Strasbourg, 22 January 2020

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EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS XXI-3 (2018) OF THE 1961 EUROPEAN SOCIAL CHARTER

(Croatia, Czech Republic, Denmark, Germany, Iceland, Luxembourg (in part), Poland, Spain and United Kingdom)

Detailed report of the Governmental Committee established by Article 27, paragraph 3, of the European Social Charter[1]

Written information submitted by States on Conclusions of non-conformity is the responsibility of the States concerned and was not examined by the Governmental Committee. This information remains either in English or French, as provided by the States.

[1] The detailed report and the abridged report are available on www.coe.int/socialcharter.

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I. Introduction

1. This report is submitted by the Governmental Committee of the European Social Charter and the European Code of Social Security (hereafter the "Governmental Committee") made up of delegates of each of the forty-three states bound by the 1961 European Social Charter or the European Social Charter (Revised)[2]. A representative of the European Trade Union Confederation (ETUC) attended the meetings of the Governmental Committee in a consultative capacity. The representative of the International Organization of Employers (IOE), also invited to participate in the work in a consultative capacity, declined the invitation.

2. Since a decision of the Ministers' Deputies in December 1998, the other signatory states were also invited to attend the meetings of the Governmental Committee (Liechtenstein, Monaco, San Marino and Switzerland).

3. The supervision of the application of the European Social Charter is based on an examination of the national reports submitted at regular intervals by the States Parties. According to Article 23 of the 1961 Charter as amended by the 1991 Protocol, the Party "shall forward copies of its reports […] to such of its national organisations as are members of the international organisations of employers and trade unions". Reports are made public on www.coe.int/socialcharter.

4. Responsibility for the examination of state compliance with the Charter lies with the European Committee of Social Rights (Article 25 of the 1961 Charter as amended by the 1991 Protocol), whose decisions are set out in a volume of "Conclusions". On the basis of these conclusions and its oral examination, during the meetings, of the follow-up given by the States, the Governmental Committee (Article 27 of the 1961 Charter as amended by the 1991 Protocol) draws up a report to the Committee of Ministers which "shall adopt a resolution covering the entire supervision cycle and containing individual recommendations to the Contracting Parties concerned" (Article 28 of the 1961 Charter as amended by the 1991 Protocol).

5. In accordance with Article 21 of the 1961 Charter as amended by the 1991 Protocol, the national reports on the articles of the Charter relating to Labour rights to be submitted in application of the European Social Charter concerned Croatia, Czech Republic, Denmark, Germany, Iceland, Luxembourg, Poland, Spain and the United Kingdom. The reports covered the reference period 1st January 2013 – 31 December 2016 and were due by 31 October 2017. The Governmental Committee recalls that it attaches a great importance to the respect of the deadline by the States Parties.

6. Conclusions XXI-3 (2018) of the European Committee of Social Rights were adopted in January 2019 (Croatia, Czech Republic, Denmark, Germany, Iceland, Luxembourg (in part) Poland, Spain and the United Kingdom). Luxembourg submitted its report with a significant delay; part of the report of Luxembourg relating to Article 6 of the Charter could not be examined because it was not submitted in time.

[2] List of the States Parties on 1 December 2019: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Republic of North Macedonia, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Turkey, Ukraine and United Kingdom.

7. The Governmental Committee took note that no further ratification has been done in the last reporting cycle.

8. The Governmental Committee held two meetings in 2019 (139th Meeting on 13-17 May 2019, 140th Meeting on 16-20) September 2019) with Mr Joseph FABER (Luxembourg) in the Chair. In accordance with its Rules of Procedure, the Governmental Committee at its autumn meeting elected for a two-year term (until 31th December 2021) its new members of the Bureau. Mr. Joseph FABER (Luxembourg) Chair, Mr. Aongus HORGAN (Ireland) 1st vice Chair, Ms Kristina VYSNIAUSKAITE-RADINSKIENE (Lithuania) 2nd vice Chair, Ms Brigita VERNEROVA (Czech Republic) Member, Mr. Edward BUTTIGIEG (Malta) Member.

9. The state of signatures and ratifications on 1 December 2019 appears in Appendix I to the present report.

II. Examination of Conclusions XXI-3(2018) of the European Committee of Social Rights

10. The abridged report for the Committee of Ministers only contains summaries of discussions concerning national situations in the eventuality that the Governmental Committee proposes that the Committee of Ministers adopt a recommendation or renew a recommendation. No such proposals were made in the current supervisory cycle. The detailed report is available on www.coe.int/socialcharter.

11. The Governmental Committee applied the rules of procedure adopted at its 134th meeting (26 – 30 September 2016). According to the decision taken by the Committee of Ministers at its 1196th meeting on 2 April 2014, the Governmental Committee debated orally only the Conclusions of non-conformity as selected by the European Committee of Social Rights.

12. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix II to the present report. The detailed report which may be consulted at www.coe.int/socialcharter contains more extensive information regarding the cases of non-conformity

13. The Governmental Committee also took note of the Conclusions deferred for lack of information or because of questions asked for the first time, and invited the States concerned to supply the relevant information in the next report (see Appendix III to the present report for a list of these Conclusions).

14. During its examination, the Governmental Committee took note of important positive developments in several State Parties (see Appendix IV).

15. The Governmental Committee asked Governments to continue their efforts with a view to ensuring compliance with the European Social Charter and urged them to take into consideration any previous Recommendations adopted by the Committee of Ministers. It adopted 9 warnings as set out in Appendix V to this report in respect of the following countries: United Kingdom (7), Germany (1) and Poland (1).

16. The Governmental Committee was informed of the 2018 findings of the European Committee of Social Rights on the follow-up to decisions on collective complaints. None of the states that have ratified the 1961 Social Charter and the collective complaints protocol has been affected by the decisions. After an exchange of views, the Governmental Committee welcomed the 2018 findings and agreed that reflection should continue with the European Committee of Social Rights with a view to improving the reporting system. A more systematic dialogue, between the ECSR and national authorities should be enhanced in order to overcome persistent situations of non-implementation, and also between the ECSR and the GC so that accurate information will be ensured about progress in difficult cases, in the framework of a more transparent and efficient relationship.

17. The Governmental Committee proposed to the Committee of Ministers to adopt the following Resolution:

Resolution on the implementation of the European Social Charter during the period 2013-2016 (Conclusions XXI-3 (2018)), provisions related to the thematic group "Labour rights"

(Adopted by the Committee of Ministers on ....
at the .... meeting of the Ministers' Deputies)

The Committee of Ministers,[3]

Referring to the European Social Charter, in particular to the provisions of Part IV thereof;

Having regard to Article 28 of the 1961 Charter as amended by the 1991 Protocol;

Considering the reports on the European Social Charter submitted by the Governments of Croatia, Czech Republic, Denmark, Germany, Iceland, Luxembourg, Poland, Spain and the United Kingdom;

Having regard to the failure of submitting the full report in due time by Luxembourg;

Considering Conclusions XXI-3 (2018) of the European Committee of Social Rights appointed under Article 25 of the 1961 Charter as amended by the 1991 Protocol;

Following the proposal made by the Governmental Committee established under Article 27 of the 1961 Charter as amended by the 1991 Protocol,

[3] At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those states which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter". The states having ratified the European Social Charter or the European Social Charter (revised) are (1 December 2019):
Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Republic of North Macedonia, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Turkey, Ukraine and United Kingdom.

Recommends that governments take account, in an appropriate manner, of all the various observations made in the Conclusions XXI-3 (2018) of the European Committee of Social Rights and in the report of the Governmental Committee.

III. Examination by Article

1961 EUROPEAN SOCIAL CHARTER

ESC 2§1 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 2§1 of the 1961 Charter on the ground that the working hours in a 24-hour period may be up to 16 hours.

18. The representative of Croatia provided the following information orally and in writing on the ground of non-conformity:

In its examination, the Committee referred to two Articles of the Croatian Labour Act: Article 74 (paragraph 2) and Article 89 (paragraph 1 - 3).

In respect of Article 74 (paragraph 2) of the Labour Act Croatia highlights that workers are not allowed to work 16 hours per day. The general rule that applies to all workers states that worker is entitled to a minimum daily rest period of 12 consecutive hours per 24-hour period.

Exceptionally, the daily rest period may be shorter in case of seasonal workers whose work is divided into two parts during a working day. When using this exception, an employer must provide worker with a daily rest period of a minimum 8 consecutive hours. Since the work is divided into two parts, the worker does not work for 16 hours without interruption.

The best example for explaining this exception is seasonal work in tourism. In hotels that serve only breakfast and dinner, workers are obliged to work 4- or 5-hours during morning and 4 or 5 hours during evening. All the time between morning and evening part of the shift worker is using his rest period. Usually the break is at least 4 hours. After evening part of the shift worker is entitled to 8 consecutive hours of daily rest.

Therefore, in 24-hour period worker is entitled to 8 consecutive hours of daily rest and to rest between first and second part of the working day. In each case when worker had only 8 consecutive hours of daily rest, pursuant to Article 74 (paragraph 3) employer is obliged to provide him or her equivalent periods of compensatory rest right after working time with shorter period of rest.

As for Article 89 of the Labour Act, Croatia emphasizes that this provision can be used only for specific professions and that situations are particularly:

1) *when the worker's place of work and his place of residence are distant from one another, or where the worker's different places of work are distant from one another,*
2) *in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons,*
3) *in the case of activities involving the need for continuity of service or production,*
4) *where there is a foreseeable surge of activity, particularly in agriculture, tourism and postal services,*
5) *in the case of workers in railway transport, whose activities are intermittent, and who spend their working time on board trains or whose activities are linked to transport timetables,*
6) *in the case of force majeure and where occurrences are due to unusual and unforeseeable circumstances.*

By mean of collective agreement between employer and trade unions, daily rest of 8 consecutive hours can be contracted. In case of only 8 hours of daily rest, the worker must be afforded a compensatory daily rest right after the end of period at work due to which shorter rest was used. The minimum rest period of 8 hours is possible only in case it is agreed by collective agreement. Therefore, consent of trade unions is mandatory. The only possibility to use an exception from Article 89 paragraph 3 is to make an agreement with trade unions by provisions of collective agreement. The employer is not allowed to use the exception unilaterally without the consent of trade unions.

On-call service

According to Article 60 of the Labour Act, it is possible to contract on-call service. It should be contracted either by employment contract or by collective agreement. The obligatory elements of such agreement are duration of on-call duty and compensation for worker.

The employer cannot determine the length of on-call duty. That has to be also agreed by employment contract or by collective agreement. These are contractual obligations where an employer cannot unilaterally and individually determine the length of on-call duty.

During on-call duty employee is not obliged to stay and spend time in the work place or another work-related place. That time is considered as rest period so worker can use that period as its free time. For the standby period worker is entitled to receive cash compensation agreed by employment contract or collective agreement.

In case of work during on-call duty all the work should be treated as working time.

19. The Secretariat pointed out that the question of call-work was not part of the Committee's finding of non-conformity. This was a question addressed to Croatia and Croatia was expected to provide information on this in its next report.

20. The Chair asked the Croatian representative if it is possible in Croatia to work 16 hours in 24 hours period. The Croatian representative replied that this situation is only possible in tourism. This situation is also regulated by collective agreements.

21. The Secretariat added that the Croatian Labour Act (Article 74, paragraph 2 and 3) clearly provides for the possibility of working 8 hours, having 8 hours of rest and then working 8 hours within a 24-hour period. For the ECSR this is enough to constitute a breach with the Charter.

22. The ETUC representative asked how limited this possibility is and how many workers are concerned by this. Although there is the safeguard that this flexibility can only happen in principle with the consent of trade unions following collective agreements that have been concluded, to what extend these situations are covered by collective agreements looking at the collective bargaining coverage in Croatia.

23. The Governmental Committee decided to give the possibility to the Croatian representative to provide additional information on the maximum duration of the working day and in which situations a 16-hour working day was possible.

24. The representative of Croatia presented the requested information as follows:

In respect of Article 74 (paragraph 2) of the Labour Act Croatia highlights that workers are not allowed to work 16 hours per day. The general rule that applies to all workers

states that worker is entitled to a minimum daily rest period of 12 consecutive hours per 24-hour period. Any deviation form that rule gives the worker the right to have a compensatory rest. According to Article 61 the full-time work shall not exceed 40 hours per week. Thus, there is no possibility to work for 8 hours than to have a little rest and to work again 8 hours. As for the Article 89 of the Labour Act-there is a possibility for a rest period for 8 hours, but that is only if there is a specific article on this in the collective agreement and there is no information that there is a collective agreement in Croatia right now. Even if there are the situations, as Stefan said, it is a long list of those professions; maybe they are less than 10%. So once again, it is clear from our Labour Act that the daily rest period is 12 consecutive hours per 24-hour period.

25. To the clarifying question of the ETUC representative, whether there was a possibility to work for 16 hours, the Croatian representative replied that there was such possibility, but in that case the compensatory resting period should be used right after the shift. However, there was no information available if there was a collective agreement providing for this possibility or if it was applicable in practice.

26. Following exchange of views, it was suggested to postpone the consideration of the case until September. However, this position was not supported by Greece. Thus, the Chairperson called for a vote to postpone the consideration of the case until September.

27. The Committee voted as follows: 4 votes in favour of postponing the case until September, majority voted to wait until the next assessment of the ECSR.

28. The Committee requested Croatia to provide more detailed information in the next report and await the next assessment of the ECSR.

ESC 2§1 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 2§1 of the 1961 Charter on the ground that the daily working hours may be extended up to 16 hours in a number of activities.

29. The representative of Czech Republic provided the following information orally and in writing on the ground of non-conformity:

The legislation in the Czech Republic remains unchanged.

The 16 hours of working time is only a hypothetical construction. The maximum length of a shift cannot exceed 12 hours and overtime cannot be planned in predetermined schedule of working hours and above the pattern of shifts (defined by Labour Code).

1. The maximum length of the shift may not exceed 12 hours – Sec. 83 of the Labour Code.

2. The minimum daily rest period between two shifts may not be shorter than 11 hours in every 24 consecutive hours – Sec. 90 Subsec. 1 of the Labour Code.

3. Reduction – uninterrupted rest period between two shifts can be reduced from 11 hours to 8 hours only under two conditions:

i) For exceptional extraordinary circumstances defined enumaratively by law (Sec. 90 Subsec. 2 of the Labour Code) such as work in agriculture, urgent repairs to avert danger to life or health (air/railway /mining disaster), natural disaster (floods, fire, calamity snowfall, and windstorm), and emergency situations.

ii) And under the condition that subsequent rest period will be extended by the time by which the preceding one was reduced – Sec. 90 Subsec. 2 of the Labour Code.

4. Uninterrupted rest period per week may not be shorter than 35 hours; can be reduced to 24 hours under the same condition as daily rest mentioned above and the subsequent rest period may not be shorter than 70 hours within two weeks (Sec. 92 Subsec. 1 and 3 of the Labour Code).

5. Overtime - Sec. 93 Subsec. 2 - An employee may not be ordered to do more than 8 hours of overtime work within individual weeks and 150 hours of overtime work within one calendar year.

The occurrence of extraordinary situations must be regulated by Labour Code with regards to safeguard the health and security protection at work and guarantee that employee is provided adequate rest.

It is important to underline that 8 hours of rest period does not mean that working time equals to 16 hour simply based on the calculation that 24-8=16.

30. The Chair asked if the maximum duration of the working day is 12 hours or more. The representative of the Czech Republic replied that this is the maximum length of the shift. Persons who work on shift, they do not work every day 12 hours. In the frame of one shift, the maximum duration is 12 hours as stipulated in the Labour Code.

31. The Slovak Republic mentioned Directive 2003/88/EC of the European Parliament and the Council of 4 November 2003 concerning certain aspects of the organisation of working time. The Directive specifically states that within a 24-hour period a worker can only work a certain number of hours. This is set within the limit of 12 hours. If a worker works 8 hours, then he/she has 8 hours of rest period, he/she cannot work more than 4 hours in order not to exceed 12 hours of maximum duration of the working day.

32. The representative of Greece pointed out that there are similarities between the situations of the Czech Republic and Croatia. She also agreed with the explanation, provided by the Slovak Republic and explained the content of Article 74, paragraphs 1, 2 and 3 of the Labour Code of Croatia.

33. The ETUC representative pointed out that there is still the possibility in certain circumstances and situations for an employee to work more than 12 hours within a 24-hour day according to the Czech legislation. The ETUC representative asked how broad the list of situations is, is it really limited to emergency situations such as floods, nuclear plant disasters etc. or it can be used in other situations.

34. The representative of the Czech Republic replied that this can also be applied when an employee is ill, but in case of extraordinary situation such as accidents, unusual circumstances which are beyond the employer’s control and a continuation of the service is required.

35. The representative of Ireland asked if there are any statistics on how often this has been used in the Czech Republic.

36. The representative of the Czech Republic replied that there are no exact statistics but as an example of emergency situation she mentioned the floods in 2002 or calamity snowfall in 2019 when 500.000 of citizens were without electricity supply.

37. The Secretariat confirmed that longer working time is possible and acceptable under the Charter in cases of natural disasters, nuclear meltdowns etc. The ECSR is examining more general situations (such as illness of a colleague) and a clear distinction has to be made.

38. The representative of the United Kingdom suggested the Czech Republic to provide a clarification on how exceptional these situations are (by using statistics).

39. The representative of Ukraine encouraged the Czech Republic to continue dialogue with social partners in order to bring the situation into conformity with the Charter.

40. The representative of the Czech Republic insured the Governmental Committee that the missing information will be provided to the ECSR to allow it to examine the situation with regard to Article 2§1 of the Charter. In addition, the Governmental Committee was informed that a meeting with social partners was held earlier in May 2019 with the aim to discuss cases of non-conformity. It was agreed not to change the current legislation.

41. The Governmental Committee decided to give the possibility to the Czech Republic to provide additional information on the maximum duration of the working day and in which situations a 16-hour working day was possible in the next report.

ESC 2§1 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 2§1 of the 1961 Charter, on the grounds that:

- ***working hours for seamen may go up to 72 hours in one week;***
- ***stand-by duty or the on-call service during which no effective work is performed are assimilated to rest periods.***

42. The representative of Iceland provided the following information orally and in writing on the ground of non-conformity:

As regards the first ground of non-conformity, concerning the working hours for seamen, the members of this Committee may recall the discussions we had on this subject at our meetings here in 2015. At those meetings we discussed the cases of a number of states, all dealing with this same issue concerning domestic legislation which allows the working hours for maritime workers to go up to 72 hours per week. These were the cases of Estonia, Iceland, Ireland and Italy who pointed out that their legislation on this subject reflects and is therefore in full

conformity with the standards put forth in both the ILO Maritime Labour Convention and in EU law.

Furthermore, Iceland and the other states concerned emphasized that the special nature of maritime labour requires the necessary flexibility in working hours to enable maritime workers to carry out their work in the special conditions that exist at sea. This has been acknowledged in both the ILO Maritime Labour Convention and in EU law, which both allow the maximum working hours of maritime workers to go up to 72 hours per week. As I said, the Icelandic legislation on this subject is therefore in full conformity with the international standards provided in these instruments.

At our meetings in 2015, the GC agreed to take note of the opinion of the states concerned as to the special nature of maritime labour and asked the ECSR to present its reasoning more clearly when adopting conclusions on this subject. Despite this request, the ECSR´s conclusion in this case does not explain why the ECSR does not agree with the ILO and the EU that the special nature of maritime labour warrants a 72-hour ceiling on weekly working hours in the maritime sector. In the case of Iceland, the ECSR´s conclusion simply states that the Committee understands that special circumstances affect maritime work and that it recognizes the importance of such work for the Icelandic economy. It then goes on to state, and I quote: "Still, it needs to recall that extremely long working hours, e.g. more than 60 hours in one week, are contrary to the Charter. It thus reiterates its previous conclusion in this respect".

In Iceland´s view, further explanation is still needed as to why the special nature of maritime work, which both the ILO Maritime Labour Convention and EU law have indeed deemed to warrant up to 72 working hours per week in this sector, does not do so in the view of the ECSR.

We would therefore respectfully suggest that the GC´s former request, for the ECSR to present its reasoning more clearly when adopting conclusions on this subject, be reiterated in the report for this meeting.

As for the second conclusion of non-conformity (which concerns the assimilation of on-call and stand-by shifts, during which no effective work is performed, to rest periods) this is a first-time conclusion of non-conformity for Iceland which we received in March and therefore we have not had much time to react to it. However, I can inform the GC that a meeting has been held with the Department of Labour in the Ministry of Social Affairs to discuss the ECSR´s conclusion and another meeting is scheduled later this month to discuss it further. That´s all the information I can provide on the subject at this time, but further information will be provided in the next report.

43. The Chair asked if the case law of the European Court of Justice (ECJ) of the European Union relating to permanence and on-call duty is applicable in Iceland taking into account that Iceland is not a member of the European Union, but a member of the European Economic Area.

44. The representative of Iceland explained the principle of homogeneity is applied and therefore Iceland takes into account the case law of the ECJ.

45. The Secretariat acknowledges the inconvenience of different international bodies applying different standards, but the Charter is a human rights treaty. The Committee takes into account the special circumstances that apply in the maritime sector but working 72 hours per week is not compatible with the Charter and not compatible with

health and safety considerations. The Secretariat suggested this topic could be further discussed in a future joint meeting of the ECSR and GC Bureaus.

46. The representative of Iceland insisted that Icelandic domestic legislation is in full conformity with other international standards and in this case the ECSR should present its reasoning more clearly.

47. The representative of Ireland agreed with the explanation of Iceland on this particular case.

48. The representative of Bulgaria reminded that one of the issues to be addressed by the Turin process was precisely to avoid that different international legal standards are applied.

49. The representative of Greece said that the Governmental Committee is examining the compliance of States Parties with the European Social Charter and not with other international standards, even if different instruments offer different protection of the same human rights.

50. The representative of the Netherlands pointed out the ILO convention for seafarers should be considered as “Lex specialis” in this domain. The ILO convention was agreed upon by both States Parties and social partners. Therefore, the opinion of the ECSR on how it uses this special legislation with respect to Article 2§1 of the Charter would be more than useful.

51. The Secretariat explained that ILO conventions and EU law are adopted in a different framework for different reasons. The European Social Charter is adopted as a human rights treaty with a human rights approach in mind. Nevertheless, the Secretariat suggested the question to be discussed in a future meeting with the ECSR.

52. The Governmental Committee decided to invite the ECSR to explain its position regarding this provision and to what extend other international standards are considered in the examination of a specific situation. The Governmental Committee decided to raise this question at the next meeting between the Bureau of the ECSR and the Bureau of the Governmental Committee.

ESC 2§1 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 2§1 of the 1961 Charter, on the grounds that:

- ***in some jobs the working day can exceed sixteen hours and even be as long as 24 hours;***
- ***on-call periods where no effective work is performed are assimilated to rest periods.***

53. The representative of Poland provided orally the following information on the grounds for non-compliance:

En ce qui concerne le premier motif de non-conformité que la journée de travail dans certains emplois peut dépasser seize heures ou aller jusqu'à 24 heures, le Comité Gouvernemental a été informé que la situation juridique reste inchangée et le gouvernement ne prévoit pas de changer la législation en vigueur. La législation en vigueur bénéficie du soutien des partenaires sociaux, en particulier des syndicats, en Pologne. Le gouvernement n'a pas reçu de proposition de modification de cette législation jusqu'à présent.

Les dispositions critiquées sont d'applicabilité limitée - elles ne sont pas applicables qu'aux travaux liés à la garde des biens ou la protection des personnes, aux travaux consistant en la surveillance des installations.
Le régime de 16 heures est applicable aux travaux consistant en la surveillance des installations ou aux travaux exigeant la disponibilité afin d'effectuer un travail, (par exemple le déchargement, periodes d'attente prolongées), le régime de 24 heures, est applicable, dans le cas de la garde des biens ou de la protection des personnes, aux corps des pompiers au niveau des entreprises et aux corps de sauvetage au niveau des entreprises).
Le système est entouré de dispositifs assurant au travailleur le repos adéquat à l'effort lié au travail effectué :

- *l'obligation d'assurer au travailleur, immédiatement après l'achèvement du travail, une période de repos d'une durée équivalente au nombre d'heures travaillées,*
- *l'interdiction de dépasser la durée maximale de travail par semaine (40 heures, semaine de travail de 5 jours), des heures supplémentaires ne sont pas admises,*
- *la période de référence réduite à un mois (la période de référence d'application générale est de 4 mois),*
- *le droit à un repos hebdomadaire sans interruption de 35 heures,*
- *le droit à des jours fériés, au nombre correspondant au nombre de dimanches, de jours de fête et de jours fériés au cours de la période de référence.*

En pratique, si l'employeur adopte le temps de travail de 16 heures, le travailleur travaillera de 9 à 10 jours durant la période de référence (soit 1 mois).
Si l'employeur adopte le temps de travail de 24 heures, le travailleur travaillera de 5 à 6 jours durant la période de référence (soit 1 mois).
En ce qui concerne le deuxième motif de non-conformité stipulant que les périodes d'astreinte effectuées au cours desquelles aucun travail effectif n'est réalisé sont assimilées à des périodes de repos, la représentante de la Pologne a informé le Comité Gouvernemental a que c'est un nouveau motif de non-conformité et que le gouvernement n'a pas eu le temps d'apporter des précisions car les Conclusions 2018 du CEDS ont été publiées en Mars 2019. Le ministre ainsi que les services compétents du ministère ont été dûment informés de la conclusion. Les services compétents vont prochainement entreprendre l'évaluation de la législation polonaise en la matière à la lumière de l'article 2 alinéa 1 de la Charte et l'opinion du Comité d'experts indépendants.

54. The Chair reminded the case law of the ECJ according to which the on-call period has to be counted as working hours. As a member of the EU, Poland has to comply with the EU legislation and the case law of the EU Court of Justice.

55. Concerning the first ground of non-conformity, ETUC pointed out that the situation in Poland is completely unacceptable under the Charter. Therefore, the representative of ETUC called for to apply the working methods of the Governmental Committee.

56. The representative of Greece asked clarification concerning the rest period of a worker working 24 hours.

57. The representative of Poland explained that, according to the relevant article of the Labour Code of Poland, if a person works 24 hours, he/she benefits of 24 hours of rest period immediately after the end of the working period. The worker shall take, in addition, 11 hours more of rest period, applicable to all the workers. This makes a rest period of 35 hours after a 24-hour duty.

58. The representatives of Greece and the Netherlands proposed, in the light of the suggestion put forward by ETUC, to apply the working methods of the Governmental Committee.

59. The Secretariat reminded that the GC observes the same voting rules as the Committee of Ministers, namely a two-thirds majority of votes cast and a simple majority of the Contracting Parties. If no vote on a recommendation was held, the Committee was required to proceed with a vote on a warning. If the Committee put a warning to the vote, it voted on the basis of a two-thirds majority of the votes cast. A warning serves as an indication to the Party concerned that, unless it takes steps to comply with the obligation under the Charter, the GC may propose a recommendation the next time the provision is examined.

60. The GC voted on a recommendation, which was rejected (7 votes in favour, 14 against and 19 abstentions). It then voted on a warning, which was carried (26 votes for, 2 against and 12 abstentions).

61. The GC invited Poland to provide information on the second ground of non-conformity under this provision at the next assessment of the ECSR.

ESC 2§1 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 2§1 of the 1961 Charter on the ground that the maximum weekly working time may exceed 60 hours in flexible working time arrangements and for certain categories of workers.

62. The representative of Spain provided orally and in writing the following information on the grounds for non-compliance:

L'interprétation que fait le Comité de notre système juridique revient à considérer comme une généralité une exception ponctuelle, que la réglementation autorise afin d'octroyer davantage de flexibilité à l'organisation productive dans le respect des conditions de protection dont doivent bénéficier les travailleurs en matière de santé et de sécurité.

S'il est vrai que la réglementation en vigueur dans notre pays en matière de temps de travail permet que la durée hebdomadaire du travail soit supérieure à 60 heures, nous tenons à

préciser qu'il s'agit d'une possibilité plus théorique que réelle. Nous en voulons pour preuve la façon dont cette question est abordée dans les conventions collectives. Certaines clauses reviennent régulièrement dans les conventions collectives, aussi bien de branche que d'entreprise, et celles relatives à la distribution irrégulière du temps de travail en font partie.

Ces clauses ont pour finalité, la plupart du temps, de restreindre les possibilités que le Statut des travailleurs octroie à l'employeur en la matière, essentiellement en limitant le nombre d'heures journalières ou hebdomadaires que celui-ci peut exiger à ses travailleurs.

Mais, ceci-dit, il faut informer de l'approbation du Décret-loi royal 8/2019 du 8 mars sur les mesures de protection sociale urgentes et la lutte contre le travail précaire pendant la journée de travail. Ce décret–loi royal contient des dispositions visant à établir l'enregistrement de la journée de travail, pour garantir le respect des limites du temps de travail, afin de créer, premièrement, un cadre de sécurité juridique pas seulement pour les personnes qui travaillent, mais aussi pour les entreprises ; et deuxièmement, de permettre le contrôle des limites du temps de travail, de la part de l'Inspection du Travail et de la Sécurité Sociale. Ce sont des dispositions qui ont été l'objet d'une approbation - par le biais de décret-loi royal - par ce nouveau Gouvernement (maintenant en fonctions) qui a considéré qu'il existe des raisons de nécessité extraordinaire et d'urgence.

Notamment, le chapitre III du Décret - loi-royal comprend des réformes normatives visant à réglementer l'enregistrement des heures de travail afin de lutter contre la précarité de l'emploi.

Malgré le fait que notre ordre de travail, conformément à la réglementation européenne, a été doté de règles qui permettent une certaine flexibilité en termes de temps pour adapter les besoins de la société à ceux de la production et du marché (répartition irrégulière de la journée de travail, travail posté ou heures supplémentaires), cette flexibilité ne peut être confondue avec le non-respect des règles relatives à la durée maximale du travail et aux heures supplémentaires. Au contraire, la flexibilité du temps justifie l'effort dans la réalisation de ces normes, tout particulièrement celles concernant le respect des limites de jour et d'enregistrement du jour de travail quotidien

L'une des circonstances qui a influencé les problèmes de contrôle du jour par l'Inspection du travail et de la sécurité sociale, ainsi que les difficultés de réclamation des travailleurs concernés par ce délai et qui a finalement facilité la création de journées supérieures à celles légalement établies ou conventionnellement convenues, a été l'absence dans le Statut des Travailleurs d'une obligation claire de l'entreprise quant au registre de la journée que les travailleurs réalisent.

Pour toutes ces raisons, l'article 10 de ce décret-loi royal modifie le texte révisé de la loi sur le Statut des Travailleurs, approuvée par le décret-loi royal 2/2015 du 23 octobre, afin de réglementer l'enregistrement des heures de travail, de garantir le respect des limites du temps de travail, et de créer un cadre de sécurité juridique pour les travailleurs et les entreprises et aussi de permettre un contrôle par l'inspection du travail et de la sécurité sociale. Avec cela, la résolution des divergences en termes de journée de travail et, par conséquent, de salaire, est facilitée, et les bases sont établies pour mettre fin à un élément de précarité dans les relations de travail, en reconnaissant le rôle de la négociation collective.

De manière complémentaire, l'article 11 modifie le texte révisé de la loi sur les infractions et les sanctions dans l'ordre social, approuvé par le décret-loi royal 5/2000 du 4 août, afin de classer comme infractions dans l'ordre social celles qui résultent d'un non-respect par rapport à l'enregistrement du jour.

CHAPITRE III

Mesures de lutte contre la précarité dans la journée de travail

Article 10. Enregistrement du jour ouvrable.

Le texte révisé de la loi sur le statut des travailleurs, approuvé par le décret législatif royal n ° 2/2015 du 23 octobre, est modifié comme suit :

Un. L'article 7 de l'article 34 est modifié comme suit :

«7. Le gouvernement, sur proposition du chef du ministère du Travail, des Migrations et de la Sécurité sociale et après consultation des organisations syndicales et commerciales les plus représentatives, peut prévoir des extensions ou des limitations dans l'organisation et la durée de la journée de travail et des pauses, ainsi que des spécialités dans les obligations d'enregistrement de la journée de travail, pour les secteurs, les emplois et les catégories professionnelles qui, en raison de leurs particularités, l'exigent. »

Deux. L'article 34 est modifié par l'ajout d'un nouvel article 9, libellé comme suit :

«9. L'entreprise garantira l'enregistrement quotidien de la journée de travail, qui doit inclure l'heure de début et de fin de la journée de travail de chaque travailleur, sans préjudice de la flexibilité horaire établie dans le présent article.

Par négociation collective ou par accord d'entreprise ou, à défaut, décision de l'employeur après consultation des représentants légaux des travailleurs de l'entreprise, ce compte rendu de la journée sera organisé et documenté.

La société conservera les registres visés dans cette disposition pendant quatre ans et restera à la disposition des travailleurs, de leurs représentants légaux et de l'inspection du travail et de la sécurité sociale.

De manière complémentaire, l'article 11 modifie le texte révisé de la loi sur les infractions et les sanctions dans l'ordre social, approuvé par le décret-loi royal 5/2000 du 4 août, afin de classer comme infractions dans l'ordre social celles qui résultent d'un non-respect par rapport à l'enregistrement de la journée.

Article 11. Infractions de travail.

La section 5 de l'article 7 du texte révisé de la loi sur les infractions et les sanctions dans l'ordre social est modifiée et approuvée par le décret-loi royal n ° 5/2000 du 4 août, qui est rédigé dans les termes suivants :

«5. La transgression des normes et des limites légales ou convenues en termes d'horaires de travail, de nuit, d'heures supplémentaires, d'heures complémentaires, de pauses, de vacances, de permis, d'enregistrement des horaires de travail et, d'une manière générale, du temps de travail visé aux articles 12, 23 et 34 à 38 du statut des travailleurs. "

Nouveau statut des travailleurs

Dans les dispositions de la dernière partie du décret-loi royal, la première disposition supplémentaire indique que le gouvernement constituera avant le 30 juin de cette année un groupe d'experts pour la proposition d'un nouveau statut des travailleurs.

Problèmes structurels de notre marché du travail, tels que le taux de chômage élevé et la haute temporalité, la nécessité de rééquilibrer les relations de travail entre entreprises et travailleurs et les transformations qui se produisent sur le lieu de travail à la suite de la numérisation, la mondialisation, les changements démographiques et la transition écologique rendent nécessaire de commencer immédiatement les travaux et les études qui servent de base à

l'élaboration d'un nouveau statut des travailleurs qui adapte son contenu aux défis et aux défis du XXIe siècle.

Première disposition supplémentaire. Groupe d'experts pour la proposition d'un nouveau statut des travailleurs.

Avant le 30 juin 2019, le gouvernement constituera un groupe d'experts chargé des travaux préparatoires et des études en vue de l'élaboration d'un nouveau statut des travailleurs. La composition et les fonctions de ce groupe d'experts seront déterminées par un accord du Conseil des ministres et une audition préalable des partenaires sociaux au sein de la Table de dialogue social sur l'emploi et les relations de travail mise en place au sein du ministère du Travail, des Migrations et de la Sécurité sociale.

Travailleurs publics

Dans le cas des travailleurs publics, il n'y a aucun groupe de travailleurs dont le temps de travail dépasse ce plafond de 60 heures. La durée légale du temps de travail correspond à celle indiquée dans le rapport, soit 37 heures et 30 minutes par semaine de travail effectif en moyenne sur l'année, cette durée pouvant atteindre 40 heures par semaine pour les agents qui travaillent sous le régime de la « dedicación especial ».

En ce qui concerne le personnel statutaire, l'article 48 de la loi 55/2003 du 16 décembre 2003 portant réglementation du statut cadre du personnel statutaire des services de santé, régit comme suit le temps dit « de travail complémentaire » :

« 1. Pour la prestation des services de garde et afin de garantir une présence permanente pour répondre de manière adaptée aux besoins des usagers des établissements de santé, le personnel de certaines catégories ou unités de ces établissements effectue un temps de travail complémentaire sous la forme définie dans le cadre de la planification fonctionnelle de chaque établissement.

Le temps de travail complémentaire est une modalité applicable uniquement au personnel des catégories ou unités dont le fonctionnement impliquait, avant l'entrée en vigueur de la présente loi, la réalisation de gardes ou l'application d'un système analogue pour assurer une permanence des soins, ainsi qu'au personnel d'autres catégories ou unités déterminées suite à des négociations sectorielles.

2. La durée maximale du temps de travail résultant de la somme des temps de travail complémentaire et normal est de 48 heures par semaine de travail effectif en moyenne sur un semestre, sauf si un accord ou une convention collective en dispose autrement.

Les astreintes ne sont pas prises en compte dans le calcul de la durée maximale susvisée, sauf si l'intéressé est appelé à fournir un travail ou un service effectif, auquel cas la durée du travail réalisé et les temps de déplacement sont pris en compte dans le calcul du temps de travail.

3. En aucun cas le temps de travail complémentaire n'est assimilé à des heures supplémentaires et il ne saurait être traité comme tel. Il n'est donc pas concerné par les limites que d'autres textes ou dispositions fixent ou pourront fixer concernant la réalisation d'heures supplémentaires, et la compensation ou rémunération spécifique à laquelle il peut donner droit est déterminée de manière indépendante dans les textes ou accords applicables dans chaque cas. »

Par ailleurs, l'article 49 relatif au temps dit « de travail spécial », dispose ce qui suit :

« 1. Lorsque les dispositions de l'article ci-dessus s'avèrent insuffisantes pour assurer comme il se doit la permanence des soins et à condition que des raisons liées à l'organisation de l'établissement de santé ou à la prise en charge des usagers le justifient, la durée maximale du

temps de travail résultant de la somme des temps de travail complémentaire et normal pourra être dépassée si le travailleur manifeste librement, individuellement et par écrit qu'il y consent, l'établissement étant tenu d'en faire expressément la proposition au préalable.

En ce cas, les dépassements de la durée du travail fixée à l'article 48.2 sont assimilés à un temps de travail complémentaire et ne peuvent excéder 150 heures par an.

2. Les établissements de santé peuvent définir au préalable les conditions de ce temps de travail spécial, notamment sa durée minimale, conditions que celui-ci s'engage à respecter lorsqu'il donne son consentement comme indiqué ci-dessus.

3. Dans les cas prévus au présent article, l'établissement de santé doit garantir ce qui suit :

a) nul ne peut subir un quelconque préjudice parce qu'il ne donne pas le consentement visé à l'alinéa 1, sans que puisse être considéré à cet effet comme préjudice un niveau de rémunération moindre résultant d'un temps de travail moindre ;

b) des registres mis à jour du personnel travaillant sous ce régime doivent être tenus et mis à la disposition des autorités administratives ou du travail compétentes, lesquelles peuvent interdire ou limiter, pour des raisons de sécurité ou de santé du personnel, les dépassements de la durée maximale du travail visée à l'article 48.2. »

63. The ETUC representative confirmed the recent positive change in Spain which consists of the obligation of the employer to record the working time of his employees in order to avoid overtime not being paid by the employer. In addition, he asked Spain to clarify whether it was still possible to work 60 hours a week and to what extent there were possible exceptions with regard to the system for recording hours of work.

64. Regarding the duration of working time, the representative of Spain said that recent changes were a first step towards a better control of working time and the gradual disappearance of 60-hour workweeks. On ETUC's second question, the representative of Spain indicated that all companies in all sectors are obliged to record the working time of their employees.

65. The representative of Greece acknowledged the positive developments in Spain and proposed to wait for the next review of this provision to ensure that it is no longer possible in Spain to work 60 hours per week.

66. The representative of Spain said that the new government to be formed following the last general elections in April 2019 intends to close the ratification procedure of the European Social Charter (revised). The Spanish Socialist Workers Party (PSOE) of the head of government Pedro Sanchez has largely won the legislative elections which guarantee a continuation in the policy of the government.

67. The GC took note of the positive developments in Spain and invited Spain to provide additional information on this provision at the next assessment of the ECSR.

Article 2 - The right to just conditions of work

Article 2§2 – to provide for public holidays with pay

ESC 2§2 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§2 of the 1961 Charter on the ground that the right of all workers to public holidays with pay is not guaranteed.

68. The representative of the United Kingdom provided the following information orally and in writing on the ground of non-conformity:

The UK is committed to the right to just conditions for work.

The UK continues to be a member of the EU, observing all EU law. In the case of annual leave and rest periods, the UK therefore continues to observe the provisions of the UK Working Time Directive.

When we leave the EU, the Government has committed that we will not only maintain workers' rights but enhance them.

In 2017, the Prime Minister commissioned Matthew Taylor (the Chief Executive of the Royal Society for the Encouragement of Arts, Manufactures and Commerce) to carry out a review of modern employment practices in the UK. Matthew's review, published later that year, contained 53 recommendations. The main theme of the review was that all work in the UK should be fair and decent.

The Government has accepted the vast majority of these recommendations. In December 2018, we published the "Good Work Plan" which sets out the Government's vision for the future of the UK labour market. At the heart of this vision is our commitment to improving the quality of work in the UK.

As an example of recent activity, Matthew Taylor's review recommended that the Government should develop and run an awareness campaign on holiday pay. We accepted this recommendation immediately, and the campaign took place during the first few months of this year. The campaign was intended to increase workers' awareness of their entitlement to holiday pay, particularly those who do not work fixed hours or who do not earn fixed pay. To assist these workers and their employers, the Government has also produced some more detailed guidance on calculating holiday pay in these situations. We have published this guidance on the Government website: GOV.UK.

The UK position remains as previously described. As we have already reported, the UK extended the statutory holiday entitlement beyond that required by the European Working Time Directive to 5.6 weeks. This means that for someone working 5 days a week they would mean an entitlement of 28 days which is guaranteed in law. It is important to note that workers cannot forego their right to 5.6 weeks leave for financial compensation.

In the UK there is no automatic entitlement to take leave on bank and public holidays. It is inevitable some people are required to work on these days e.g. in the retail, hospitality and transport sectors. If someone works is required to on a bank or public holiday, they are still be entitled to 5.6 weeks leave and this may mean leave being taken on an alternative day or days. However, rates of pay and circumstances in which work may be performed is a matter for individual contracts. Although employers can determine when workers can take their leave, it

is important to emphasise they cannot prevent workers from taking their leave allocation during the year.

The UK Government notes the negative conclusions reached by the Committee on the last report, but we remain of the view that we conform with the measures in Article 2 paragraph 2.

69. The ETUC representative asked how much a worker is paid if she/he works during a bank holiday; a normal wage or there is an additional compensation.

70. The representative of the United Kingdom explained that the additional rate of pay, if any, is to be decided upon between the employer and the employee prior to signing the employment agreement. Workers are entitled to 5.6 weeks, and if they do work during a bank holiday, that doesn't change the number of days off.

71. The representative of Ireland asked about clarification.

72. The Chair noted that there is no compensation and no additional holiday granted for working during bank holidays unless there is a prior agreement for compensation or additional holiday between the employer and the employee.

73. The representative of Greece pointed out that States Parties to the Charter cannot claim they are in conformity with the Charter because they are in conformity with EU law or any other international instruments which provide different levels of protection. States Parties to the Charter are supposed to support the Charter and take action to bring policies and practices in line with the Charter.

74. The representative of the United Kingdom agreed with the representative of Greece. He explained that in the UK presentation, compliance with EU law was mentioned as context only. The UK fully recognises and fully agrees that being in line with EU law does not mean that the UK is necessarily and automatically in line with the Charter.

75. The ETUC representative fully agreed with the intervention of the Greek delegate. Giving the fact that this is a third negative conclusion on this provision and also taking into account the reluctance of the UK Government to change the legal framework, the ETUC representative suggested to apply the working methods of the GC.

76. The representative of France stressed the importance to apply the same rules to the different situations and try to provide a satisfactory level of response to the situations examined by the GC. She also underlined that the consent of States Parties is absolutely necessary in order to make the most of the Charter.

77. The Chair recalled the working methods of the Committee.

78. The representative of Ireland said the conclusion with respect to the United Kingdom is about pay not being guaranteed and not about additional pay. One can see from the presentation of the UK representative that pay is actually guaranteed. If there is a requirement under the Charter or a requirement from the ECSR for additional pay, it has to be clearly said. On that basis, the Irish representative said that a vote of any type would be unjustified.

79. The representative of the Netherlands quoted the interpretation of the ECSR of Article 2§2 which says that "work performed on a public holiday should be paid at least a double the usual rate". The non-conformity comes from the fact that the UK does not pay double for work performed on a public holiday. The representative of the Netherlands underlined that the Netherlands is not paying double either.

80. The Chair made a reference to international labour law according to which employees do not work during national public holidays, but they are paid. If the employee is required to work on a public holiday, a compensatory day off shall be agreed upon or an additional payment.

81. The Secretariat clarified that the ECSR does not require anymore a double payment for work performed on a public holiday (in previous years the ECSR was applying more radical standard namely of double pay for work on a public holiday). The ECSR examines the situations on a case-by-case basis but, nevertheless, the ECSR expects that workers are paid more than the normal rate when working on a public holiday. A 50% or 75% of increase are definitely not enough according to the ECSR requirements. But at the same time it takes into account other factors such as combination of pay increase with time off or other compensations.

82. The representative of Greece called the GC to apply its working methods.

83. The GC voted on a recommendation, which was rejected (1 vote for). It then voted on a warning, which was also rejected (10 votes for, 16 against and 13 abstentions).

84. The GC invited the United Kingdom to take all the necessary steps to bring the situation in conformity with Article 2§2 of the Charter and decided to await the next assessment of the ECSR.

Article 2 - Right to just conditions of work

Article 2§4 - RESC to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, (ESC) to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations

ESC 2§4 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks, despite the existing risk elimination policy, are not entitled to appropriate compensatory measures.

85. The representative of Luxembourg presented the following information:

Bien qu'au Grand-Duché de Luxembourg, aucune disposition ne prévoit actuellement d'accorder soit une réduction de la durée de travail, soit des congés payés supplémentaires aux salariés qui sont employés à des occupations dangereuses ou

insalubres, des efforts considérables ont été mis en œuvre par l'Inspection du travail et des mines (ITM) au cours des quatre dernières années en vue de réduire le nombre des accidents de travail et des maladies professionnelles.

La loi du 17 juin 1994 concernant la sécurité et la santé des travailleurs au travail, basée sur la prévention et l'élimination des risques, qui a entre-temps été intégrée au sein du Code du travail et qui pose les principes et obligations générales en matière de sécurité et de santé au travail, résulte de la transposition en droit national de la directive 89/391/CEE du 12 juin 1989 concernant la mise en œuvre de mesures visant à promouvoir l'amélioration de la sécurité et de la santé des travailleurs au travail, dont le but était notamment de faire diminuer les accidents du travail par une meilleure prévention des risques et une meilleure protection des salariés.

L'objectif de la loi du 17 juin 1994, qui est actuellement repris au sein de l'article L.311-1 du Code du travail dispose que : «Le présent titre a pour objet la mise en œuvre de mesures visant à promouvoir l'amélioration de la sécurité et de la santé des salariés au travail. A cette fin, il comporte des principes généraux concernant la prévention des risques professionnels et la protection de la sécurité et de la santé, l'élimination des facteurs de risque et d'accident, l'information, la consultation, la participation équilibrée des employeurs et des salariés, la formation des salariés et de leurs représentants, ainsi que des lignes générales pour la mise en œuvre desdits principes.»

Il incombe dès lors à l'ITM non seulement de veiller à l'application de la législation, de promouvoir l'amélioration de la sécurité et de la santé des salariés, mais également d'intervenir comme partenaire privilégié tant de l'employeur que du salarié en matière de sécurité et de santé au travail en vue d'accélérer la compréhension de ceux-ci ainsi que la mise en œuvre efficace de la réglementation en matière de sécurité et santé au travail.
La prévention mise en œuvre par l'ITM consiste bien sûr en un effort déterminé pour réduire les accidents du travail et les maladies professionnelles, mais la prévention, dans le cadre d'une inspection du travail moderne, est bien plus que d'éviter simplement les risques et les incidents. En effet, les principes et les méthodes des stratégies de prévention modernes peuvent être applique à tous les domaines fonctionnels relevant de la responsabilité de l'ITM : sécurité et santé au travail, relations professionnelles, conditions générales de travail, travail illégal, pratiques de travail déloyales, plaintes et règlement des différends, enquêtes sur les accidents, etc.

En veillant au respect du droit du travail et des normes sécuritaires du travail, l'ITM contribue continuellement au développement d'une culture de prévention et de coopération en matière de conditions de travail et de sécurité et de santé au travail. En effet, l'imposition d'obligations aux employeurs et aux salariés contribue à la qualité, l'efficacité, la productivité et la réussite des entreprises, et à la santé, la sécurité et le bien-être général de tous les salariés du Grand-Duché de Luxembourg. Par ailleurs, dans le cadre de ses missions, l'ITM met tout en œuvre afin de promouvoir le credo selon lequel la prévention est un atout et non un surcout.

Depuis le 1er avril 2015, un nouvel organigramme fonctionnel ainsi que les nouveaux services suivants ont été mis en place auprès de l'ITM :

a) le service «Accidents, Enquêtes et Contrôle (AEC)», dont la majeure partie sont des ingénieurs techniciens en raison de la complexité des affaires, ont principalement pour mission d'assurer une astreinte nationale et de mener des enquêtes suite à un accident de travail, mais également de se rendre sur un lieu de travail dans le cadre d'un danger grave et imminent avant qu'un accident du travail ne se produise ;

b) le service «Inspections, Contrôle et Enquêtes (ICE)», dont les agents ont principalement pour mission de mener des enquêtes en entreprise ou d'effectuer des contrôles sur un lieu de travail suite à une communication d'une plainte en matière de conditions de travail ;

c) le service «Etablissements Soumis à Autorisation (ESA)», dont les agents sont principalement des ingénieurs ou ingénieurs techniciens, et qui ont principalement pour mission d'établir des autorisations en matière d'établissements classés et de contribuer ainsi au développement d'une culture de prévention et de coopération en matière de sécurité et de santé au travail lorsqu'ils sont amenés à exercer leurs missions notamment dans le cadre des établissements classés ;

d) le service du «Help Center et Call Center (HCC)», dont les agents ont principalement pour mission d'assurer la réception des réclamations et de communication de renseignements aux salariés et employeurs et ainsi que de garantir la proximité envers ces derniers et d'effectuer des contrôles en matière de détachement de salariés en vue de lutter contre le dumping social et la concurrence déloyale et de protéger les droits des salariés.

Dans le cadre de sa mission de prévention des risques professionnels et de la protection de la sécurité et de la santé sur le lieu de travail, l'ITM a mis en place depuis le 1er juin 2018 le service « Contrôles, Chantiers et Autorisations (CCA)» en vue de renforcer la promotion d'une culture de prévention, de sensibilisation et d'information en matière de sécurité et de santé au travail des entreprises et des salariés du secteur de la construction qui sont le plus exposés aux risques d'accidents du travail.

La mission principale de ce service consiste à effectuer pendant toute l'année des contrôles en matière de conditions de travail, de sécurité et santé au travail, en matière de détachement de salariés ainsi qu'en matière d'établissements classés sur des chantiers temporaires ou mobiles.

L'objectif de ce service est de prévenir et de sensibiliser de façon durable les employeurs, les salariés, les salariés désignés ainsi que les délégués à la sécurité et à la santé et partant de réduire continuellement le nombre des accidents du travail et des maladies professionnelles, voire de sauver des vies.

Ainsi, en veillant au respect du droit du travail et des normes sécuritaires du travail, l'ITM contribue continuellement au développement d'une culture de prévention, à la valorisation du travail et à l'amélioration des conditions de travail de tous les acteurs du monde du travail.

Par ailleurs, la réduction des irrégularités en matière de conditions de travail et de sécurité et santé au travail contribue à la qualité, l'efficacité, la productivité, la réussite et à l'accroissement de la compétitivité des entreprises, ainsi qu'à la promotion de la sécurité, de la santé et du bien-être au travail de tous les salariés du Grand-Duché de Luxembourg.

Aussi, l'ITM met à la disposition des salariés et des employeurs un vaste arsenal de documents explicatifs en matière de droit du travail et de sécurité et santé au travail.

Pour le droit du travail, il s'agit plus particulièrement des plus de 1.200 FAQ (Questions-Réponses) qui sont disponibles en langue française ainsi qu'en langue allemande) sur le site internet de l'ITM. A noter que des FAQ en matière de sécurité et de santé au travail sont actuellement en cours d'être établies et seront disponibles prochainement.

En matière de sécurité et de santé au travail, l'ITM dispose toutefois d'ores et déjà d'une multitude de prescriptions ou de conditions-types qui sont également disponibles sur le site internet de l'ITM (www.itm.lu).

Pour ceux qui veulent en savoir davantage ou bien qui ne retrouvent pas leurs réponses à leurs questions sur le site internet de l'ITM, ils peuvent obtenir les renseignements nécessaires soit en contactant un des agents du «Help Center et Call Center (HCC)» tous les jours ouvrés entre 8h30 et 12h00 et entre 13h30 et 16h30, soit en nous adressant un courrier (B.P. 120 L-2010 Luxembourg) ou courriel à l'adresse e-mail «contact@itm.etat.lu» ou bien encore en se rendant à un de nos quatre guichets régionaux à Diekirch (lundi, mardi, jeudi et vendredi), Esch-sur-Alzette (lundi à vendredi), Strassen (lundi à vendredi) ou à Wiltz (mercredi), dont les heures d'ouverture sont de 8h30 à 11h30 et de 14h00 à 17h00.

Etant donné que le secteur de la construction représente actuellement plus d'un quart des accidents du travail et a connu ces derniers temps de nouveau un certain nombre d'accidents graves, voire tragiques, une semaine de la sécurité au travail a été organisée chaque année depuis 2017, en étroite collaboration avec les représentants des employeurs, les chambres professionnelles, les syndicats, l'Institut de Formation Sectoriel du Bâtiment (IFSB) et l'Association d'Assurance Accident (AAA) et l'Inspection du Travail et des Mines (ITM). A noter que cette initiative s'inscrit dans la stratégie de prévention en sécurité et santé au travail « VISION ZERO».

Il s'agit au cours de cette semaine de la sécurité et santé au travail de mettre en œuvre des synergies en vue de contribuer au succès de la semaine de sécurité au travail dont l'objectif sera de prévenir et de sensibiliser de façon durable les employeurs, les salariés, les salariés désignes ainsi que les délégués à la sécurité et à la sante en matière de conditions de travail et surtout en matière de sécurité et de santé au travail.

A cet effet, il est prévu de multiplier les contrôles sur les chantiers pour attirer l'attention des employeurs comme des salariés sur les risques potentiels et les mesures de prévention.

86. The representative of Greece noted that the Government of Luxembourg has invested a lot in the prevention. The first question was if there was an agreement with social partners on this policy and second, if there was a statistic on the effectiveness of this policy.

87. The representative of Luxembourg replied that there he did not have clear information if there was the agreement with social partners or not. As for the second question, he stated that the statistics were problematic, particularly because of how they were

collected. He further elaborated that in general commuting accidents were calculated together with other work accidents, thus the number was usually quite high. Currently, this has been changed and separated, but there are no numbers now.

88. The representative of the United Kingdom questioned the very last point, asking if there was sufficient evidence to state that the numbers were reduced.

89. The representative of Luxembourg replied that what was certain, that the work accidents were high, but as indicated, this was due to commuting accidents. Since 2018 the data for commuting accidents was separated and the first figures seem to illustrate the fact that the numbers on even commuting accidents went lower now as well.

90. The representative of the ETUC asked to clarify, how wide spread was the mining sector in Luxembourg and why there were some privileges, such as additional leave, provided by law only for miners and not for other categories of workers, given the new technologies may bring new risks.

91. The representative of Luxembourg explained that the given provision in law is rather historic, since Luxembourg has closed down most of the mines. Some of them were transformed into museums where there were visits organised. Currently it was not possible to provide statistical data on how many miners benefit from these privileges.

92. The representative of the ETUC further asked to what extent the safeguards not provided by the law were guaranteed by the collective agreements.

93. The representative of Luxembourg replied that at the moment there were two big collective agreements, but the companies prefer to increase the pay rather than reducing the working time or giving additional leave.

94. The vice Chair summarised the situation stating that there was a very long-standing non-conformity starting from 1996. The approach by Luxembourg was different to the article. The Luxembourg authorities tried to reduce risks and prevent unhealthy occupation. However, the ESCR believed that this was not the only scope of the article, but also additional paid holidays or reduced working hours should be also provided.

95. Thus, the vice Chair raised the question, whether the Committee was satisfied with the position of Luxembourg and what should be done in this case. Should the Committee ask the Luxembourg, as in 2004 and 2007, for introducing compensatory measures in respect of work, where it was not possible to eliminate the risk entirely? Or the Committee should wait until the next assessment by the ECSR?

96. The representative of the UK expressed support for the approach of Luxembourg aiming to reduce exposure to risk. His interpretation of the case law was that the ECSR had tented to interpret Article 2§4 as focusing on two things: either the elimination of risk or compensation for exposure to risk. In many circumstances it is not possible to eliminate risk entirely, and therefore it is desirable to encourage governments to introduce policies and legislation that would reduce risk. It was perceived by him, that this was the approach favoured by Luxembourg.

97. The representative of the Netherlands echoed the intervention made by the UK representative. By citing the relevant provisions from the 7th edition of the digest of the ECSR case law, she further noted that according to the ECSR interpretation, either preventive measures should be implemented to eliminate risks, or when it was not possible to eliminate of sufficiently reduce these risks, some form of compensation should be ensured. In this case, the approach by Luxembourg, as well as by UK and Netherlands, was to eliminate/reduce these risks, rather than provide compensations. Thus, the Netherlands was supporting the approach of Luxembourg to creating a system for prevention rather than financial compensation. And this was a valid argument in this discussion.

98. The representative of the ETUC further commented that indeed this was a long-standing non-conformity. The Luxembourg's approach is of course welcomed, but the problem was that there was no evidence to what extent this policy was working, no numbers on reduced accidents were available, the only category of workers that was getting the additional compensatory measures were the guides in the mines, and not the miners.

99. The representative of the ETUC further suggested taking a strong stand and requiring Luxembourg to bring the situation into conformity with the Charter, given that the last time the question was discussed was 11 years ago and there was no evidence of changes or that the policy was working.

100. The representative of Estonia supported the approach by Luxembourg, UK and Netherlands. In 2019 the goals set by those countries to eliminate hazardous working conditions were the right goals. If we look at compensations for dangerous working conditions, it may give a sign to the employees working in such conditions, that it is acceptable to work in such conditions, if you are compensated by reduced working time or by additional holidays. Thus, the approach should be different, it should not be perceived as acceptable to work in such conditions, even if compensation was provided. Thus, the goals set by these countries are right and these kinds of measures should be supported by other member States.

101. The vice Chair noted that different arguments were heard regarding the given ECSR decision. She reminded that this was a long-standing issue. Though it was previously also mentioned by the representative of Luxembourg that the high number of work injuries was due to commuting, but this was not the only reason, there were other types of injuries as well. Until this is completely eliminated, the question was whether the Committee was satisfied with the measures taken by Luxembourg. The Committee had decided in 2004 to ask Luxembourg to introduce compensatory measures and in 2007 the Committee had decided that it would wait until the next assessment. The question was whether now the Committee was canceling its previous decisions and not requiring anything from Luxembourg, noting that the situation in Luxembourg had not changed.

102. The representative of France noted that the arguments presented by Luxembourg were acceptable and the Charter provision may be interpreted in broader way, it does not provide for a requirement on formal assessments. The options should be proposed that the members can vote as they would feel.

103. The representative of Ireland broadly agreed with what the chairperson and the representative of the ETUC previously said. The issue was that Luxembourg had not provided data that this preventive approach was working. The question was if there was a will to be more engaged with the Charter and if there was an ability to provide statistics that would help to support the case put forward.

104. The representative of Luxembourg replied to the two questions. First, he could not answer whether Luxembourg was ready to bring the situation in conformity with the Charter, as this was a political decision to be taken and he could only transmit the question to the Ministry of Labour. Second, as regards the statistics, it would be possible to provide the statistics, as since 2018, the insurance companies did work to segregate the data on commuting, building and other risks.

105. The representative of UK made three remarks: First, according to his view Luxembourg had provided information on measures that were taken intended to reducing the exposure to risks, what was not provided by Luxembourg was the statistics whether this approach worked. Second, while Luxembourg was willing to provide the statistics, that would help to assess the effectiveness of the approach, this information was being collected only as of 2018 and it would require some time to be able to see if the situation was improving. Third, the representative of Luxembourg was willing to take the message of the Committee to the relevant Minister. The question was, what message should this be and what would be the best way to send such message to the government.

106. Following the discussions, the vice Chair suggested to follow the proposal made by France and to vote for a recommendation. In case the recommendation would not passes the vote, then a warning to be voted and if the warning would not be adopted, to encourage Luxembourg to provide additional statistics.

107. The Committee proceeded with the vote as follows: 0 for recommendation, 5 in favour of warning, 14 against and 21 abstentions. Both recommendation and warning were not adopted.

108. The Committee strongly recommended Luxembourg to provide evidence, such as detailed statistics, that the preventive approach is working.

ESC 2§4 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks, despite the existing risk elimination policy, are not entitled to appropriate compensatory measures.

109. The representative of UK presented the following information:

The UK Government, respectfully, continues to disagree with the Committee's conclusions on Article 2, Paragraph 4 (Elimination of risks in dangerous or unhealthy occupations). The approach taken by the UK Government, (outlined in the 37th report), is explicitly focused on reducing exposure to occupational health risks in line with a set of principles enshrined in legislation. The UK has a robust framework for

reducing risk that is focused on reducing exposure under the established principles of elimination, reduction, assessment and control of risk. In the UK Government's continuing view, this goal-setting approach presents the potential for higher levels of risk control than simply focusing on reducing the time of exposure to the risk or by providing additional leave once an employee has been exposed to risks to their safety or health at work.

Empirical data shows that the UK performs consistently well compared to other large economies and the EU average on key health and safety outcomes such as workplace injuries, work-related illnesses and health and safety practices in workplaces. The UK has one of the lowest rates of fatal injury across the EU. European surveys reveal that the majority of UK workers are confident that their job does not put their health or safety at risk (82% of UK workers, compared with the EU-28 average of 77%). Additionally, UK businesses are more likely to have a health and safety policy, and to follow this up with formal risk assessment, compared to other EU countries. (92% of UK businesses compared with the EU-28 average of 77%).

110. The representative of the ETUC noted that the situation in UK was quite similar to the situation in Luxembourg and asked to clarify whether there was statistical data in UK showing to what extent the prevention policy was effective.

111. The representative of UK mentioned that he did not have the statistics due to the reason that no specific request had been made to get such statistics and it was not known if such statistics existed. Thus, he would verify this information.

112. The Chair suggested adopting the same approach as in case of Luxembourg and request the UK to provide statistics which would show that there was an improvement with regard to work-place injuries.

113. The representative of Greece agreed with such suggestion, noting that substantial evidence should be provided to support the approach taken by some countries which was different than the interpretation provided by the ECSR.

114. Mr. Malinowski, from the Secretariat, suggested, that considering the discussion on Art 2§1 and 2§4, maybe there was a need to look deeper into the mandate of the Governmental Committee and use the available tools to facilitate closer dialog between the Committee and national authorities which are developing alternative explanations or ways of responding to the requirements of the Charter. In such cases the respond given by the Committee, maybe, should be more general rather than country specific by adding different elements to the interpretation of the Charter driven by the developments in the modern world.

115. The Chair suggested including this proposal for consideration at the next bureau meeting.

116. The representative of the ETUC suggested that the dialog with the ECSR should be enhanced, particularly to discuss the issues that were discussed by the Committee in relation to Art 2§1 and 2§4, as the ECSR was the one taking the decisions on conformity or non-conformity.

117. Further discussions suggested that the Committee should facilitate the dialog between both the ECSR and member States, to revile the root-causes of such situations when member States' approach is different than the interpretation of the ECSR.

118. The Chair suggested that at the next bureau meeting this issue would be considered and the Committee would be informed.

119. The GC decided adopting the same approach as in case of Luxembourg and requested that UK provide statistics which would show that there was an improvement with regard to work-place injuries and decided to wait for the next assessment of the ECSR.

Article 2 - Right to just conditions of work

Article 2§5 - to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest

ESC 2§5 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 2§5 of the 1961 Charter on the ground that agricultural workers may, pursuant to collective agreement or individual contract, postpone weekly rest, resulting in an excessive number of consecutive working days.

120. The representative of the Czech Republic provided the following information:

<u>National legal order:</u>
Section 90a of the Labour Code stipulates: "As regards seasonal agricultural work, a rest period between the end of one shift and the start of the next one (where such rest period was reduced pursuant to section Sec. 90 Subsec. 2) may be compensated (to an employee who is older than 18 years) in the subsequent three weeks since the said reduction.

That means that the compensatory time off will not be granted immediately in the next rest period [as stipulates Sec. 90 Subsec. 2) of the Labour Code], but no later than within three week-time.

<u>Examples:</u>
1. Standard situation
Minimum rest period between two shifts amounts to 11 hours. However, due to unexpected situation the rest period will be reduced by 2 hours 11 – 2 = 9.
The following rest period have to be extended by two hours = reduction from preceding rest period i.e. 11 + 2 = 13 hours (as stipulated by Labour Code Section 90 Subsec. 1).).

2. Exception for agricultural worker
Reduction from the preceding rest period amounting to two hours will be granted in three week-time (no later), not in the consecutive rest period next day. Besides, weekly and monthly rest periods are also guaranteed.

Uninterrupted rest period per week may not be shorter than 35 hours; can be reduced to 24 hours under the same condition as daily rest mentioned above and the subsequent rest period may not be shorter than 70 hours within two weeks (Sec. 92 Subsec. 1 and 3 of the Labour Code).

So it doesn't mean that employees work without rest period during the three-week time or twelve or more days in a row. There is nothing resulting in an excessive number of consecutive working days.

National regulation is fully in compliance with EU Directive 2003/88 stipulating derogations and exceptions in Article 17 in case of activities involving the need for continuity of service or production, such as agriculture, dock and airport workers, gas, water and electricity production, care provided by hospitals, prisons etc.

121. Following some clarifications provided by the secretariat on the historic aspect of the non-conformity, the representative of the Czech Republic told that there was a misunderstanding and it was not entirely clear for the Czech Government, where was the non-conformity with the Charter. She further explained the legislation, regarding the workers involved in agricultural works, providing citations from the Labour Code, and explaining that the law did not provide for excessive number of working hours. Moreover, the provisions in question were in line with the Art. 17 of the EU directive.

122. To the clarifying question on whether the weekly rest period can be shortened and/or postponed, the representative of the Czech Republic explained that the weekly rest period could be shortened, but the minimum given by law must be kept; the rest period between two shifts could not be less than 8 hours and the reduction will be granted in three week-time. The minimum of 24 hour rest period per week could not be postponed and only the reduced rest time could be granted within the frame of 3 weeks.

123. The representative of Greece was not convinced by the explanation provided by the representative of the Czech Republic, since the Government had many opportunities to explain the situation to the ECSR before, which was not the case. Thus, the working methods should be applied, and a voting procedure should be called.

124. Following the further discussions, it was, once again stated by the representative of Czech Republic, that the weekly rest period could not be postponed, but only reduced.

125. Given that the representative of the Greece insisted on the vote, the Committee proceeded with the vote, as follows: 0 votes in favour of a recommendation; 1 vote in favour of a warning, 26 against and 12 abstentions. Thus, the warning was not adopted.

126. The Committee required the Czech Republic to explain in a greater detail the situation in their next reporting cycle and decide to wait for the next assessment of the ECSR.

ESC 2§5 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§5 of the 1961 Charter, on the ground that there are inadequate safeguards to prevent workers from working for more than twelve consecutive days without a rest period.

127. The representative of UK provided the following information:

The situation where a person might work more than 12 days between rest is where a special case under Regulation 21 of the UK Working Time Regulations applies. For example, this may include:

- *Workers whose home and work locations are a long way from each other such as offshore workers.*
- *Workers at docks and airports.*
- *Workers working on gas, water and electricity production.*
- *Research and development activities and other industries where work cannot be interrupted on technical grounds.*
- *Postal and telecoms services.*
- *Circumstances where there is a temporary but foreseeable surge of activity such as agriculture*
- *Where circumstances are affected by unusual, unforeseeable or exceptional events, or an accident or the imminent risk of one.*

By their nature, these are very limited circumstances. In such cases, compensatory rest is due under Regulation 24 and are in keeping with Article 17 of the EU Working Time Directive.

It is important to point out that different rest break periods apply to young workers – for example, young workers are usually entitled to two days off each week. This cannot be averaged over a two-week period and should normally be two consecutive days.

The UK Government notes the negative conclusions reached by the Committee on the last report. However, we remain of the view that we conform to the measures in Article 2 paragraph 5.

128. The representative of the ETUC noted that there was no new information provided by the representative of the UK. It was clear that there was no intention by the Government of UK to change anything in this regard in the near future.

129. The representative of the UK further referred to the Secretariat, asking to explain further why the UK was found in non-conformity with the Charter. Moreover, it was apparent that there was a contradiction between the EU Directive on Working Time and the Charter interpretation.

130. To the question whether there it was known how many people work under the above-mentioned condition of 12days work period, the UK representative explained that there was not a specific statistic on that, as it was difficult to collect such data.

However, there was a statistic showing that 84% of workers benefit from Sunday off, thus it can be implied that they don't work 12 days in a row.

131. Proposal of the Netherlands to call for a vote was supported by the Greece and France, calling for the Committee members to consider, what would be the best for their countries.

132. The Committee proceeded with the voting as follows: 0 voted in favour of recommendation; 16 in favour of a warning, 4 against, 18 abstentions. Thus, a warning was adopted.

Article 4 – The right to a fair remuneration

Article 4§1 – to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living

ESC Article 4§1 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 4§1 of the 1961 Charter on the ground that the statutory minimum wage is not sufficient to ensure a decent standard of living to all workers.

133. The representative of Germany provided the following information:

In the Federal Republic of Germany, wages are primarily set by employers and employees or - at collective level - by the collective bargaining parties (employers/employers' associations and trade unions). The parties to a collective bargaining agreement or to an employment contract are free to decide what amount of remuneration they deem appropriate. This follows from the principle of private autonomy of Article 2 of the Basic Law or - where wages are set by the collective bargaining parties - from the principle of collective bargaining autonomy (Article 9(3) Basic Law). Various criteria may be relevant in determining wage levels. These include, for example, the training and professional experience, but also the personal skills of the applicant. The amount of wages can also be influenced by the cost of living and the general wage level of the respective regions. The state does not influence what parameters the collective bargaining parties or parties to an employment contract take into account when making their decisions or how they weigh them. This has not changed in the period under review.

Germany introduced a general statutory minimum wage of EUR 8.50 gross per hour on 1 January 2015 which was increased to EUR 9.19 on 1 January 2019. It will increase to EUR 9.35 on 1 January 2020.

The development of the level of the general minimum wage is decided by an independent commission of the collective bargaining partners with the aid of academic experts. In the context of an overall assessment, the commission examines, for example, what level for the minimum wage is appropriate in order to help ensure adequate minimum protection for employees. The Minimum Wage Commission uses the development of collectively bargained pay scales as the basis for its decisions.

The Federal Government then decides whether this decision will be made binding by an ordinance. However, it cannot deviate from this decision in terms of content.

The general minimum wage is to be understood as the lowest possible wage. The Federal Government is of the opinion that it guarantees an adequate minimum level of protection. In addition, there are still sectorial minimum wages in accordance with the Posted Workers Act, which are generally higher than the general minimum wage. Sectorial minimum wages are based on agreements concluded by the collective bargaining parties without state influence.
Almost all workers are already protected by the general minimum wage. Only young people without training and the previously long-term unemployed are excluded in the first six months of new jobs.
The protective effect of the minimum wage must also be seen in the context of the system of basic income support for jobseekers in Germany. This can be illustrated using the example of a one-person household: Under the basic income support scheme, standard needs have been set at EUR 424 per month. With the national average of recognised accommodation costs of EUR 338, this adds up to a total of EUR 762 that must be covered. Taking the exempted amounts of gainful employment into account, there is no entitlement to basic income support if the socially insurable gross income from work amounts to at least approximately EUR 1,395 (~ EUR 1.062 net). For a 39-hour working week, this corresponds to a gross hourly wage of EUR 8.28 which means that at a minimum wage of EUR 9.19 per hour (or EUR 1,553 per month); there is no entitlement to basic income support benefits.

As to the requested updated figures concerning net minimum and net median wages it must be stated that data on average monthly net wages are not available. The Structure of Earnings Survey only collects data on gross monthly earnings in the companies of sectors A to S. Net wages cannot be deduced from that, because the tax deductions depend on the household constellation of the employees. The Structure of Earnings Survey is a survey of employers in which only data on the gross earnings of employees are collected.
The table provided for the 35th report on the application of the European Social Charter (20 occupations with the lowest average gross monthly earnings) on the basis of the Structure of Earnings Survey 2014 still contains the most updated figures available. The figures for the year 2018 are not yet available. For the year 2018, the average gross monthly earnings in the 20 sectors with the lowest average gross monthly earnings of full-time employees can be identified on the basis of the quarterly earnings survey.

*As far as salaried **federal employees** are concerned, we can state that according to Annex 1, "hourly wages TVöD Bund" (collective agreement for the public service) of the circular letter of 19 July 2019 - D5-31002/51#9, the collectively negotiated lowest possible hourly wage, calculated in accordance with section 24(3) 3 TVöD, has been 11,22 euros since 1 April 2019.*

Average gross monthly earnings without special bonus payments of full-time employees in 2018 for the 20 occupations with the lowest average earnings

Results for Germany

Sectoral nomenclature for economic activities	EUR
N78 Employment activities	2,338:
I56 Food and beverage service activities	2,342
I55 Accommodation	2,457
N80 Security and investigation activities	2,555
S96 Other personal service activities	2,588
S81 Services to buildings and landscape activities	2,612
H49 Land transport and transport via pipelines	2,810
H53 Postal and courier activities	2,826
R92 Gambling and betting activities	2,829
C10 Manufacture of food products	2,982
G47 Retail trade, except of motor vehicles and motorcycles	2,982
C13 Manufacture of textiles	3,056
H52 Warehousing and support activities for transportation	3,130
C16 Manufacture of wood and of products of wood and cork, except furniture	3,168
F43 Specialised construction activities	3,186
Q87 Residential care activities	3,228
E38 Waste collection, treatment and disposal activities; materials recovery	3,243
E39 Remediation activities and other waste management services	3,247
N82 Office administrative, office support and other business support activities	3,268
M75 Veterinary activities	3,298

Data basis: Quarterly Earnings Survey 2018

134. The vice Chair thanked the representative of Germany for the information provided and informed the GC that a statement of the International Organisation of the Employers(IOE) on this case was distributed to all representatives (see in Appendix 12) . In this respect she said that the IOE considers that the ECSR uses a rigid mathematical interpretation for assessing the net minimum wage without taking into account neither the specificities of a given country, nor the business needs and that such a strict interpretation leads to important difficulties in applying article 4.1 in many European countries – among the ones that have the highest minimum wage. The chair, therefore asked to the German representative whether the statement from IOE, that was distributed at the beginning of the meeting, does mean that Germany thinks that is in conformity with the Charter.

135. In reply to the question asked by the Chair, the representative of Germany pointed out that the statement was not distributed by the country but by the employers' organisation in order to give some more information in the prospective of the employers. The German representative stated that the Ministry is aware of that information.

136. The representative of the Netherlands noted that the Representative of Germany said that a statutory minimum wage has been introduced with two exceptions: the young people and the long unemployed people. She asked whether the latter are not entitled to the statutory minimum wage and, if that is the case, to what they are entitled to. The Representative of the Netherlands also noted that unemployed people should have an incentive to go to work and to earn at least the statutory minimum wage.

137. In reply to the question asked by the Representative of the Netherlands, the Representative of Germany noted that unemployed people are not entitled for the minimum wage for 6 months but after 6 months they are entitled to have the minimum wage.

138. The Representative of the Netherlands asked to what they are entitled to for the first six months and whether they are subsidised by the Government.

139. The Representative of Germany noted that in that period they are subsidised by the Government and are helped by the labour agencies to get a job.

140. The Representative of the Netherlands asked whether they receive more than when they would have stayed at home.

141. The German representative noted that they receive more than when they would have stayed at home but that the Government do not have the exact figures. The philosophy is that it is always better to do something than staying at home. They are encouraged to work.

142. The vice Chair asked what the purpose is of referring to the Structure of Earnings Survey. She noted that the Representative of Germany gave to the Secretariat a table with average gross monthly earnings for different sectors. She also noted that Germany is part to the Code of Social Security and in order to ratify some articles of the Charter the States Parties need to be in line with the Code. When in the Code we refer to the structure of earning survey it is used to show what the minimum wage is. The Chair asked the Representative of Germany whether by stating what is the structure they are referring to the same idea as this earning is used when we measure the minimum wage in the Code. She noted that if this is the case, the Representative of Germany is just explaining something that is not explained in the Code. In the table the Representative of Germany states that the Structure of Earnings Survey collect data in gross monthly earnings in the companies of sectors A to S and net wages cannot be reduced from that.

143. The Chair underlined that when we want to measure the minimum wage, we are trying to use the median wage or the average wage in the larger sector, in order to use it as a reference point. She asked whether despite having the ECSR since 2007 (2010-2014-2018) found the situation non conformity, Germany feels that it should be measured in a different way so that Germany would be in conformity. The Chair asked to the rest of the member of the GC how they should proceed.

144. In reply to the question asked by the vice Chair, the representative of the United Kingdom noted that one possible course of action following from this discussion would be to pose some questions to the ECSR. In particular, the representative of the United Kingdom suggested asking why the ECSR consider 60% as a threshold and why the ECSR focus on net earnings rather than gross.

145. The Secretariat underlined that it is the ECSR long term approach and pointed out that there has been a discussion between the two Bureaus of the GC and the ECSR on this subject. The Secretariat also noted that there is a study explaining why the ECSR adopted this approach. The Representative of the United Kingdom would

be very interested to see the study. He underlined that the fact that things have been done in a way for a long time does not mean that they cannot be questioned.

146. The GC took note of the situation in Germany and suggested to Germany to send updated figures concerning net minimum and net median wages to the ECSR for the next assessment.

ESC Article 4§1 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 4§1 of the 1961 Charter on the grounds that:

- ***the minimum wage for workers in the private sector does not secure a decent standard of living;***
- ***the minimum wage for contractual staff in the civil service does not secure a decent standard of living.***

147. The Secretariat recalled that the situation has been not in conformity since 1998.

148. The representative of Spain provided the following information:

Sur ce point, le Comité demande une nouvelle fois des informations sur la valeur nette du salaire minimum et du salaire moyen. Il insiste sur le fait qu'en dépit de la hausse du SMI, la situation demeure inchangée, et maintient son précédent constat de non-conformité.

Concernant ce constat répété de non-conformité, selon lequel le SMI en Espagne ne permettrait pas d'assurer un niveau de vie décent, nous tenons à insister sur le fait que son montant constitue une garantie de rémunération minimale suffisante pour les travailleurs. Celui-ci fait l'objet d'une révision annuelle dans le cadre du dialogue social et conformément aux critères définis dans le Statut des travailleurs. Il s'agit d'un processus ouvert et prévisible, qui intègre des éléments d'évaluation d'ordre économique et social, le montant final du SMI étant fixé par le gouvernement, après consultation des partenaires sociaux.

Les critères appliqués pour la révision du SMI pendant la période de référence (1er janvier 2013 – 31 décembre 2016) ont permis d'avancer vers la réalisation des objectifs sociaux et économiques que s'était fixés le gouvernement au regard de la conjoncture, notamment à atteindre son objectif prioritaire, à savoir la reprise économique et la création d'emplois, ainsi qu'à encourager la compétitivité, en ajustant l'évolution des salaires au redressement de l'emploi.

Ce processus de révision, les critères pris en compte et son résultat sont conformes à la Convention 131 de l'OIT sur la fixation des salaires minima et en particulier à ses dispositions relatives aux éléments à prendre en compte pour déterminer le niveau du salaire minimum.

Quant à l'objectif de la Charte sociale européenne relatif au montant du SMI, qui devrait représenter 60% du salaire moyen net, les hausses du salaire minimum

interprofessionnel approuvées pendant les années qui ont suivi la période de référence (2017 et 2018) sont allées dans cette direction : en 2017, le SMI a été fixé à 707,7 € mensuels sur 14 mois, et en 2018 à 735,9 € mensuels, également sur 14 mois. Parallèlement, dans le but de se rapprocher progressivement de l'objectif de la Charte sociale européenne, le gouvernement et les partenaires sociaux ont signé le 26 décembre 2017 l'Accord social pour l'augmentation du SMI 2018-2020, qui prévoyait des augmentations annuelles progressives de manière à ce qu'en 2020 le SMI atteigne 850 euros mensuels sur 14 mois, à condition que le taux de croissance soit supérieur à 2,5% et que 450 000 emplois soient créés chaque année.

La dernière révision du SMI pour l'année 2019, et afin de garantir l'exercice effectif du droit à une rémunération équitable et de reconnaître le droit des travailleurs à une rémunération suffisante leur assurant, ainsi qu'à leurs familles, un niveau de vie décent, il a été adoptée le décret royal 1462/2018 du 21 décembre 2018, lequel fixe le salaire minimum interprofessionnel, pour toute activité dans le domaine de l'agriculture, de l'industrie ou des services, à 30 euros/jour ou 900 euros/mois, sur 14 mois, en fonction de la base, journalière ou mensuelle, utilisée pour la fixation du salaire. En aucun cas, le salaire annuel ne peut être inférieur à 12 600 euros.

D'après les dernières données publiées par l'Institut national de la statistique (INE, en espagnol), le salaire moyen dans notre pays s'élève à 23 156,34€ ; par conséquent, le salaire moyen interprofessionnel, fixé à 12 600€ pour 2019, se rapproche du taux de référence de 60%, puisqu'il équivaut à 54,41% du salaire moyen de l'Espagne (brut).

Le préambule du décret royal 1462/2018 explique l'augmentation substantielle (22,3%) du nouveau SMI par rapport à celui de 2018, dans les termes suivants :

Les nouveaux montants, qui représentent une hausse de 22,3% par rapport à ceux en vigueur du 1er janvier au 31 décembre 2018, résultent de la prise en compte conjointe des facteurs énumérés à l'article 27.1 du texte refondu de la loi sur le Statut des travailleurs (ST).

Cette hausse est le reflet de l'amélioration de la situation économique du pays et a pour objectif de prévenir la pauvreté dans l'emploi et de favoriser une croissance générale des salaires plus dynamique. En phase avec les recommandations internationales, afin de garantir l'exercice effectif du droit à une rémunération équitable et de reconnaître le droit des travailleurs à une rémunération suffisante qui permette à ces derniers et à leurs familles d'avoir un niveau de vie décent, le Comité européen des droits sociaux a interprété que cette rémunération doit se situer au moins à hauteur de 60% du salaire moyen. L'augmentation du SMI à 900 euros par mois nous rapproche de cette recommandation.

Enfin, l'augmentation du salaire minimum interprofessionnel est un facteur-clé pour que la création d'emploi et la reprise économique entraînent une réduction progressive et réelle des inégalités salariales et de la pauvreté sous tous ses aspects, dans la mesure où elle favorise une croissance économique durable, soutenue et inclusive. L'Espagne contribue ainsi à la réalisation de l'Agenda 2030, en particulier des cibles 1.2 et 10.4 des Objectifs de développement durable.

Ce décret royal a été adopté après consultation des organisations syndicales et patronales les plus représentatives.

Il convient de rappeler ici les facteurs cités à l'article 27.1 du ST, et repris dans le préambule reproduit ci-dessus, étant donné que l'objectif est que le SMI soit au plus près de la réalité et qu'en ce sens des facteurs tels que la productivité ou l'IPC doivent être pris en compte :

Article 27.1 du Statut des travailleurs :

Le gouvernement fixe chaque année le salaire minimum interprofessionnel, après consultation des organisations syndicales et des associations patronales les plus représentatives, en tenant compte de :
a) l'indice des prix à la consommation ;
b) la productivité moyenne nationale atteinte ;
c) l'augmentation de la contribution du travail au revenu national ;
d) la conjoncture économique générale.

TRAVAILLEURS PUBLICS

En marge de cette mesure, la 4e Convention collective unique pour le personnel contractuel de l'administration générale de l'État, qui sera signée prochainement, prévoit une augmentation substantielle des salaires des agents contractuels.

149. The GC took note of the positive developments in Spain and decided to await the next assessment of the ECSR.

ESC Article 4§1 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§1 of the 1961 Charter on the ground that the minimum wage does not ensure a decent standard of living.

150. The Secretariat pointed out that the Committee did take note of improvements in the situation with the introduction of the National Living Wage in 2016. However, on the base of the data available it noted that the gross rate of the national living wage amounted to 44 % of the gross average earnings.

151. The UK representative pointed out that they have a different figure than 44%. He provided the following information:
The UK Government supports Article 4's principles for the right to a fair remuneration and to ensure a decent standard of living; and is committed to building an economy that works for everyone.

Through the National Minimum Wage (NMW) and the National Living Wage (NLW) the Government protects the lowest paid within our society. As noted by the Council, the National Living Wage was introduced in 2016 for workers aged over 25 years old and is set a target to reach 60% of median average earnings by 2020. The NLW is currently 59.8% of median earnings and on track to meet its target next year.

We welcome the Committee's recognition that the rate of the minimum wage "has increased significantly in recent years, much faster than average weekly earnings and consumer price index". The lowest paid saw their wages grow by 8% above inflation between April 2015 and April 2018, which is faster than at any other point in the distribution. Furthermore, as noted by the Low Pay Commission, the current rate of the NLW places the UK's minimum wage as one of the highest in Europe.

In addition to the NLW, there are four NMW rates for: 16-17-year olds, 18-20-year olds; 21-24-year olds and an Apprenticeship rate. These rates, as a proportion of median earnings, are all above 60%, varying from 80% for the 21-24-year-old rate, to 64% for the Apprenticeship rate.

The NMW and NLW are set by Government following recommendations from the independent Low Pay Commission (LPC). The Low Pay Commission (LPC) consists of 9 members: 3 employer representatives, 3 worker representatives and 3 independent representatives. By seeking expert and independent advice from the LPC when setting the minimum wage rates, we can ensure that the right balance is struck between the needs of workers, the affordability for businesses and the impact on the economy. This balance is reflected in findings from academic studies that have shown that the UK's minimum wage has not had an adverse impact on employment. The UK's latest employment rate was estimated at 76.1% (for December 2018 to February 2019), which is the joint-highest figure on record.

We do not have estimates for the minimum wage as a proportion of net income. Our surveys collect gross earnings.

This Government is committed to building an economy that works for everyone and has therefore announced in October 2018 an aspiration to end low pay. Later this year, the Government will set out the Low Pay Commission's remit for the years beyond 2020.

It is for these reasons that this Government's view is that the United Kingdom is in conformity with Article 4 Paragraph 1 of the 1961 Charter, on the ground that we do provide a minimum wage that ensures a decent standard of living

152. The Representative of Greece suggested that all the Countries in the next report should refer to other extra benefits or tax reductions which could be taken in to consideration in order to reach the decent standard of living.

153. In reply to the suggestion proposed by the Representative of Greece, the Representative of the United Kingdom pointed out that it seems that the Committee in this situation has the wrong data. The UK has a target of 60% of median earnings and therefore it is not clear why the UK is not in conformity.

154. The GC took note of the information provided by the United Kingdom and decided to await the next assessment of the ECSR.

Article 4 - Right to a fair remuneration

Article 4§2 - to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases

ESC Article 4§2 CZECH REPUBLIC

The Committee concludes that the situation in Czech Republic is not in conformity with Article 4§2 of the Charter on the ground that an increased compensatory time-off for overtime hours is not guaranteed.

155. The representative of Czech Republic provided the following information:

I will repeat the similar things already said in connection with Article 2§1 where also the situation concerning compensatory time-off was mentioned. According to the Czech Labour Code there are 2 situations.
The first situation is when an employee was ordered to work 2 hours extra and the following day, he comes to work 2 hours later and work two hours less. It is just a replacement of the working time in the frame of the pattern of the shift. It is not exceeding the regular working hours. There is no reason to provide employee with compensatory time off and there is no reason to keep it in the overtime limit stipulated by the Labour Code. It is just changing of the working hours.
The second situation is when an employee was ordered to work extra hours, i.e. instead eight hours he/she will work ten hours and was not provided by compensatory time off. In that case he/she will be paid for the two hours worked out the frame of the pattern of the shift and plus extra fees for overtime. Total of working hours at the end of the week will be 42 hours, showing two hours overtime. These two hours will be included in the overtime limit defined by the Labour Code. Employee will be paid for overtime work plus compensation for overtime.

156. The representative of Czech Republic underlined that they have already provided information to the ECSR that they hope that the misunderstanding with the ECSR will be solved.

157. The GC took note and asked Czech Republic to provide necessary explanations to the ECSR in the next report.

ESC 4§2 LUXEMBOURG

Following the request of the representative of Luxembourg, the Committee decided to consider Art 4.2 in regard to Luxembourg earlier than scheduled according to the agenda (Thursday 16 May).

The Committee concludes that the situation in Luxembourg is not in conformity with Article 4§2 of the 1961 Charter on the ground that it has not been established that the right to increased remuneration for overtime work is sufficiently guaranteed.

158. The representative of Luxembourg provided the following information:

Compte épargne-temps

Dans ce contexte, il y a du nouveau à signaler dans le sens qu'une loi du 1er août 2018 a introduit le compte-épargne temps dans la fonction publique.

La durée du travail des fonctionnaires et des employés de l'Etat est fixée par les articles 18 et suivants de la loi modifiée du 16 avril 1979 fixant le statut général des fonctionnaires de l'Etat.

La durée normale de travail est fixée à 8 huit heures par jour et quarante heures par semaine. La durée de travail maximale ne peut dépasser ni dix heures par jour, ni quarante-huit heures par semaine.

Un décompte de la durée de travail de l'agent est établi au terme de chaque mois. Ce décompte peut présenter un solde positif constitué par des heures excédentaires par rapport à la durée normale de travail calculée sur un mois.

Depuis la loi du 1er août 2018 portant fixation des conditions et modalités d'un compte épargne-temps dans la fonction publique, chaque agent de l'Etat dispose d'un compte épargne-temps.

Le solde positif constitué par les heures excédentaires est automatiquement affecté sur le compte épargne-temps de l'agent. Le congé épargne-temps est accordé sur demande de l'agent par le chef d'administration, sous condition que les nécessités du service ne s'y opposent pas. Le solde horaire du compte épargne-temps est limité à mille huit cents heures.

Concernant les heures supplémentaires, l'article 19 du statut général précise que « par heure supplémentaire il y a lieu d'entendre toute prestation de travail effectué au-delà des cinq journées de travail se situant du lundi au samedi, de l'amplitude de la durée de travail s'étendant de 6.30 à 19.30 heures ou des huit heures de temps de présence obligatoire fixées pour un agent.

Police

Le personnel du cadre policier bénéficie d'un congé supplémentaire de 8 jours à ajouter au congé annuel de récréation (article 57 de la loi du 18 juillet 2018 sur la Police grand-ducale.

En plus les policiers bénéficient d'une prime militaire (qui varie entre 15 et 35 points indiciaires) ainsi que d'une prime d'astreinte qui varie entre 12 et 22 points indiciaires.

Education national

Enseignement fondamental:

I. Tâche normale des instituteurs de l'enseignement fondamental :

L’article 4, et notamment les alinéas 3 et 4, de la loi modifiée du 6 février 2009 concernant le personnel de l’enseignement fondamental fixe la tâche normale des instituteurs de l’enseignement fondamental, à savoir 23 leçons hebdomadaires d’enseignement direct + 54 heures de cours d’appui pédagogique annuelles + 134 heures de travail annuelles à assurer dans l’intérêt des élèves et de l’école.

Un règlement grand-ducal modifié du 23 mars 2009 fixant la tâche des instituteurs de l’enseignement fondamental détermine le détail de la tâche, les modalités d’octroi et le volume des décharges pour activités connexes dans l’intérêt du fonctionnement de l’école ou de l’enseignement en général, ainsi que les modalités d’octroi et d’indemnisation des leçons supplémentaires.

L’article 17 du règlement grand-ducal précité fixe le tarif des heures supplémentaires pour les instituteurs de l’enseignement fondamental :
Traitement de base x 1/23 x indice de la vie x valeur du point x 36/52

Enseignement secondaire:

Tâche réglementaire : 22 leçons.

Rémunération des heures supplémentaires : Traitement de base x 36/52.

159. To the question of the representative of Estonia, the representative of Luxembourg further elaborated, that according to the legislation additional 8 days off were provided to all police officers, irrespective of overtime work. In addition to this, the overtime work was compensated with 100%.

160. The committee took note of the positive developments in Luxembourg and decided to await the next assessment of the ECSR.

ESC 4§2 POLAND

The committee concludes that situation in Poland is not in conformity with Article 4§2 of the Charter on the ground that workers in both public and private sector do not have a right to increased compensatory time-off for overtime hours.

161. The Secretariat recalled that the situation of non-conformity dates back to 2007.

162. The representative of Poland provided the following information:

La présentation de la situation telle que donnée par le Secretariat nécessite une atténuation. Ce ne sont pas tous les travailleurs qui sont dans une telle situation. La situation n’a pas changé au cours de la période qui suit le rapport et il n’y a pas l’intention de changer la législation.
Pour les travailleurs qui ont de contrats régis par le Code du travail, on privilégie la décision de l’employeur quant à la façon de récompense des heures supplémentaires.

L'employeur est tenu à payer pour chaque heure travaillée 100% de rémunération ordinaire et un supplément au montant de 100% de la rémunération pour chaque heure travaillée la nuit, le dimanche, les fêtes. En ce qui concerne le travail en heure supplémentaire les autres jours ouvriers, c'est un supplément de 50%. Si l'employeur décide de récompenser le travail en heures supplémentaires en temps libre, il l'accorde, dans la proportion, une heure travaillée une heure et demi libre. Il est différent quand le travailleur demande la récompense : dans ce cas, le temps libre est accordé en raison une heure de travail une heure de repos. Cette solution particulière pose le problème à la lumière de la Charte.
Un autre group qui est touchée par la conclusion négative du Comité est les fonctionnaires d'Etat. Il y a deux groupes de fonctionnaires, fonctionnaires nommées « titulaires » et des fonctionnaires contractuels. Les premiers sont récompenses pour le travail des heures supplémentaires de façon forfaitaire (comme le système présenté par le Luxembourg, mais notre système est encore plus généreux). En plus de leur rémunération, les fonctionnaires nommées ont droit à un supplément mensuel à la rémunération d'un montant significatif et qui dépend du stage de travail. Puis, ils ont droit à un congé supplémentaire de durée des 5 à 12 jours max par an. La durée de ce congé dépend aussi de l'ancienneté. S'ils travaillent le dimanche ou les fêtes ils auront droit à un jour libre sans prendre en considération le temps de travail réel (i.e. 5 minutes de travail le dimanche – 1 jour libre).
Les fonctionnaires contractuels ont droit à une récompense pour le travail en heures supplémentaires et il est récompensé en raison une heure travaillée - une heure de repos. Pour le travail le dimanche et les fêtes le système est le même que pour les fonctionnaires nommées (i.e. 5 minutes de travail le dimanche – 1 jour libre).
Ces informations ont été déjà présentées dans le passé. Il faudrait revenir à ces informations en les détaillant plus dans le prochain rapport. Récemment des informations détaillées sur l'étendue de travail en heure supplémentaires des fonctionnaires ont été publiés vu leur complexité elles se prêtent à la présentation dans le prochain rapport écrit.
Pour ce qui concerne les personnes travaillant sur la base d'un contrat de travail (travailleurs ordinaires) il y a un bon développement à annoncer. Il y a une initiative de la part d'un syndicat qui s'est adressé au ministre de la famille du travail et de la politique sociale en demandant l'ouverture de la discussion sur le changement des règles établies dans le Code du travail sur la façon de récompenser pour des heures supplémentaires quand c'est le travailleur qui demande le temps libre. Nous allons voir la suite de cette initiative.

163. The GC took note of the positive developments and asked Poland to provide more information in the next report to the ECSR.

ESC 4§2 SPAIN

The Committee concludes that situation in Spain is not in conformity with Article 4§2 of the Charter on the ground that the Worker's Statute does not guarantee increased remuneration or an increased compensatory time-off for overtime work.

164. The Secretariat recalled the situation of non-conformity dates back to 1998.

165. The representative of Spain provided the following information:

D'abord, et par rapport à l'information sur le nombre d'heures supplémentaires effectuées, d'après l'enquête sur la population active de l'INE (chiffres de 2018), environ 54% des heures supplémentaires accomplies par l'ensemble des travailleurs salariés sont rémunérées, une situation qui ne diffère guère de celle de 2008, avec toutefois une baisse du nombre total d'heures supplémentaires et d'heures non rémunérées. Cette information est disponible sur le site web de l'INE :

http://www.ine.es/dynt3/inebase/es/index.htm?padre=982&capsel=985
http://www.ine.es/jaxiT3/Tabla.htm?t=4364&L=0

En ce qui concerne la non-conformité, il y a lieu de signaler que le premier alinéa de l'article 35 du Statut des Travailleurs prévoit que, en vertu de la convention collective ou, à défaut, du contrat de travail individuel, les heures supplémentaires peuvent être soit rémunérées, selon le montant qui aura été fixé et qui ne peut en aucun cas être inférieur à la valeur de l'heure normale, soit compensées par des temps de repos équivalents rémunérés. En l'absence de stipulations en la matière, il est entendu que les heures supplémentaires réalisées doivent être compensées par des temps de repos dans les quatre mois suivant le moment auquel elles ont été accomplies.

Par conséquent, la rémunération ou non des heures supplémentaires dépend de ce qui a été convenu entre les parties, à titre individuel, dans le contrat de travail ou, à titre collectif, dans la convention collective applicable. En l'absence de stipulations relatives à la prestation d'heures supplémentaires, ces dernières sont compensées par des temps de repos.

Le ST fait ainsi une distinction entre heures normales et heures supplémentaires, ces dernières pouvant être soit rémunérées, soit compensées par des temps de repos rémunérés, ce qui garantit leur compensation.

Il convient de souligner que le Statut des travailleurs établit, de manière générale, le caractère volontaire de la réalisation d'heures supplémentaires, sauf si la convention collective ou le contrat de travail en dispose autrement. Aussi, la réalisation d'heures supplémentaires est limitée pour les travailleurs à temps complet, et interdite pour les travailleurs à temps partiel.

*À cet égard, et comme l'on a déjà mentionné, **en vue de renforcer les garanties du travailleur et de lutter contre la précarisation de l'emploi, une modification a été introduite à l'article 34 du ST dans le but de réglementer l'enregistrement des heures de travail**. Si une certaine flexibilité dans la distribution du temps de travail est certes autorisée, celle-ci ne peut en aucun cas entraîner le non-respect de la réglementation relative au temps de travail maximal et à la réalisation d'heures supplémentaires. Le système d'enregistrement des heures de travail permet ainsi de contrôler les dépassements du temps de travail. Le décret-loi royal 8/2019 du 19 mars 2019 portant adoption de mesures urgentes de protection sociale et de lutte contre la précarisation du travail, déjà mentionné dans l'explication de l'article 2.1, réglemente l'enregistrement quotidien des heures de travail et a accordé un délai de deux mois*

pour son application par les entreprises, soit jusqu'au 12 Mai passé. Avec cette mesure, les travailleurs pourront prouver plus facilement la réalisation d'heures supplémentaires.

<u>CHIFFRES DE L'INSPECTION DU TRAVAIL</u>
En réponse au souhait exprimé par le Comité dans ses commentaires sur l'article 4§2 de la Charte sociale européenne, le tableau ci-dessous présente des données relatives à l'activité de l'Inspection du travail et de la sécurité sociale concernant le contrôle des heures supplémentaires pour la période 2017-2018. Les chiffres pour la période 2013-2016 ont été présentés dans le 30e rapport de l'Espagne.

CONTRÔLE DES HEURES SUPPLÉMENTAIRES INTERVENTIONS ET RÉSULTATS		
	2017	***2018***
INTERVENTIONS	*4 663*	*2 637*
INFRACTIONS (NOMBRE)	*1 368*	*573*
INFRACTIONS (MONTANT)	*1 114 313*	*1 008 835*
TRAVAILLEURS CONCERNÉS	*18 834*	*13 797*
MISES EN DEMEURE	*1 057*	*643*

<u>LES TRAVAILLEURS PUBLICS</u>

En ce qui concerne les travailleurs du secteur public, les heures supplémentaires n'ont pas d'existence juridique en tant qu'élément de rémunération des fonctionnaires. Néanmoins, l'article 24.d) du texte refondu du statut général des employés publics (TREBEP) prévoit, au titre de rémunération complémentaire, « les services extraordinaires effectués en dehors du temps de travail normal ». Pour ce qui est du personnel contractuel, l'article 73.6.1 de la Convention collective applicable à tout le personnel de l'administration générale de l'État prévoit que ces heures doivent être compensées de préférence par des temps de repos accumulés, à raison de deux heures de repos par heure supplémentaire effectuée, sauf si elles sont effectuées de nuit ou un jour férié, auquel cas elles sont compensées par deux heures et demie de repos.

Cette convention établit que, si les parties en conviennent ainsi, les heures supplémentaires peuvent être rémunérées en espèces.

<u>INFORMATION COMPLÉMENTAIRE</u>

<u>Décret-loi royal 8/2019 du 8 mars 2019 portant adoption de mesures urgentes de protection sociale et de lutte contre la précarisation du travail</u>

L'obligation d'enregistrer le temps de travail est entrée en vigueur en Espagne le 12 avril 2018 ; toutefois, les entreprises ont jusqu'au 12 mai prochain pour prendre les dispositions nécessaires à cette fin. À partir de cette date, tous les travailleurs devront pointer à l'entrée et à la sortie de leur travail. Les entreprises qui n'auront pas mis en

place le dispositif nécessaire pour que les travailleurs puissent le faire sont passibles de sanctions allant de 626 à 6 250 euros.

***Mettre un terme aux heures supplémentaires non rémunérées*.**

L'objectif principal de la réglementation désormais en vigueur est de mettre fin aux heures supplémentaires non payées, cette pratique au sein de l'économie espagnole étant problématique et polémique. D'après la dernière enquête sur la population active, près de 376 000 travailleurs accomplissent 2,96 millions d'heures supplémentaires non rémunérées par semaine.

Il convient de rappeler qu'un arrêt du Tribunal suprême de mai 2017 avait exonéré les entreprises de l'obligation d'enregistrer les heures de travail de leurs employés. Cet arrêt signalait néanmoins que « il conviendrait [d'opérer] une réforme législative qui clarifie l'obligation [pour les entreprises] de tenir un registre des heures de travail et permette au travailleur de prouver plus facilement la réalisation d'heures supplémentaires ».

Plan Directeur Pour un Travail Digne

Le Conseil des ministres du 27 juillet 2018 a approuvé la décision portant publication du Plan directeur pour un travail digne 2018, 2019 et 2020, régissant l'activité de l'Inspection du travail et de la sécurité sociale (ITSS) pour cette période, un document qui intéresse, par conséquent, les entreprises et les travailleurs.

Ce plan traduit et décrit la réalité du marché du travail en Espagne, tout en cherchant à agir sur celui-ci.

3. Temps de travail. Ce volet concerne non seulement les dépassements du temps de travail qui ne font pas l'objet d'une rémunération et de la cotisation correspondante, mais aussi les vacances, le travail posté, le travail de nuit, les jours fériés, les week-ends, etc., ce qui représente 40% des plaintes déposées. Le nombre d'heures supplémentaires hebdomadaires réalisées en Espagne est estimé à 6 millions, dont 48% non rémunérées.

2. Contrats à temps partiel, dépassements du temps de travail et heures supplémentaires. L'ITSS croisera ses propres données avec celles de la TGSS, de l'Agence du Trésor et de l'INSS, avec l'aide des communautés autonomes. Elle poursuivra également les campagnes visant les secteurs fortement soupçonnés de dépasser le plafond des 80 heures annuelles.

Outre les plans d'urgence, d'autres mesures du Plan directeur mises en œuvre par l'organisme national de l'ITSS peuvent également être citées :

- *la création de l'unité de lutte contre la discrimination ;*
- *la création d'une boîte aux lettres de l'Inspection du travail et de la sécurité sociale pour la communication d'infractions au droit du travail ;*
- *le renforcement des ressources humaines avec le lancement d'un concours pour doter 353 nouveaux postes d'inspecteurs et de sous-inspecteurs ;*
- *le renforcement de l'instrument de lutte contre la fraude ;*

- *la promotion d'autres campagnes pour lutter contre la précarisation du travail et améliorer la qualité de l'emploi (discrimination salariale fondée sur le genre ou protection des groupes particulièrement vulnérables, entre autres).*

166. The ETUC representative asked whether it is correct that the developments in law and policy mainly refer to the situations where it would be easier for workers to prove that they have been working overtime, but that on the other hand the situation that was considered not in conformity (i.e. increased remuneration or an increased compensatory time-off for overtime work) has not been changed.

167. The representative of Spain confirmed and noted that compensation for overtime is agreed by the parties or by collective agreements; it is left to the parties to decide. However, according to the Spanish representative, what has changed is that overtime is now supervised and paid.

168. The representative of the United Kingdom asked if what Spain just said about the fact that overtime is now supervised has a direct bearing on the non-conformity in question.

169. The representative of Spain underlined that she does not feel that there is anything wrong. What is important is that overtime is paid as the parties agreed and that there is an agreement between the parties. However, under no circumstances may the extra hour be smaller than the normal hour. From this ceiling the overtime is paid in addition. There is no need to set out in the text that overtime should be entitled to an additional remuneration. It follows naturally. What matters is to avoid precariousness and to make sure that part time workers do not do a lot of overtime even though they are not supposed to. The Government thinks that workers are protected with this provision. The representative of Spain expressed the need to meet up with the ECSR to explain or to have them explain to the Government what the issue is.

170. The ETUC representative underlined the need to take into consideration that, according to the Spanish representative, the actual overtime rate compensation depends on either collective bargaining or individual agreements. That means that if there is no collective bargaining we have a large proportion of workers in Spain that if they are lucky will depend on individual agreements. The ETUC representative pointed out that in their working document the comments of the Spanish trade unions colleagues on the phenomena of non-respecting or not paying overtime in practice can be found. The legislation is not respected in practice.

171. The Spanish representative pointed out that the Spanish government implemented the master plan to supervision in 2018 and that it has already been successful. The labour inspectorate is making a big effort to prosecute every case of fraud.

172. The vice Chair recalled that in 2007 and in 2010 there was a voting on recommendation and a warning. However, there have been new measures. She suggested to wait for the next assessment and to ask Spain to provide information in the next report.

173. The Secretariat reminded that international human rights law says very clearly that overtime has to be compensated at an increased rate. In Spain, it is left to the social dialogue to establish the rate. The negotiations could even lead to a lower rate than the one that could be normal. It is difficult to be satisfied. The rationale behind the ECSR conclusions is international human rights law, it is Article 4§2 of the Charter. He therefore invited the GC to be mindful of international human rights law when taking the decision.

174. The representative of the Netherlands thanked the Secretariat and specified that, according to the interpretation of the ECSR, with respect to overtime there should be both the right to increased remuneration or the employee should have the right to leave and that should be longer than overtime work. She appreciated the information provided by the Spanish government. However, she underlined that the information provided did not concern the ground of non-conformity. She stressed the fact that also other countries will have the same issue.

175. The representative of Spain indicated that there is a misunderstanding with the Secretariat. According to the Spanish representative, the compensation is not only a matter of collective agreements but also of individual contract.

176. The representative of the United Kingdom underlined that Spain spoke about a decent work master plan. The United Kingdom believes that measures like that aimed at addressing significant issues in the labour market, that many countries face. He thanked Spain for adopting a master plan of that kind.

177. The vice Chair underlined the need for the states representatives to understand what the aim of the Governmental Committee is. Is the aim of the GC to have solidarity with a government or to have solidarity with the people and try to protect their social rights? Member states are in the GC to apply the Social Charter. According to the vice Chair, for several days during the GC session the Charter was not applied, its application was avoided. The vice Chair further noted that the GC perception about recommendations and warnings is wrong. Even when a country takes positive steps, that country should be encouraged by a recommendation. Recommendations and warnings are not enemies; colleagues that are voting for it are not enemies, on the contrary they are friends of countries nationals. The main goal of the GC and the representatives' role of public servants are to protect their own people. Recommendations should be taken to support the country.

178. The Secretariat supported the point stated by the vice Chair. The recommendation is perceived as a very massively reaction by the GC and eventually by the Committee of Ministers but in fact it very much depends how that is voted and perceived. The Secretariat reminded the discussion of the previous day about Ukraine. There was a considerable positive development in the situation. The discussion was whether to make a recommendation or a warning. According to the Secretariat, a recommendation on that occasion acknowledging the new measures, recommending pursuing that line would have been very positive and would not have been perceived as aggressive. He specified that what the Chair stated goes very much on that direction. Concerning Spain, according to the Secretariat, the significant progress could be encouraged with a recommendation. A warning could be perceived more harshly than a recommendation.

179. The Secretariat mentioned that according to the GC rules of procedures a warning should serve as an indication to the party in the sense that unless it takes steps to comply with the obligation under the Charter, the GC may propose a recommendation the next time this provision is adopted. Looking at the historical, when the GC adopted a warning, the next time the GC never proposed or adopted a recommendation. According to the statistics, from the year 1988 to the year 1999, 31 recommendations were adopted by the CM on the basis of proposals by the GC. From the year 2000 to the year 2007, 5 recommendations were adopted by the CM on the basis of proposals by the GC. From the year 2008 to the year 2018, zero recommendations were adopted by the CM because there were no proposals by the GC. In the last ten years, if we except the case of Turkey on Article 1.2 of two years ago, from the GC there have been no proposals of recommendations. According to the Secretariat, that is not because the situation in Member States was perfect, but because there is a need to be more active in order to implement social rights in member states. The Secretariat highlighted the need to be more effective and efficient within the GC.

180. The representative of Bulgaria expressed its concerns about the role of the GC.

181. The representative of Portugal supported the point of the Chair and of the Secretariat. She pointed out the importance of distinguishing constructive and strong recommendation. The recommendation should be clear in that. She suggested assessing the impact of a recommendation in the different countries.

182. The representative of the Netherlands pointed out that Article 4§2 of the European Social Charter (Revised) and Article 4§2 of the 1961 Charter are stated in a similar way. According to the agenda, there are twelve countries with the same problem. The Netherlands asked whether it would be possible for the GC to adopt a joint recommendation for all the States concerned. Not mentioning the single State, and mentioning that the GC believes that the government should take action on the increased remuneration.

183. In respect of the proposal made by the representative of the Netherlands, the representative of Bulgaria noted that if the country concerned is not mentioned, the Minister in the CM will not feel concerned.

184. The French representative noted that the proposal of the Netherlands is creative and innovative. However, according to the French representative, a recommendation to be efficient needs to be addressed to an individual State. Being new in the GC, she showed her frustration concerning the work of the GC. She noted disparities among the decisions taken specifically due to the non-application of the rules of procedure. Concerning the point of the Secretariat, the representative of France expressed her dissatisfaction of attending a GC session only taking notes and asking regularly the same states to specify the measures taken for the same non-compliance cases. Moreover, she pointed out that nowadays the Council of Europe, as many other organisations, attaches great importance to the efficiency of its bodies in order to grant them a financial sustainability. Thus, according to the French representative, the adopted procedure must be strictly applied as it is to allow the GC to carry its activites in an efficient work of manner. Furthermore, according to the

French representative, a coherence must be searched between the approach of ECSR in the collective complaints procedures and the decisions taken by the GC when adopting resolutions or recommendations. Actually, a resolution is better welcomed than a recommendation. As such, a work of explanation, pedagogical, must undoubtedly be undertaken with the national authorities. The representative of France supported the point stated by the Bulgarian representative.

185. The GC took note of the interesting debate.

186. The GC took note of the recent developments in Spain and decided to wait for the next assessment of the ECSR.

RESC 4§2 UNITED KINGDOM

The Committee concludes that situation in the United Kingdom is not in conformity with Article 4§2 of the Charter on the ground that workers have not adequate legal guarantees to ensure them increased remuneration for overtime.

187. The Secretariat recalled that the case of non-conformity dates back to 1998.

188. The representative of the United Kingdom provided the following information:
In the United Kingdom workers are remunerated for every time where they are at risk of minimum wage in the payment and this is stringently enforced. However, the UK does not directly provide increased remuneration for overtime.

As stated in our previous reports, the minimum rates of pay are set out in law, and employers and employees are free to negotiate terms and conditions that go above and beyond the requirements set out in legislation. The worker and the representative or trade union are free to, and often do, negotiate better terms for inclusion in the contract of employment and welcome the flexibility provided to ensure these terms meet the worker's specific needs. Indeed, analysis by the Resolution Foundation found that, in 2016, approximately half of employees doing overtime were paid an overtime premium of 10 per cent or more, with one in five employees getting a premium of at least 50%.

There is one significant development that we wish the GC to consider. We already mentioned the existence in the UK of the Independent Low Pay Commission who consists of worker representatives and employer representatives. Last year in 2018 the Government asked the Independent Low Pay Commission to consider what the impact of introducing a premium for non-guaranteed hours would be. This could be considered a prototype of overtime premium pay. Government asserts as a way to tackle the heart of an issue workers face which we call one sided flexibility.

One sided flexibility is where employers pass on anti-risk to workers resulting in employers offering work with short notice or cancelling shifts at last minute. After an extensive consultation the low pay commission found out that a premium was not appropriate as there were concerns that this premium pay could reduce the number of hours available to workers and the numbers of people employed. Therefore, this could damage the earnings of workers. They also did not recommend this premium

as they believed it does not address all the aspects of the issue of one-sided flexibility. Instead the Independent Low Pay Commission recommended alternative options, including providing compensation for cancelled shifts as a way of tackling this core issue.

We would be consulted on the specifics of the recommendations. The Government has already committed to bring in the right for workers whose working hours do vary so that they can request a stable and predictable contract that reflects his actually working patterns.

Therefore, while increased remuneration is not provided in the UK it is something that we recently considered, and we are taking a different approach by tackling the exploitative issue that some worker face.

189. The Representative of ETUC asked whether the UK government considers the compensation would be the same as the employee would have had if the shift was cancelled or if it would be less.

190. The UK representative specified that the Low Pay Commission in the recommendation simply stated that compensation should be adopted for shift cancellation. It has still to be discussed.

191. The ETUC representative stated that despite the announcement of the new developments, the possibility of solving the actual problem of non-conformity has been overruled by the government. According to the ETUC representative, on the actual point of non-conformity there is no development.

192. The representative of Slovenia suggested the UK to improve the statistics. Since it is a long-standing non-conformity and since there is no progress which could be accepted as an improvement, she proposed to vote on a recommendation or a warning.

193. The GC voted on a recommendation, which was rejected (1 vote in favour; 16 against; 14 abstentions). It then voted on a warning, which was carried (10 votes for, 2 against, 23 abstentions).

Article 5 – The right to organise

ESC 5 CZECH REPUBLIC

The Committee concludes that the situation in Czech Republic is not in conformity with Article 5 of the 1961 Charter on the ground that members of the SIS are prohibited from forming any type of professional association for the protection of their economic interests.

194. The representative of the Czech Republic provided the following information:

The Constitutional order of the Czech Republic guarantees the right to organise in Article 27 paragraph 1 of the Charter of Rights and Freedoms[4]. Paragraph 2 of the same Article guarantees the independence of trade unions from the state and prohibits preferential treatment for any union.
Article 44 of the Charter explicitly determines that the restriction of that right for members of the security forces and the armed forces can be imposed ***as far as it is related to the exercise of their duties.*** *The restriction covers only situations that could be inconsistent with the proper performance of service (for example members of security forces must not hold political rallies or political agitation in military buildings, jeopardise the national security etc.[5]), so the impartial and apolitical performance of service must be ensured.*
Security and Intelligence Service (SIS) is the Government's Secret Service, which ensures security of the state. The fundamental characteristic of SIS activities is that its activities are secret. The agents are subject to confidentiality, even among themselves, and they are under very special regime of security, apolitical, intelligence and armed service. The establishment of an unincorporated association requires at least three founding members, who must be identified in the public register. From that moment, the secret agent ceases to be secret.
The trade union organisations in the Czech Republic negotiate and conclude a collective agreement also on behalf of employees who are not trade union members (Sec. 24 subsec. 1 of the Labour Code). Members of Prison Guard, Municipality Police, Fire Guard, Rescue System, Civil Protection, Customs Administration and other civil servants commonly form associations.
Comprehensive data concerning number of associations is not available. The name of the association can be arbitrary and to find out the number of trade unions through the Public Register (kept by Ministry of Justice) is practically impossible.
Associations'records have been kept at registers of seven regional Commercial Courts;
Based on survey from June 2019, using the keywords "trade union" , following numbers of trade union organisations were found in Commercial Courts

-	Prague 360 organizations of security or armed forces:
-	Ceske Budejovice 47 organisations
-	Pizer\ - 87 organisations
-	Listi nad Labem 125 organisations
-	Hradec Kralove 101 organisations
-	Ostrava 167 organisations

Including:
Confederation of Trade Unions of Security Forces,
Trade union Association of General Inspections of Security Forces, The Independent Trade Union of the Police of the Czech Republic,
The Union of Security Forces Associating Metropolitan Police Members, Municipality Police Members, Police Officers, Prison Guard, Fire-fighters and Customs Officers,

[4] *Act No 23/ 1991 Coll., The Cha rter of Rig ht s and Fr eedoms of th e Czech Republic.*

[5] *§ 44 of the ACt No 221/1999 Sb ., Career Soldiers Act .*

Trade Alliance of the Integrated Rescue Team - involving Policemen, Rescue System, Municipality Police, Fire Brigade members, et c.

Organisations of employers and employees in public service, including security services, are entitled to form and to join federations and confederations. On the other hand, no one can be forced to join an association or participate in its activities and everyone can leave the association anyti me.
Civilian employees can be organised with no limitation.
That means that the limitation of the right to organise should not be seen as a blanket prohibition of professional association of trade union nature and the imposition of lawful restriction on the exercise of the right of the specific category of SIS employees is determined and regulated by law and from our point of view is fully in line with Article 5 and 31 of the Charter and Article 11 of the European Convention of Human Rights.

195. The representative of the Czech Republic, in reply to a request for further clarifications from the Chair and the representative of the United Kingdom, mentioned that the restrictions to form or join an association, as referred to in the law, concerned very special circumstances relating to secret service agents and applied only as far as necessary for the exercise of their duties.

196. The representative of the Netherlands recalled that Article 11 of the European Convention on Human Rights (ECHR) was closely related to Article 5 of the Charter, and dealt with freedom of assembly and association, including the right to form or join a trade union. The case law of the European Court of Human Rights under Article 11, concerning military personnel, recognised that legitimate restriction to freedom of association could be justified in some instances, however it prohibited a blanket ban which applied to a category of personnel in forming or joining a Trade Union.

197. The representative of the ETUC recalled that it was a long-standing situation of non-conformity. He also referred to the case law under Article 11 of the ECHR and said that there appeared to be a blanket prohibition in the Czech Republic which applied to a category of personnel to form or join a Trade Union.

198. The Chair referred to some new information provided by the Government which seemed to better explain the exceptions foreseen in the legislation.

199. The representative of the Czech Republic said that the legislation did not concern a blanket prohibition and the restriction applied only to a very specific number of secret service agents and asked the Secretariat for who falls into the scope of Article 31.

200. The representative of Lithuania said that the Government should provide more detailed explanations of the restrictions, as they appeared to apply only in exceptional circumstances in a limited number of cases in the interest of security.

201. The representative of Spain considered that restrictions that applied to personnel in very specific circumstances, which were crucial for security, fell within the context of Article 31 of the 1961 Charter.

202. The representative of France referred to the difficulties in categorising personnel. She pointed out that security issues were related to personnel in different types of work environment.

203. A discussion took place during which a number of delegates raised relevant issues such as data protection rules, confidentiality of trade union membership, and the need to protect the identity of certain personnel in the interest of security.

204. The Secretariat pointed out that when restrictions apply to certain personnel for a particular reason, the workers concerned ought to be compensated, for example, through higher pay, and they should be able to participate in some form of consultation process. The Secretariat also recalled that the GC could address issues to the Committee of Ministers if it considered that additional analysis and guidance for States was necessary.

205. The representatives of Denmark, France and the United Kingdom believed that further clarifications by the ECSR were necessary, in order for governments to better understand the Committee's interpretation of the Charter.

206. The representative of Lithuania recalled that discussions on specific issues between the GC and the ECSR had taken place in the past which were useful, and she suggested this approach.

207. The Chair proposed that the question be raised at the next joint meeting of the Bureaus of the ECSR and the GC, to enable a clarification of the Committee's interpretation of the Charter.

208. The GC invited the Government to provide more detailed information concerning the different categories of workers in its next report, and to raise the question of the non-conformity at the next joint meeting of the bureaus of the ECSR and GC.

ESC 5 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 5 of the 1961 Charter on the ground that the legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark.

209. The Secretariat recalled that the situation has been in non-conformity since 1987 and that the Committee of Ministers adopted a Recommendation on this issue in 1995.

210. The representatives of Denmark provided the following information:

"Thank you for the opportunity to comment on the conclusions made by the Committee regarding article 5 and article 6, para 2 of the 1961 Charter related to the Danish International Register of Shipping, hereafter referred to as the D I S. I will be commenting on both articles in this intervention.
The Committee conclusions of non-conformity are made on the grounds that

1) *the legislation on the DIS provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarer's resident in Denmark*
   and
2) *the right to collective bargaining of non-resident seafarers engaged on vessels entered in the DIS is restricted.*

I would like to start by emphasizing, that a non-resident seafarer employed on a ship registered in DIS can join and be represented by a Danish union and that it is possible for the union to ensure minimum conditions for the seafarer.
It is only regulated which persons may be covered by general agreements entered into by respectively Danish unions and foreign unions. This ensures global competitiveness by keeping the manning costs at a competitive level.
On the other hand, no distinction is made between Danish and foreign seafarers with regards to other social-, employment- or safety rights. The same high level of standards applies on DIS ships regardless of the seafarers' nationality.
Allow me to further elaborate on the matter.
Along the lines of what Denmark has expressed on previous occasions before this Committee, the DIS is crucial in creating and maintaining employment in the maritime cluster. It prevents ships from flagging out of the national merchant fleet to other registers whereby employment would otherwise be lost. Furthermore, the DIS has an important impact on Danish economy. It ensures global competitiveness by keeping the manning costs at a competitive level.
The commercial and competitive framework conditions surrounding the shipping industry introduced by the DIS Act have maintained and created jobs in the shipping industry, not only for Danish seafarers but also for seafarer from other countries.
It would not be beneficial for the seafarers if we do not maintain the competitive framework conditions and dismiss our legislation. This would increase manning costs. Ships would be transferred to foreign registers, some with substantially lower safety standards, let alone social and employment standards – all matters that have been taken into account and ensured for seafarers working on a ship registered in the DIS regardless of nationality.
The Danish government has always encouraged free negotiations and has held consultations with the industry on the DIS and the employment of foreign seafarers in order to facilitate the process of exploring possibilities to develop mutually satisfactory solutions in relation to the DIS for the parties concerned.
Coordination between the parties has developed through many years and is still ongoing. To recap information previously provided to the Committee, an industry framework agreement, called the DIS Main Agreement, has been adopted between all the social organizations –employers as well as employees - in the shipping industry with the exception of one. The essence of the agreement concerns mutual information, coordination and cooperation between the Danish social partners concerning seafarers on board DIS ships. Many issues related to the DIS are resolved on an ad hoc basis within this framework.
I would like to mention in this connection that the before mentioned coordination between the social parties has led to amendments and adjustments of the DIS Act. As the committee has already been informed, the DIS act was expanded in the year 2000 to also include passenger ships sailing internationally. The purpose was also in this case to ensure global competition for passenger ships in order to maintain employment. On a similar note, the act is currently in the process of being further

expanded to include the off-shore sector, the purpose being the same. In both these cases the Danish trade unions can enter into general agreements covering all seafarers regardless of nationality.
These amendments have been possible due to agreement between the social parties. As for the remaining issues, on which the parties have not been able to reach agreement, the underlying reasons for maintaining the DIS - as mentioned in the beginning - remain.
It is important to emphasize, that there is nothing in Danish law preventing a seafarer not residing in Denmark and working on board a ship registered in DIS to choose to be member of any Danish trade union, provided that the membership is in accordance with the individual trade union's own rules.
It is only regulated which persons may be covered by general agreements entered into by respectively Danish and foreign unions.
Whether a seafarer, who is not residing in Denmark and who is not employed on a collective agreement, may be a member of a Danish trade union is not regulated in the Act on the DIS. Nor is it regulated in the DIS Main Agreement. Membership of a Danish trade union is solely determined by the individual trade union in accordance with its own rules.
Furthermore, it follows from the DIS Main Agreement that Danish unions, which are parties to the agreement, may at their own wish be represented in the negotiations with foreign trade unions. The purpose is to ensure that the result of the negotiations is in accordance with an internationally acceptable level in terms of wages and other conditions agreed on between other internationally affiliated trade unions and shipping companies.
I hope that it is clearly illustrated by this intervention that a non-resident seafarer can join and be represented by a Danish union and that it is possible for the union to ensure minimum conditions for the seafarer.
I also sincerely hope that the committee will take positive note of the ongoing joint industry ad-hoc work outlined in this intervention and take this into consideration in its final conclusions.
Thank you for allowing me the floor."

211. The Chair asked whether there were two types of shipping registers in Denmark and whether collective agreements applied only to the members of the trade union which had entered into the agreement or to all employees.

212. The representative of Denmark replied that there were still two registers for shipping companies. The seafarers and the shipping company attached to the DIS have a different taxation regime. In Denmark, collective agreements only apply to the members of the trade union concerned.

213. The representative of Greece asked about the percentage of foreign seafarers in a ship under a Danish flag.

214. The representative of Denmark emphasised that he was not in possession of valid figures, but an estimate would be approximately 8000/9000 seafarers; among which 2000-3000 Danish seafarers.

215. The ETUC representative asked whether seafarers not resident in Denmark had to be members of the trade union and whether Danish trade unions were looking

into the possibility of supervising the working conditions of seafarers belonging to foreign trade unions.

216. The representative of Denmark indicated that foreign seafarers are entitled to join a Danish trade union, but they can only become part of a Danish collective agreement if they are residents. If they reside in another State Party, it would be the trade union of that State Party which would have to negotiate and conclude an agreement. Danish trade unions would advise the foreign trade union but could not conclude the collective agreement on their behalf. It was important to bear in mind that the majority of non-resident seafarers had never set foot in Denmark. The residence requirement was relevant for different purposes, among which local wage conditions.

217. The Chair asked about the number of agreements concluded with foreign trade unions for non-resident seafarers.

218. The representative of Denmark replied that they did not have such information.

219. The Chair asked whether it was needed to make a new recommendation, considering that the old one is from 1995. He also raised the possibility of inviting the Danish Government to discuss this issue with the ECSR.

220. The representative of Lithuania asked whether the Government had contacted the ECSR.

221. The Secretariat confirmed that the ECSR has had meetings with the Danish delegation on labour law in general, but not specifically on this issue. The ECSR was willing to discuss particular issues with States, but the situation has not changed much since 1987.

222. The representative of Denmark confirmed that they would be willing to meet with the ECSR.

223. The representative of France stressed that this issue was related to the issue of corporate responsibility of the shipping companies.

224. The representative of Denmark said that the Danish companies flying a Danish flag must obey by the national rules.

225. The Chair raised his doubts about the usefulness of the dialogue with the ECSR, given that the ECSR’s position on this issue was clear and long-standing.

226. The representative of the Netherlands supported the idea of bilateral dialogue with the ECSR.

227. The representative of Lithuania recalled that a Committee of Minister’s recommendation is valid until the situation is solved. She suggested that the GC could remind the old CM recommendation and urge Denmark to contact the ECSR with a view to solving the situation.

228. The Chair supported the proposal to recall the 1995 Recommendation and to remind Denmark that they could contact the ECSR in the short-term with a view to solving the situation.

229. The GC agreed with this proposal.

230. This decision also covered the situation of non-conformity under Article 6§2 of the Charter on Denmark (see below).

ESC 5 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 5 of the 1961 Charter on the ground that the existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment infringes the right not to join trade unions.

231. The representative of Iceland provided the following information orally and in writing on the ground of non-conformity:

As the Secretariat explained, the case on priority clauses in Iceland is a long-standing case with which this Committee has become well familiar as it has been discussed extensively in its previous meetings.

As has been explained on those occasions, the priority clauses have a long history on the Icelandic labour market. They had already become widespread in collective agreements before the Act on Trade Unions and Industrial Disputes was passed in 1938.

Priority clauses can be found in most collective agreements on the private labour market, although they have not been introduced into collective agreements in the public sector. Historically, these priority clauses had the explicit aim to develop a well-organized labour market with strong trade unions as well as to promote the effective right to organise and a high level of trade union membership amongst workers. Today, around 80% of workers in Iceland are members of trade unions while around 90% are paid according to collective agreements.

As has been stated on previous occasions in the meetings of the GC, the Icelandic government has communicated to the social partners in Iceland the ECSR´s findings that priority clauses in collective agreements infringe the right not to join trade unions.

The trade unions have subsequently emphasised their position that priority clauses are in full conformity with Icelandic law and that they are an important cornerstone of the private labour market. They have also emphasised that a priority right enjoyed by one trade union does not preclude the establishment of more trade unions within the same occupation, in the same geographical union area. Nor do priority clauses entail an exclusive right of the trade union to negotiate a collective agreement.

A trade union can only have recourse to a priority clause if it can prove that its member is as qualified or better qualified than a non-unionised applicant. Moreover, employers are free to determine the conditions applicants must meet in order to be offered a

contract of employment and priority clauses must be interpreted narrowly, as has been confirmed by the Icelandic Labor Court.

These considerations have all been communicated to the ECSR in Iceland´s previous reports as well as to the GC at previous meetings. Furthermore, the committees have been informed that the trade unions in Iceland have stated that the abolition of priority clauses could impact the stability of the Icelandic labour market, with unforeseeable consequences.

It is the aim of the Government of Iceland to respect the social dialogue and recognise the importance that the social partners achieve consensus in collective agreements on labour market issues and thus contribute to economic and social stability and justice.

At the same time, the Icelandic Government recognises that, ultimately, it remains for the Government to ensure conformity of the national situation with the Charter. In that regard, the ECSR has repeatedly concluded that priority clauses interfere with the right not to join trade unions since they result in a position where non-unionised workers find themselves in a disadvantaged position on the labour market, compared to workers belonging to trade unions that have negotiated priority clauses for their members.

The Minister of Social Affairs and Children has therefore decided to start a formal dialogue with the social partners on priority clauses to analyse the role of such clauses on today´s labour market and the effect it would have to abolish them from collective agreements.

For this purpose, the Minister will appoint a committee composed of representatives from the government and the social partners. The committee is expected to deliver its findings to the Minister next year.

Further information on these initiatives and their results will be provided in the next report.

232. The representative of the ETUC said that the situation in Iceland had not changed, however, there were signs of a willingness on all sides to discuss the issues in question.

233. The GC took note of the information provided and invited the Government to provide all the information, including the outcome of the talks, in its next report. Meanwhile, it decided to await the next assessment of the ECSR.

ESC 5 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 5 of the 1961 Charter on the ground that, during the reference period, the legal framework continued to restrict some categories of workers from fully enjoying the right to organise.

234. The representative of Poland provided the following information orally and in writing concerning two aspects of the situation of non-conformity.

Firstly, the Chancelleryof the Prime Minister confirmed that the provisions of the Civil Servants Act which limits the rights to some higher ranking categories of civil servants from fully enjoying the right to organise, as indicated in the conclusion of non-conformity, are not in conformity with either Article 5 of the Charter or ILO Convention 87 on Freedom of Association and Protection of the Right to Organise. In order to address the incompatibilities, it would be necessary to make modifications to the law on the civil service. As Parliamentary elections will be held in October 2019, the work on modifying the relevant provisions of the law could not start until 2019.

Secondly, an amendment to the Trade Union Act concerning trade union rights of home-based worker was adopted in July 2018 and entered into force in January 2019, thus Poland is in full compliance with the Charter. Independent experts, having examined the changes to the Trade Union Act, consider that the amendments meet the concerns that had been raised.

235. The GC took note of progress as regards the home-based workers. Concerning the legislative provisions for categories of civil servants which are not in conformity with the Charter, the GC invited the government to provide further information on developments regarding the Civil Servants Act in its next report. Meanwhile, it decided to await the next assessment of the ECSR

ESC 5 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 5 of the 1961 Charter on the ground that legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represent an unjustified incursion into the autonomy of trade unions.

236. The representative of the United Kingdom provided the following information orally and in writing on the ground of non-conformity:

The Government respectfully disagrees with the Committee and we are firmly of the view that our provisions do not breach Article 5.

Union's ability to indemnify an individual

The UK Government is of the view that section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) serves a beneficial function, namely to make it unlawful for a union to indemnify a union member for a penalty imposed for an offence or contempt of court. We believe that this deters reckless and unlawful behaviour by union officials, and therefore ensures union funds are safeguarded.

Our legislation provides protection for union members against wrongdoing within their unions. Furthermore, it is our view that it strikes the right balance of protecting the rights of union members whilst protecting the freedom of others.

Union's ability to discipline its members

The Government strongly supports the principle that workers should be free to join a trade union of their own choosing. With that in mind, we are of the view that the rights of unions to discipline and expel members needs to be balanced against the rights of individuals to acquire and retain their membership. Section 64 TULRCA gives union members the right not to be unjustifiably disciplined. This protection means members have the freedom to make up their own minds whether or not to support industrial action and provides protection for members who seek to ensure that their union follows its own rulebook and complies with statutory requirements.

Under UK law, individuals are potentially committing a tort or breach of contract when they take industrial action. They can therefore lose pay for breach of contract. Under the UK system of trade union immunity unions cannot be sued for damages if they lawfully organise industrial action.

Since an individual's own rights and liabilities may be affected, as well as those of the unions, the Government considers that the individual needs to be free to decide whether or not to take part in lawfully organised industrial action, whether or not this is lawfully organised.

Whilst UK law does not prevent a trade union from expressing dissatisfaction with members refusing to take industrial action, the Government considers that the law should not allow a union to take certain disciplinary actions - such as expulsion - against members who, for example, decide not to break their contract of employment; make allegations of breaches of union rules by union leaders; or who wish to no longer have their union subscriptions taken at source from their salaries.

We would like to point out that the UK Government has taken steps to improve the autonomy of unions with regards to matters relating to their membership. Section 19 of the Employment Act 2008 modified the rights of a trade union to determine its conditions for membership, and to take political party membership into account when deciding whether a person should belong to the trade union. These provisions broadened a trade union's ability to exclude or expel individuals.

237. The representative of the ETUC recalled that it was a serious, long-standing situation of non-conformity and called on the GC to apply its working methods. He recalled that the GC had previously invited the government to establish a dialogue with the ECSR and wished to know if any progress had been made in this respect
.

238. The Secretariat said that no such request for a dialogue had been received from the Government of the UK.

239. The representative of Greece supported the proposal of the representative of the ETUC that the GC apply its working methods and proceed to a vote.

240. The GC proceeded to vote first on a renewed recommendation, to replace the 1997 Recommendation, which was not carried (10 in favour, 6 against and 24

abstentions). The GC then voted on a warning, which was carried (23 in favour, 2 against, and 13 abstentions).

241. The GC adopted the warning, urged the UK Government to bring back the situation into conformity and recalled that the 1997 Recommendation remained valid.

Article 6 - The right to bargain collectively

Article 6§2 – to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreement

ESC 6§2 CZECH REPUBLIC

The Committee concludes that the situation in Czech Republic is not in conformity with Article 6§2 of the 1961 Charter on the ground that the promotion of collective bargaining is not sufficient.

242. The Secretariat explained that according to the requirements of Article 6§2, collective bargaining must result in the conclusion of collective agreements.

243. The representative of the Czech Republic provided the following information:

The promotion of voluntary negotiations is one of the key activities of the Government of the Czech Republic.
There is a very intensive cooperation with national tripartite body - the Council of the Economic and Social Agreement (CESA), which meets regularly (monthly), serves as regular and solid platform for national tripartite consultations of the Government and national representative organ i sat ions of workers and employers. All the important national economic and social policy strategies, policies, and legislation have been discussed with social partners within the CESA.
According to the Regulation of the legislative process (approved by the Government), the national representative organisations of social partners are regular and obligatory participants of this process. These organisations have thus the opportunity to influence the legal order of the country through the ***consultation procedure*** *concerning all the bills and law amendments. Comments and observations raised by the social partners which were not settled during this consultation procedure, must be reported to the Government when the Government approves such legislative acts.*
With the aim to promote the development of collective bargaining, the Government (via MoLSA) provides annually (in accordance with Section 320a of the Labour Code and based on the agreement of the Council of the Economic and Social Agreement) a financial grant [7] to national representative trade union organisations and employers' organisations. Thanks to this support, these organisations strengthen capacity of relevant organisations at national, regional, sectoral and enterprise level with the aim to increase their ability to bargain collectively, to conclude collective agreements, to advance important interests of workers and employers, namely their economic interests, working and social

conditions, including wages, OSHP, working time etc. both for private and public sector .

In 2017 the contribution amounted to 34 280 272 CZK
In 2018 the contribution amounted to 31100 577 CZK
In 2019 the contribution amounted to 37 581 063 CZK.

Legal protection

To promote collective bargaining at enterprise level, there is a strong legal protection of trade unions guaranteed by law. The trade union organisation can be established by minimum of three members only, on the base of notification. Any form of discrimination or different treatment based on trade union membership in labour relations is prohibited by law (Labour Code, Anti-discri mination Act, Employment Act).

[7] Guidance notes of the CESA regulating the process of cooperation.

There is a strong legal protection of trade union representatives against dismissal - the employer has to ask the trade union organisation for its prior consent before giving a notice of termination of an employment of the trade union member.
Technical support to trade unions

Employer is obliged to create at his own cost conditions for proper performance of activities by employee representatives, such as furnished rooms and equipment, costs relating to their maintenance and technical operations and by covering the cost of necessary documents, to provide sufficient time off necessary for activity as a mediator and arbitrator in collective bargaining et c.
Regular annual survey of wage, working conditions and benefits negotiated in collective agreements is published at the website www.kolektivnismlouvy.cz.

244. The Chair asked whether there were means to facilitate collective agreements. The ground of non-conformity concerns the lack of promotion of collective agreements.

245. The representative of the Czech Republic said that agreements also cover persons who are not members of trade unions. It is difficult to conclude that collective bargaining is not functioning on the basis of the percentage referred to in the conclusion. She précised that they do not collect figures of the collective agreements concluded.

246. The Chair outlined that it was only the lack of promotion of collective bargaining which was at the basis of the finding of non-conformity.

247. The ETUC representative explained that the Czech social partners were very active in capacity building. Although the figure they had was higher than the one mentioned in the conclusion (46% according to the OECD database), there had been a decrease in the number of collective agreements concluded.

248. The Secretariat informed that there is not an exact percentage stipulated for being in conformity. The ECSR evaluates situation separately country by country.

249. The GC invited the Government of the Czech Republic to do all its best to promote collective agreements and decided to wait for the next assessment of the ECSR.

ESC 6§2 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 6§2 of the 1961 Charter on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

250. The representative of Denmark provided the following information:

I would like to refer to my previous intervention in which I have commented on the committee conclusions in relation to articles 5 and 6 para 2 of the 1961 social charter jointly.

I will therefore not comment any further. I do, however, stand ready to answer any questions the Committee might have in relation to article 6, para 2.

251. The Chair applied the same decision as for Article 5 on Denmark, the GC decided to recall the 1995 Recommendation and to remind Denmark that they could contact the ECSR in the short-term with a view to solving the situation.

See above for Article 5 Denmark (GC's decision covers both provisions)

ESC 6§2 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 6§2 of the 1961 Charter on the ground that legislation permits employers unilaterally not to apply conditions agreed in collective agreements.

252. The representative of Spain provided the following information:

The representative of Spain explained that the situation had not changed since the last ECSR assessment. She proposed to hold a meeting with the ECSR with a view to clarifying the situation. This meeting could be held on the occasion of the upcoming conference with the Inter-American Court of Human Rights which will be held in October in Madrid.

She provided the following information on two judgments delivered by the Constitutional Court of Spain concerning the specific issue covered by the conclusion:

"Arrêt de la plénière de la Cour constitutionnelle du 8/2015 du 22 janvier de deux mille quinze confirmant la constitutionnalité des articles 41, 51, 84.2 et disposition complémentaire 10 du Statut des travailleurs, dans son libellé donné par la loi 3/2012 du 6 juillet sur les mesures urgentes pour la réforme du marché du travail.

Le TC déclare :

Sur la réforme de l'art. 41 du Statut des travailleurs, qui attribue à l'employeur le pouvoir de modifier unilatéralement les conditions de travail prévues dans les

"conventions collectives", c'est-à-dire celles dites "extra statutaires" ou "à efficacité limitée" (elles manquent d'efficacité générale rejettent la violation des articles 37.1 (droit de négociation collective) et 28.1 (liberté d'association) de la Constitution dans la mesure où, comme l'avait prévenu le droit en appel, Dans son énoncé des motifs, la limitation du droit de négociation collective poursuit le but de «rechercher le maintien du travail plutôt que sa destruction».

En outre, explique le jugement, l'exercice de la faculté des affaires de la modification unilatérale des conditions de travail "n'est conçu que comme une alternative à l'échec de la négociation préalable et obligatoire avec les représentants des travailleurs".

D'autres conditions sont établies, telles que :

- L'employeur ne peut prendre la décision discrétionnaire que si "des raisons économiques, techniques, d'organisation ou de production éprouvées sont concordantes" ou lorsque

- La décision commerciale "est dans tous les cas soumis à un contrôle juridictionnel".

À cet égard, en ce qui concerne les dérogations et qu'elles sont imposées unilatéralement, les données sur la non-application des accords de la période 2013-2017 témoignent, d'une part, de leur diminution significative (de 2 512 en 2013 à 1 076 2017) et, d'autre part, plus important encore, que 98,9% des non-demandes sont adoptées par accord, soit pendant la période de consultation, soit lors de procédures ultérieures.

Ensuite, ni l'employeur ne se sépare de ce qui est établi dans la convention sans motif ou avec une justification causale ouverte, et il n'est pas non plus possible que le décrochage puisse être forcé contre l'opposition de la représentation des travailleurs.

Il est évident que l'inapplication, d'une part, répond à un contexte de difficulté particulière et, d'autre part, que la règle est de parvenir à un consensus sur son utilisation par ceux qui sont le plus directement concernés par une hypothèse de crise. En bref, sa condition de mesure exceptionnelle, causale et concertée est soulignée.

De même, en ce qui concerne le nouveau libellé de l'article 82.3 ET réglementant la procédure d'inapplication en société des conditions de travail convenues dans la convention collective («prise en charge»), il est nécessaire de mentionner le STC 119/2014 du 16 juillet qui stipule que une telle mesure a un but constitutionnel légitime lorsqu'elle est dictée dans un contexte de crise économique grave et dans le but de promouvoir la flexibilité interne de l'entreprise avant la destruction de l'emploi ou la cessation de l'activité productive. »

253. The ETUC representative asked whether the current Government had the intention to restore the rights concerned and reverse the situation of non-conformity. He asked about the reasons for not dealing with this particular issue and reminded that there was an international obligation at issue, irrespective of the position of the Constitutional Court.

254. The representative of Spain explained that the wish of the current Government was to reform the workers' legislation but stressed that there was a misunderstanding between the ECSR and Spain on this particular issue. She said that in their view, the situation was in conformity with the Charter.

255. The Chair proposed to take note of the information provided and to invite Spain to contact rapidly the ECSR with a view to sorting out the possible misunderstandings.

256. Thus, the GC took note of the information provided and invited Spain to contact the ECSR with a view to sorting out the possible misunderstandings.

ESC 6§2 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6§2 of the 1961 Charter on the ground that workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining

257. The representative of the United Kingdom provided the following information:

We acknowledge that Article 6 obliges us to ensure the effective exercise of the right to bargain collectively. The UK takes a voluntarist approach to collective issues. Collective bargaining is largely a matter for individual employers, their employees and their trade unions and we believe that our current domestic law sufficiently protects the rights of trade unions and workers under Article 6.

Section 145A of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) entitles individual trade union members to the right to not be made an offer by an employer where the sole or main purpose is to induce them to not be or seek to be a trade union member.

Rights of workers who did not receive an offer

The UK Government does not believe Article 6(2) guarantees the right for co-workers or trade unions to bring proceedings with regard to inducement offers to surrender a worker's union rights. The text in Article 6(2) does not indicate this is a requirement and we believe that to interpret the text so widely would be incorrect.

The right to not receive an inducement offer to surrender one's union membership is a right held by an individual worker, and similarly it is therefore appropriate that they, as individual workers, are entitled to enforce that right. This is consistent with other individual rights in individual rights in industrial relations law.

From a practical perspective, it would be very difficult for a co-worker to bring a claim.

Free-standing right for unions to complain about its right to collective bargaining

The Government is content that our current law conforms to Article 6(2) of the ESC.

We believe that on a fair reading of Article 6, the right of the applicant unions to strive for the protection of their members' interests is not a right separate from and independent of the Article 6 right of their members to freedom to belong to a union for the protection of their interests, it is contingent upon the members' own right. It follows that infringement of the rights of the union only happens as a result of infringement on the individual's rights and as such the union has no free-standing right.

It is the UK Government's position that the rights of trade union members are sufficiently protected and are enforceable through section 145A of TULRCA.

258. The Chair stated that the role of the GC it's limited to economic and social consideration and does not decide on issues dealt by the ECSR. The GC continuously

discussed in the past this specific issue of the UK ground of non-conformity without resolving it.

259. The ETUC representative commented that although co-workers are not the primary activists to defend workers' rights, trade unions who represent workers are also not able to bring legal proceedings so they can defend workers' rights. Additionally, the Committee has not taken any actions towards remedying this situation with the exception of forwarding the case to the ECSR.

260. The Chair stated that according to the historic elements of the case, the Committee has never taken a vote on a recommendation or warning. The Committee has indeed invited the UK to meet with the ECSR. However, the GC should decide on what to do with this case of non-conformity.

261. The representative of Ireland asked for the GC to apply its working methods in order to be consistent.

262. The Lithuanian representative supported the proposal of Ireland.

263. The Chair suggested putting the issue on vote.

264. The Committee voted as follows: 0 in favour of recommendation, 3 against and 36 abstentions the recommendation was rejected. The GC voted for a warning with 22 in favour, 0 against and 18 abstentions. The warning was carried.

Article 6.4 and recognise: the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

ESC 6§4 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 6§4 of the 1961 Charter on the ground that the right to call a strike is reserved to trade unions, and the time frame for registering a trade union, which may take up to thirty days, infringes the right to strike.

265. The representative of Croatia provided the following information orally and in writing on the ground of non-conformity:

When it comes to the right to strike, we want to emphasize that this right is extremely important in the Republic of Croatia. As such, it is guaranteed by the Constitution of the Republic of Croatia, the Labour Act and each collective agreement contains a chapter regulating the right to strike that is more extensive than in the Labour Act.

The Constitution of the Republic of Croatia, Article 61 guarantees the right to strike. This right may be restricted in the armed forces, police, public administration and public services, as law defines it.

In the Republic of Croatia, Labour Act regulates the right to strike. In the Act, a whole chapter is dedicated to the aforementioned matters in the framework of the settlement of collective labour disputes.

A strike is ultimate remedy that trade unions take when they can't realize protection and promotion of the economic and social interests of its members.

Further to the Committee's comment that the right to strike is reserved exclusively for trade unions, we would like to mention that in accordance with our national legislation trade union is a registered association with legal capacity to enter into and sign collective agreements or take any other industrial actions. A group of people doesn't have the legal capacity so it can't be a legal entity, enter into, or sign the collective agreements. For this reason of legal capacity, the employer can't enter into a collective agreement with group of workers. It has to be trade union.

We would like to mention that there are 667 trade unions that are registered in the register of associations maintained under the Labour Act.

Trade unions are representative of all employees, they are synonymous for the employees, and the union members themselves are workers who are employed by the employer.

Through trade unions, all employees are entitled to strike. This way employee can fight for all their rights.

The reconciliation process with the employer must be completed before the strike begins.

The conciliation process may be terminated by an agreement that deals with disputes such as the manner and timing of the payment of salaries (if this has been disputed).

Article 205 (paragraph 1) states that trade unions have the right to call a strike and to carry it out for the purpose of protecting and promoting the economic and social interests of their members, but also for non-payment of wages, part of wages, or wage compensation if they are not paid by the due date.

The strike must be announced to the employer or association of the employer against whom it is directed, and the letter of the notice must state the reason for the strike, the day, place and time of the beginning of the strike.

The Labour Act does not define the term of strike but defines the preconditions for its organization. This is the result of organized union action to protect and promote the economic and social interests of its members.

We want to emphasize that the social partners are involved in drafting regulations governing the right to organize and take industrial action, including the right to strike.

We would like to point out that, except by the Labour Act, the strike procedure can be regulated by collective agreements, and that is very common in the Republic of Croatia.

The Committee considers that the 30-day deadline for issuing a decision on the application for entry in the register of associations is too long.

We would like to emphasize that this deadline is harmonized with a special act, the Act on General Administrative Procedure, which prescribes the rules based on which state administration bodies, bodies of local and regional self-government units and legal persons with public authority act and resolve in administrative matters.

266. The Chair stated that a deadline of 30 days is considered to be too long in practice by the ECSR, but this deadline does not seem to pose any problems.

267. The representative of the ETUC asked for clarification by the Secretariat that in relation to the 30 days in the working documents there could be a violation in 2006,

but this is the 1st time the Committee is discussing the violations, and why there is no reference to this case since 2006-2014

268. The Secretariat responded that the reason is that Croatia in the previous reporting cycle in 2010 didn't submit its report.

269. The representative of the ETUC stated that simplifying reporting procedures does not seem increase effectiveness, the practical examples demonstrated, that the strikes were decided earlier for example in 2 days, and questions whether the ECSR has taken into account this practice. Because it does not seem to pose a problem.

270. The Secretariat mentioned the ECSR was most likely unaware of this, and if Croatia could provide the relevant information including the rate of unionization in the next meeting.

271. The representative from Croatia mentioned that in the report the information is provided, but not on a yearly basis, if there is a problem with the organization and establishment then there would not be so many trade unions.

272. The Chair stated that this statement confirms his opinion and suggests that the GC take note of the information provided with regard to the deadline of registration of a trade union and on the information on the number of persons covered by collective or bargaining agreements.

273. The GC agreed to take note of the information provided and to await the next assessment of the ECSR, but also invite Croatia to submit the information required in the next report.

ESC 6§4 CZECH REPUBLIC

The Committee concludes that the situation in Czech Republic is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- ***the percentage required for calling a strike in disputes regarding the conclusion of collective agreements is too high;***
- ***there is an absolute prohibition on the right to strike for members of the police, fire and rescue service, prison service and the Office for Foreign Relations and Information.***

274. The representative of the Czech Republic provided the following information:

Ad a) *Section 17 of the Collective Bargaining Act [8] stipulates that the right to call a strike in disputes regarding collective agreements is subject to a majority requirement of two-thirds of the votes cast and a quorum requirement of 50% of the employees concerned by the agreement.*

That means that at least half of all employees were present at the voting and two thirds of them voted in favour of the strike. These two thirds make in fact 34 employees, which is one third of all employees, which can be easily voted down.

The mentioned quorum has been introduced in Collective Bargaining Act in 2007 in agreement with the social partners in reaction to negative conclusion of the ECSR and with the aim to be in line with the Charter.

The Digest of Case law of the ECSR from December 2018 [page 106, part b} "Other procedural requirements"] stipulates that:

"Subjecting the exercise of the right to strike to prior approval by a certain percentage of workers is in

conformity with Article 6§4, provided that the ballot method, the quorum and the majority required are not such that the exercise of the right to strike is excessively limited."

The Czech Republic is persuaded that the required percentage is not too high. It does not cause any problems or disputes in practice. The very high standard of legislation, which does not prevent the exercise of the right to organise and collective bargaining helps to keep social and industrial peace and stability in the Czech Republic. The Czech Republic believes that based on the presented example and explanation, 34% of all employees shall not be considered as excessively limited.

Ad b) *As described previously in connection with Article 5, Members of Prison Guard, Municipality Police, Fire Guard, Rescue System, Civil Protection, Customs Administr ation and other civil servants can form and form associations without any limitation as far as it is in line with their duties.*

Restriction is based on the very nature of the armed forces; whose mission is to protect the security of the society as a whole.

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8 Act No 2/ 1991 Coll., Collect iv e Bargaining Act , amended by Act No 264/ 2006 Coll., eff ecti ve fr om Jan uary 1, 2007 .

275. The Chair noted that the second ground does not concern the right to form trade unions, but an absolute prohibition on the right to strike for members of the police, army, etc. He asked if these persons could form a trade union, and if these unions could have the right to strike.

276. The Czech Republic representative responded that they could, if it’s not in breach with their duties, but a strike is considered a last resort action.

277. The ETUC representative concerning the 2nd ground said that the only misunderstanding is that there is no prohibition, but a restriction to strike. According to the Czech representative, employees can strike, if it’s not in contradiction with their duties, but how wide is the restriction.

278. The Secretariat stated that the ECSR believed that there was an absolute prohibition and not a restriction except if the law had been repealed.

279. The ETUC representative noted that the restriction can be so wide that it could be called a prohibition.

280. The Chair stated concerning the number of 30 or 35-36 of workers that need to vote in favour of striking does not seem problematic. However, if a company has several thousands of workers the situation will be more difficult. On the 2nd ground of non-conformity, an employee can strike depending on whether it is not in contradiction with their duties. In the case of a firefighter or a prison officer it cannot be determined how they will be able to strike if they have to take into account these duties.

281. The Secretariat stated that these kinds of employees should be able to strike and that is the opinion of the ECSR but could be restricted in some particular situations.

282. The representative of the Czech Republic remarked that in her statement a mistake was made by mixing two things together. The correct version is that it can be only in-line with their duties, if there is a fire not all fire workers from the specific station could participate to the strike. In every enterprise there must be a list of people that guarantee the minimum standard of service in case of strike.

283. The Chair remarked that, if these people who appear in the list which is in the conclusion of non-conformity could strike, but they must provide a minimum standard of service, this will just need to be mentioned in the next report and the situation will be resolved which has been unsatisfied since 2002. It is suggested the information be noted and provided, and the Government is invited to provide the information in the next report and await the next assessment of the ECSR.

ESC 6§4 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- ***civil servants employed under the Civil Service Act are denied the right to strike and***
- ***the workers who are not members of a trade union that has called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike.***

284. The representative of Denmark provided the following information:

The conclusion at hand concerns art. 6, para. 4, of the charter. It states that the situation in Denmark is not in conformity with the charter, since:

1. *civil servants employed under the Civil Servants Act are denied the right to strike, and*
2. *that the workers who are not members of a trade union that has called a strike are prevented from participating in the strike, unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike.*

Civil servants

- *As a starting point I would like to emphasize, that the vast majority of public employees in Denmark are employed according to collective framework agreements. This gives them a right to strike.*

- *Only a very limited number of all public employees are employed under the Civil Servants Act - which denies the right to strike.*

- *Thus, the vast majority of civil servants in Denmark has a right to strike – they are not employed under the Civil Servants Act.*

- *The Danish Government has continuously had a focus on limiting the number of civil servants employed under the Civil Servants Act.*

New appointments

- *In 2000 this effort lead to a circular letter, which limited the appointment of new civil servants to positions covered by article 31 in the Social Charter.*

- *Since the circular letter there has been further reductions in the number of positions in which new civil servants can be appointed under the Civil Servants Act.*

- *An example of this reduction is the 2008 collective framework agreement on employment conditions for higher government officials.*

- *The agreement limited the number of positions of higher government officials in which new civil servants under the act can be appointed. New appointments was limited to permanent secretaries and similar chief government officials.*

- *New appointments are thus only used in the following positions:*

1. *permanent secretaries and similar chief government officials*
2. *judges*
3. *senior deputy judges*
4. *senior prosecutors*
5. *employees in the police corps*
6. *governors of prisons*
7. *prison officers*
8. *high ranking officers in the military and civil defense forces, and*
9. *inspectors of the fishery inspection.*

- *New appointments are therefore in conformity with the charter and has been since the 2000 circular letter.*

Reductions in numbers

- *As per 31st of May 2019 there were approximately 28.000 civil servants employed in the state sector under the Civil Servants Act, a reduction from approximately 50.000 as of September 2011.*

- *Of these civil servants (28.000), only approximately 16.000 were employed in positions which are still open to new appointments under the Civil Servants Act – all of which are covered by article 31 in the Social Charter.*

Transitional scheme (in positions with no new appointments)

- *The remaining approximately 12.000 persons are covered by a transitional scheme.*

- *Civil servants under the scheme have the opportunity to be employed instead according to collective framework agreements – and thus gain access to the right to strike.*

- *However, these persons have wished to remain employed under the Civil Servants Act with the restrictions on the right to strike that this entails.*

- *When persons under the transitional scheme terminate their employment, they will be replaced by persons not hired under the civil servants act.*

Social partners

- *The social partners have been thoroughly consulted through the reductions made by the 2000 circular letter and the 2008 collective agreement.*

- *The social partners have not expressed a wish for further reductions of employment under the Civil Servants Act and have accepted the optional character of the transitional scheme.*

Non-union members' right to participate in strike and to be protected during a strike

- *The right to strike in Denmark is closely related to the right to collective bargaining. The right to strike is primarily exercised when unions attempt to establish or renew collective agreements on wage and working conditions with employers.*

- *In order to engage in negotiations, there must be a collective of workers which puts forward a demand – typically a union.*

- *It is the opinion of the Danish Government that a single worker can neither demand such negotiations nor support these demands by means of a strike.*

- *The right to strike is guaranteed by all major labour market agreements, including agreements for the public sector.*

- *Labour market organisations have an independent right to initiate conflicts on behalf of their members. Organisations may not demand that non-members initiate or participate in labour conflicts.*

- *It should be noted however, as a nuance - that according to the working environment legislation, collective agreements and fundamental legal principles, an employee has, regardless of whether organised or not, the right to leave the workplace if his or her life, honour or welfare is under threat.*

- *Therefore, a worker may leave the workplace without prejudice or harmful or unfair consequences when a serious and immediate danger exists.*

- *After a collective agreement is reached, a peace obligation exists for the duration of the agreement. Therefore, strikes are prohibited until the expiration of the agreement.*

- *It is the opinion of the Danish Government that Article 6 protects the right to collective bargaining and the use of collective action as a means to ensure that this right may be exercised.*

- *To conclude - The right to action in support of attaining a collective agreement is the sole prerogative of a collective of workers. The Danish Government does not view Article 6 as relating to an individual right to action in order to secure collective bargaining.*

285. The Chair commented that if the historical elements of this case are examined, there are 2 pages of negative conclusions including a recommendation concerning Denmark.

286. The representative of Ireland indicated that there are a limited number of senior officials that are not allowed to strike and that this number has been reduced on a progressive basis.

287. The representative of Norway questioned on the 2nd point of non-conformity, if the right to strike is an individual right, because the Charter states it's a collective right.

288. The representative of Denmark responded that it is of his belief that that is the ECSR interpretation.

289. The ETUC representative expressed concern relating to the 1st ground, as the transitional process the phasing out of civil servants will take at least until 2030 and some will still remain and so it was suggested to the GC to apply its working methods. On the 2nd ground of non-conformity it is understood that workers who are not members of a trade union that call for a strike don't have the same protections as trade union members who have to participate in a strike. The ETUC raised two questions, one relating to what happens if these non-trade union members participate in a strike and two if they are not able to go to work because of the strike, are they sanctioned or are they considered that they are illegally striking

290. The representative of Denmark responded that on the 2nd question it cannot be said that they are illegally striking but it will need to be confirmed. As to the 1st question the representative would need to collect more information in order to answer.

291. The ETUC representative remarked that it does make sense if somebody is a non-member but asked what happens if someone is willing to go to work but can't enter because of the strike. What would happen with these workers do they face sanctions?

292. The representative of Denmark commented he will need more information on the matter.

293. The ETUC representative asked if there was any additional information on the phasing out procedure.

294. The representative of Denmark responded that there was no information at this point on the final date of the phase out.

295. The Greek representative asked for the number of employees under the Civil Service Act to be repeated.

296. The representative of Denmark responded that as of 31st of May 2019 there were approximately 28.000 civil servants employed in the state sector under the Civil Servants Act, a reduction from approximately 50.000 as of September 2011. Of these civil servants (28.000), only approximately 16.000 were employed in positions which are still open to new appointments under the Civil Servants Act – all of which are covered by Article 31 in the Social Charter. The remaining approximately 12.000 persons are covered by the transitional scheme with no new appointments under the Act.

297. The representative of Greece mentioned the significance of the case and does not believe that 28.000 who are refused to strike is a limited number even if it is reduced.

298. The representative of Denmark stated that the number is 12.000.

299. The representative of Greece responded that she thought it was 28.000 and that the 12.000 will be replaced when pensioned.

300. The representative of Denmark explained there are 16.000 in positions open to new appointments; these are exceptions covered by Article 31. In addition, there are 12.000 people that are not covered by Article 31, but they will not be new appointments, these will be the final phase out.

301. The Chair summarizing the situation said that there are 28000 civil servants of which 16000 are under the civil service law and 12.000 are under the transitional system, these employees will be replaced by other people, but will be administered under a new system.

302. The representative of Denmark agreed with the summary.

303. The representative of France asked for an explanation on the difference between individual and collective rights and summarized the transitional scheme. Further it was asked if a person belongs to a trade union and does not want to strike what happens in that situation as it is difficult to see what is applied in this case.

304. The representative of Estonia asked what was the number of civil servants covered by collective agreements in order to determine how many officials are covered by Article 31.

305. The representative of Denmark replied affirmatively to the French's representative on the 1st question. In relation to the 2nd question it was mentioned that this information was not available but could be investigated. On the question of the Estonian representative the numbers would have to be investigated as well for more clarity.

306. The representative of ETUC suggested a more pragmatic solution and agreed with the representative of Greece that it will be reasonable for the Danish representative to collect some answers by the next day in order to draw a conclusion

307. The Irish representative expressed the general confusion concerning the figures and states that it is clear that the 12.000 civil servants are of concern that are going to disappear, and these people are not looking for other contracts.

308. The Chair agreed but specified that there are another 16.000 civil servants.

309. The representative of Ireland responded that they are covered under Article 31.

310. The representative of Denmark agreed with the Irish delegate that the discussion concerns 12.000 employees.

311. The representative of Greece agreed with the decision to postpone the discussion to allow the Danish representative to provide the relevant figures.

312. The French representative asked about the transitional period in the labour market and the projection for the end of it for instance.

313. The Chair responded that it will be asked to the representative of Denmark to provide this relevant information in the following day.

(Following day)

314. The representative of Denmark explained that in the civil service there are 12.000 persons who are under a phase out scheme who will be replaced with people that are under a collective agreement. From the 28.000 civil servants in the state sector, the 12.000 are not covered by collective agreements. There is not an estimate or exact year of when the transitional scheme will be completed, but the youngest

persons hired by the Civil Service Act are in their 30s. All of the 12.000 have the opportunity to be covered by collective agreements but chose not to have the right to strike and chose to not be able to strike. In relation to the question on non-unionized workers, non-union members workers not organized under the union have the right and duty to go to work as usual. Physical blockades are not legal in Denmark as established by the Supreme Court. The employees can be assisted by the police and can secure the right and duty of a non-organised worker to work. The employer can call the police that can ensure to these workers the access to their workplace.

315. The ETUC representative commented that there was no estimate on when the transition phase will end and that most workers are in there 40s. Furthermore, the ETUC representative asked the statutory retirement age in Denmark, and if those 12.000 that have chosen to stay under the Civil Service Act does their decision imply that they have the option to be covered into collective agreements if they wanted.

316. The representative of Denmark responded that they can, but that was not able to provide the exact details on the matter. Concerning the retirement age it is estimated around 65-67.

317. The ETUC remarked that the number represents the 6% of the civil service and said that the case will be on the agenda for the next 25 years.

318. The representative of Denmark responded that there is no final estimate for the final phase out. But the youngest persons in the scheme are in their 30s. Although there are solutions to the problem as it is a phase out.

319. The Chair stated that the employees can be covered by other schemes, but they choose not to because they may have benefits for that scheme. But questions in the case of a transitional scheme is if there are other benefits granted.

320. The representative of Demark responded that being under the Civil Service act is very beneficial and that the social partners seem not to be concerned about this scheme.

321. The GC took note of the state sector employees' situation and the number under the Civil Service Act. It was highlighted that this was a phase out and that the GC will await the next assessment of the ECSR although in the next 4 years the conclusion will probably be the same on the matter.

ESC 6§4 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- ***the prohibition on all strikes not aimed at achieving a collective agreement constitutes an excessive restriction on the right to strike and***

- ***the requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constitute an excessive restriction to the right to strike and***
- ***the denial of the right to strike to civil servants as a whole, regardless of whether they exercise public authority, constitutes an excessive restriction to the right to strike.***

322. The representative of Germany provided the following information:

The Federal Government has always maintained its legal opinion that the ban on strikes by pensionable civil servants in Germany is in line with the ESC.
In addition to the general restriction of Article 31 ESC, which applies to all rights, the right to strike is also subject to a national ascertainment reservation, i.e. a special restriction, pursuant to Annex, Part II, on Article 6 (4):

"It is understood that each Contracting Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article 31. "

This ascertainment reservation was incorporated into the Treaty text at the suggestion of France, Luxembourg, the Netherlands and the Federal Republic of Germany.

Even before the European Social Charter was signed in 1961, the Permanent Representative of the Federal Republic of Germany had made a declaration within the meaning of Article 31 (2) b of the Vienna Convention on the Law of Treaties (VCLT) to the other States party to the European Social Charter. According to the declaration, Article 6 (2) and (4) of the ESC should not, according to Germany's understanding, be interpreted as applying to pensionable civil servants in the sense of status law. The declaration is worded as follows:
"In the Federal Republic of Germany, pensionable civil servants (Beamte), judges and soldiers are subject to special terms of service and loyalty under public law, based in each case on an act of sovereign power. Under the national legal system of the Federal Republic of Germany they are debarred, on grounds of public policy and State security, from striking or taking other collective action in cases of conflicts of interest. Nor do they have the right to bargain collectively since the regulation of their rights and obligations in relation to their employers is a function of the freely elected legislative bodies. Hence, with reference to the provisions of items 2 and 4 of Article 6 of Part II of the Social Charter the Permanent Representative of the Federal Republic of Germany to the Council of Europe feels obliged to point out that in the view of the Government of the Federal Republic of Germany those provisions do not relate to the abovementioned categories of persons. The above declaration does not relate to the legal status of non-pensionable civil servants (Angestellte) and workmen in the public service.",

This declaration expresses the Federal Government's conviction that, in the public service, the European Social Charter applies only to employees, i.e. to workers and salaried staff.

This declaration was made to the Council of Europe and the other contracting parties before the signing of the ESC and fulfils the conditions for an instrument in the context

of a treaty within the meaning of Article 31 (2) b of the VCLT, which is also acknowledged as customary legal practice. The declaration was notified to all contracting parties, which did not object. The Federal Government has subsequently consistently maintained the position that the contracting states of the ESC recognise Germany's legal position, inter alia on Article 6 (4) of the ESC, as being a binding interpretation for the Federal Republic and have agreed that this provision is to be applied in Germany in accordance with the declared interpretation.

The Federal Government represented its legal opinion during the contract negotiations and in the memorandum to the German legislation, which was a prerequisite for the ratification of the ESC, explicitly ruled out that the ESC could also be applied to pensionable civil servants in the sense of status law:
"The Charter understands employees to be workers and salaried staff. Persons who are in a public-law service and loyalty relationship (pensionable civil servants, judges and soldiers) individually established by an act of state sovereignty do not fall into the category of "employee" (BT-Drucksache IV/2117, p. 29).

The Federal Government continues to maintain this legal position.
In its judgment of 12 June 2018, the Second Senate of the Federal Constitutional Court (BVerfG) rejected four constitutional complaints concerning the "ban on strikes by pensionable civil servants". Both the judgment's general tenor and its grounds for decision are fully in line with the legal argument of the Federal Government. The BVerfG has established that the personal scope of protection of freedom of association under Germany's Basic Law also covers pensionable civil servants but is constitutionally restricted by the ban on strikes as an independent, systemically necessary and thus fundamental structural principle of the pensionable civil service (Article 33 (5) of the Basic Law). The BVerfG has decided that the German legislature may not make any structural changes here either, because a right to strike would undermine the principles essential to functioning of Germany's civil service law (so-called alimentation (i.e. the obligation of a public employer to provide for a civil servant's welfare), duty of loyalty, lifetime employment and the regulation of essential rights and obligations reserved to the legislature). These structural features, which characterise German civil service law, do not stand unconnected side by side, but rather are related to each other, as the BVerfG has emphasised. The ban on strikes cannot therefore be looked at in isolation but must be seen in the context of all essential structural requirements.

In particular, the BVerfG focussed not only on the fact that the ban on strikes only affects part of the freedom of association (i.e. it does not exclude, for example, the formation of pensionable civil servants' own interest groups). It also took into account more than the fact that pensionable civil servants are obligated to act in the general interest and thus not to act in office in a partial manner and must put their own interests aside when performing the tasks entrusted to them, and that the use of economic means of combat and pressure to enforce their own interests, in particular also collective combative action within the meaning of Article 9 (3) of the Basic Law such as the right to strike, cannot be reconciled with the duty of loyalty of pensionable civil servants.

The BVerfG by contrast found that guaranteeing a legally and economically secure position, also enables pensionable civil servants to fulfil their duty of loyalty.

In this respect, it emphasised that the remuneration of pensionable civil servants must be regulated by law, that the umbrella organisations of trade unions and representatives of the interests of pensionable civil servants enjoy special rights of participation in the legislative procedure and that the Salary Act (Besoldungsgesetz) is based on a constitutionally guaranteed obligation to provide so-called alimentation. Pensionable civil servants therefore do not rely on the right to strike to secure a reasonable salary; this is compensated by the guarantees mentioned.

In return for the fact that pensionable civil servants make themselves available to their employer with their full personality (lifetime principle), they receive a salary for themselves and their family according to the responsibility associated with their office and in accordance with the development of the general economic and financial situation, as well as the general standard of living, which is constitutionally protected according to the traditional principles of the civil service from Article 33 (5) of the Basic Law. This guarantee of adequate remuneration, also referred to as the alimentation principle, constitutes right similar to that of a basic right a and thus, if necessary, an individual right of each pensionable civil servant vis-à-vis the state that can be asserted in court.

As part of its overall consideration of all the elements that fundamentally shape pensionable civil servant status, the BVerfG has come to the conclusion that the ban on strikes is a constituent part of pensionable civil servant status. Granting pensionable civil servants, the right to strike to would only be possible if the legal organisation and constitutional law and civil servant law foundations were reorganised for the whole civil service.

The ESC does not make any prescription to the States Parties as to how they organise their civil service. The constitutionally anchored division of the public service in Germany into pensionable civil servants and public employees does not contradict the ESC. The BVerfG also stressed in the proceedings that the ban on strikes by pensionable civil servants in Germany does not apply to the entire public sector and that individuals can obtain the right to strike by waiving civil servant status and instead entering into an employment relationship.

In this fundamental decision, the BVerfG dealt in detail with the relationship between the Basic Law and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). On the basis of a careful analysis of the case-law of the European Court of Human Rights on Article 11 ECHR, it concluded that Germany's rules are justified under Article 11 (2) ECHR and therefore compatible with the ECHR.

323. The Chair recalled the recommendation of 1998 addressed to Germany on the first ground of non-conformity which is still in force.

324. The ETUC representative underlined that the information provided is not new to the GC except for the judgment of 2018 of the Federal Constitutional Court which was met with a lot of criticism in the country. As a result of it a number of cases have been lodged before the European Court of Human Rights in relation to the right of strike(Application no. 59433/18 Karin HUMPERT against Germany and 3 other

applications). He suggested that, since this is a very long-standing issue, the GC considers at least a renewal of the recommendation already addressed in 1998.

325. The Lithuanian representative asked to apply the GC working methods on the third ground of non-conformity, since on the first and second ground the recommendation adopted in 1998 is still valid.

326. The ETUC and Dutch representatives pointed out that the 1998 recommendation referred only to the first ground of non-conformity and that the GC should vote on the second and third ground of non-conformity.

327. The Secretariat explained that while the 1998 recommendation referred to the first ground of non-conformity, the case law of the ECSR was changed later on and therefore the recommendation adopted in 1998 was considered covering also the second ground of non-conformity, when was assessed the non-conformity in 2006.

328. The Chair on this basis suggested that the GC, concerning the first ground of non-conformity, recalls the previously adopted 1998 recommendation and that would vote on the second and third ground of non-conformity. The GC agreed with this proposal.

329. The GC proceeded to vote the following:

- On the second ground of non-conformity the GC voted first for a recommendation. The result of the vote was: 0 votes in favour, 5 votes against, 35 abstentions. The recommendation was not carried. The GC then voted for issuing a warning. The result of the vote was: 13 votes in favour, 6 votes against, 21 abstentions. The warning was adopted.
- On the third ground of non-conformity the GC voted first for a recommendation. The result of the vote was: 0 votes in favour; 10 votes against; 30 abstentions. The recommendation was not carried. The GC then voted for issuing a warning: 11 votes in favour; 7 votes against; 21 abstentions. The warning was not adopted.

ESC 6§4 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 6§4 of the 1961 Charter on the ground that that during the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter.

330. The representative of Iceland provided the following information:

I want to apologize ahead of time for the length of my intervention, but I hope it will give the Committee a better overview of the situation in Iceland.

Under Icelandic law, the right to strike is protected under Article 14 of the Act on Trade Unions and Industrial Disputes (no. 80/1938) as well as under Article 74 of the Icelandic Constitution, on the freedom of association.

In a judgment from 2002 (in case no. 167) the Supreme Court of Iceland confirmed that Article 74 of the Constitution must be interpreted in light of Article 11(2) of the European Convention on Human Rights, and other international treaties on social rights ratified by Iceland, including the European Social Charter. Therefore, restrictions to the right to strike must be prescribed by law and be necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

In the same judgment, the Supreme Court noted that, by nature, strikes are intended to put pressure on employers, they typically have some adverse effect on the lives and work of others and may even bring society to a halt to some degree. Despite this inherent nature of strikes, the Supreme Court found that it cannot be ruled out that in some situations the effect of strikes on the economy can be so severe that public interest justifies the temporary termination of such measures.

The decision to pass legislation to terminate collective action is not taken lightly by the Icelandic authorities and is only applied in extreme cases. When applied, the necessity for such measures is therefore explained in detail in the notes to the legislative bills proposing that such action be taken. These explanations were included, though not in their entirety, in Iceland´s last report on the four situations in which the Parliament intervened in disputes in the reference period 2013-2016.

Regarding Article 6(4), the ECSR found that it was not demonstrated sufficiently in Iceland´s report that the conditions of Article 31 of the Charter were fulfilled in these situations so as to justify legislative intervention. In that regard, it should be emphasized that the Icelandic government considers that the conditions of Article 31 were met in these situations and that the legislative measures thus did not go beyond what is permitted by Article 31 of the Charter (which corresponds to Article G of the Revised European Social Charter).

The ECSR points out that further information would have been needed in the last report to determine, in particular, whether the measures were "necessary in a democratic society". For this requirement of Article 31 to be met, the restriction has to be proportionate to the legitimate aim pursued.

Iceland´s last report provided an overview of the four situations in which legislation was passed to end strikes and summarized why the legislature considered it necessary to intervene. However, the ECSR found that these explanations were not comprehensive enough so as to enable the committee to assess whether the measures fell within the scope of Article 31. In future reports, care will therefore be taken to provide all the necessary information to enable the ECSR to carry out its assessment. For the time being, I can provide the GC with some further information on these situations, but more in-depth information can be provided in the next report.

The first situation concerned the strike action by the Seamen´s Union on Herjólfur, a ferry that sails between the southern coast of Iceland and the Westman Islands. They´re a popular tourist destination populated by around 4.300 people.

In this case, the ECSR stated that although the justification for terminating the strike was the protection of the rights and freedom of others, and the economy, it has not been demonstrated that the conditions of Article 31 had been met, namely that it was necessary in a democratic society. It noted that it would have needed further information on the essential services denied to the inhabitants, lack of hospital care, other modes of transport etc. to complete its assessment.

On this point, I can confirm that the inhabitants of the Westman Islands do indeed need to travel to the mainland of Iceland for a number of services not available in such a small community of 4.300 people, including various health care services. For example, birth services are not provided for pregnant women, so they need to go to the mainland to give birth.

Regarding other modes of transportation, the Herjólfur ferry is in fact the principal mode of transportation to the islands and the only means of public transport. The strike therefore had a severe impact both on the inhabitants of the islands as well as on tourism.

The ferry is also nearly the sole mode of transport for goods, including fish which is unloaded on the islands and subsequently shipped to the mainland by the ferry. The islands can also be accessed by plane, which is a much more expensive and less used mode of transportation to the islands. Also, flights sometimes need to be cancelled due to difficult weather conditions in the region.

Another main consideration of the legislature was that since the ferry is the principal mode of transport to and from the islands for people and goods alike, the strike had a negative impact on business operations. This included fisheries since fish could no longer be transported from the islands in sufficient quantities. The strike therefore resulted in lower prices and endangered jobs on the islands, particularly in fisheries and tourism. Construction work also came to a halt due to a lack of supplies. To put the situation in perspective, the Herjólfur ferry normally sails 3-5 times every day of the week, transporting around 12,000 passengers and 1,800 vehicles per week. During the strike, however, only 4 trips were made on average per week, transporting around 1,600 passengers and 240 vehicles.

The legislature also noted that the dispute had been referred to the State Conciliation and Mediation Officer on the 27th of January and that the negotiations had come to a standstill, with no further meetings being envisioned by the parties to resolve the dispute. No resolution to the conflict was therefore in sight. The Parliament considered that intervention was therefore necessary for the protection of public interest, taking into consideration the overall severity of the effects on public interest and that the dispute concerned the wages and terms of service of six individuals on the ferry.

It should be noted that instead of terminating the strike permanently and referring the dispute to compulsory arbitration, as is sometimes done when the legislature intervenes, Parliament chose a lesser means of intervention, a softer measure than compulsory arbitration, opting to temporarily postpone the strike until the 15th of September that same year, in order to give the parties more time to resolve the dispute on their own.

I won´t go into as much detail on the other three situations, since we have limited time, but as I said, further information can be provided on them in the next report. I´d like to briefly mention just a few main points concerning the other cases, though.

Regarding the second case, concerning the strike action taken by pilots working for the airline Icelandair, the ECSR stated in its conclusion that even though this had important consequences on the economy, and this being the primary consideration on which state intervention to terminate the strike was based, it has not been established that such intervention falls within the limits of Article 31 of the Charter, namely that it was necessary for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

The explanatory notes to the Act terminating the strike state that, in the view of the legislature, intervention was necessary in this case to protect public interest due to the severity of the economic effects of the strike. The explanatory notes emphasize that according to the Supreme Court economic effects of strikes can in some cases be so severe that they justify the termination of strikes for the protection of public interest. The severe effects of the pilot´s strike on the economy are described in detail in the explanatory notes to the Act, pointing out that Iceland is an island, and therefore depends heavily on flight as a means of transportation. Also, the market share of the airline, Icelandair, for flights to and from the country was over 70% at the time. The daily loss of income for tourism in Iceland was estimated to be 900 million ISK and the strike was also considered to impact future bookings in the tourism sector as a whole. The strike also had grave economic effects on the fisheries sector since almost all fresh fish was shipped from Iceland by the airline in question. The Parliament noted that due to the sensitive nature of fresh fish as a product, timely delivery is extremely important and without it, the loss of income is severe, and markets are lost.

The economic effects of the strike as a whole were therefore considered to be so grave that intervention by the legislature was necessary to protect public interest. To mitigate the effects of the intervention, the dispute was not referred immediately to compulsory arbitration. Instead, the parties were given until the 1st of July to continue their negotiations. An agreement was reached between them on the 22nd of May and therefore, the matter did not go before a court of arbitration.

The fourth case also concerned the flight sector in Iceland, i.e. a strike by air traffic controllers. In this case, the legislature considered it necessary to intervene to protect public interest due to the economic effects of the strike for businesses, the public and the tourism sector. Another main consideration was the strike´s effect on Iceland´s ability to fulfil its contractual obligations under a transnational agreement between 25 countries on air navigation services in the North-Atlantic. However, to mitigate the effects of the intervention, the dispute was not referred immediately to compulsory arbitration. Instead, the parties were given until the 24th of June to continue their negotiations. An agreement was reached between the parties but was subsequently rejected by the Icelandic Air Traffic Controller´s Union. The parties then reached a court settlement, bringing the dispute to an end.

Finally, I´d like to make a quick comment on the final case, which concerned the long-standing strike by the Alliance of University Graduates and the Icelandic Nurses´ Association. In this case, the ECSR considered that it had not been demonstrated that

the legislature´s intervention was necessary in a democratic society. On that issue of proportionality, I can inform the GC that the Supreme Court of Iceland, in its judgment from the 13th of August 2015, found that the legislation ending the strike had been lawful and in line with the principle of proportionality. Further information concerning this case and the judgment of the Supreme Court can be provided to the ECSR in writing.

As I have said, future reports will contain more comprehensive explanations on how the individual criteria of Article 31 are met, to enable the ECSR to carry out its assessment. In the meantime, it would be helpful if the Secretariat could provide some guidance on whether further information on these four cases from the reference period 2013-2016 should be included in our next report for the next reference period or how we should proceed given this conclusion of non-conformity?

331. In reply to the question posed by the Icelandic representative the Secretariat said that the information on the 4 cases was not needed in the next report because it is not relevant to the next reference period.

332. The Chair recalled that is the second time of non-conformity.

333. The representative of Iceland said, in reply to the question of clarification posed by the ETUC representative, that the Supreme Court of Iceland has stated in a judgment that Article 74 of the Icelandic Constitution must be interpreted in light of the criteria of Article 31 of the Charter and of Article 11 of the ECHR. The criteria of those provisions therefore have to be fulfilled to justify legislative action restricting to the right to strike. Furthermore, according to the Supreme Court, the economic effects of strikes can in some cases be so severe that they justify the termination of strikes for the protection of public interest.

334. The GC agreed to request the Icelandic authorities to provide further information in the next report and decided to await the next ECSR assessment.

ESC 6§4 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 6§4 of the 1961 Charter on the ground that legislation authorises the Government to impose compulsory arbitration to strikes in cases which go beyond the limits permitted by Article 31 of the 1961 Charter.

335. The representative of Spain provided the following information:

L'article 10 du décret-loi royal 17/1977 du 4 mars 1977 relatif aux relations de travail, qui régit l'exercice du droit de grève, dispose que le gouvernement, sur proposition du ministère du Travail, en tenant compte de la durée ou des conséquences de la grève, des positions des parties et de la gravité du préjudice pour l'économie nationale, peut imposer aux parties le recours à l'arbitrage.

Dans ses conclusions de 2010, le Comité européen des droits sociaux a reconnu au gouvernement la possibilité d'imposer le recours à l'arbitrage, à condition que certaines circonstances soient réunies et que celui-ci entre dans les limites de l'article

31 de la Charte sociale européenne, à savoir : la loi prescrit le recours à l'arbitrage et celui-ci est nécessaire, dans une société démocratique, pour la protection des droits et des libertés d'autrui, ou pour protéger l'ordre public, la sécurité nationale ou la santé publique.

Comme nous l'avons déjà exposé dans de précédents rapports, nous ne partageons pas l'avis du Comité, étant donné que le recours à l'arbitrage obligatoire pour mettre fin à une grève est une procédure qui a lieu d'être uniquement dans les cas exceptionnels prévus par la loi :
a. durée prolongée ou conséquences de la grève,
b. positions des parties excessivement éloignées, et
c. dommage grave pour l'économie nationale.

Selon une jurisprudence constante, ces critères exceptionnels ont un caractère cumulatif et doivent donc être tous réunis pour que le gouvernement puisse intervenir. Il est entendu qu'ils peuvent être assimilés à ceux énoncés à l'article 31 de la CSE, surtout en ce qui concerne le respect des droits et des libertés d'autrui, les cas prévus dans la législation espagnole ne pouvant en aucune manière être considérés comme plus vastes que ceux établis dans la Charte.

Sur ce point, il y a lieu de rappeler l'arrêt 119/2014 du 16 juillet 2014 du Tribunal constitutionnel relatif à l'imposition d'un arbitrage obligatoire pour mettre fin à une grève, lequel précise que : « ...l'objectif poursuivi par le législateur avec la mesure contestée est de faciliter la viabilité du projet d'entreprise et d'éviter de recourir à des décisions qui donneraient lieu à la résiliation de contrats de travail. Cet objectif est constitutionnellement légitime, eu égard au droit au travail (art. 35.1 CE) et aux devoirs des pouvoirs publics de protéger la défense de la productivité (art. 38 CE) et de mettre en œuvre une politique axée sur le plein emploi (art. 40.1 CE), étant donné la nécessité d'affronter le grave problème du chômage en Espagne... ».

En outre, ce mécanisme est rarement utilisé et, tout obligatoire qu'il soit, il n'en demeure pas moins un système d'arbitrage, les conditions d'impartialité de l'arbitre devant être garanties et le système d'arbitrage étant, par ailleurs, susceptible d'un contrôle juridictionnel. Il y a lieu de préciser que conformément à l'arrêt 11/1981 du 8 avril 1981 du Tribunal constitutionnel, l'article 10.1 du décret-loi royal 17/1977 du 4 mars 1977 relatif aux relations de travail, qui réglemente cette question, habilite le gouvernement non pas à imposer une reprise du travail mais à instituer un arbitrage obligatoire, dans le respect de l'obligation d'impartialité des arbitres, comme nous l'avons déjà signalé.

336. The ETUC representative noted that this is a long-standing situation of non-conformity and that there is no intention to change.

337. The Chair recalled that the GC voted in 2010 for a warning which was not adopted.

338. The GC agreed to request the Spanish authorities to provide further information in the next report and to await the next ECSR assessment.

ESC 6§4 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6§4 of the Charter on the following grounds:

- **the scope for workers to defend their interests through lawful collective action is excessively circumscribed; lawful collective action is limited to disputes between workers and their employer, thus preventing a union from taking action against a de facto employer if this was not the immediate employer;**
- **the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive;**
- **the protection of workers against dismissal when taking industrial action is insufficient.**

339. The representative of United Kingdom provided the following information:

Strike action against a de facto employer

The UK Government recognises the Committee's criticism in this regard, however respectfully disagrees. The Appendix to Article 6(4) entitles each country to regulate the right to strike, provided the restrictions can be justified by Article G.

In the UK's context, history and traditions, the UK's prohibition of secondary action is necessary for the protection of the rights and freedoms of others and for the protection of the public interest.

It is well established under the UK's legislation that for trade unions to undertake lawful industrial action, they must have a trade dispute with the direct employer who employs the workers involved in that dispute.

Where an employer is not a direct party to a trade dispute, they have no ability to negotiate or control over the dispute and as such there may be little, they can do to help resolve it.

The UK's restrictions on secondary action must also be considered in the context of our industrial relations history. In the 1970s the annual average of working days lost was 12.9 million. The economic damage to the UK economy caused by these strikes was disproportionately large due to the severe impact of secondary action on the UK's very decentralised industrial relations structure.

The large number of bargaining units in the UK means there is scope for multiple disagreements to arise between parties each year. In the past, lawful secondary action led to a severe impact on the UK economy and the wider public.

The difficulties experienced in the past, and the fact the UK has no other controls on industrial action means we are concerned sanctioning secondary action would pose a significant risk to the UK economy and ability to deliver services to the general public.

It is worth noting however that UK legislation does not prohibit secondary action with regard to lawful picketing.

Requirement to give notice of a ballot

The UK Government believes the legal requirements with regard to ballot notices are proportionate and are not excessive. Our legislation recognises the interest which employers, whose workers may be called on to take industrial action against them, have in the conduct of strike ballots and any ensuing calls for action.

The requirement for a union to give notice to an employer of a ballot of industrial action gives employers the chance to respond to the prospect of a strike ballot, or strike call, as they deem in the best interests of the business.

Protection of workers against dismissal

The Government respectfully disagrees with the Committee's conclusions in this area. Under UK law it is unfair for an employer to dismiss an employee for taking lawfully organised, official industrial action lasting twelve weeks or less. It is worth noting that virtually all industrial action in the UK lasts less than twelve weeks.
It should also be pointed out that this period does not include days when the employer has prevented workers from working or from returning to work by locking them out of the workplace.
Regardless of the duration of the industrial action, if the employer has failed to take reasonable procedural steps to resolve the dispute with the trade union, it is unlawful for an employer to dismiss an employee for taking this type of industrial action.
Generally, this means that the employer must have exhausted the standard procedures for dispute resolution before dismissing any employees. If the trade union has requested it, the employer should have also used mediation and conciliation services.
The Government also considers that Article 6(4) should not be interpreted as meaning that employees can never be dismissed in any circumstances for taking industrial action.
Protracted periods of industrial action can frequently threaten the very existence of a business and can endanger the livelihoods of other employees who are not involved. Their rights also need to be factored into the construction of a fair and balanced legal system.

340. In reply to the question posed by the Chair the Secretariat clarified that the recommendation adopted in 2005 addressed to the UK authorities was referred only to the third ground of non-conformity.

341. The ETUC representative noted that the information provided by the UK representative was not new to the GC and that there wasn't any intention to change the situation. In this respect and taking into consideration that is a long-standing issue, invited the GC to consider applying its working methods.

342. The representative of the Netherlands pointed out that also other international institutions (ECHR and ILO) have contested this issue and agreed to apply the GC working methods.

343. The GC agreed to vote on the following:

- On the first ground of non-conformity:
  Concerning the proposal for a recommendation, the result of the vote was: 1 vote in favour, 2 votes against, 36 abstentions. The recommendation was not carried. Concerning the proposal of issuing a warning, the result of the vote was: 14 votes in favour, 1 vote against, 25 abstentions. The warning was adopted.
- On the second ground of non-conformity:
  Concerning the proposal for a recommendation, the result of the vote was: 1 vote in favour, 3 votes against, 34 abstentions. The recommendation was not carried.
  Concerning the proposal of issuing a warning, the result of the vote was: 19 votes in favour, 1 vote against, 22 abstentions. The warning was adopted.
- On the third ground of non-conformity:

The GC decided to vote whether to issue a new recommendation to change the preceding one, which referred to a period of 8 weeks (while now the legislative situation has extended the period to 12 weeks). The result of the vote was: 6 votes in favour, 3 votes against, 27 abstentions. The recommendation was not carried.
The GC then voted the proposal for issuing a warning. The result of the vote was: 25 votes in favour, 1 vote against, 13 abstentions. The warning was adopted**.**

APPENDIX I

List of participants

(1) 139th meeting, Strasbourg, 13-17 May 2019
(2) 140th meeting, Strasbourg, 16-20 September 2019

139th meeting of the Governmental Committee
13-17 May 2019
Strasbourg – Agora building – room G 01

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140th meeting of the Governmental Committee
16-20 September 2019
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APPENDIX II

Table of signatures and ratifications – situation at 1 December 2019

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints' procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00	12/11/04	
Armenia	18/10/01	21/01/04	
Austria	07/05/99	20/05/11	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04	07/10/08	
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	06/11/09	**26/02/03**	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	**03/11/99**	04/04/12
Denmark *	03/05/96	**03/03/65**	
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98 **X**
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00	22/08/05	
Germany *	29/06/07	**27/01/65**	
Greece	03/05/96	18/03/16	18/06/98
Hungary	07/10/04	20/04/09	
Iceland	04/11/98	**15/01/76**	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	29/05/07	26/03/13	
Liechtenstein	**09/10/91**		
Lithuania	08/09/97	29/06/01	
Luxembourg *	11/02/98	**10/10/91**	
Malta	27/07/05	27/07/05	
Republic of Moldova	03/11/98	08/11/01	
Monaco	05/10/04		
Montenegro	22/03/05	03/03/10	
Netherlands	23/01/04	03/05/06	03/05/06
Republic of North Macedonia	27/05/09	06/01/12	
Norway	07/05/01	07/05/01	20/03/97
Poland	25/10/05	**25/06/97**	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/00	16/10/09	
San Marino	18/10/01		
Serbia	22/03/05	14/09/09	
Slovak Republic	18/11/99	23/04/09	
Slovenia	11/10/97	07/05/99	07/05/99
Spain	23/10/00	**06/05/80**	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland	**06/05/76**		
Turkey	06/10/04	27/06/07	
Ukraine	07/05/99	21/12/06	
United Kingdom *	07/11/97	**11/07/62**	
Number of States 47	**2**+ 45 = 47	**9** + 34 = 43	15

The **dates in bold** on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.

APPENDIX III

List of Conclusions of non-conformity examined orally following the proposal of the European Committee of Social Rights

Article 2 ESC – *The right to just conditions of work*

Article 2§1 ESC – *To provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit*

ESC 2§1 CROATIA
ESC 2§1 CZECH REPUBLIC
ESC 2§1 ICELAND
ESC 2§1 POLAND
ESC 2§1 SPAIN

Article 2§2 ESC – *To provide for public holidays with pay*

ESC 2§2 UNITED KINGDOM

Article 2§4 ESC – *To provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations*

ESC 2§4 LUXEMBOURG
ESC 2§4 UNITED KINGDOM

Article 2§5 ESC - *To ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest*

ESC 2§5 CZECH REPUBLIC
ESC 2§5 UNITED KINGDOM

Article 4 ESC – *The right to a fair remuneration*

Article 4§1 ESC – *To recognise the right of workers to a remuneration such as will give them and their families a decent standard of living*

ESC 4§1 GERMANY
ESC 4§1 SPAIN
ESC 4§1 UNITED KINGDOM

Article 4§2 ESC - *To recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases*

ESC 4§2 CZECH REPUBLIC
ESC 4§2 LUXEMBOURG
ESC 4§2 POLAND
ESC 4§2 SPAIN
ESC 4§2 UNITED KINGDOM

Article 5 ESC – *The right to organise*

ESC 5 CZECH REPUBLIC
ESC 5 DENMARK
ESC 5 ICELAND
ESC 5 POLAND
ESC 5 UNITED KINGDOM

Article 6 ESC – *The right to bargain collectively*

Article 6§2 ESC – *To promote where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreement*

ESC 6§2 CZECH REPUBLIC
ESC 6§2 DENMARK
ESC 6§2 SPAIN
ESC 6§2 UNITED KINGDOM

Article 6§4 ESC – Recognise the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into

ESC 6§4 CROATIA
ESC 6§4 CZECH REPUBLIC
ESC 6§4 DENMARK
ESC 6§4 GERMANY
ESC 6§4 ICELAND
ESC 6§4 SPAIN
ESC 6§4 UNITED KINGDOM

APPENDIX IV

List of deferred Conclusions

Country	Articles
CROATIA	ESC Protocol Article 3
CZECH REPUBLIC	ESC 2§3, ESC 4§3, ESC 4§5
DENMARK	ESC 4§1, ESC 4§3
GERMANY	ESC 2§5, ESC 4§5
LUXEMBOURG	ESC 2§5
POLAND	ESC 4§3
SPAIN	ESC 2§4, ESC 6§3

APPENDIX V

List of examples of positive developments in State Parties

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

Article 2§3 – *To provide for a minimum of four weeks' annual holiday with pay*

GERMANY

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

Article 2§4 – *To eliminate risks in inherently dangerous unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations*

SPAIN

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

Article 4 -*The right to a fair remuneration*

Article 4§1 - *To recognize the right of workers to a remuneration such as will give them and their families a decent standard of living*

ICELAND

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

Article 5 – *The right to organise*

LUXEMBOURG

- **The Committee previously found the situation not to be in conformity with Article 5 of the1961 Charter, on the ground that the national legislation does not enable trade unions to choose their candidates for joint works council elections freely, regardless of nationality. i.e. candidates for joint works councils had to be an EU national. According to the report, the Law of 23 July 2015 amended the situation and candidates no longer have to be EU nationals. (Article 5)**

ICELAND

- **Parliament passed an Act in 2010 to repeal the Act on the industry charge. Consequently, the industry charge has not been collected since Act No. 124/2010 entered into force in 2011. (Article 5)**

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

The right to information and consultation

SPAIN

- **In the field of public administrations, Spain signed on 21 December 2015 the "Framework Agreement on information and consultation rights for central governments administrations". The Sectorial Social Dialogue Committee for Central Government Administrations signed a social partner agreement on common minimum standards of information and consultation rights for central administration workers in matters of restructuring, work-life balance, working time and occupational health and safety. (Article 2 of the additional Protocol of the 1961 Charter)**

CROATIA

- **In 2014 entered in to force the Labour Act 93/2014 that regulates employment relationships in Croatia. The Labour Act 93/2014 contains provisions on the right to information and consultation and enables participation of workers in decision-making through three legal mechanisms: 1. works council, 2. workers' assemblies and 3. employers' bodies. (Article 2 of the additional Protocol of the 1961 Charter)**

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

The right to take part in the determination and improvement of the working conditions and working environment

DENMARK

- **The report provides information on the progress concerning the new strategy relating to the working environment up to 2020 aimed at reducing the number of serious accidents, the number of employees who are psychologically overloaded and the number of employees who experience musculoskeletal disorders and states the creation of a midterm study supporting the achievement of the goals. It further states that an expert committee on how to enhance the undertaken efforts has been established. (Article 3 of the additional Protocol of the 1961 Charter)**

SPAIN

- **The report indicates that the Royal Decree 1084/2014 of 19 December 2014 amending the Royal Decree 67/2010 of 29 January 2010 on the adaptation of the legislation on the prevention of occupational risks to the general administration of the State has intervened to amend the legislation on the participation of workers in the determination and improvement of working conditions. This amendment is essentially in response to the decision of the General Bargaining Committee of the General State Administration, adopted on October 29, 2012, regarding the allocation of resources to the bargaining and participation structures and the streamlining of these structures. The decision concerns on the one hand the election of the delegates to the prevention and the credits of hours which they benefit and, on the other hand, the committees of safety and health at work, which must adapt, except in the cases provided for in the said royal decree, to the new definition of "workplace" according to which it constitutes the new electoral unit. (Article 3 of the additional Protocol of the 1961 Charter).**

- **The agreement of the General Negotiating Committee of the General State Administration is also at the origin of the provisions contained in Royal Decree-Law 20/2012 of 23 July 2012 adopting measures to guarantee budgetary stability and to encourage competitiveness. Specifically, Article 10 of this text designates the General Negotiating Committees as the responsible bodies for agreements in this area, in particular as regards the exercise of representational and negotiating functions.**

APPENDIX VI

Warning(s) and Recommendation(s)

GOVERNMENTAL COMMITTEE TABLE OF WARNINGS ADOPTED IN 2019							
ARTICLES							
STATES	**2.1**	**2.5**	**4.2**	**5**	**6.2**	**6.4**	**WARNINGS**
1. GERMANY						1	**1**
2. POLAND	1						**1**
3. UNITED KINGDOM		1	1	1	1	3	**7**
TOTAL	**1**	**1**	**1**	**1**	**1**	**4**	**9**

Warning(s)[6]

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

Article 2§1 *– To provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit.*

POLAND

- **In some jobs the working day can exceed 16 hours and even be as long as 24 hours**

Article 2§5 *– To ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as day of rest.*

UNITED KINGDOM

- **There are inadequate safeguards to prevent workers from working for more than 12 consecutive days without a rest period.**

Article 4 *– The right to a fair remuneration*

Article 4§2 *– To recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.*

UNITED KINGDOM

- **Workers have not adequate legal guarantees to ensure them increased remuneration for overtime**

Article 5 *– The right to organise*

UNITED KINGDOM

- **The legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represent an unjustified incursion onto the autonomy of trade unions.**

[6] If a warning follows a notification of non-conformity, it serves as an indication to the state that, unless it takes measures to comply with its obligations under the Charter, a recommendation will be proposed in the next part of a cycle where this provision is under examination.

Article 6 *– The right to bargain collectively*

Article 6§2 *– To promote where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.*

UNITED KINGDOM

- **Workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining**

Article 6§4 *– recognise the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.*

GERMANY

- **The requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constitute an excessive restriction to the right to strike.**

UNITED KINGDOM

- **The scope for workers to defend their interests through lawful collective action is excessively circumscribed; lawful collective action is limited to disputes between workers and their employer, thus preventing a union from taking action against a de facto employer if this was not the immediate employer;**
- **The requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive;**
- **The protection of workers against dismissal when taking industrial action is insufficient.**

Recommendation(s)

–

Renewed Recommendation(s)