2019.

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 (under point A) and to the information provided in the previous report (2015).

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 2019.

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 (under point A) and to the information provided in the previous report (2015).

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 2019.

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 2017. 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 Government in the report registered on 6 December 2017, provides no new information on the situation and refers to the previous report.

The Committee recalls 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.

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 recalls in its previous follow up to the complaint - findings 2016 - it stated that on the basis of the information at its disposal it did not see that it was 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 and reserved its position pending more detailed information in this respect.

No specific evidence has been submitted to the Committee demonstrating how the age-limit of 70 years corresponds to essential professional requirements imposing an earlier retirement of seamen in the present-day conditions.

As the Committee has found no new information in the report it reiterates its reservation on the situation, However, it requests the next report to provide comprehensive information as to the reasons/ justifications for the adoption of 70 as the age when employment may be terminated,

which is two years earlier than the mandatory retirement age set by the Working Environment Act.

It will next assess the situation on the basis of the information to be submitted in October 2019

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 ground that the age-limit set out in Section 19, paragraph 1, subsection 7 of the Seamen's Act amounts to discrimination on grounds of age in 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.

2. Information provided by the Government

The Government in the report registered the 6 December 2017, provides no new information on the situation and refers to the previous report.

3. Assessment of the follow-up

The Committee recalls that it previously noted (Findings 2016) the repeal of Section 19, paragraph 1 of the Seamen's Act. It noted that Section 5-12, paragraph 1 of the Maritime Labour Act now provides that employment may be terminated at 70 years of age. It considered, 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 reserved its position pending receipt of more detailed information on these issues. The Committee again reserves its position and asks the next report to provide information as to 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.

It will next assess the situation on the basis of the information to be submitted in October 2019.

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. It was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee had found a violation.

These are the proposed decisions:

- 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 assessment appears below. It also appears 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 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 was 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 amended two Acts in 2016 and included the explicit prohibition of all forms of punishment of children in domestic and other settings in national legislation.

The explicit prohibition of all corporal punishment of children in the domestic environment is included in the Act amending the Act on the prevention of domestic violence (Official Gazette of the Republic of Slovenia (Uradni list RS) No. 68/2016), which entered into force in November 2016. Article 3a of the Act provides that:

"1) Corporal punishment of children shall be strictly prohibited.

2) Corporal punishment of children shall be considered as any physical, cruel or degrading punishment or any other act with the intention to punish children containing elements of physical, psychological or sexual violence or neglect as an educational method".

The explicit prohibition of all corporal punishment of children in other contexts is included in the Act amending the Act on the organisation and financing of education (Official Gazette of the Republic of Slovenia (Uradni list RS) No. 46/2016), which entered into force in July 2016.

Article 2 of the Act provides that: "In accordance with the objectives set out in the preceding article, kindergartens, schools and other educational institutions for children and adolescents with special needs shall provide a safe and supportive learning environment where corporal punishment and any other form of violence against children or between children or any unequal treatment on grounds of gender, sexual orientation, social and cultural origin, religion, race, ethnic or national origin or physical or mental development shall be prohibited".

The government asserts that the violation of Article 17§1 of the Charter, as established in the decision on the collective complaint (No. 95/2013) and in the Committee's conclusions has been remedied.

3. Assessment of the follow-up

In its decision, the Committee noted that the provisions of the impugned Family Violence Prevention Act and the Criminal Code referred to in the context of this complaint prohibited serious acts of violence against children, and that national courts sanctioned corporal punishment provided it reached a specific threshold of gravity. When corporal punishment failed to fulfil these criteria, it could nevertheless be dealt with as a minor offence. However, none of the legislation referred to by the Government set out an express and comprehensive

prohibition on all forms of corporal punishment of children that was likely to affect their physical integrity, dignity, development or psychological well-being. Furthermore, there was nothing to establish that a clear prohibition of all corporal punishment of children had been set out in the case law of national courts.

The Committee takes note of the positive developments and in particular of the two Acts, as amended in 2016, which explicitly prohibit all corporal punishment of children in all circumstances affecting the physical integrity, dignity, development or psychological well-being of a child, and therefore addressing the violation found by the Committee.

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

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 denationalised 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.

In its last report the Government indicates that certain tenants in denationalised dwellings had filed an application with the European Court of Human Rights against the Republic of Slovenia. In the case of Berger-Krall and Others v. Slovenia, the Court rejected all the tenants' claims and on 12 June 2014 issued a judgment finding that the rights of the tenants of denationalised dwellings guaranteed by the European Convention on Human Rights had not been violated. The judgment became final in October 2014.

Moreover, the Government explains that it does not have the required statistics on the number of tenants of denationalised dwellings who have not yet been rehoused and number on waiting lists.

The Government believes that its measures described in Slovenia's previous report on the implementation of the Charter have adequately resolved the issue of tenants in denationalised dwellings and stresses that the European Court of Human Rights found that their rights had not been violated.

3. Assessment of the follow-up

The Committee clarifies that it has taken note of the judgment Berger-Krall and Others v. Slovenia where the Court found that the interference with the applicants' right to the peaceful enjoyment of their possessions was lawful and in accordance with the general interest. It had also struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individuals' fundamental rights concluding to a non-violation of Article 1 of Protocol No. 1.

The Court recognised that as a result of the housing reform, the applicants had had to face a general degradation of the legal protection they had previously enjoyed (for example, increased rent, restrictions on the right to transmit the tenancy to family members and reduced security of tenure). These were, however, unavoidable consequences of the legislature's decision to provide former owners with the possibility of restitution in natura of dwellings which had been nationalised after the Second World War. Securing the rights of previous owners could not but result in a corresponding restriction of the rights of the occupiers. In any event, certain obligations assumed by the applicants under the new leases (not to cause damage, disturb other residents, perform prohibited activities or sublet) were in substance similar to those found in normal landlord and tenant relations.

The Court found that, in addition, the applicants enjoyed and continued to enjoy special protection going beyond that usually afforded tenants: the lease contracts were concluded for an indefinite period and transmissible to the spouse or long term partner of the tenant and the non-profit rent imposed on the applicants continued to be significantly lower than the free market rent more than 22 years after the housing reform was introduced, which showed that the transition to a market economy had been conducted in a reasonable and progressive manner. Moreover, none of the applicants had shown that the level of rent was excessive in relation to his or her income.

Thus, in balancing the exceptionally difficult and socially sensitive issues involved in reconciling the conflicting interests of "previous owners" and tenants, the respondent State had ensured a distribution of the social and financial burden involved in the housing reform which had not exceeded its margin of appreciation.

The considerations which led the Court to find that the applicants' rights under Article 1 of Protocol No. 1 had not been violated allowed it to reach the same conclusion under Article 8 of the Convention in respect of those applicants whose complaints under that provision were declared admissible. They had been afforded the possibility of indefinite term leases, transmitting them to their spouses or long term partners and occupying the premises for a non-profit rent. None of the applicants had submitted evidence showing that they could not afford the rent and, in any event, public subsidies were available for socially or financially disadvantaged tenants.

As to the fault-based grounds for eviction that had been introduced by the Housing Act 1991, they were essentially similar to those traditionally contained in lease agreements in other Council of Europe member States and could not, as such, be considered incompatible with Article 8 of the Convention. The two additional rights afforded previous owners under the Housing Act 2003 – to move a tenant to another suitable property and to evict a tenant who owned another suitable dwelling – were justified in view of the special, reinforced protection afforded to persons in the applicants' situation and the corresponding limitations placed on the rights of the previous owners, who were forced into a lifelong low rental agreement with tenants they had not chosen.

As to the procedural guarantees enjoyed by the applicants, it was not contested that they had the possibility of challenging any eviction order before the competent domestic courts, which had jurisdiction over all related questions of fact and law. The interference with the right to respect for their home of the three applicants concerned had thus been necessary in a democratic society.

However, the Committee recalls that it assesses the information provided by the authorities on the basis of Articles 16 and 31 of the Charter that provide respectively for the right to housing and the right of the family to social, legal and economic protection. In this framework States Parties must take action to prevent categories of vulnerable people from becoming homeless. 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.

In its Findings adopted in 2016 the Committee noted the developments in the situation which are positive, however the Committee needed 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 Government indicates not to be in possession of such information. The Committee therefore finds that the situation had 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 2019.

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 2019.

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

2019.

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 2019.

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. It was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee had 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 assessment appears below. It also appears in the HUDOC database.

In its Findings 2016, the Committee found that the situation had been brought into conformity with the Charter and decided to terminate the examination of the decision:

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 found that there had been a violation of Article 6§2 of the Charter on the ground that, with regard to posted workers, legislative restrictions and limitations 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.

2. Information provided by the Government

The Government had indicated in Findings 2016 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 the posting of workers, which evaluated the amendments 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 invited to consider possible legislative amendments to strengthen the role of collective agreements with regard to 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 authorities indicated that they were currently considering these proposals. The government announced that it would propose a bill on the new regulations on the posting of workers in January 2017. The government would submit additional information on this issue in due course.

In the Budget Bill for 2017, the government stated that Swedish wages and conditions shall apply to all persons working in Sweden and that this legislation must be designed so as to promote the implementation of the terms agreed upon by the social partners in collective agreements. In this context, the government is working on reviewing and strengthening the Foreign Posting of Employees Act and implementing Directive 96/71/EC of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (Directive concerning the posting of workers).

The authorities welcomed the European Commission's intention to present a Labour Mobility Package including a revision of the Directive concerning the posting of workers. They believed that an amendment of that 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 was currently holding discussions with EU member States and the European Commission to that effect.

3. Assessment of the follow-up

In Conclusions 2015, the Committee considered that, as regards posted workers, the statutory framework 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 will next examine the situation on the basis of the information to be submitted in October 2019.

In this regard, the Committee takes note of the recent legislative changes that have taken place in Sweden and therefore requests to be informed of their impact on the follow-up to this decision.

B. Violation of Article 6§4 of the Charter

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

The Committee held 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 applicable 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 posted 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 will next examine the situation on the basis of detailed information to be submitted in October 2019.

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

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

The Committee found that there had been a violation of Article 19§4a of the Charter on the ground that in respect of remuneration and other working terms and conditions, the legislation 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 complaint procedure enabled workers to assert the right to protection in terms of remuneration and other employment terms and conditions set out in the directive on the posting of workers; what action was available to the Government to enforce the provisions of the "lex Laval", which transposes this directive; and whether the same collective agreements and working terms and conditions applied to posted workers and 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 will next examine the situation on the basis of the information to be submitted in October 2019.

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 had been a violation of Article 19§4b of the Charter on the ground that the lack of statutory provisions or regulations providing the requirement for 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 requested up-to-date information on the work or the findings of the committee of inquiry on the posting of workers and on any changes in law or practice concerning posted workers with regard to union membership or the enjoyment of the benefits of collective bargaining. It reiterated its conclusion that the restriction imposed by law on the right of posted workers to participate in collective action to improve their terms

and 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 concludes that the lack of statutory provisions or regulations providing the requirement for foreign companies to appoint in Sweden a contact person entitled to negotiate and conclude agreements with Swedish trade unions still does not secure for foreign posted 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 concludes that the situation has not been brought into conformity with the Charter.

It will next examine the situation on the basis of the information to be submitted in October 2019.